



**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: Lithuania**



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

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

**Supreme Court of Ireland**

**Questionnaire**

**I. Introduction**

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

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

1.3 The Dublin seminar on the 25<sup>th</sup> and the 26<sup>th</sup> 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 12<sup>th</sup> to the 14<sup>th</sup> 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.

*The formal title of our court is Lietuvos vyriausiosios administracinės teisėms (Supreme Administrative Court of Lithuania).*

2. What country/jurisdiction does your institution serve?

*Republic of Lithuania.*

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

*In the capital of Lithuania – Vilnius. Full address: Zygimantu st. 2 LT-01102 Vilnius, Lithuania.*

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.

*A link in Lithuanian: <https://www.lvat.lt/>*

*A link in English: <https://www.lvat.lt/en>*

### 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);

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

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

*According to the Law on Administrative Proceedings, the Supreme Administrative Court of Lithuania is the appellate instance for cases from decisions, rulings and orders of regional administrative courts as the courts of the first instance. Rulings of the Supreme Administrative Court of Lithuania are final and not subject to appeal. The Supreme Administrative Court is also the first and final instance for certain categories of administrative cases assigned to its jurisdiction by law (e. g. cases relating to the lawfulness of regulatory administrative acts adopted by the central entities of state administration, cases*

where legality of general acts adopted by societies, political parties, political organisations or associations is questioned etc.).

*A court system of the Republic of Lithuania is made up of courts of general jurisdiction and courts of special jurisdiction.*

*The Supreme Administrative Court of Lithuania and regional administrative courts are courts of special jurisdiction hearing disputes arising from administrative legal relations (for more detailed information please visit <https://www.teismai.lt/en/courts/judicial-system/650>).*

### **C. Caseload**

6. How many judges<sup>1</sup> serve on your institution?

*19 judges serve in the Supreme Administrative Court of Lithuania since the end of October, 2018.*

7. How many cases<sup>2</sup> are brought to your institution per year on average?

*4 000 cases per year on average.*

8. How many cases does your institution dispose of<sup>3</sup> per year on average?

*3 800 cases per year on average.*

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<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> 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?

*It does not. However, judges do specialise in particular areas (i.e. competition law, environmental law, social security law etc.) yet having such specialisations does not require creating separate chambers or divisions at court. When decision which panel of judges should hear the case is made, it is considered what specialisation those judges have and whether it coincides with the essence of case.*

*It is important to mention that judges normally have 9-11 specialisations, hence the scope of questions in cases that they hear is rather wide.*

10. If yes, provide the following details:

- a. How many chambers/divisions?
- b. How many judges serve in each chamber/division?
- 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.).
- d. Do judges move between chambers/divisions? If yes, how is such movement determined?
- e. Is it possible for a judge to be assigned to more than one Chamber at a time?
- f. Are there different levels of chambers, for example, an 'ordinary chamber' and Constitutional Review Chamber?
- g. How many judges are usually assigned to consider and decide an average case?
- 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?
- 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?
- j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?

If yes, specify the additional roles and explain how these roles are assigned.
- k. How significant is the role of the Chief Judge or President of the court in determining:
  - (i) The assignment of cases to chambers or panels of judges;

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

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.

#### **E. Research and Administrative Assistance**

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

*Supreme Administrative Court of Lithuania employs assistants to judges, consultants and advisors who all provide administrative assistance and legal research to Court's judges on different levels. Court has a mutual relationship with Faculty of Law of Vilnius University, therefore there are also interns serving as paralegals. In addition to that, administrative assistance is completed with secretaries who provide other administrative services (such as sending summons to court hearings, recording court's oral hearings, filing relevant information about cases to Lithuanian courts online platform etc.).*

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

*Currently there are 29 civil servants and 3 employees.*

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

*In certain cases of particular importance or difficulty advisors provide both legal research and administrative assistance. This means they do not only provide legal opinions in certain cases but also prepare pre-hearing documents and draft decisions' projects based on legal opinions, take care of other formalities, such as uploading decisions' final versions online or depersonalizing data etc.*

*In addition to that, advisors comprise one of Court's departments – the Judicial Research Department – where spectrum of their responsibilities is rather wide. They not only assist in certain above-mentioned cases, but also closely follow practice of the Supreme Administrative Court to guarantee its consistency, prepare overviews of Court's practice, as well as overviews of practice of the Court of Justice of the European Union and the European Court of Human Rights, share unified practice rules with other courts, prepare information about cases and Court's work for general public etc.*

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.

*Assistants to judges are assigned individually to judges for period of three months only. This assignment is based on rotation system and after three months pass another assistant is assigned to a judge. In the mean time, that assistant works solely with the judge he or she was assigned to.*

*Advisors are assigned to a particular judge only when the latter as a rapporteur has a case where advisor is considered needed. Other than that, advisors work independently not with certain judges but as a part of the Judicial Research Department and can work with multiple judges at a time or none of the judges, depending on tasks they have at that time.*

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?

*As it has been mentioned above, there is Judicial Research Department which provides additional pooled research support. This department is comprised of advisors – law professionals that have PhD in law degrees and specialise in certain areas of law (e. g. competition law, environmental law, tax law etc.) and who not only provide legal opinions, draft final decisions of court, but also closely follow practice of the Supreme Administrative Court and guarantee its consistency, prepare overviews of its practice, as well as overviews of practice of the Court of Justice of the European Union and the European Court of Human Rights.*

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

*Both assistants to judges and advisors (when they are assigned to cases) prepare pre-hearing documents. They do this to full extent and judges are never faced with a duty to prepare for pre-hearings without assistance.*

(b) Undertaking legal research to assist a judge to make a decision in a case;

*Both assistants to judges and advisors (when they are assigned to cases or are asked for a legal opinion) undertake legal research of relevant courts' practice and legal acts. Advisors also undertake research of legal doctrine and/or travaux préparatoires*

*of legal acts. All relevant information is compiled and presented to judges hearing the case.*

(c) Discussing aspects of a case with a judge orally or in writing;

*Both assistants to judges and advisors discuss aspects of a case with judges orally. If a legal opinion is required, normally advisor provides it in writing.*

(d) Consideration and evaluation of the relevant law;

*Both assistants to judges and advisors have to go through procedure of evaluation of the relevant law, applicable to that particular case, and representation of it to judges.*

(e) Undertaking comparative law analysis;

*Usually it is a task to advisors to draw comparisons between different legal systems or legal acts.*

(f) Drafting sections of judgments;

*All the information regarding facts, decision of first instance court and arguments which parties put forward in appeal process is compiled and described by assistants to judges. Motives' section of final judgment is prepared only when judge orders so. When advisor is assigned to a case, there might be several different versions of decision drafted and presented to panel of judges hearing that case.*

*Judges draft motives of judgments only in cases where they act as rapporteurs.*

(g) Putting forward a suggested or preliminary decision for judge(s) to consider;

*Advisors provide legal opinions in writing when they are asked to do so. If judges agree with suggested evaluation of situation and decision following from it, either advisor or assistant to judge prepares draft of judgement based on that opinion. When advisor is assigned to a case, there might be several different versions of decision drafted and presented to panel of judges hearing that case.*

*Generally opinions on the possible outcomes of case are exchanged during presentation of case to judges by both advisors and assistants, however such exchanges are not formalised in writing.*

(h) Any other element that you consider is relevant in this context.

*Judges can be assisted with help of either assistants to judges, advisors or both of them at the same time. It depends on a case and its difficulty, requirement of expertise knowledge of certain law area etc.*

## **F. Oral hearings**

18. Is there an oral hearing in all cases?

*According to the Law on Administrative Proceedings, appeal procedure is entirely conducted in writing, unless court decides it is necessary to have an oral hearing.*

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

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

*Roughly one percent.*

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

*It is solely up to panel of judges hearing that case and their evaluation whether such hearing is needed.*

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

*Parties are free to submit such requests to the court, however, judges that are hearing that case decide whether an oral hearing is needed or not and request by parties does not oblige them in any way, shape or form. If a party puts forward such request for an oral hearing before hearing takes place, court considers it and decides in a timely manner whether or not such request should be granted. If a party submits such request later, arguments why oral hearing was not granted are to be found in the final judgement of that case.*

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?

*There is always a deliberation between judges before oral hearings. One reason for that is the scarcity of such hearings in general and those cases where oral hearing is considered to be required presuppose particular difficulty of circumstances or applicable law. However, such deliberations take part insofar as judges discuss premises of a case that is about to be heard and possible problematic aspects arising in case either by application of law or difficult factual circumstances that should be clarified during court hearing.*

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

*There are no such time limits imposed on parties during oral hearing.*

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

*During oral hearing parties can address Court for as long as they please, on condition that they stay on topic and provide relevant information. No particular time restrictions apply.*

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?

*Discussion in the oral hearing is bound to earlier statements and written submissions of parties. However, in most cases it inevitably leads to broader discussions and it is allowed provided that these discussions are restricted within framework of earlier statements.*

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

*If proceedings are already over but judgement is not announced yet, parties still have a possibility to use their procedural rights (i. e. request court to send judgement to a particular address, award compensation of expenses incurred etc.). Other claims of a different nature are added to the material of case but not considered by panel of judges.*

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 the European Court of Human Rights settled case-law, the existence of impartiality must be determined according to a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. Therefore legal opinion expressed during a hearing before judgement is released might impair judge's perception as impartial, hence give rise to the perception of bias and trigger his or her removal from a panel that hears the case.*

## **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 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.

*There is no such restriction of length imposed on parties.*

## **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?

*According to the Law on Administrative Proceedings, circumstances that are crucial for legitimate and fair decision can be examined on court's own motion (ex officio). Court establishes boundaries of such examination and is not limited to the points or requests made by the parties of the case.*

*When court hears a case as an appellate instance, it analyses lawfulness and legitimacy of the judgement announced by first instance within boundaries of appeal that has been lodged. These boundaries can be disregarded only when interests of state, municipality or individuals' rights would be significantly infringed otherwise.*

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

*There is no formal procedure to regulate that, however judges that compose panel hearing a particular case have a meeting where they discuss facts and applicable law to reach a unanimous decision. If question is of particular importance or difficulty there is a possibility*

*to elevate procedure to extended composition and require advisors to draft legal opinions in that case. Such legal opinions are later presented to extended composition of judges and decision is then made based on deliberations which take place during extended composition meeting.*

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?

*Supreme Administrative Court of Lithuania conducts deliberations and releases judgements only in Lithuanian.*

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

If yes, specify the relevant rules etc.

*There are no such specific formal rules.*

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

*Deliberations take place orally, however, if there are a few possible outcomes that are being considered, further and more detailed communication among judges might be in writing as well.*

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?

*It is all a part of forming judge's internal perception and assurance of a case, meaning that it neither has a higher nor lower value than written submissions.*

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

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## **I. The decision of the institution**

28. Is the decision delivered on behalf of the institution or is it open to each individual judge assigned to the particular case to deliver a separate judgment?

*The decision is delivered on behalf of the Republic of Lithuania and is considered to be released by court in corpore, not by an individual judge or their panel. It is important to add that there is a possibility for a judge to address his or her position in a separate opinion, yet it is not a judgement on behalf of individual judge.*

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?

*Panel of judges that heard the case releases judgment on behalf of the Republic of Lithuania. The text of judgement is drafted by one judge that acted as rapporteur in that case, yet all the other judges that comprised panel sign judgement as well.*

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

*Court's final ruling and reasoning that led to it is only in writing and can be read in court's judgement.*

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)?

*No, there is not. The final decision that is released by court (in other words judgment) is also the operative ruling of the court. No separate legal document has to be released in order to enforce judgement or its content.*

*Also, Law on Administrative Proceedings regulates what type of decision (judgement or ruling) is appropriate at particular situations.*

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.

*In administrative disputes roughly fifteen months, in cross-appeals roughly six weeks.*

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

*No, there is not.*

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.

*Yes, there are a few categories of cases that are required to be dealt with within the time frame specified by law (e. g. 48 hours are foreseen to deal with claims arising from election; it can take no more than two months to provide rulings on whether a member of municipal administration broke an oath etc.).*

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.

*According to Law on Administrative Proceedings judgement should be announced no later than twenty working days from hearing a case. President of the Supreme Administrative Court can prolong this term for no longer than ten working days when there is adequately reasoned request to do so by panel of judges. These terms are mandatory.*

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?

*See answers to questions 35-36.*

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?

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**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?

*No.*

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

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

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**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?

*No.*

**Thank you for completing this questionnaire.**