



Consiglio di Stato



**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Law, Courts and guidelines for the public
administration”**

Fiesole (Firenze), Autumn 2021

Answers to questionnaire: Finland



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ITALIAN PRESIDENCY ACA - EUROPE
FIESOLE (FIRENZE), 19 OCTOBER 2020

"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

QUESTIONNAIRE - FINLAND

1. Introduction

1.1 The seminar to be held in Fiesole, on the 19th and 20th October 2020 at the European University Institute, is the first meeting organised by the Italian presidency.

As explained during the initial presentation of the programme for the upcoming Italian presidency, its leitmotiv will be to enhance and foster the value and the experience of “horizontal dialogue” among the highest administrative national Courts, aiming to create and develop a common culture and shared standards in judicial review of the activity of the public authorities.

This “horizontal dialogue”, more than “vertical dialogue”, aims to focus on examining and comparing modes of judicial decision making and judicial conduct, and the impact of judgments on the activities of public authorities.

Horizontal dialogue between Courts of Member States is the best way to achieve an effective European citizenship, that is to say a common standard of legal protection for citizens and companies living in Europe and dealing with public powers.

1.2 The purpose of this questionnaire and of the subsequent seminar is to provide a greater understanding of similarities and differences among our legal systems, especially regarding:

- a) the interpretation of law by judges;
- b) the binding effect of judgments both so as to ensure the judges’ compliance with the nomophylactic statements of the Supreme Administrative Courts (SACs) and to act as an instrument to address the future action of public administrations in similar cases;
- c) the effect of the administrative judgments on the activity of public administration and their enforcement;
- d) the consultative role of the SAC, if existing.

1.3. The seminar will cover the following topics:

- a) The method followed by administrative courts in the interpretation of the law, focusing on the criteria applied by judges (including reference to *ratio legis*, reference to preparatory work, reference to the advice of the SAC regarding the adoption of the law, if existing, etc.). A special focus will be placed on the tools for supporting judicial activity with regard to services for classifying and archiving judgments, e.g. databases and AI instruments.
- b) The application of the law by the Court, with specific reference to the nomophylactic pronouncements of the SAC. Jurisprudential stability and the predictability of decisions are important values related to the general principles affirmed by the European Court of Justice such as legal certainty, predictability for citizens and companies of the consequences of their behaviour and the protection of legitimate expectations. Therefore, there will be a special focus on the ways and the procedures, where they exist, through which SACs ensure compliance with the nomophylactic statements in the administrative system.
The “binding or steering effect” of the of Supreme Court judgments: this topic aims to foster mutual understanding of the capacity of administrative judgments to bind the public administration in the subsequent exercise of its power. It covers not only the binding effect on decided case, but it also aims to analyze judgments as instruments to orientate the future action of public administrations in similar cases (i.e. judgement as guidelines).
- c) The seminar will also examine the enforcement of the administrative judgment, in case the public administration fails to comply with it spontaneously and correctly, with special reference to judicial enforcement measures provided by each legal jurisdiction, if they exist.
- d) Finally, a brief session will be devoted to the consultative role of the SAC, if existing, and its impact on administrative action.

1.4 It is intended that the Seminar will provide each Supreme Administrative Court with a better understanding both of the decision making process underpinning the judgments of other SACs and of their impact on the activity of public authorities.

In a constitutional democracy, administrative courts are seen as performing a vital function in the interaction between law and administration.

The purpose, to reiterate, is to verify whether it is possible to find or develop a homogeneous method to scrutinize the way public administrations exercise their powers and to guarantee a common standard of legal protection for citizens and companies in all Member States.

The questionnaire which follows represents an initial information gathering exercise the purpose of which is to clarify the interaction of the administrative courts with the law, on the one hand, and the administration, on the other, so as to ensure certainty, legality and quality of justice for citizens and public institutions.

I SESSION

THE METHOD OF INTERPRETATION OF LAW AND ITS APPLICATION BY THE COURTS

1. The role of the Supreme Administrative Courts in the interpretation of law.

1.1. Does your legal system provide general rules for the interpretation of law?

No

Yes

1.2. What is the level of general rules for interpreting the law?

Law. *However, please see explanation below.*

Public authority regulations

Guidelines

Supreme Court rulings. *Precedents*

Other. *Principles of legal science*

Please explain and give an example. *The general rules of interpretation are principally not laid down by an act, but by principles of legal science and court precedents. However, the principle of interpreting the law in a fundamental rights friendly manner is effectively laid down by section 22 of the Finnish Constitution.*

1.3 What are the criteria for interpretation of the law?

literal interpretation

reference to purpose of law (so-called *ratio legis*)

consistency within the legal system

reference to preparatory work

reference to the advice of the SAC regarding the adoption of the law, if existing

Other. *Jurisprudence*

Explain, if necessary.

1.4. What criteria do judges apply when there are gaps in the law?

- X Analogy (reference to similar *ratio* of other rules). *Please see explanation below.*
- X General principles of the legal system
- Other

Explain, if necessary. *In Finnish law analogy cannot, however, be applied to the detriment of the accused in matters involving “a criminal charge”.*

1.5. Does the SAC elaborate general interpretative *criteria*?

- No
- X Yes

Please explain and give an example. *For instance, whether a specific provision of law must be interpreted narrowly or not.*

1.6 In deciding the case, to what extent does the Court take the following into account and within which limits?

- EU law (Nice Charter, EU regulations, EU directives) and the judgments of the EU Courts;
 never seldom sometimes X often
- The European Convention of Human Rights and the general principles elaborated by the ECHR;
 never seldom sometimes X often
- The general clauses of proportionality and of reasonableness.
 never seldom sometimes X often
- The statements (or case law) of the Courts of other countries in similar cases;
 never seldom X sometimes often
- The general interests involved (i.e: order and public safety, environmental protection, consumer protection, the economic, financial and social effects on the labour market)
 never seldom sometimes X often
- The results of regulatory impact analysis (AIR), if applicable;
 never seldom sometimes often *Not applicable*
- The impact of the decision;

never seldom sometimes often

Other

Please specify. *In the field of administrative law, Court decisions typically have wide-ranging impacts on the environment, economy, and other public interests. The Court must be aware of the consequences of its rulings, which, however, must be based on valid law, not loose consideration of different interests. E.g. a ruling concerning a cellulose mill investment of more than one billion euro and the impacts of the planned activity on the watercourse, keeping in mind the obligations of the Water Framework Directive, the Weser ruling, and domestic legislation implementing the Directive.*

2. Tools for supporting judicial activity.

2.1. Are there any services established in the Supreme Administrative Court responsible for classifying the judgments and drafting their abstracts?

No

Yes

2.2. What other activities do these Services perform?

preparation of useful material for the most important judgments of the SAC ;

comparative studies;

information about new developments in the law and in the case law;

training of judges

other activities.

Please specify. *The Finnish SAC does not have a service mentioned at 2.1, but the court's Information Service carries out database searches and supplies materials on demand.*

2.3. Are administrative Court judgments stored on a searchable and free database?

No

Yes

Please explain. *Judgments of particular interest are published in a public and free database. Other judgments are available upon request.*

2.4. What kind of database do the administrative judges consult in their daily work?

- X public and free databases
- X private databases, provided by their institution
- other

Please explain. *Judges have access to several databases, a very small number of which are subject to a charge paid by the employer.*

2.5. Are there projects implementing advanced artificial intelligence systems operating in the decision making process and/or for the preparation of decisions?

- X No
- Yes

2.6 If yes, explain the role of the AI systems in the decision-making process (e.g. drafting final decisions, supporting judges for some significant aspects of the case, such as for example the calculation of damages, etc.)

AI is not used for the preparation or drafting the decision. However, for example the names of the parties and certain standard phrases do not need to be entered manually.

3. The application of law: the “nomophylactic” statements in the administrative judicial system.

3.1. Does the judgment of the SAC have binding effect on lower courts?

- X No
- Yes
- Only if the SAC decides in special composition

The decisions provide guidance for the lower courts, but they are not strictly legally binding on them. However, in practice, the decisions are complied with to a high degree.

3.2. If the answer to question 3.1. above is no, what percentage of lower court cases comply with SAC decisions?

- less than 25%
- from 25% to 50%

- from 50% to 75%
- from 75% to 100%

3.3. If the answer to question 3.1. above is no, how is the consistency and predictability of court decisions ensured?

Please explain and give an example. *The SAC guides the application of the law by precedent. It may also give opinions and submit legislative initiatives. In case of inconsistency in the lower courts' judgments, the SAC may decide to clarify an issue by issuing a new, more detailed precedent, if need be in a larger panel. A case can be decided in one of the following compositions: Chamber, Plenary Chamber and Plenary Court.*

3.4. When solving jurisprudential conflicts or stating principles of law, does the SAC work in a special composition (for example a Plenary Assembly or a larger panel)?

- No. *Please see answer at 3.3.*
- Yes

If the answer is yes, please explain.

3.5. Is there a specific procedure for referring a question to the SAC working in special composition?

- No
- Yes. *The decision to refer a case to Plenary Chamber is taken by the President of the Chamber and the decision to refer a case to Plenary Court is taken by the President of the Court.*

3.6. If the answer to question 3.5 above is yes, if a judge of the SAC does not agree with the principle affirmed, what can he or she do?

- it is not possible to disagree
- it is possible to take a different decision, giving reasons
- a new referral to the Court is necessary

Separate opinions are allowed (dissenting and concurring). However, if the majority of the justices in the Chamber composition are unable to follow the SAC's jurisprudence, it is the

duty of the President of the Chamber to inform the President of the Court of the situation, and if need be, the case is referred to either Plenary Chamber or Plenary Court.

3.7. In order to guarantee the consistency of jurisprudence among the various sections of the SAC or with another Supreme Court, if such exists, are there organizational mechanisms in place to promote this aim (for example, periodical meetings among judges or among presidents)?

No

Yes

If the answer is yes, please explain. For the time being the SAC works divided into three Chambers. The justices and the legal secretaries of a Chamber meet every or every other month to discuss topical issues. Within each Chamber there are various smaller teams responsible for the processing of particular groups of cases. Team meetings take place about once a month in order to exchange information on decisions taken and cases in the pipeline. Plenary Court also decides certain organisational / administrative issues and those meetings are a good forum to exchange information on topical issues in the different chambers. Also seminars etc. organised by the National Courts Administration offer fora for discussion.

3.8. If your judicial system has administrative Courts separated from other Courts (civil ones), which body or Court is entitled to resolve conflicts of jurisdiction between administrative and ordinary courts? (e.g. *Tribunal des Conflits*).

Any conflict of jurisdiction is decided by the court where the case is pending. To date, there is thus no third body to which an issue of jurisdiction can be referred. However, a working group whose task was to examine how the highest courts could benefit from co-operation in the future has very recently published its report.

SESSION II.

THE IMPACT OF DECISIONS OF SUPREME ADMINISTRATIVE COURT ON THE FUTURE DEVELOPMENT OF ADMINISTRATIVE ACTIVITY

1. To what extent does the administrative judgment bind the public administration in the new exercise of its power?

Please explain. If the administrative authority's decision is quashed because the court takes a different view as regards the material outcome of the case, the administrative authority is

bound by the court's decision in the sense that the authority cannot give a new similar decision on the same ground that has already been rejected by the court. When a court quashes an administrative authority's decision because of a procedural flaw and sends it back to the authority, the court does not give any instructions as to the material outcome of the case.

2. Can the decision of an administrative judge influence the work of public administrations even beyond the objective and subjective context of the case decided?

- No
- Yes

Please explain. *It is presupposed that public administration follows the lines of interpretation taken by the administrative courts and especially the SAC also in cases similar to the ones resolved by the Courts earlier.*

3. According to regulatory rules or practices, may the effects of an administrative judgment be extended by the administration itself beyond the case decided?

- No
- Yes

Please explain.

SESSION III

IMPLEMENTATION AND ENFORCEMENT OF THE DECISIONS.

1. Is there a specific legal procedure in your system aimed at monitoring and pursuing the full and complete execution of the judgment?

- No
- Yes

1.1 If the answer to question 1 above is yes, in what percentage of cases are such remedies used?

2. If there is no specific procedure, how does your system ensure the full compliance of the judgment?

Compliance is ensured by the fact that the administrative authorities are bound by the law and decisions that have gained legal force. Within an administration there is both internal and external legality control. In addition, the “general legality controllers” (the Parliamentary Ombudsman and the Chancellor of Justice) can take measures on their own initiative and upon request.

3. If there is such a judicial remedy, does it require the judgment to become final?

No

Yes

Please explain.

4. Do judges have the power of substitution, directly or through Commissioners *ad acta*, in the case of *inertia* or incorrect execution of judgments?

No

Yes

Please specify. *The execution of judgments is outside the powers of the court (which has decided the case). However, there are several mechanisms concerning administrative coercive measures, which can be initiated by the parties. If, say, an administrative authority has decided not to take an action claimed by a party, the party can appeal against this decision in the competent administrative court.*

5. Is the administration (and/or the official) liable for damages due to non-execution or incorrect execution of the judgment?

No

Yes

5.1. If the answer above is yes, is it within the jurisdiction of the administrative judge to decide on the action for damages?

Please explain and give an example. *Actions for damages are as a rule dealt with by civil courts.*

SESSION IV

THE CONSULTATIVE ROLE OF THE SAC (IF EXISTING) AND ITS IMPACT ON ADMINISTRATIVE ACTION.

1. Does the SAC play advisory functions for the government or for the public administration?

- No
- Yes

The SAC is frequently asked to give opinions on legislative proposals and the court can even in some cases make proposals to amend legislation.

1.1 Where the answer to the above question is yes, please specify the kind of acts to which the advisory functions apply.

(More options are possible)

- primary legislative acts (of parliament or of government)
- governmental and ministerial regulatory acts
- resolution of specific questions on request of a public administration, on the interpretation of a law or in the definition of a specific matter.
- Other

Please specify. *The SAC frequently gives opinions on proposals to amend acts of parliament or of government, but only rather seldom regarding governmental and ministerial regulatory acts. The opinions are focussed on questions concerning the rule of law, constitutional rights, legal system and especially the system of administrative judicial procedure, not politically sensitive questions.*

2. The SAC's advice in its consultative role is:

- optional and non binding
- mandatory and binding

- mandatory but not binding
- optional and, once required, binding
- it depends on circumstances (please clarify)

3. In exercising its advisory functions, can the SAC consult experts in economics or statistics in order to assess the economic and social impact of regulations?

X No. *Normally no (please see also the answer to question 1.1. above).*

- Yes
- In certain circumstances only (please specify)

4. Are there forms of collaboration of administrative judges in the activity of the Government or of public administrations? (for example, secondment of individual magistrates to head legislative boards of a Ministry or as members of an independent authority, participation in study commissions, etc.).

X No

- Yes

Sometimes judges are recruited from administrative authorities. Also joint training seminars take place.

5. Can the advisory function of the SAC also consist in the resolution of a specific dispute working as an ADR (alternative dispute resolution)?

X No

- Yes