



Bundesverwaltungsgericht



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

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

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Answers to questionnaire: Netherlands



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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?

The number of instances depends on the subject matter of the case. Generally speaking, there are two judicial instances for administrative law cases, with the addition that administrative law proceedings start with an administrative review procedure.

Most administrative procedures in the Netherlands start with a mandatory non-judicial objection procedure or an administrative appeal procedure. Any person whose interest is directly affected by an administrative decision (*the primary decision*) can seek redress against such decision from the authority which made the decision (*the objection procedure*) or an administrative authority other than the one which made the decision (*the administrative appeal procedure*).¹

The administrative decisions following these procedures can subsequently be brought before to the administrative chamber of a district court for appeal.² There are eleven district courts in the Netherlands that consider cases of administrative, civil and criminal law. These are the first instance courts.

Depending on the subject matter, appeal is open against these judgements to one of the last instance courts. There are four last instance courts for administrative law proceedings in the Netherlands: the Supreme Court (fiscal chamber), the Administrative Jurisdiction Division of the Council of State (hereafter: AJD), the Administrative High Court (*Centrale Raad van Beroep*) and the Trade and Industry Appeals Court (*College van Beroep voor het bedrijfsleven*). Each is competent in specified areas of administrative law. Judgements of these courts are final, except for exceptional cases concerning limited areas of administrative law in which there is a right to appeal to the Supreme Court.

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

Yes. The AJD is competent in first and only instance concerning specified administrative decisions, for example zoning plans and decisions concerning the Election Act.

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?

¹ Exemptions exist however, in some cases this step can be passed over and appeal is open against the primary decision before a district court (prorogation). A request for overleaping the objection or administrative appeal procedure can be honored if such is requested in the notice of objection, the case is suitable, and if the administrative authority assents to it.

² Important exemptions exist, however. In these exemptions, the procedure before the district courts is skipped and the secondary decision of the administrative authority is directly brought before a last instance court (the Administrative Jurisdiction Division of the Council of State, The Administrative High Court (*Centrale Raad van Beroep*) or the Trade and Industry Appeals Court (*College van Beroep voor het bedrijfsleven*)).

The cases that are considered in first and only instance by the AJD are specified by law³ and solely depend on the subject of the disputed decision. There is no right to appeal such a decision.

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.)!

About 8% of cases are first instance cases.

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 22% of cases are cases concerning provisional proceedings. These are usually done by a single judge.

In about 6% of cases the case is decided without a hearing because the outcome of a case is manifestly clear. These cases are usually done by a single judge.

About 38% of cases are immigration law cases in which a judgment with an abbreviated reasoning is given. These cases are usually done by a single judge. To be clear, not all immigration law cases are decided in this way. In about 60% of all immigration law cases a judgment with an abbreviated reasoning is given.

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)?

Cases concerning provisional proceeding cannot be weighed as to their complexity. Cases which are decided without a hearing because the outcome of a case is manifestly clear, are simple cases. Immigration law cases in which a judgment with an abbreviated reasoning is given can be weighed as to their complexity.

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?

The AJD is competent to review decisions of the lower courts with a view to the law and to the facts on the basis of the grounds of appeal and the grounds of defence brought before the court by the parties to the proceedings (the interested parties and the administrative authority responsible for the disputed decision).

As to the law, the AJD assesses the lawfulness of the judgment of the district courts based on statutory law, customary law and the general principles of law. In more fundamental cases, it furthermore considers (abstract) legal questions of general importance for the development of administrative law. As there are four last instance administrative courts in the Netherlands (see the answer to question 1a), the fundamental relevance of unity of law was recognized by the legislator. For this purpose, a 2012 Act revising the Dutch General Administrative Law Act⁴ introduced the possibil-

³ Chapter 2 of the appendix of the Dutch General Administrative Law Act contains a list of all decisions that are considered by the Administrative Jurisdiction Division of the Council of State in first instance. For these type of cases, the Division acts as a special court (for more detail on the different administrative justice systems in the Netherlands: see the answer to question 5a).

⁴ Wet van 20 december 2012 tot wijziging van de Algemene wet bestuursrecht en aanverwante wetten met het oog op enige verbeteringen en vereenvoudigingen van het bestuursprocesrecht (*Wet aanpassing bestuursprocesrecht*), Stb. 2012, 682

ity for three of these highest administrative courts to request a conclusion from an advocate general in full bench cases as of 2013.⁵ They can also refer full bench cases to a Grand Chamber when such is appropriate in light of the unity of law or the development of law.⁶ Grand Chamber cases are considered by five judges, including at least one judge from each of the four last instance courts. The first conclusion from an advocate general and subsequent judgment by the Grand Chamber dealt with the interpretation of the reasonable time requirement of Article 6 ECHR.⁷

As to the facts, the AJD has the competence to assess the facts on which the disputed decision was based, for example concerning the fact findings of the administrative authority that were relevant when the disputed decision was taken. According to a research done in 2007, in about a third of appeal cases questions about the facts are raised.

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?

The text of the Dutch General Administrative Law Act is silent on the purposes of the courts of appeals in administrative law. This question has therefore been decided in case law. The AJD has decided it has these purposes as a court of appeals in regular cases:

- to review whether the judgment of the lower court is lawful and based on facts. This includes checking whether the lower court has complied with procedural rules;
- to make sure the law is interpreted and applied uniformly by the lower courts;
- to further develop the law;
- to give parties the opportunity to supplement their grounds against the contested administrative decision with evidence and/or arguments which they didn't bring before the lower court.

It depends on the case which one of these purposes is emphasized. In general, the AJD can deliver single case justice in regular appeal cases, but there are limitations to this. See the answer to question 5 of part II for these limitations.

In the area of immigration law, the legislature has decided that the main purposes of the AJD as a court of appeals are to make sure the law is interpreted and applied uniformly by the lower courts and to further develop the law. The AJD will also review the judgment of the lower court, but if this judgment doesn't have to be annulled and no important question has been raised in a case, it will give a judgment with an abbreviated reasoning: it will only state in its judgment that the judgment of the lower court doesn't have to be annulled and no question has been raised which needs to be answered. An important question is a question which has to be answered:

⁵ Article 8:12a of the General Administrative Law Act. This Article does not include the Supreme Court (fiscal chamber), as the Supreme Court already has its own advocate-generals.

⁶ Article 8:10a, paragraph 4 of the General Administrative Law Act. Formally, this Article does not include the Supreme Court (fiscal chamber), but in practice, judges of the Supreme Court can sit in Grand Chamber cases as extraordinary councillors.

⁷ Administrative Jurisdiction Division of the Council of State, Conclusion, 23 October 2013, ECLI:NL:RVS:2013:1586. The judgment followed on 29 January 2014, see for an English translation: <http://www.raadvanstate.nl/assets/uitspraken/english-versions/201302106-1-A2.pdf>

- to ensure the law is interpreted and applied uniformly by the lower courts;
- to further develop the law ;
- or in the interest of an effective legal protection in a general sense.

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

The most important purpose of the AJD as a court of first instance is to review the lawfulness of the administrative decision is lawful and its basis on the facts. Besides this purpose it has the purposes to make sure the law is applied uniformly by administrative authorities and to further develop the law.

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

There are several reasons depending on the area of law. For example, cases concerning the Election Act are decided by the AJD as a court of first instance, because these cases have to be decided in a short amount of time.

Cases about zoning plans are decided by the AJD as a court of first instance, because of the interests of third parties, like developers, and because other decisions, like building permits, are based on zoning plans. Third parties like developers have to know within a reasonable amount of time whether they can execute their plan. In other word, the principle of legal certainty plays an important role.

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

No. there is no separate constitutional court in the Netherlands.

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

No. It is relevant to note here that Article 120 of the Dutch Constitution prohibits all courts to review the constitutionality of Acts of Parliament or treaties. This prohibition extends to fundamental principles of law.⁸ Effectively, this translates to a theory of sovereignty of parliament. Acts of Parliament are presumed to comply with the constitution.

However, the Dutch Council of State has an advisory division alongside the administrative jurisdiction division with a distinct task. The advisory division advises the government and parliament on legislation and governance. In assessing Bills and other requests for advice, the advisory division uses an assessment framework made up of three elements: policy analysis, legal issues and technical aspects.⁹ The assessment of legal issues includes the review of compatibility with higher law including the Dutch Constitution, Treaties and European Union law. Constitutional review therefore arguably takes place before a Bill or act of parliament enters into force.

⁸ HR 14 april 1989, NJ 1989.

⁹ <https://www.raadvanstate.nl/the-council-of-state.html>

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

The constitutional limitations of Article 120 of the Dutch Constitution are restricted to Acts of Parliament and treaties (acts of the formal legislator). This prohibition does not extend to “lower” legislation, meaning legislative acts that do not originate from Parliament (e.g. ministerial regulations or local ordinances). Courts are permitted to review their compliance with “higher” law including the Constitution and fundamental principles of law. The same goes for decisions from administrative authorities. In this context it is useful to note that, the Dutch General Administrative Law Act excludes generally binding provisions (*algemeen verbindende voorschriften* or AVV) from appeal to an administrative court. The legality of such provisions can only be put into question through so-called indirect or exceptive review, where the administrative court reviews whether the provision on which the decision is based is in line with higher law or general legal principles.

The prohibition of article 120 of our Constitutions does not limit courts to review whether Acts of Parliament comply with binding international instruments such as the Charter of Fundamental Rights of the European Union and other Human Rights treaties. More specifically, article 93 of the Dutch Constitution stipulates that provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents, shall become binding after they have been published. Article 94 follows with the notion that statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons. Administrative courts are therefore in the position to review whether national legislative acts or decisions are in line with international provisions that are binding on all persons by virtue of their contents.

In sum, notwithstanding the limits of constitutional review, the AJD can resort to international provisions that are binding on all persons by virtue of their contents, to consider international constitutional principles and fundamental rights in its judicial review.

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?

Not applicable, see 6a.

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?

Not applicable, see 6a.

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?

Not applicable, see 6a.

II. Access to the SAC

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

No, Dutch procedural administrative law does not require representation by a legal professional. The parties to the proceedings can represent themselves or, if they deem it necessary, engage a legal professional. A legal professional is anyone with a legal education. So, for example a party can be represented by a lawyer who works for a trade union, or a lawyer who works for an NGO. Exceptions exist for special groups, including children who need a parent or legal guardian to represent them and persons who fell into bankruptcy who need their curator.

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

Not applicable

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...?

Yes, see the answer to question 1a of part II.

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

Not in general, see the answer to question 1a. Administrative authorities are commonly represented by a civil servant (legal department) who needs a mandate decision to act as such or by an attorney.

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

The formal requirements of an appeal to all administrative courts in regular cases are the same. There are no distinct rules for an appeal before one of the SACs in regular cases.

Competence of the court depends on the absolute competence (which kind of court is competent to hear the case; civil/administrative court, AJD/the Administrative High Court/the Trade and Industry Appeals Court) and the relative competence (which exact (district) court is competent to hear the case?). Article 8:1 of the Dutch General Administrative Law Act stipulates that appeal is only open to decisions (and, for example, not for factual acts). Not all decisions can be appealed (see for example the answer to question 6C in part I) and other exceptions exist, but the ground rule is that only decisions can be appealed.

Admissibility

There are a number of formal rules in terms of the admissibility of an appeal. These are in sum, the following:

1. the requirement of being an interested party (either directly or indirectly). These are: the person appealing the decision, the administrative authority responsible for the disputed decision and third parties with an interest;
2. the requirement of having procedural interest in the outcome of the case (point d'intérêt). Having an interest on merely principle grounds is not enough;
3. the petition should be filed with the court (of appeals) in a certain time limit (six weeks);
4. the party is required to have contested the administrative decision in the administrative procedure, unless he has a valid reason for not doing this;
5. the petition should include the name and address of the person submitting the appeal, the date, a specification of the disputed decision and the grounds for appeal, and;
6. the requirement of paying the court fees in time.

In immigration law cases, a party is required to state in his appeal to the AJD which parts of the judgment of the lower court are contested and to give grounds why these parts of the judgment are not correct.

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?

Yes. The appeal is limited to the grounds of appeal and the grounds of defence brought before the court by the parties to the proceedings. The court does however consider rules of public order (*regels van openbare orde*) ex officio, such as the rules governing the competence of the court and the admissibility of the appeal.

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?

The AJD has the duty to refer to the ECJ for a preliminary ruling if a question of EU law needs to be answered to address a ground of appeal or a ground of defence and there is no *acte clair* or *éclairé*. In the Dutch legal system, provisions of EU law are not of public order.¹⁰ The general question of whether provisions of EU law are of public order, falls under the principle of procedural autonomy (obligation of effectiveness and equivalence).¹¹ This means that national courts are not obliged to undertake an ex officio assessment of compliance with EU law. However, if EU law prescribes that an ex officio assessment is required by national courts, or if the CJEU has ruled so, administrative courts undertake such an assessment. Dutch courts derive the power to refer preliminary question to the CJEU from Article 267 TFEU, and their powers to do so cannot be restricted by national law. For last instance courts, including the AJD, the duty to refer a case for a preliminary ruling is not limited by national law. They face no procedural restrictions (in light of the previous question) to refer a case for preliminary ruling.

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

¹⁰ CJEU 14 December 1995, C430/95, Van Schrijndel.

¹¹ CJEU 16 December 1976, C-33/76, Rewe.

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?

Yes, every interested party of the proceedings at the lower court has the right to appeal against a judgment of the lower court. They have to comply with the formal requirements for an appeal (see the answer to part 2a of question II. There's no leave to appeal procedure to bring a case before the AJD.

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

Yes, certain types of judgments of lower courts are excluded from the right of appeal to the AJD.

In the first place there's no right of appeal against provisional judgments of lower courts.

In the second place there's no right of appeal against judgments of lower courts in which it has decided that the outcome of a case is manifestly clear, for example manifestly inadmissible. Parties may oppose these kinds of judgements at the lower court. Another judge/chamber of the lower court then has to decide whether the outcome of a case is indeed manifestly clear. These decisions are also excluded from the right of appeal.

In the third place, in the area of immigration law judgments concerning certain types of administrative decisions are excluded from the right of appeal, for example judgments concerning administrative decisions about travel visas which are valid for less than 90 days.

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)?

There is no leave to appeal procedure to bring a case before the AJD.

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

Not applicable.

- Which court decides (lower court or 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 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,...)?

There are no special rules for filters for certain fields of law.

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

No admittance procedure (or leave of appeal procedure) exist in

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?

In the areas of law in which the AJD is competent, there are no more than two instances.

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

Not applicable

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

Not applicable.

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?

Yes, grounds of appeal against the contested administrative decision which haven't been brought before the lower court are in principle inadmissible. Furthermore, the AJD can declare a case inadmissible in case of legal abuse, like frivolous lawsuits. The system of appeal in the area of immigration law as described in the answer to question 4 of part I has the effect of a *factual* filter. The Administrative Law Jurisdiction of the Council of State only gives a fully reasoned judgment in immigration law cases in which the judgment of the lower court has to be annulled or in which an important legal question has been raised.

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?

Grounds of appeal against the contested administrative decision which haven't been brought before the lower court are in principle inadmissible. One of the reasons for this restriction is that the AJD sees its task as a court of appeals to review the judgment of the lower court. It doesn't see its task as a court of appeals to review the contested administrative decision afresh. However, in cases in which there is a criminal charge, grounds of appeal which haven't been brought before the lower court may be admissible.

As to the system of appeal in the area of immigration law, one of the reasons for this system is to enable the AJD to focus on its tasks of making sure the law is interpreted and applied uniformly by the lower courts and developing the law, its main tasks in this area of law.

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

No

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?

Not applicable

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 has been an academic discussion about access to the Administrative Law Jurisdiction of the Council of State as a court of appeal.

On the one hand, some authors have argued for more restricted access to the Administrative Law Jurisdiction of the Council of State as a court of appeal. They have argued for either a leave to appeal procedure or a system of appeal for regular appeal cases similar to the system of appeal in the area of immigration law, so that it can focus on its purposes of making sure the law is interpreted and applied uniformly by the lower courts and developing the law.

On the other hand, other authors have argued that the restriction to grounds of appeal which have been brought before the lower court should be abolished. They think the main purpose of the Administrative Law Jurisdiction of the Council of State as a court of appeal should be to deliver single case justice. Others have argued that this restriction should be limited to cases in which the interests of third parties are involved, for example cases about building permits. They find the restriction in these kinds of cases justified, because the holder of a permit has to know in a reasonable amount of time whether he can use his permit. According to them, it will take longer for a court of appeals to hand down a judgment if it has to decide about grounds of appeal which haven't been brought before the lower court. The main reason for this discussion is that the case law of the Administrative Law Jurisdiction of the Council of State differs from the case law of the Administrative High Court (Centrale Raad van Beroep) on this point. The Administrative High Court sees as one of its purposes as a court of appeals to review the contested administrative decision afresh. That means parties are allowed to bring grounds against the contested administrative decision before the Administrative High Court which they haven't brought before the lower court. The Administrative High Court mainly adjudicates cases in which no interests of third parties are involved, for example social security cases..

Some authors don't agree with the system of appeal in the area of immigration law. They have argued that the competence of the Administrative Law Jurisdiction of the Council of State to give judgments with almost no reasoning is in violation of article 6

ECHR and article 47 of the Charter of Fundamental Rights of the European Union.

There has been no political discussion concerning any kind of reform with regard to the access to the Administrative Law Jurisdiction of the Council of State as a court of appeal

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? *Yes*
- issue a discretionary decision out of its own authority? *Yes*
- remit to the constitutional court? *Not applicable*
- other? *See the answer in the text box below*

The AJD can also decide:

- a) that all or part of the legal consequences of the annulled administrative decision or the annulled part of it shall remain in effect;
- b) to set the administrative authority a time limit for issuing a new decision or performing another act;
- c) to determine a provisional remedy;
- d) to determine that, as long as the administrative authority does not comply with a judgment, any damages to be fixed in the judgment shall be payable by the legal entity designated by the court to a party designated by the district court.

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? *Yes*
- issue a discretionary decision out of its own authority? *Yes*
- remit to the constitutional court? *Not applicable*
- issue a legal opinion/authoritative interpretation of the law without connection to a single case? *No*
- other? *See the answer in the text box below*

The AJD can also decide

- a) that all or part of the legal consequences of the annulled administrative decision or the annulled part of it shall remain in effect;
- b) In case the AJD directs the administrative authority to make a new decision or to perform another act in accordance with its judgment, the AJD can decide that an appeal against the new decision can only be brought before the AJD;
- c) to set the administrative authority a time limit for issuing a new decision or performing another act;

- d) to determine a provisional remedy;
- i) to determine that, as long as the administrative authority does not comply with a judgment, any damages to be fixed in the judgment shall be payable by the legal entity designated by the court to a party designated by the district court;

If the judgement of the district court is correct, but lacks a solid reasoning, the SAC remedies the reasoning.

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

The Administrative Law Jurisdiction of the Council of State as a court of appeals in regular cases has the competence to investigate and determine the facts on its own. For example, it can call for expert witness or hear a witness.

It is not bound by the facts as they have been investigated and determined by the lower court. It is also not bound by agreements between parties about the facts. In practice, if the parties do not contest facts as they were investigated and determined by the lower court the Administrative Law Jurisdiction of the Council of State will usually rely on these facts. In regular cases parties are allowed to supplement their grounds against the administrative decision with evidence which they haven't brought before the lower court. However, they are not allowed to bring evidence and/or arguments before the court which amount to new grounds of appeal against the contested administrative decision.

In immigration law cases, parties are not allowed to bring evidence before the court which they haven't brought before the lower court, unless a party gives a valid reason why it was not possible for him or her to bring that piece of evidence before 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?

For the most part, the AJD applies the same rules of court procedure as the common first instance courts. However the time limit for an administrative authority to bring grounds of defence and for the AJD to decide a case can be shorter. And in certain cases about zoning plans which have been specified by law a party is obligated to state all his grounds of appeal against the administrative decision within the time limit to appeal the administrative decision. A party is not allowed to supplement his petition with new grounds of appeal after this time limit.

- 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?

Not applicable.

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

Not applicable.

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?

The lower courts are bound by decisions of the AJD about their competence to hear a case. There is no legal obligation for lower instance courts to follow decision of the AJD in other cases. However, in practice the lower courts will often follow the decisions of the AJD in similar cases.

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

Not applicable.

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

No.

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

Not applicable.

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

No, not formally. But the AJD keeps a close watch on a uniform application of the line of its jurisprudence. There are a number of (informal) working groups within the AJD, where issues are discussed that are relevant for broader discussion, including for reasons of unity of law.