



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: Finland



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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 12th to 14th 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 25th and 26th 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?

Two.

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

Yes, it does.

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.

Depending on the subject-matter:

- *cases from Government of Åland*

- *taxation cases from Central Tax Board*

- *for example wholesale price of medicinal products cases from The Pharmaceuticals Pricing Board*

- *cases from Sámi Parliament*

- *cases decided by the Finnish Government (the Cabinet in plenary)*

- *data communications cases from the Finnish Communications Regulatory Authority*

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.)!

Percentage value is only one (1 %).

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?

About 75 % of incoming cases are subject to the requirement of leave to appeal.

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)?

If leave to appeal is refused the case typically causes less work than cases where substantive decision will be given. However, it shall be emphasized that also those cases are under close scrutiny in the referendary's memorandum and deliberations in the session. On the other hand, when leave to appeal is granted the case will often have precedential value and be published, and those cases demand exceptionally much work. Cases where the SAC is the first (and only) court, the decisions typically require a little bit more work concerning the analysis of facts and in writing the decision than other types of cases (but, as mentioned above, the number of these cases is very limited). The work load in these cases is very big in the unlikely (but realistic) situation that an oral hearing must be conducted at the SAC.

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

- review decisions of the lower courts with a view to the facts and to the law? *Yes*
- review decisions of the lower courts with a view to the law only? *No*
- solely answer a(n abstract) legal question? *No*

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

- the standardisation/unification of the law? *Yes*
- the deliverance of single case justice? *Yes*
- (further) development of the law? *Not exactly, but giving precedents can come close to this purpose*
- care for adherence to procedural rules of lower courts? *Yes*

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

Deliver single-case justice and uphold the rule of law in administrative authorities' decision-making

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

The rationale varies depending on the subject-matter. Partly the urgency of the matter, partly the hierarchical position of the authority making the decision as the first instance (e.g. legality of a decision taken by the Cabinet (Council of Ministers in a plenary) is not suitable to be assessed in a regional administrative court).

6. a) Is there a separate constitutional court in your country?
No.

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?

The consideration of constitutional law and fundamental rights is integral to the work of the court.

According to section 106 of the constitution of Finland if, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.

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?

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?

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?

II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?
No

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

No

However, public legal aid covered by the Legal Aid Act is only provided by public legal aid attorneys, advocates or licenced attorneys referred to in the Act on licenced attorneys.

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...?

An advocate or another honest and otherwise suitable and capable person of age who is not bankrupt and whose competence has not been restricted may act as attorney or counsel. However, a person who has participated in the consideration of the matter in the authority or acted in it as the attorney or counsel of the opposing party shall not act as attorney or counsel. (Administrative Judicial Procedure Act, section 20)

e) Are there specific (different) rules for representatives of administrative authorities?
No

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

An appeal shall be lodged in writing. The appeal document, which shall be addressed to the appellate authority, shall indicate the decision challenged, the parts of the decision that are challenged and the amendments demanded to it; and the grounds on which the challenge is based. If leave to appeal is required in the matter, the appeal document shall indicate why leave should be granted.

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?

No (only the ancient rule prohibiting Reformatio in peius, of course, applies)

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?

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?

In practice, yes. Any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision may appeal against the decision. In addition, an authority may appeal against a decision pursuant to an express provision in an Act or if it is essential to exercise the right of appeal to protect a public interest supervised by the authority. (Administrative Judicial Procedure Act, section 6(1) and 6(2).)

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

There can be restrictions of the right of appeal (certain decisions of minor importance, but also e.g. administrative court's decision in a case concerning emergency placement of a child according to the Child Welfare Act). There are cases where the decision of the lower court may not be challenged by appeal at all or cases where leave is required for appeal in the Supreme Administrative Court. Some decisions concerning interim measures may be appealable only in connection with the appeal against the decision in the subject matter.

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)

About 75 % of the submitted cases are subject to the requirement of leave to appeal.

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

- Which court decides (lower court or SAC)? SAC
- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?
- If the SAC decides, is there a specific procedure of admittance before the SAC?
Please give details!

If leave to appeal is required in the matter, the appeal document must indicate why leave should be granted. Most often, the decision to grant leave to appeal and the decision in the substantive issue is declared in one decision. However, the SAC can first decide to grant leave to appeal and later decide the substantive matter. A request for leave to appeal can be rejected by a composition of three justices (in certain matters by two justices), whereas, in general, in judicial procedure matters, five members constitute a quorum.

- If the lower court decides (in a negative way), can the SAC still admit a case?
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

Yes, to date the main rule still is (according to the Administrative Judicial Procedure Act) that no leave to appeal is needed. Hence, the requirement of leave to appeal is based on the substantive law applicable in the case at hand (e.g. matters falling under the Alien's Act are subject to the requirement of leave to appeal, as well as matters concerning the environment, taxation, and a number of others). Normally the grounds for granting a leave to appeal are uniform (based on section 13(2) the Administrative Judicial Procedure Act; see d) below) in different acts, but e.g. in the Aliens Act the grounds are slightly different.

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

When an appeal against a decision of an Administrative Court to the Supreme Administrative Court requires leave to appeal pursuant to another Act, such leave must be granted if: 1) with regard to the application of the act, in other similar cases, or because of the uniformity of legal praxis, it is important to bring the matter to the Supreme Administrative Court for decision; 2) there is specific reason to bring the matter to the Supreme Administrative Court for a decision due to an obvious error in the matter; or 3) there is another important reason for granting leave.

Leave to appeal can also be granted to apply to only a section of the Administrative Court decision against which the appeal is lodged

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?

E.g. in Tax Law there is a specific provision (so called precedent appeal), which enables the parties to agree upon lodging the case directly to the SAC, instead of the regional administrative court, in order to speed up the procedure to make a precedential decision.

f) Are there specific requirements in certain fields of law?

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?

About 10-20 %, depending on the subject matter.

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?

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?

The system of requirement of leave to appeal does not as such restrict the individual appellants right to have his or her case reviewed by the SAC. However, as request for leave to appeal can be rejected by a smaller composition of three justices (sometimes two), the procedure is flexible and allows for the SAC to effectively direct its resources in exercising the administration of justice.

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

According to section 99 of the Constitution of Finland justice in civil, commercial and criminal matters is in the final instance administered by the Supreme Court. Justice in administrative matters is in the final instance administered by the Supreme Administrative Court. The highest courts supervise the administration of justice in their own fields of competence. They may submit proposals to the Government for the initiation of legislative action.

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?

According to section 21 of the Constitution of Finland everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.

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)?

There is a fairly general consensus that the system of requirement of leave to appeal should be expanded to become the general rule, with direct appeals to the SAC being the exception.

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? Yes
- obligation of the administrative authority to issue an administrative act? Yes
- obligation of the administrative authority to issue a new discretionary decision? Yes
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)? Yes

- issue an administrative act itself? *No*
- issue a discretionary decision out of its own authority? *No*
- remit to the constitutional court? *N/A*
- 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? *Yes*
- cassation of the administrative act? *Yes*
- obligation of the administrative authority to issue an administrative act? *Yes*
- obligation of the administrative authority to issue a new discretionary decision? *Yes*
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)? *Yes*
- issue an administrative act itself? *No*
- issue a discretionary decision out of its own authority? *No*
- remit to the constitutional court? *N/A*
- issue a legal opinion/authoritative interpretation of the law without connection to a single case? *No*
- other?

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

The SAC can inform the parties of additional evidence that needs to be presented and can also on its own initiative obtain evidence. The SAC is not bound by the determination of facts as made by the lower court.

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?

Yes. Also the duty to conduct an oral hearing in these cases is similar to that of the regional administrative courts (unlike in the cases where the SAC is the final court of appeal).

b) If not, what are the differences?

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?

No

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

No

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

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

Not strictly by law (of precedent), but in practice the lower courts tend to follow the decisions of the SAC

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

E. g. in cases where new interpretations can be based on decisions of the Court of Justice of the European Union or the European Court of Human Rights.

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

Not formally. However, given the importance of consequent case law, there is an established court practice that if a panel would be inclined to deviate from an earlier decision having precedential value, the case should be submitted to the plenary session of the chamber.

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

If the chamber plenary finds that in the present legal and factual (even societal) situation a new interpretation/application would be better reasoned, it can change the previous case law.

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

No. However, if a question of law common to all of the chambers, comes up the case can be submitted to the Plenary session of the SAC. After that the interpretation confirmed by the plenary is considered to be binding upon all of the justices.