



Bundesverwaltungsgericht



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

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

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Answers to questionnaire: Estonia



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ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

Answers by the Supreme Court of Estonia

I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

There are three instances: administrative courts, circuit courts (which have administrative law chambers) and the Supreme Court (which has an Administrative Law Chamber).

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

The Administrative Law Chamber of the Supreme Court does not serve as a first instance court.

However, the Constitutional Review Chamber of the Supreme Court does adjudicate some disputes, which could be classified as administrative cases, as a first instance court: for instance complaints against resolutions of the Parliament and the President of the Republic, as well as electoral disputes.¹

c) If so, under what circumstances does your court serve as a first instance court?

N/A

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

N/A

2.

a) Looking at the **caseload** of a single judge of your SAC, can you identify larger groups of cases, which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall caseload?

In 2018, the Administrative Law Chamber received 801 applications for opening of proceedings. Every judge² resolved on average 178 applications for opening of proceedings.

¹ See § 2 of the Constitutional Review Court Procedure Act (henceforth CRCPA), available in English: <https://www.riigiteataja.ee/en/eli/528062017007/consolide>.

² In 2018, from January until June, the Chamber had five members. After the retirement of a judge in June, a new judge took office only in December and did not participate in many cases last year.

In 2018, the Chamber admitted 91 applications (11.4% of the applications for opening of proceedings) and resolved 72 administrative cases: in 47 appeals in cassation, a judgment was made, and a ruling was issued in 25 appeals against a court ruling. Special panels (ad hoc panels formed of two members each of the potentially competent chambers together with the Chief Justice) determined in three cases the competent court to deal with the matter.

Two members of the Administrative Law Chamber were in 2018 also members of the Constitutional Review Chamber. One of them was a reporter in one constitutional review case. The Supreme Court en banc and among them all members of the Administrative Law Chamber judged upon two constitutional review matters.

In 2018, a member of the Administrative Law Chamber was member of the panel on average in 34 cases and reporter on the case in 16 cases. The judges who were also members of the Constitutional Review Chamber were members of the panel on average in 35 cases and reporters on the case in 16.5 matters on average.

Workload of judges of the Administrative Law Chamber in 2018

Judge	Administrative cases				Constitutional review cases			
	Reviewed appeals	Admitted appeals	Member of the panel	Report on the case	Appeals (total)	Admitted appeals	Member of the panel	Report on the case
A	801	91	31	20	8	6	2	
B			36	13			3	
C			35	15			2	1
D			35	19			3	
E (until June 2018)			17	6			1	
F (since Dec 2018)			1	0				
Average time to process one case	146 days							

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

The complexity and time required depends on each individual case. While generally, it could be said that appeals against court rulings are easier to deal with than appeals in cassation, this is not always the case.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

Usually, the Supreme Court reviews decisions of the lower courts with a view to the law only. According to § 229 (1) of the Code of Administrative Court Procedure (henceforth CACP)³, the Supreme Court verifies whether the circuit court has, in its judgment, correctly applied relevant rules of substantive law and whether, when reaching its judgment, the court has observed the rules of procedure. When verifying whether an appeal in cassation is well founded, the Supreme Court has regard to the facts as ascertained in the judgment of a lower court. In addition, the Supreme Court has regard to the facts submitted in order to state the reasons of the assertion concerning significant infringement by the circuit court of a rule of procedure, including any facts apparent from the minutes of the court session (§ 229 (2) CACP). The Supreme Court is bound by the facts as ascertained by the circuit court, except in the case that ascertainment of a fact is contested in the appeal in cassation and, in relation to that ascertainment, the rules of procedure were significantly infringed (§ 229 (3) CACP).

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law? +
- the deliverance of single case justice? +
- (further) development of the law? +
- care for adherence to procedural rules of lower courts? +

5. N/A

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

There is no separate constitutional court in Estonia. The Supreme Court has a Constitutional Review Chamber which consists of the justices from all other chambers (including the Administrative Law Chamber) on a rotational basis and the Chief Justice.

b) Does the SAC in your country serve as a constitutional court? *The Supreme Court does, but not the Administrative Law Chamber.*

³ Available in English: <https://www.riigiteataja.ee/en/eli/512122017007/consolide>.

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

The administrative courts consider constitutional law, especially fundamental rights on a regular basis when checking the legality of administrative activities. According to § 158 (4) CACP, when deciding a matter, the court sets aside any legislative act if it contravenes the Constitution of the Republic of Estonia. In that case, the court shall forward the respective judgment or ruling to the Supreme Court (§ 9 (1) of the CRCPA). This initiates constitutional review proceedings in the Constitutional Review Chamber of the Supreme Court.

However, if the Administrative Law Chamber of the Supreme Court finds that a prerequisite for disposing of the administrative matter is determination of an issue to be dealt with in constitutional review proceedings (including the constitutionality of a legislative act or the lack of one), the Chamber refers the matter directly to the Supreme Court en banc (§ 228 (1) 3) CACP).

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law? *No.*

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional? *See answer to question c).*

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

There are some categories of administrative acts that can only be contested directly before the Constitutional Review Chamber of the Supreme Court. These include complaints against resolutions of the Parliament and the President of the Republic, as well as electoral disputes. Since administrative courts are only competent to decide on disputes arising in public law relationships unless the law provides a different procedure for resolving such disputes, in these cases listed in § 2 CRCPA the administrative courts are not competent.

II. Access to the SAC

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

No, a participant of proceedings may participate in the proceedings either in person or through a representative (§ 31 (1) CACP).

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

If the participant does have a representative, then the categories of representatives are indeed limited before the Supreme Court. In 1st and 2nd instance courts, a participant can also be represented by any person who possesses a higher legal education or, in tax matters, a tax or accountancy consultant who possesses a higher

education in economics, but these categories are excluded from representation before the Supreme Court. There, a participant may only be represented by either an advocate or the party's procurist (in commercial matters), the party's official or employee (if the court deems them suitable), the party's close relative, or parties may authorise other parties to represent them (§ 32 (1)-(2) CACP).

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?
No.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...? *See answer to question b).*

e) Are there specific (different) rules for representatives of administrative authorities? *As stated in answer to question b), administrative authorities may authorise their officials or employees to represent them, but the court must deem them to possess such knowledge and experience which is sufficient to represent the participant. However, this is not specific to administrative authorities, but is also relevant for other legal persons.*

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

An appeal in cassation must contain the following (§ 213 (1) CACP):

1) for each participant of the proceedings, the name, place of residence or seat, postal address and status in proceedings, as well as particulars of the means of telecommunications if these have changed during the proceedings and are known to the appellant in cassation;

2) the name of the court which entered the judgment against which the appeal is lodged, the date of the judgment and the docket number of the administrative matter;

3) a clearly stated application of the appellant in cassation, showing the scope within which he or she contests the judgment of the circuit court and the decision that he or she seeks from the Supreme Court;

4) the reasons for the appeal in cassation, showing which rule of substantive law the circuit court has, in the opinion of the appellant in cassation, applied incorrectly, or which rule of court procedure the circuit court has significantly infringed and what the substance of the infringement is;

5) whether the appellant in cassation wishes the matter to be heard in a court session. If the appellant in cassation has not stated the corresponding wish, it is assumed that he or she agrees to the matter being heard by way of written proceedings;

6) particulars concerning the payment of the security on cassation;

7) a list of the documents appended to the appeal in cassation.

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

No. While the Supreme Court only verifies the judgment of the circuit court to the extent that that judgment has been appealed (§ 229 (1) CACP), the Supreme Court is not bound by the reasons in law stated in an appeal in cassation (§ 229 (4) CACP).

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU? *N/A*

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

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

According to § 211 (1) CACP, a party or third party of the matter [so, that excludes administrative authorities joined to the proceedings in other capacities apart from party or third party – for example supervisory authorities] has the right to lodge an appeal against the judgment of the circuit court with the Supreme Court. The reasons stated in the judgment may only be contested if the operative part of the judgment is contested, except in the case that such reasons affect the rights or duties of a participant of the proceedings independently of the operative part. The right of appeal is limited in case of some procedural rulings.

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

The only restrictions are based on the type of procedural ruling – for example interim relief, procedural assistance, stay of proceedings etc. All judgments may be appealed, unless the participant has waived his or her right to appeal.

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

There is a leave of appeal system, and the leave depends on a preliminary assessment. The only quantitative filter is that, if impingement on the right that the appeal seeks to protect is a minor one and the law would permit the matter to be heard by way of simplified proceedings, the Supreme Court opens proceedings on the appeal only if the decision of the Supreme Court holds fundamental importance from the point of view of uniform application of the law or of development of law (§ 219 (6) CACP) – so in case of minor impingements [if the legal value can be appraised in monetary terms, the limit is usually 1000 euros (§ 133 (1) CACP)], the filter is stricter than in general.

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

- Which court decides (lower court or SAC)? *The Supreme Court.*
- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC? *N/A*
- If the SAC decides, is there a specific procedure of admittance before the SAC? Please give details!

According to § 219 (1) CACP, the Supreme Court, acting as a panel of three members, decides the opening of proceedings on the appeal without summoning the participants of the proceedings. The Supreme Court opens proceedings on an appeal in cassation if: 1) the positions stated in the appeal warrant the conclusion that the circuit court has incorrectly applied a rule of substantive law, or has significantly infringed the rules of court procedure, which has resulted or could have resulted in an incorrect judgment being entered; 2) regardless of the provision of clause 1 of this subsection, decision on the appeal is of considerable import from the point of view of ensuring legal certainty or uniformity of approach in the case-law of the courts (§ 219 (3) CACP). The opening of proceedings on an appeal in cassation is refused if the Supreme Court is convinced that none of the grounds listed above exist. Proceedings are not required to be opened on the appeal also in the case that the Supreme Court is convinced that it will be impossible, by conducting the proceedings, to achieve the aim of the appeal. If impingement on the right that the appeal seeks to protect is a minor one and the law would permit the matter to be heard by way of simplified proceedings, the Supreme Court opens proceedings on the appeal only if the decision of the Supreme Court holds fundamental importance from the point of view of uniform application of the law or of development of law (§ 219 (6) CACP). The Supreme Court may decide on the leave of appeal based on the appeal alone, but may also ask for other participants' responses (§ 218 (1) and § 219 (1)-(2) CACP). The opening of proceedings on an appeal in cassation, or refusal to open such proceedings, is formalized as a ruling of the Supreme Court. The ruling concerning the opening of proceedings, or refusal to open proceedings, on the appeal sets out the legal basis for the opening of, or refusal to open, those proceedings (§ 219 (7) CACP). A copy of the ruling is delivered to the participants and published on the website of the Supreme Court (§ 219 (7) and (9) CACP).

- If the lower court decides (in a negative way), can the SAC still admit a case? *N/A*
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application? *N/A*

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)? *No.*

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

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements? *No.*

f) Are there specific requirements in certain fields of law? *No.*

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

*According to data from three recent years (2016–2018), in administrative matters the **Supreme Court accepts approximately 10% of appeals (this includes mainly appeals in cassation and appeals against rulings).***

	2016	2017 ⁴	2018	Average
Appeals (total)	1041	627*	801	
Admitted appeals	104	53*	91	
%	10	8,5	11,4	10%

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases? *N/A*

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable? *The functions marked as applicable in Q I. 3. are derived from the restrictions of access.*

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

Yes. § 24 of the Constitution of the Republic of Estonia⁵ states that in accordance with the procedure provided by law, everyone is entitled to appeal a judgment rendered in his or her case to a higher court. The constitution also provides for three court instances (§ 148), as well as that circuit courts only review rulings of the courts of first instance on appeal and that the Supreme Court reviews rulings of other courts pursuant to a cassation procedure (§ 149).

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance? *The constitution is not that specific.*

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)? *There has been some discussion, and based on it, an additional filter – the one concerning minor impingements (see answers to questions 4 a) and b)) – was recently (01.01.2018) added to the CACP.*

III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC: *N/A*

2. As far as your SAC serves as a court of appeal:

a) What is the possible **content of decisions** of your SAC:

⁴ In 2017, a new statistics' system for courts was introduced and because of a transition period, the data for the second trimester of year 2017 are missing.

⁵ Available in English: <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

- cassation of the decision of the lower court and remitting the case back to the lower court? +
- cassation of the administrative act? +
- obligation of the administrative authority to issue an administrative act? +
- obligation of the administrative authority to issue a new discretionary decision? +
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)? +
- issue an administrative act itself? -
- issue a discretionary decision out of its own authority? -
- remit to the constitutional court? -
- issue a legal opinion/authoritative interpretation of the law without connection to a single case? -
- other? *annul the judgment of the circuit court and uphold the judgment of the administrative court; vary the reasons stated in the judgment of the circuit court or the administrative court while upholding the operative part of the judgment; ascertain that the administrative act is null and void or that the administrative act or measure is unlawful.*

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

When verifying whether an appeal in cassation is well founded, the Supreme Court has regard to the facts as ascertained in the judgment of a lower court. In addition, the Supreme Court has regard to the facts submitted in order to state the reasons of the assertion concerning significant infringement by the circuit court of a rule of procedure, including any facts apparent from the minutes of the court session (§ 229 (2) CACP). The Supreme Court is bound by the facts as ascertained by the circuit court, except in the case that ascertainment of a fact is contested in the appeal in cassation and, in relation to that ascertainment, the rules of procedure were significantly infringed (§ 229 (3) CACP).

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts? *N/A*

b) If not, what are the differences? *N/A*

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures? *All cases must first go through the admittance procedure described in answer to question 4 b). For the main procedure (the procedure after admittance), there are separate rules.*

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

According to § 219 (1) CACP, the Supreme Court decides the opening of proceedings on the appeal without summoning the participants of the proceedings. After the appeal is admitted, the Supreme Court hears appeals in cassation by way of written proceedings, provided it does not consider it necessary to convene a court session. If, during written proceedings, the court finds that a court session should be

convened, it schedules the court session (§ 223 (1) CACP). So, the admittance procedure is always written, but in the main procedure, the Supreme Court may decide to hold a public hearing. This is, however, very rare.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases? *No.*

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

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

No. However, if the majority of the panel dealing with the case favours overruling the position of the Administrative Law Chamber regarding the application of the law, the matter is referred for the hearing to the full panel of the Administrative Law Chamber (§ 226 (1) 2) CACP).

d) If so, under which conditions can it deviate from its previous decision? *See answer to previous question.*

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

In the case that the panel of the Supreme Court that deals with an administrative matter considers it necessary to derogate, in interpreting the law, from the latest opinion of another chamber [i.e. Civil or Criminal Chamber] or of a special panel of the Supreme Court, the administrative matter is referred by a ruling to be decided by a special panel constituted by the chambers which hold differing views on the issue (§ 227 (1) CACP). The matter may also be referred to the Supreme Court en banc, if the majority of the members of the Administrative Law Chamber [i.e. the full panel] adopts a position which differs from a principle of law which the Supreme Court en banc continues to recognise, or from its opinion concerning the application of the law (§ 228 (1) 1) CACP).