



**Seminar organized by the Supreme Court of Ireland and  
ACA-Europe**

**How our courts decide: The decision-making processes  
of Supreme Administrative Courts**

**Dublin, 25 – 26 March 2019**

**Questionnaire**



Seminar co-funded by the «Justice » program of the European Union

**ACA Seminar**  
**How our Courts Decide: the Decision-making Processes**  
**of Supreme Administrative Courts**  
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**Supreme Court of Ireland**

**Questionnaire**

**I. Introduction**

1.1 The seminar will focus on the process followed by our national Supreme Administrative Courts in reaching their decisions. Each court will have its own formal rules, whether provided for in substantive law or in the internal rules or formal procedures of the court. Furthermore, each legal system will have its own culture and traditions which will inform the way in which the decision making process progresses.

1.2 The purpose of this questionnaire and the seminar which will follow is to provide a greater understanding of both the similarities and differences which exist between the decision making process in the respective Supreme Administrative Courts. It is hoped that this will provide useful information both for comparative purposes but also to give each Supreme Administrative Court a better understanding of the process which may have led to decisions of the courts of other EU member states.

1.3 The Dublin seminar on the 25<sup>th</sup> and the 26<sup>th</sup> March 2019 for which this preparatory questionnaire is being distributed is envisaged as a sister seminar to that which will be organised by our German colleagues in conjunction with the General Assembly of the 12<sup>th</sup> to the 14<sup>th</sup> May 2019 in Berlin. While there may be some small and unavoidable overlap between the issues raised it is intended that the Dublin Seminar will focus on the decision making process of the court whereas the Berlin Seminar will focus on access to the Supreme Court and its functions including, for example, the question of whether ‘filters’ are provided for in administrative procedural law.

1.4 Further, while this project is independent of the ACA-Europe transversal analysis project on ‘The Quality of Judgments’, there will be an inevitable link between certain elements of the questionnaire formulated for that project and aspects of this questionnaire.

1.5 Please note that when answering the questions in this questionnaire it is not (with the exception of the statistical questions regarding caseload under Part C) necessary to consider proceedings which lead to the making of provisional orders.

1.6 In addition, in the event that your institution undertakes legislative functions such as providing advice on proposed legislation as well as the function of adjudicating cases in the context of court litigation, it is not necessary to include information pertaining to the legislative functions when responding to the below questions.

## **II. Questions**

### **A. Background questions in relation to your Supreme Administrative Court/Council of State**

1. What is the formal title of your Supreme Administrative Court/Council of State ('institution')? Please provide the name of your institution in your national language and the English translation if possible.
2. What country/jurisdiction does your institution serve?
3. Where is your institution based (i.e. its seat)?
4. Please provide a link to your institution's website (if available), including a link to the English or French version or pages of the website if available.

### **B. The Structure of your Supreme Administrative Court/Council of State**

5. Please provide an outline of:
  - (a) The main functions of your institution (e.g. a first and last instance court, court of cassation or court of appeal);
  - (b) The nature of your institution (e.g. a Supreme Administrative Court or a Supreme Court with jurisdiction in other areas of law); and
  - (c) Its place within the overall court structure in your country/jurisdiction.

### **C. Caseload**

6. How many judges<sup>1</sup> serve on your institution?
7. How many cases<sup>2</sup> are brought to your institution per year on average?
8. How many cases does your institution dispose of<sup>3</sup> per year on average?

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<sup>1</sup> Please include figures concerning judges only and not the number of Advocates General (which will be dealt with under question 11) or judicial assistants/clerks/researchers (which will be dealt with under question 13).

<sup>2</sup> In this question 'cases' means the average number of incoming cases per year, whether litigious (in which the judge(s) decides a dispute) or non-litigious (where a case in which there is no dispute is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not deal solely with administrative law cases (for example, civil and commercial law, criminal law etc). It refers to both cases decided in writing and by oral hearing. It includes applications submitted to a Supreme Administrative Court before any filtering process is undertaken if such a mechanism exists.

<sup>3</sup> Please indicate the average number of cases that come to an end in your Supreme Administrative Court each year either through a judgment or any other decision that ends the procedure, whether it has been considered in writing or by oral hearing.

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

9. Does your institution have chambers/divisions?

10. If yes, provide the following details:

- a. How many chambers/divisions?
- b. How many judges serve in each chamber/division?
- c. The nature of particular areas of specialisation in your Supreme Administrative Court by chamber or otherwise (if any) (e.g. commercial division, environmental division etc.).
- d. Do judges move between chambers/divisions? If yes, how is such movement determined?
- e. Is it possible for a judge to be assigned to more than one Chamber at a time?
- f. Are there different levels of chambers, for example, an ‘ordinary chamber’ and Constitutional Review Chamber?
- g. How many judges are usually assigned to consider and decide an average case?
- h. Does the number of judges assigned to decide cases vary? If yes:
  - (i) Based on what rules or factors?
  - (ii) Who decides how many judges are assigned to consider and decide a particular case?
- i. Is there a procedure for certain cases to be elevated to a grand chamber or plenary session? If yes, how is this decided and how many judges decide?
- j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?  
If yes, specify the additional roles and explain how these roles are assigned.
- k. How significant is the role of the Chief Judge or President of the court in determining:
  - (i) The assignment of cases to chambers or panels of judges;
  - (ii) The number of judges assigned to consider and decide a particular case;
  - (iii) The assignment of certain additional roles to judges (see (f) above);
  - (iv) Any other matters you consider relevant in this context. For example, are there any other special panels, General Assemblies or bodies of judges to which cases are assigned.

11. Does the position of Advocate General exist in your legal system? If yes, please indicate:
- (i) The number of Advocates General or equivalent members of your institution;
  - (ii) The function of the Advocate General in the context of your institution; and
  - (ii) The extent to which the Advocate General participates in proceedings before your institution.

**E. Research and Administrative Assistance**

12. What level of research and/or administrative assistance is available to your institution?
13. How many officials provide legal research support to your institution?
14. Do officials which provide legal research assistance to your institution also provide administrative assistance?
15. Are research and administrative supports pooled (i.e. shared between judges) or assigned individually to judges or is there both a pool and some researchers assigned to individual judges? Please explain.
16. If research and administrative support is assigned individually to judges, is there also a research and documentation or equivalent department which provides additional pooled research support?
17. To what extent, if at all, do assistants/*réferendaires* provide support to judges in your institution as regards specifically:
- (a) Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing of a case;
  - (b) Undertaking legal research to assist a judge to make a decision in a case;
  - (c) Discussing aspects of a case with a judge orally or in writing;
  - (d) Consideration and evaluation of the relevant law;
  - (e) Undertaking comparative law analysis;
  - (f) Drafting sections of judgments;
  - (g) Putting forward a suggested or preliminary decision for judge(s) to consider;
  - (h) Any other element that you consider is relevant in this context.

**F. Oral hearings**

18. Is there an oral hearing in all cases?

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

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

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

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

20. Does deliberation take place between the judges before the oral hearing? If so, is this the practice in all cases or in some cases?

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

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

23. Is discussion in the oral hearing confined to matters set out in the statements or written submissions of the parties or may it involve broader legal discussion between the lawyers/a party and the Court?

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

25. Is it possible for a judge to be excluded from proceedings based on a legal opinion expressed during an oral hearing giving rise to the perception of bias?

**G. Written submissions of parties**

26. What is the usual length and level of detail of written submissions of parties provided to your institution? Please indicate the approximate number of pages (1.5 line spacing) of a ‘typical’ written submission

- 0 – 5 pages
- 5-10 pages
- 10-20 pages
- 20-30 pages
- 30-40 pages
- 40-50 pages
- 50+ pages

20. Is there a maximum length for written submissions filed by parties in a case? If yes, please provide details.

**H. Consideration of the case**

21. Can your institution raise points of law of its own motion (i.e. ex officio) or is it limited to the points raised by the parties to the case?

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

23. Does your institution deliberate in a number of different languages? If so, please provide some detail. For example, does your institution have more than one official language?

24. Are there rules, processes, or conventions about how discussions and votes take place?  
If yes, specify the relevant rules etc.

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

26. Where there is an oral hearing, to what extent does the oral hearing (as opposed to written submissions) influence the court’s discussion, deliberation and decision-making?

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

**I. The decision of the institution**

28. Is the decision delivered on behalf of the institution or is it open to each individual judge assigned to the particular case to deliver a separate judgment?

29. If the decision is delivered on behalf of the institution, does one judge write for the institution? If not, please explain how the judgment of the court is written for your institution. Are there formal rules or informal practice governing this?

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

31. Is there a distinction in your Supreme institution between the Judgment (i.e. reasons) and the Order (i.e. the operative ruling of the court)?

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

**J. Timeframes for the decision-making process**

33. How long, on average, between consideration of a case by your institution and the making of a decision? Please indicate the approximate length of time between the introduction of the case into the system of the Supreme Administrative Court (rather than the time when the case first comes before a judge for consideration) and the final resolution of the case through, for example, the pronouncement of the final decision.

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

35. Are there specific mandatory timeframes for particular categories of cases? If yes, please provide details of the categories of cases and the relevant timeframes.

36. If there are no mandatory timeframes for deciding cases, is there a certain amount of time that it is considered appropriate for the decision-making process to take? If yes, please provide details.

37. If there are mandatory timeframes applicable to the decision-making process in your institution, is it ever difficult for the court to abide by these timeframes? If yes, what are the main reasons for this?

38. If there are no mandatory timeframes for deciding cases, but by convention or practice, there is a certain amount of time that is considered appropriate for the decision-making process to take, is it ever difficult for the court to abide by this timeframe? If yes, what are the main reasons for this?

**K. Developments over time**

39. Have the processes you have outlined in the preceding answers been subject to any significant changes in the last five years?

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

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

**I. Further comments or observations**

42. Is there anything about your institution and/or its particular decision-making processes that you believe is not captured in the questions above, or any contextual information that you believe would aid our understanding of the decision-making processes in your court?

**Thank you for completing this questionnaire.**