



**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: Malta



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. In Malta there are 3 institutions that deal with administrative cases:

- 1. Tribunal ta' Revizjoni Amministrattiva – Administrative Review Tribunal (with a right of appeal to the Court of Appeal (Inferior Jurisdiction) composed of 1 judge)**
- 2. Prim'Awla tal-Qorti Civili – First Hall of the Civil Court (with a right of appeal to the Court of Appeal (Superior Jurisdiction composed of 3 judges)**

2. What country/jurisdiction does your institution serve? **Malta**

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

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.justiceservices.gov.mt/courtservices/>

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); **My institution is the Administrative Review Tribunal which is regulated by Chapter 490 of the Laws of Malta (Administrative Justice Act). This Tribunal is an independent and impartial tribunal for the purpose of reviewing administrative acts referred to it. However the Administrative Review Tribunal does not have a general jurisdiction to review administrative acts which are reviewable under article 469A of the Code of Organisation and Civil Procedure but it has jurisdiction to review those administrative acts as may be prescribed in Chapter 490 of the Laws of Malta or any other law granting jurisdiction to the Administrative Review Tribunal over any class of administrative acts.**

Administrative acts which do not fall in the competence of the Administrative Review Tribunal are reviewed by the First Hall of the Civil Court composed of one judge.

From the decisions of the Administrative Review Tribunal there is appeal to the Court of Appeal (Inferior Jurisdiction). From the decisions of the First Hall Civil Court there is an appeal to the Court of Appeal (Superior Jurisdiction) composed of three (3) judges.

(b) The nature of your institution (e.g. a Supreme Administrative Court or a Supreme Court with jurisdiction in other areas of law); **The nature of my institution is a Tribunal which is composed of a Chairperson (who holds or has held the office of a judge or magistrate in Malta) assisted by two assistants whom may be consulted to reach a decision.**

On the other hand the First Hall of the Civil Court is presided by one judge.

and

(c) Its place within the overall court structure in your country/jurisdiction. **The Administrative Review Tribunal has all the powers of a First Hall of the Civil Court..**

C. Caseload

6. How many judges¹ serve on your institution? **The Administrative Review Tribunal is presided by two magistrates. The administrative review cases assigned to the First Hall of the Civil Court are mainly addressed to 1 judge.**

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

The Administrative Review Tribunal receives an average of 100 cases per year.

The First Hall of the Civil Court receives an average of 20 cases per year.

8. How many cases does your institution dispose of³ 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.

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.

The Administrative Review Tribunal disposes of an average of 100 cases per year.

The First Hall of the Civil Court receives an average of 12 cases per year.

D. Internal organisation of the Supreme Administrative Court

9. Does your institution have chambers/divisions? **No**

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? **No**

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.

E. Research and Administrative Assistance

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

No administrative assistance is provided

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

14. Do officials which provide legal research assistance to your institution also provide administrative assistance? **No**

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. **A part-time research support (judicial assistant) is provided to individual judges in the Administrative Tribunal. A full time court attorney is provided in the Superior Courts to each individual judge.**

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? **No**

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; **No assistance**

- (b) Undertaking legal research to assist a judge to make a decision in a case; **There is some assistance from a judicial assistant**
- (c) Discussing aspects of a case with a judge orally or in writing; **There can be some assistance for a limited number of cases (since the judicial assistant is part-time)**
- (d) Consideration and evaluation of the relevant law;
- (e) Undertaking comparative law analysis; **No assistance**
- (f) Drafting sections of judgments; **There can be some assistance for a limited number of cases (since the judicial assistant is part-time)**
- (g) Putting forward a suggested or preliminary decision for judge(s) to consider; **There can be some assistance for a limited number of cases (since the judicial assistant is part-time)**
- (h) Any other element that you consider is relevant in this context.

F. Oral hearings

18. Is there an oral hearing in all cases? **Yes**

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? **Not applicable**

21. Are time limits imposed on parties making oral submissions before your institution? **Not particularly**

22. Are parties permitted to address the Court for an uninterrupted period of time? If so, for how long? **Yes. However if counsel is repeating himself/herself he/she may be stopped.**

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? **Oral submissions should be confined to what results from the evidence brought before the Court. The lawyers/parties don't usually enter into discussions with the Court.**

24. Are parties permitted to file further written submissions following an oral hearing? **Usually the parties submit written submissions and then there is a last sitting oral hearing.**

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? **Yes but usually judges don't express legal opinions during hearings.**

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 checked="" type="checkbox"/> |
| 5-10 pages | <input 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. **No maximum length.**

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 Administrative Tribunal can raise ex officio pleas like when an application for review is filed fuori termine or where the subject matter of the review is not of the Tribunal's competence.**

22. How is discussion, deliberation and decision-making structured in your institution? **The Administrativ Review Tribunal is composed of 1 magistrate. He/She hears all the evidence brought forward, hears the final submissions and after considering all the evidence submitted, reaches a decision.**

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 official language is Maltese but when an applicant does not understand Maltese the proceedings may be continued in the English language.**

24. Are there rules, processes, or conventions about how discussions and votes take place? **Not applicable to the Administrative Review Tribunal as it is composed of 1 magistrate.**
If yes, specify the relevant rules etc.

25. How are preferences for particular outcomes communicated between the judges? **Not applicable**

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 given the same weight as the writing submissions.**

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? **Both the Administrative**

Tribunal and the First Hall of the Civil Court which are competent to decide administrative cases are composed of 1 judge. The Court of Appeal is composed of 3 judges but it delivers a collective judgement.

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?

30. How is the court's ruling/reasoning recorded? **The Court's reasoning is recorded in the 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**

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? **2/3 months.** 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 Malta there is no Supreme Administrative Court. There are Administrative Tribunals, Ordinary Courts and the Court of Appeal. Time frames vary largely from the Administrative Tribunals to the Ordinary Courts. The length varies largely due to different subject matters. For example appeals from decisions of the Lands Authority have been decided within 6 months from when the Lands Authority is notified with the appeal. All other cases vary in length depending on the issue involved. However cases before the Administrative Review Tribunal are generally more expeditious than those before the Ordinary Courts which deal with matters that are not within the competence of the Administrative Review Tribunals like breach of human rights and claims for damages.**

34. Is there a specific mandatory timeframe for deciding all cases? If yes, please provide details. **No specific time frame, except for appeals from the Lands Authority decisions which have to be heard and decided within 6 months from when the Authority is notified with the appeal.**

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. **As above.**

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.**

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? **It is nearly always very difficult to abide by timeframes, but the Tribunal abides by the same timeframes. The main reason is that the parties take long**

to produce the evidence in the oral hearings and then there is left little time to draft the judgement.

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? **In cases where no timeframes are imposed it is not difficult to deliver judgement in a fair and reasonable time.**

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?

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.