



**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: Bulgaria



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

Върховен административен съд

Supreme Administrative Court

2. What country/jurisdiction does your institution serve?

Republic of Bulgaria

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

Sofia city

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.

<http://www.sac.justice.bg/>

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);

Court of first instance for certain types of cases referred to the Administrative Code and the Court of Cassation for cases of 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);

Supreme Administrative Court

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

The Supreme Administrative Court shall exercise supreme judicial oversight as to the precise and equal application of the law in administrative justice.

The Supreme Administrative Court shall rule on all challenges to the legality of acts of the Council of Ministers and the individual ministers, and of other acts established by law.

C. Caseload

6. How many judges¹ serve on your institution?

97 judges

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

15670 cases

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

22,000 cases

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 Administrative Court is divided into college and divisions

10. If yes, provide the following details:

a. How many chambers/divisions?

The SAC is divided into two colleges, each of which has four divisions

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

49 judges serve in each of the colleges.

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.).

Each division in the court is specialized in a certain kind of matter - in the field of tax law, social security, environment, competition, public procurement, spatial planning, damages for illegal administrative acts, civil servants, appeals against acts of the Supreme Judicial Council.

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

Judges may be moved from one division to another if they wish to change the matter of work in case of vacancy and following a decision of the General Assembly of Judges of the Court

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

No. In each division judges are divided basically into three-judge chambers. They have permanent character and are formed on the proposal of the chair of the division.

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

The main panel of three judges examines cases when the Supreme Administrative Court acts as a court of first instance and when it acts as a cassation instance of the cases of the administrative courts. Where the Supreme Administrative Court

considers the cases of the first instance three-member panels of the same court as the instance of cassation, then it meets in a five-member panel.

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

The main panel of the court is a panel of three judges

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

(i) Based on what rules or factors?

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

According to Art. 217 of the APC the case shall be examined by a three-member panel of the Supreme Administrative Court, where the decision has been delivered by an administrative court, and by a five-member panel when the decision has been delivered by a three-member panel of the Supreme Administrative Court.

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?

Cassation appeals against the first-instance decisions of the three-member boards of the SAC are considered within the same college.

From the composition of the five-member panel, which acts as cassation instance judges ruled in first instance decision are excluded? Judicial composition is determined electronically.

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

In the Chamber there is reporting judge, whose role is to report the case to the Chamber and to prepare grounds of the judgment

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

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

(i) The assignment of cases to chambers or panels of judges;

The chairman of the court and its deputies, depending on matter, assign the cases between the two colleges and then between the different wards

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

No such function

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

No such function

(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.

No such function

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.

Such procedural figure does not exist in the national administrative procedures

E. Research and Administrative Assistance

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

The SAC has a system of services that support the work of the court. These are administrative offices and have no competence in the field of research. Judges are assisted by court assistants who can carry out research. Judicial assistants are employees of the court. At present, at the initiative of the President of the Court, a procedure for the formation of an analytical unit is carried out. It will consist of judges who will have the function of conducting research, analyzing contradictory practice of court chambers, and giving opinions on constitutional matters.

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

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

15. Are research and administrative supports pooled (i.e. shared between judges) or assigned individually to judges or is there both a pool and some researchers assigned to individual judges? Please explain.

16. If research and administrative support is assigned individually to judges, is there also a research and documentation or equivalent department which provides additional pooled research support?

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

Each court chamber has one legal assistant. He carries out all the activities of those listed by the judges in connection with specific cases.

F. Oral hearings

18. Is there an oral hearing in all cases?

Oral hearings are the main type of hearings before the Supreme Administrative Court. APC was amended from 1.01.2019 and it provided closed sessions. The case shall be examined by a three-member panel of the Supreme Administrative Court in a closed session, unless the judge-rapporteur with a n order instructs the case to be heard in open session. The order shall not be subject to appeal. Where a party has requested in a cassation appeal at the latest, or in the reply to a cassation appeal, that the case be heard in open court, it shall be heard with in this order. This amendment to the APC was challenged before the Constitutional Court by the President of the Republic as contradictory to the Constitution. The case has not yet been dealt with by the Constitutional Court

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

- (a) What percentage of cases typically involves an oral hearing?
- (b) On what basis (formal rules or informal determinations) is it determined which cases will have an oral hearing?
- (c) Can parties to a case request an oral hearing? If yes, what is the significance or consequence of such a request?

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

As yet no deliberations among the judges before the oral hearing=

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

Oral hearings are a mandatory part of the procedure and are not linked to deadlines

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

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

The discussion in the oral hearing confined only to matters set out in the statements or written submissions of the parties

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

The Court accepts the parties' submissions also in writing. This action is not foreseen in the APC, but the case law allows it.

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?

Such exclusion is permissible throughout the court proceedings, including during oral proceedings. In case such exclusion is made, it is necessary to repeat all procedural steps.

G. Written submissions of parties

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

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

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

There is no statutory time limit for the parties' pleadings. In that case, the court may fix a date with regard to all the circumstances of the case

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 Supreme Administrative Court shall consider only the defects of the decision, pointed out in the complaint or the protest. The court shall check and ex officio for the validity, the admissibility and the correspondence of the decision with the material law.

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

These issues are not regulated by the APC. They are governed by the practice of the panels.

The manner of discussion and decision-making depends on each of the judges in the panel.

Under the law, the decision on the case must be taken within 1 month of the last hearing

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?

The proceedings carried out in Bulgarian language.

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

If yes, specify the relevant rules etc.

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

Each panel alone determines how it decides how to form the majority in the decision. If the judge cannot accede to form the majority, it could put a written dissenting opinion in 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?

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 was made on behalf of the institution. If the judge cannot accede to form the majority, it could put a written dissenting opinion in the case.

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?

On the basis of the judgment of the court, the written decision and the reasons for it shall be drawn up by the Judge-Rapporteur.

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

The decision shall be made in writing and signed by all judges of the panel. The solution is also reflected electronically in the electronic system of the court to which everyone has access.

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)?

According to the rules of the APC, the decisions are made in cases of substantive examination of the case. They solve legal disputes and they have definitive character. There is also a case in which the court does not resolve a legal dispute between the parties. In the administrative act, it shall include an order on its preliminary execution, when it is enforced to ensure the life or health of the citizen, to be protected in particular by the state or social interests, at the risk that it may be foiled or seriously hampered by the execution of the act, or if the delay in the execution may result in significant or hardly repairable damage, or at the request of some of the parties, in the protection of its particularly important interest. The order by which it is admitted or is refused the preliminary execution may be appealed to the administrative body before the court within three days after its announcement, whether the administrative act has been appealed. The complaint shall be considered immediately in an open meeting, and copies thereof shall not be handed over to the parties. It shall not stop the admitted preliminary execution, but the court may stop it until its final decision. The court shall decide on the merits of the appeal. If the preliminary execution is canceled, the administrative body shall renew the existing situation before the execution. The definition of the court shall be subject to appeal.

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

J. Timeframes for the decision-making process

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

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

The court shall render a judgement within one month period after the meeting in which has finished the consideration of the case. The deadline is established by law and is binding. For example, in 2017 in total number of 15812 cases - 13403 were closed within 1 month period, 1946 cases - within 1 to 3 months and 436 cases - over 3 months.

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 such cases

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.

no such cases

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 complexity of the cases, a great number of evidence to be discussed.

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

K. Developments over time

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

The latest amendment to the APC provides an opportunity for closed hearings of the cassation instance.

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

Amendments to the Act enter into force on 1.01.2019. There is still no case law on them.

They are subject to dispute before the Constitutional Court of Bulgaria

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.