



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

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

Dublin, 25 – 26 March 2019

Answers to questionnaire: Slovakia



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

ACA Seminar
How our Courts Decide: the Decision-making Processes
of Supreme Administrative Courts
Dublin, 25-26 March 2019

Supreme Court of Ireland

Questionnaire

I. Introduction

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

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

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

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

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

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

II. Questions

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

1. What is the formal title of your Supreme Administrative Court/Council of State ('institution')? Please provide the name of your institution in your national language and the English translation if possible.

Najvyšší súd Slovenskej republiky – The Supreme Court of The Slovak Republic (hereinafter as “the Supreme Court”)

2. What country/jurisdiction does your institution serve?

The Supreme Court is the highest judicial authority in the Slovak Republic. It exercises its jurisdiction through its sections and their presiding judges; through divisions and their presiding judges; and through the President and Vice-President of the Supreme Court.

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

The Supreme Court sits in Bratislava.

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.

<https://www.nsud.sk/>

<https://www.nsud.sk/the-supreme-court-of-the-slovak-republic/>

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);

Under Chapter VII of the Constitution, the Supreme Court of the Slovak Republic and other courts exercises judicial power in the Slovak Republic. The Supreme Court is the highest judicial authority in the Slovak Republic. The Supreme Court sits on three-member sections composed of the presiding judge and two judges, and on five-member sections composed of the presiding judge and four judges (the Panel). Three-member sections rule on regular and exceptional legal remedies which challenge decisions made by regional courts, district courts, the Higher Military Court and military district courts, and other cases as set out in the law; examine the legality of decisions made by central authorities of the state administration, unless the law stipulates otherwise; decide on the recognition and enforceability of decisions

of foreign courts in the territory of the SR in cases prescribed by law or by international treaty. Five-member panels rule on exceptional legal remedies that challenge decisions that the Supreme Court panels have adopted regarding regular legal remedies.

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

The Supreme Court has jurisdiction in all areas of law. In that context, the Supreme Court has four divisions: criminal, civil, commercial and administrative. The judges are assigned to divisions according to the field in which they work. The heads of divisions are their presiding judges who organize and manage division activities.

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

As mentioned above, the Supreme Court is the highest judicial authority in the Slovak Republic.

C. Caseload

6. How many judges¹ serve on your institution?

79

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

About 12 000 per year on average

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

About 14 000 per year on average (together with things taken over previous year)

¹ 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).

² 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.

³ 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?

The Supreme Court of the Slovak Republic is the highest judicial authority in matters falling within the competence of administrative courts. The judges of the Supreme Court form divisions according to their specialization. There are four divisions at the Supreme Court: Civil law, Criminal, Commercial and Administrative Divisions. A judge of the Supreme Court is a member of the division according to the predominant content of his decision-making activity, laid down by the working schedule. A judge may be a member of one division only. The division is headed by the president of the division. The division is composed of sections.

10. If yes, provide the following details:

a. How many chambers/divisions?

The Administrative Division is composed of 10 sections.

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

The Administrative Division has 26 judges. The Administrative Division sits in sections of three or five judges.

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.).

The Supreme Court of the Slovak republic is general court with 4 divisions: civil, commercial, criminal and administrative. Administrative division consists of 10 sections, of which two specialize in social cases. Other sections are devoted to the whole range of administrative cases, e.g. tax matters, economic competition, environment, etc. Two of these sections hear also asylum procedures and procedures relating administrative banishment of foreigners.

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

A judge of the Supreme Court is a member of the division according to the predominant content of his decision-making activity, laid down by the working schedule. A judge may be a member of one division only; this provision does not exclude the possibility to act and decide in cases belonging to other division if judges of the respective division are unable to act and decide in the case because of the exclusion.

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

No, it isn't. See answer above.

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?

Three judges

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

(i) Based on what rules or factors?

A section of the Supreme Court is composed of three judges of which one is Presiding judge. When deciding on ordinary or extraordinary appeals (remedies) from decisions of sections of the Supreme Court, the panel of the Supreme Court is composed of the Presiding judge and four judges. The rule on proceedings before courts may provide that a section/panel of the Supreme Court shall consist of a larger number of judges. The section/panel must be always composed of an odd number of judges.

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

The number of judges in the section is determined in procedural law – Administrative Code (act no. 71/1967 Coll. on Administrative Proceedings).

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?

If the section has reached a legal opinion, which is different from the legal opinion already expressed in the decision of another section, it shall refer the case to the Grand Chamber for its decision. In its resolution to transfer the case to Grand Chamber, it justifies its different legal opinion. The Grand Chamber consists of the Presiding judge of the Section and six judges. The President of the division is the Presiding judge of the Grand Chamber. The members of the Grand Chamber are the judges of the Section of the Supreme Court who have referred the case to the Grand Chamber and three judges of that division laid down by the working schedule.

The most important body of the Supreme Court is the Plenum, which consists of the President of the Supreme Court, the Vice-President of the Supreme Court, Heads of the Divisions, Presiding judge of the Sections/Panels and all other judges of the Supreme Court. The Plenum discusses the Supreme Court's Rules of Procedure and in the interest of consistent decision-making of the courts it adopts standpoints on the courts decision-making in the matters of particular kind in issues pertaining to more than one division.

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.

To hear the case is selected a section by random electronic selection. The President of such section shall designate a judge – rapporteur, to whom is the case allocated. The judge rapporteur has to study the case in detail, and then informs orally or in writing other members of the section about the content of the file, usually at closed session of the section. After deciding the case, the judge rapporteur shall draw up written decision.

k. How significant is the role of the Chief Judge or President of the court in determining:

- (i) The assignment of cases to chambers or panels of judges;
- (ii) The number of judges assigned to consider and decide a particular case;
- (iii) The assignment of certain additional roles to judges (see (f) above);
- (iv) Any other matters you consider relevant in this context. For example, are there any other special panels, General Assemblies or bodies of judges to which cases are assigned.

The President of the Supreme Court carries out his judicial role within the Supreme Court jurisdiction by:

- performing judicial functions within the Supreme Court jurisdiction in accordance with the work schedule as presiding judge of a panel or as a judge;
- submitting, based on the Full Supreme Court decision, motions for new legislation to the National Council of the Slovak Republic (the legislative body – Parliament of the Republic) or to other competent bodies;
- recommending that the Minister of Justice integrate the knowledge obtained in the decision-making activities of the Supreme Court into the professional training of regional and district court judges.

The President of the Supreme Court also performs state administration tasks in the Court by:

- securing proper functioning of the Supreme Court from the personnel, organizational, economic and financial points of view;
- securing professional training of judges and other court employees;
- appointing and recalling presiding judges of divisions and their deputies, and appointing presiding judges of Supreme Court panels;
- presenting motions for disciplinary proceedings against Supreme Court judges;

- securing dignified and smooth court proceedings and observation of judicial ethics at the Supreme Court;
- and by handling complaints concerning delays in proceedings or improper conduct and/or disturbance of the dignity of judicial proceedings by the Vice-President, judges and other staff members of the Supreme Court.

The President of the Supreme Court has the discretion to discuss decisions that concern the performance of his judicial function with the court management, which, apart from him, includes the Deputy President of the Supreme Court and the presiding judges of the Supreme Court divisions.

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?

The primary cell of the internal organization of the court is the legal department. The legal department is composed of court officials and other court employees who perform tasks in the administration of justice. The allocation of court officials and other court employees who accomplish tasks in administration of justice to the legal department shall be determined in the working schedule.

The Assistants and the officials from Department of Documentation, Analytics and Comparatistics provide legal research assistance. Other court employees provide administration tasks.

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

Department of Documentation, Analytics and Comparatistics – 8 persons

Assistants – approximately 90

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

No, officials that provide legal research assistance to our Supreme Court don't 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.

Legal researchers from the Department of documentation, analytics and comparatistics provide legal research to all judges of the Supreme Court on their individual request. While the assistants are assigned to concrete section and its judges, in which they carry on work.

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/*référéndaires* 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.
 - Anonymization of court decisions; statistics

Everything as written above except undertaking comparative law analysis [point (e)].

F. Oral hearings

18. Is there an oral hearing in all cases?

No, there is not.

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

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

At present, the Supreme Court is obliged to order an oral hearing in administrative cases in approximately 20% of such cases, depending on the type of proceedings. In detail, this is stipulated by the procedural law – Administrative Code. The meritorious decisions in all cases are always publicly announced, that is, in the presence of the whole section and the

parties (or participants) to the proceedings. The participants are informed about the term of the announcement via the website of the Supreme Court, whereby their participation is on their own consideration.

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

As stated in previous point (a), Administrative Code as procedural law determines rules.

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

The participants may apply for ordering an oral hearing in cases, where the law provides for such an option.

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

Yes, the President of section always orders a closed session of the section before ordering an oral hearing. During closed session, a judge rapporteur reflects the outcome of the study of the file, and the judges of the section comment on the matter, the case is being discussed.

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

No.

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

Yes, they are.

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

The statement is limited only to the facts set out in the written submissions - the action, the rejoinder, the rebutter, even on the grounds that the proceedings in the administrative judiciary are concentrated, that is to say, the arguments can be applied only within the statutory time-limits.

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

It is not banned, but the court cannot take account of new facts or new ground for action.

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 | <input type="checkbox"/> |
| 5-10 pages | <input checked="" type="checkbox"/> |
| 10-20 pages | <input checked="" type="checkbox"/> |
| 20-30 pages | <input type="checkbox"/> |
| 30-40 pages | <input type="checkbox"/> |
| 40-50 pages | <input type="checkbox"/> |
| 50+ pages | <input type="checkbox"/> |

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

No, there isn't.

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?

The scope of the consideration is set by the plaintiff.

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

It has been already described above.

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

No, official language is only Slovak. In the case of a participant who does not master an official language, it is possible for the court to hold an oral hearing with the interpreter.

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

If yes, specify the relevant rules etc.

The discussion within the closed session is governed by the President of the section, the judge-rapporteur express at first and as the last speaks the President of the section. When

voting, the rules are laid down directly in the law, the junior vote as first, then the older judges vote, and as the last votes the President of the section. The voting is not public.

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

Communication between judges in the matter is ongoing, and it is at the closed sessions of the section, where discussions are held, solutions are sought and a consensus or compromise is sought.

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?

Since the administrative courts are procedural and legal courts, the oral hearing may affect the result minimally.

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?

The decision is served on behalf of the court.

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

The decision is written by the judge rapporteur. Upon drafting it, he/she shall submit a written decision to the remaining members of the section to read and comment it and to sign the decision. The judge who has not agreed to the decision adopted, he/she may write his opinion in writing that may be attached to the judgment. Subsequently, the office prepares the parallels and delivers the decision.

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

The public announcement of the decision is recorded and stored in a technical medium.

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

Yes, there is. The court must always announce the judgment publicly, the order may also be taken by the court in a closed session of the section and the court does not publicly announce it, but sends it to the parties in written form, including its reasons.

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.

Approximately 1 – 2 years

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

A specific mandatory timeframe for deciding all cases does not exist. However, in specific cases, such as administrative detention of persons the court has to decide within 7 days.

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.

There is an oral usage – one year.

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?

The court strictly respects the mandatory timeframes.

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?

It can happen in case of overload or high case load, insufficient administrative support and technical equipment of the court as well as due to the differentiated remuneration of judges of individual divisions of the Supreme Court of the Slovak Republic, as the agenda of criminal judges is generally preferred by the executive branch.

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?

The Administrative Procedure Code, one of the new procedural codes effective from 1 July 2016 has introduced a cassation decision system.

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.