



**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: Austria



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 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.

Verwaltungsgerichtshof - Supreme Administrative Court

2. What country/jurisdiction does your institution serve?

Austria

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

The Supreme Administrative Court is seated in Vienna, Austria.

The address is:

Judenplatz 11

1010 Wien

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.

German: <https://www.vwgh.gv.at/>

English: <https://www.vwgh.gv.at/english.html>

There is no French version 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);

The Supreme Administrative Court is a last instance court - its decisions are final and not subject to further appeal. As a rule, the Supreme Administrative Court only acts upon request. The Federal Constitution provides for various ways in which a matter can be brought before the Supreme Administrative Court: Natural and legal persons may petition for review of rulings by lower administrative courts if these involve legal questions of fundamental importance. A legal issue is considered to be of fundamental importance if the contested court ruling departs from relevant past decisions of the Supreme Administrative Court or if there is no – or no consistent – case law on the issue in question. If the Supreme Administrative Court finds for the petitioner, it annuls the decision under review and sends it

back to the court, which issued it. In giving its new decision, this court is bound to apply the interpretation of the Supreme Administrative Court. Otherwise the petition for review is dismissed as unfounded. Under certain circumstances, however, the Supreme Administrative Court itself may decide on the merits, possibly requiring the lower court to establish additional facts. Should a petition for review be found to be formally defective (e.g. if it was filed late or does not involve an issue of fundamental importance), it is dismissed by court order. The Supreme Administrative Court can also be called upon in cases where a lower administrative court fails to give a timely decision. Moreover, it rules on disputes regarding jurisdiction and, upon the request of an ordinary (i.e. civil/criminal) court of law, on the legality of decisions issued by administrative authorities or lower administrative courts.

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

It is a Supreme Administrative Court and does not have jurisdiction over other areas of law.

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

It is placed above the lower administrative courts, which in turn ensure that administrative authorities such as tax offices, district authorities and the Federal Office for Immigration and Asylum act in conformity with the law. Austria has three separate jurisdictional orders - the ordinary courts, ruling over civil and criminal law matters, the administrative jurisdictional order, ruling over administrative matters including administrative penal law, and the Constitutional Court, ruling inter alia on the constitutionality of laws or whether a decision of a lower administrative court has violated a fundamental right.

C. Caseload

6. How many judges¹ serve on your institution?

The Supreme Administrative Court of Austria currently consists of the President, the Vice-President, thirteen panel-presidents and 54 justices.

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

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.

In 2017, 7.300 new legal matters were submitted to the Court; in 2018 approximately 8.000 new cases are expected. The new legal matters, which were submitted to the Court before were approximately 5.100 in 2016, 4.600 in 2015, 3.900 in 2014 and 4.970 in 2013.

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

The concluded cases were 6.600 in 2017 with an average duration of 4,6 months. 5.500 in 2016 with an approximate duration of 6,9 months, 5.400 in 2015 with an approximate duration of 8,9 months, 5.500 in 2014 with an approximate duration of 10,6 months and 5.615 in 2013 with an approximate duration of 16,7 months. In 2018 approximately 8.000 concluded cases are expected, the average duration for a ruling being 4 months.

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?

Yes, the Supreme Administrative Court consists of 22 panels.

10. If yes, provide the following details:

a. How many chambers/divisions?

See answer to question 9.

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

Each panel consists of five justices, where one presides over the panel (referred to as panel-president).

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 various fields of legal matters are assigned to the panels according to the allocation of business (Geschäftsverteilung), which is decided annually by the plenary assembly of the Court (§ 10 para. 2 sub-para. 2 of the Supreme Administrative Court Act 1985 - VwGG) and can be modified if needed.

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

Yes, justices can move between panels. This is only possible with a change of the allocation of business and therefore has to be decided by the plenary assembly.

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

Each member can be part of more than one panel. It is customary for justices to be a member of two panels.

f. Are there different levels of chambers, for example, an 'ordinary chamber' and Constitutional Review Chamber?

No, there are no different levels of chambers.

g. How many judges are usually assigned to consider and decide an average case?

In general the Supreme Administrative Court sits in panels of five (one panel-president, one rapporteur, three additional justices). However, in administrative penal matters the panel consists of three members (one panel-president, one rapporteur, one justice). Under the circumstances outlined in § 12 para. 1 VwGG (stay of proceedings, requests for a deadline, on petition of the panel-president or of the rapporteur regarding final complaints whose legal matter is particularly simple or clarified by previous decisions, on a motion for reopening the

proceeding if it concerns a proceeding decided by the panel of three, on the motion for reinstatement to the previous legal position if a proceeding was not pending or if it concerns a proceeding decided by the panel of three, on the claim for reimbursement of costs filed only after termination of the proceeding, on objections against the claim resulting from a decision or an order of the Supreme Administrative Court, to the extent they are based on facts dismissing or suspending the claim having occurred only after creation of the writ of execution) a decision can be issued by a three member panel. Under certain circumstances a case has to be decided by an enlarged panel (see answer to i.).

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

(i) Based on what rules or factors?

See above (g).

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

In Austria this is foreseen by law (see above [g]), however, the panel of three judges can decide to refer the case to the ordinary panel of five judges.

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?

According to § 13 para. 1 VwGG the five-member panel shall be reinforced by four additional members (enlarged panel), if it decrees by order that the decision would mean a deviation from former decisions of the Supreme Administrative Court or that the legal issue to be resolved has so far not been uniformly answered by the Supreme Administrative Court.

j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?

Every incoming case is distributed to the competent panel in accordance with the allocation of business and one member of the panel is appointed as rapporteur by the president of the court (§ 14 para. 1 VwGG).

If yes, specify the additional roles and explain how these roles are assigned.

The rapporteur prepares a draft ruling, which the panel then deliberates and decides on in a meeting which is not open to the public. Procedural instructions in the preliminary proceedings, procedural instructions serving only to prepare the decision, as well as procedural instructions and decisions concerning granting suspensive effect to a petition and legal aid is issued by the rapporteur without resolution of the panel (§ 14 para. 2 VwGG).

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;

See answer to j.

(ii) The number of judges assigned to consider and decide a particular case;

The President does not play a role in this.

(iii) The assignment of certain additional roles to judges (see (f) above);

Pursuant to § 17 VwGG the President of the Supreme Administrative Court appoints a member of the Court to be the head of the Office of Records. The head of the office of records shall report to the President on any decisions and resolutions deviating from previous court decisions. The office of records is in charge of registering the decisions of the Supreme Administrative Court, in case of necessity also the decisions of other supreme courts and the relevant literature.

One member of the Supreme Administrative Court is appointed by the President as the “Präsidentialvorstand” who assists the President with the conduct of business, which includes the supervision of the staff as well as the office operations.

Furthermore several justices serve as media spokespeople and handle media inquiries. There is one head of the media department who is supported by two deputies (one of which serves as a spokesperson for asylum matters and one serves as a spokesperson for tax matters).

(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.

Not applicable.

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.

No, such a position does not exist in the Austrian administrative court system.

E. Research and Administrative Assistance

12. What level of research and/or administrative assistance is available to your institution?

The Supreme Administrative Court has 45 research associates assisting the justices and approx. 130 non-judicial staff, who provide administrative assistance.

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

See answer to question 12.

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

The research associates take the minutes at panel meetings and during office hours one research assistant is available for questions of the public concerning cases (not regarding the content) and general questions concerning the Supreme Administrative Court. Also the research assistants help with systematically documenting the legal rulings of the court.

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.

About half of the available research associates are pooled in asylum law and exclusively work in this field of law. In this “pool” a team of four to five research assistant works for one of the five asylum panels. In addition to that there is a pool of five research assistants exclusively working in gambling law, which handle the gambling cases for the judges. The other research assistants are assigned to single justices.

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?

Less than half of the aforementioned research associates are assigned to single justices whereas the other half is pooled in two areas - asylum and gambling law. In the field of asylum law 24 research associates support five panels and in gambling law five research associates also support five panels.

17. To what extent, if at all, do assistants/*référendaires* 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.

Generally speaking all the aforementioned duties are or can be done by research associates. The extent of support depends solely on the supported justice. The preparation of pre-hearing

documents are normally not needed since oral hearings are uncommon at the Supreme Administrative Court. However, the duties as stated in (b) to (g) outline the main scope of functions of a research associate. Apart from these tasks, the research associates are partly responsible for the systematic documentation of legal rules, which then are published online in the legal information system (“RIS”). See also answer to question 14 with regards to duties of research associates at panel meetings. Furthermore some research associates are also assigned additional tasks: two research associates support the media spokesperson, two are responsible for tasks regarding the ACA and other international affairs and another two handle enquires regarding human rights (especially statements concerning proceedings before the ECHR and the HRC).

F. Oral hearings

18. Is there an oral hearing in all cases?

No.

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

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

Since the year 2016 two oral hearings have been held at the Supreme Administrative Court.

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

§ 39 VwGG describes in which cases an oral hearing in front of the Supreme Administrative Court is to be held. After termination of the preliminary proceeding a hearing before the Supreme Administrative Court is to be held on the complaint if the complainant has, within the period allowed for the final complaint, or another party has, within the period for submitting the answer to the final complaint, requested a hearing to be held.

Such a motion can be withdrawn only with the consent of the other parties. A hearing is to be held if the rapporteur or the panel-president deems holding the hearing to be suitable or the panel decides to hold it.

Irrespective of any motion filed by a party, the Supreme Administrative Court may abstain from holding an oral hearing in the following scenarios:

- if the proceeding is to be dismissed or the final complaint is to be rejected,
- the contested decision or the contested order is to be repealed on the grounds of unlawfulness due to lack of jurisdiction of the Administrative Court;
- the contested decision or the contested order is to be annulled on the grounds of unlawfulness resulting from the fact that rules of procedure have been violated;

- the contested decision or the contested order is to be annulled in accordance with continuous decisions of the Supreme Administrative Court due to unlawfulness of its contents;
- no other party has submitted an answer to the final complaint and the contested decision or the contested order is to be repealed;
- the pleadings of the parties and the files of the proceeding before the Administrative Court reveal that an oral hearing is not expected to further clarify the legal matter and the refraining from the hearing does not conflict with Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms or with Art 47 of the Charter of Fundamental Rights of the European Union.

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

See above.

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?

Generally speaking discussions are always possible and happen before and after a hearing. However, it is in the panels's discretion if/how much they discuss a case before an oral hearing. Deliberations in the proper sense, in cases where an oral hearing is held, happen during/after the oral hearing.

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

The chairman opens, presides over and closes the hearing and is in charge of keeping order in the court. The hearing begins with the report of the rapporteur. The chairman shall ex officio provide for the exhaustive debate on the case. After the report of the rapporteur all parties shall be heard; there is no official time limit.

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

There is no rule stating that a party has to be heard uninterrupted for a certain period of time.

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 discussion in the oral hearing may involve broader legal discussion between the lawyers if the deciding panel considers this to be necessary. However, it is emphasized once more that

due to the scope of review at the Supreme Administrative Court (legal questions of fundamental importance) oral hearings are a rare occurrence.

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

The Supreme Administrative Court does not have time limits, such as the administrative courts of first instance (six months), to reach a decision in the pending legal matters. Therefore, the parties may submit written statements until the Court has decided in the concerned case. The Court can also request the parties to submit further pleadings within a reasonable time or to comment on the pleadings of other parties (§ 37 VwGG). It is, however, in the deciding panel's discretion to decide, if the submissions are relevant and will be taken into consideration.

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?

According to § 31 para. 1 VwGG in case of a conflict of interest the justices or the minute takers at panel meetings shall notify the President of the Court accordingly and abstain from exercising their office 1) in legal matters, in which they themselves, one of their relatives or one of the persons under their guardianship are involved, 2) in legal matters in which they were or are appointed the representative of a party, 3) if they were involved in proceedings previous to that of the Supreme Administrative Court and 4) if there are any other important reasons for doubting their impartiality.

Furthermore, parties may also challenge members of the Court and minute takers for the stated reasons until the beginning of an oral hearing (§ 31 para. 2 VwGG). If the challenge is based on the fourth aforementioned reason, the party shall credibly justify the reasons. The panel in charge of the matter decides on the challenge in absence of the challenged member by order. In case the panel decides that the challenge is justified, the President of the Court will order the substitute justice to be called upon.

However, it is not possible for a justice to be excluded from proceedings solely based on a legal opinion expressed during an oral hearing.

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.

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?

Pursuant to § 41 VwGG the Supreme Administrative Court, unless it finds unlawfulness due to lack of jurisdiction of an Administrative Court or because of violation of procedural, reviews the contested decision or the contested order on the grounds of the facts assumed by the Administrative Court within the scope of the points of the final complaint submitted or within the scope of the declaration on the scope of the final complaint. If it finds that for the decision on the unlawfulness of the decision or order in one of the points of the final complaint or within the scope of the declaration on the scope of the final complaint there may be relevant reasons which so far have not been known to one of the parties, the parties shall be heard and, if necessary, the hearing adjourned.

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

Before a case is discussed and deliberated in a panel meeting the rapporteur drafts a decision and presents this suggested decision to the panel-president who then in turn ensures that this

case and draft circulates with every member of the panel. If the members of the panel deem it necessary they may add remarks in writing to the drafted decision.

By virtue of § 15 VwGG, the deliberation and the voting of the panels are not public. The panel-president conducts the deliberation and the voting. Deliberations of the panels start with the rapporteur presenting the case. The rapporteur concludes his presentation with suggesting a decision. This is followed by space for debate when and where necessary. If every member of the panel who requested to speak has been heard, the final word is left to the rapporteur. Every member of the panel can request that their statements is recorded in the minutes, they can also attach a written statement to the minutes.

After the debate is finished, a vote on the drafted decision takes place. If the panel deliberates a decision or a court order, it has to vote on the reasoning and the verdict separately. The rapporteur is the first one to cast his vote, followed immediately by the co-rapporteurs in the order of sequence in which they have reported, the panel president, who participates in the voting in the same manner as any other member, is the last one to vote. The members longer in office shall vote before the ones younger in office. No member is allowed to refuse to vote on the question for decision, not even then if such member has been in the minority during the vote regarding a prejudicial question.

If a motion in the panel or in the plenary meeting obtained more than half of the votes, such motion is considered adopted, unless otherwise provided by the law. In case none of the opinions reached the required majority, the vote shall be repeated. If on this occasion it still does not obtain the required number of votes, a new vote shall take place, for which the motions shall, if need be, separated into a number of separate questions.

Furthermore, in case a decision is to be taken in a panel of three, the deliberation and the voting can be replaced by a so called “circulation resolution” if none of the members objects hereto. In such a case the consent of the other panel members will be given in writing.

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.

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

If yes, specify the relevant rules etc.

Yes, as stated in the answer to question 22 there are certain rules regarding the structure of discussion, deliberation and decision-making at panel meetings. These rules are stipulated in § 15 VwGG as well as in the rules of procedure of the Supreme Administrative Court, specifically in Art. 3 and 4.

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

The justices can also discuss a case during informal meetings or at panel meetings. See hereto also answer to question 22 (under H. Consideration of the case).

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?

An oral hearing will especially be held in cases, where the Court decides on the merits. In these cases the ascertainment of additional facts can be required. For this reason the Supreme Administrative Court may hold an oral hearing, which then will probably have an influence in the Court's decision. The Supreme Administrative Court can, however, also order the lower Administrative Court to supplement the preliminary proceedings.

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

No.

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 Supreme Administrative Courts speaks through its decisions, each decision is pronounced in the name of the Republic of Austria. There is no possibility of publishing dissenting opinions.

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?

Each decision is drafted by the rapporteur and the panel deliberates this decision. The decisions are pronounced in the name of the Republic, they are issued by the panel without revealing the name of the rapporteur.

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

The draft decisions of the rapporteurs until the panel meeting as well as the final decision as voted upon at the panel meeting are saved in the database of the Court. The draft version is then replaced by the final decision. After a decision is delivered to the concerned parties, the decision will be published online at the homepage of the legal information system ("RIS"), which among others entails most of the decisions of the Supreme Administrative Court.

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)?

§§ 42 para. 1 and 43 of the VwGG entail few regulations concerning the form of the judgement, required signatures, the reasoning and the order (in the name of the Republic). Furthermore, the rules of procedure of the Supreme Administrative Court stipulate that the name of the parties, lawyers, judges, and the date of the judgement must be included in the decision. Therefore, there is no distinction and the judgment entails both the order as well as the reasoning. It is however customary that the order and the reasons are separated by a headline, which is “Entscheidungsgründe” (decision-making rationale) in case of judgements and “Begründung” (reasons) in case of orders.

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

No.

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.

The average length of the proceedings was 4,9 months in 2017, in 2018 4 months.

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

No.

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.

No.

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.

As mentioned in the answer to question 24 (under F. Oral hearings) there are no mandatory timeframes for deciding cases at the Supreme Administrative Court.

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?

Not applicable.

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?

Not applicable.

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?

In 2014, following one of the most comprehensive reforms of Austria's system of administrative justice, new administrative courts of first instance at a federal and regional level took up operations. The reform created eleven new administrative courts, the so called "9+2 model", one for each of the nine provinces, one for review of the decisions of federal agencies, and one for the review of administrative decisions in financial matters. The Supreme Administrative Court is competent to review the rulings of these lower administrative courts, thus retaining final jurisdiction in all administrative matters. Also with this change the Supreme Administrative Court was assigned jurisdiction in asylum matters as final instance.

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

Due to the amount of asylum applications in 2015/2016, there was an immense increase in the pending legal matters at all instances in this area. Also in legal matters concerning gambling law there was an immense increase in 2017 and in 2018. This reflects in the caseload (see answers to questions 7 and 8).

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

Yes, these changes constitute an improvement as this is also clearly visible in the duration of proceedings, even though the caseload increased drastically the Supreme Administrative Court still managed to reduce its duration of proceedings.

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.