



**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: Sweden



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.

Högsta förvaltningsdomstolen, The Supreme Administrative Court

2. What country/jurisdiction does your institution serve?

Sweden.

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

Stockholm.

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.

www.hogstaforvaltningsdomstolen.se

<http://www.hogstaforvaltningsdomstolen.se/Funktioner/English/The-Swedish-courts/The-Supreme-Administrative-Court/>

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 third and last instance with a rather strong emphasis on creating precedence to give guidance to lower courts and authorities.

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

Supreme Administrative Court.

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

See a). Sweden has two parallel court systems, one of general courts dealing with criminal and civil law cases, one of general administrative courts dealing with almost all cases involving an individual who appeals against a decision by a public authority, with the exception of migration cases.

C. Caseload

6. How many judges¹ serve on your institution?

16 judges, out of which two normally serves in the Law Council (an advisory body to the Government and Parliament scrutinizing legislative bills).

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

Approximately 8000.

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.

Approximately the same number, 8000.

D. Internal organisation of the Supreme Administrative Court

9. Does your institution have chambers/divisions?

Yes.

10. If yes, provide the following details:

a. How many chambers/divisions?

Two.

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

Seven in each chamber.

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.).

No specialisation.

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

Yes. Once per year judges are rotated as per decision by the Plenary of the court. In average this means that two or three judges from each chamber switches chamber.

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

No. Unless during a time for change of composition of the chambers it is needed in order to decide a particular case.

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

No.

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

Five 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?

The Supreme Administrative Court decides cases by one, three or five judges and in rare cases in planery sessions of all judges. As the court's main task is to

provide precedence, most cases are decided by refusal of leave to appeal, as the case in questions does not raise any question where guidance is deemed to be necessary. This is decided by one judge. A case that is deemed to be of interest for a possible precedence is evaluated by a panel of three judges who either gives leave to appeal or denies that request. A single judge that feels that a case might be appropriate for leave to appeal can put it before such a panel (often including him- or herself). A case that has been given leave to appeal is finally judged upon by a composition of five judges.

- i. Is there a procedure for certain cases to be elevated to a grand chamber or plenary session? If yes, how is this decided and how many judges decide?

Yes. It is a decision taken by the five judges assigned to the case.

- 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.

Yes. One judge is rapporteur to each case, being responsible for providing the chamber with a first draft of the judgement etc. It is the chair of the chambers (the president or the vice-president of the court) who assigns this task to judges.

- 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 President and the Vice-president allocate cases to the chambers on a weekly basis.

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

This follows from rules of procedure, although the president of a chamber has discretion to reduce the number i.a. if a judge is absent due to illness.

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

The presidents of the chambers assign roles as they see fit, depending upon such factors as specialisation, work-load etc.

(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 such position.

E. Research and Administrative Assistance

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

The court has a complete legal library to its disposition with librarians. Junior judges serves as law clerks providing legal research and procedural support.

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

Approximately 35.

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

Yes. The law clerks also deal with procedural issues in cases before the court, handling i.e. communication to the parties involved.

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.

They are mainly pooled and organised according to different fields of law (tax, social insurance, public procurement, compulsory care etc.) so as to provide opportunity for specialisation for the law clerks. However, when it comes to single-judge cases (the one where no leave to appeal is the most likely outcome) law clerks are assigned a specific judge

with whom they work and prepare such decisions. Each judge will have 2-4 law clerks assigned on such duty.

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?

See above.

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;
- (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.

The answers to the questions above under (a) – (g) are all “yes”.

F. Oral hearings

18. Is there an oral hearing in all cases?

No.

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

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

There are procedural rules on oral hearings that stipulate that such hearings are mainly for securing evidence etc, and such hearings are in general not used in the administrative procedure unless necessary. The Supreme Administrative Court deals almost exclusively with issues of law, not of fact, so such hearings are very seldom necessary. Parties can always request such a hearing and it will in rare cases (i.e. compulsory care of children) be granted as a necessary part of the court's decision-making. Less than 5 % of cases involve an oral hearing.

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?

Yes, there is some preparation before the hearing so as to orient the composition on the facts of the case, the legal issues at stake, the parties involved etc.

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

No formal limits on time.

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

Yes, for as long as necessary. The court can however interrupt a party that is misusing this possibility or is not sticking to relevant issues. This is not a frequent problem.

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 formal rules are quite lax in this regard. The oral hearing is viewed as a complement to the written procedure and may include new aspects and wider issues than what has been brought before the court beforehand. Such issues may provoke further written submissions after the hearing.

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

Yes.

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?

It would be possible, if a judge would voice a very firm stance on an issue of controversy and thus bring his or hers impartiality in question. We have no practical experience of such issues. In a case a few years back, a judge's impartiality was questioned due to his involvement in legislation as a senior civil servant in the Ministry of justice. The court found that this involvement did not cast any reasonable doubt on the judge's impartiality (RÅ 2005 ref. 1).

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"/> |

Most cases involve a private individual, without legal assistance, asking for leave to appeal and such letters will generally only be a few pages long. However in complicated cases, often involving tax issues, the submissions can be more than 50 pages long.

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

No.

H. Consideration of the case

21. Can your institution raise points of law of its own motion (i.e. ex officio) or is it limited to the points raised by the parties to the case?

We are limited to the facts of the case, but not to specific legal arguments put forward by the parties.

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

In cases decided by panels of three and compositions of five judges, one judge is selected as rapporteur. The law clerk who has prepared the case makes an oral and written presentation of the case, complete with legal research and a draft decision. The judges discuss the case and the rapporteur is then given some ten days to prepare a draft of his/her own, with the support (if necessary) of the law clerk. This draft is discussed at a subsequent meeting and sometimes the judges will decide the case on that basis, with perhaps some minor changes. More often the draft will be followed by alternative drafts by the other judges, exploring different ways of analysing the legal and factual issues. These will also be discussed at the meeting and sometimes preferred to the rapporteur's draft. Sometimes more than one meeting – and further drafts – will be needed in order to come to a decision. Discussion is generally free, the rapporteur will start and other judges with drafts will explain their views thereafter. As a general rule, the least senior judge will give his or her opinion first with the president of the chamber last.

23. Does your institution deliberate in a number of different languages? If so, please provide some detail. For example, does your institution have more than one official language?

No.

24. Are there rules, processes, or conventions about how discussions and votes take place?
If yes, specify the relevant rules etc.

See 22 above. The rule on voting can be found in the Law on General Administrative Courts (1971:289) 26 § with referral to the General Code of Procedure chapter 16 § 1.

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

Orally at meetings and in written drafts that are circulated.

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?

As explained above, such hearings are done only when necessary and can of course influence the court.

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

The filtering system of leave to appeal together with the rather strict rules on what cases the Supreme Administrative Court should give leave (precedence) have a large impact on how cases are considered, particularly single-judge cases, that can be disposed of in large numbers without in-depth legal analysis. Time and effort is highly focused on cases brought before the panels of three and compositions of five judges.

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?

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?

The decision is delivered on behalf of the court. The judgement is written as a text that the whole court (or the majority) stands behind. No individual judge is singled out as the author of this text. Each individual judge can however have a concurring or dissenting opinion as they see fit and these opinions are identified by name of the judge/judges concerned. All judges in the composition sign the decision.

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

In a public file at the court, on the court's public web-site and in a special yearly publication of the courts major decisions (Högsta förvaltningsdomstolens årsbok).

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)?

Yes.

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.

Most cases that are not granted leave to appeal are decided within 3 months. Cases that are considered in full are generally decided with a year.

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

No.

35. Are there specific mandatory timeframes for particular categories of cases? If yes, please provide details of the categories of cases and the relevant timeframes.

No.

36. If there are no mandatory timeframes for deciding cases, is there a certain amount of time that it is considered appropriate for the decision-making process to take? If yes, please provide details. Certain types of cases are handled with priority, such as compulsory-care cases.

The court has internal guidelines and goals concerning the time cases should take, making room for different kind of cases such as complicated tax-law 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?

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

Not for the moment, the court has an excellent “balance” of cases in the system, the internal goal is to have a maximum case-load of 2 300 pending cases, but it is currently below 2 000. Effective case-management at the level of law clerks is the main explanation for this positive situation.

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.