Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

Seminar by ACA Europe and the Supreme Court of Ireland

How our Courts Decide: the Decision-making Processes of Supreme Administrative Courts

Dublin, 25-26 March 2019

General Report

by

Mr. Justice Frank Clarke, Chief Justice, Supreme Court of Ireland
Dr. David Kenny, Assistant Professor of Law, Trinity College Dublin
Dr. Áine Ryall, Senior Lecturer, School of Law, University College Cork

Foreword

I have great pleasure in presenting this General Report to the members of ACA Europe. The seminar that will follow it is one of two proposed by the German Presidency for the purposes of providing an in-depth analysis of the way in which our Supreme Administrative Courts work. The second seminar will take place in Berlin in conjunction with the ACA General Assembly next May.

It is frequently said that the preliminary reference procedure provided for in Article 267 of TFEU is a means of dialogue between national courts and the Court of Justice of the European Union. In that sense it might be said that what is involved is a vertical dialogue whereby definitive rulings on issues of European law are made by the Luxembourg Court and passed downwards to national courts to ensure compliance of rulings in individual cases with European law as definitively interpreted by the Court of Justice.

However, there is a growing tendency to engage in what I might describe as a 'horizontal dialogue' between the courts of Member States and, in particular, the highest courts in each jurisdiction. It is important that we have proper regard to the way in which other Member States' apex courts have dealt with similar issues of Union law that have come before them. Indeed, I think it is fair to say that ACA has been at the forefront of encouraging such horizontal dialogue, not least through the circulation of relevant judgments via the Jurifast system and by the provision of the Forum whereby any member court can enquire as to whether other courts have been encountered a particular problem. It is also fair to say that other institutions, not least the Court of Justice itself, have followed suit in seeking to put in place mechanisms for improved horizontal dialogue.

But an important component of any such dialogue between our member courts is that we have the best possible understanding of how our colleague courts conduct their business, so that we can place decisions in the context of the process that led to them. For example, an understanding of whether a particular court has a procedure whereby certain matters go to an expanded chamber or a plenary, and the legal significance of such a development within the procedural law of the Member State concerned, can be helpful in understanding the status of a decision by the court in question.

Apart, therefore, from the fact that we may all learn improved practices from colleague courts that we may be able to adapt to our own systems, a broader understanding of how we all do business can only enhance the value of horizontal dialogue. I very much hope that this General Report, the seminar which will follow on from it, and the sister seminar to be held in Berlin, will make a meaningful contribution to that understanding.

Finally, I should say that this report would not have been produced without the extraordinarily skilled and diligent work of two young Irish academic lawyers, Dr. Áine Ryall of University College Cork and Dr. David Kenny of Dublin University. They took on the task of helping to formulate the questionnaire, correlating the results and preparing an initial detailed draft report with enthusiasm and great skill. To them, and to my Senior Executive Legal Officer, Sarahrose Murphy, who co-ordinated both the work on this General Report and the preparations for our seminar, I extend my heartfelt thanks.

Frank Clarke
Chief Justice of Ireland

March 2019

Contents

Introduction

This report focuses on the processes followed by our national Supreme Administrative Courts, Councils of State or other institutions with supreme jurisdiction in administrative law in reaching their decisions. Every such institution has a set of procedures, conventions, or customs establishing a process through which cases are heard and decided. These processes are underpinned by principles and traditions that speak to the history, priorities and values of our respective judicial systems. In this seminar, we hope to compare and discuss these processes, and the similarities and differences between them, so that we can better understand how our institutions make decisions.

This report is a synthesis of the detailed information provided in the answers to a questionnaire which asked members and observers of ACA-Europe to provide accounts of the processes and practices of their decision-making. Twenty-eight jurisdictions responded – Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland and the United Kingdom (UK). A list of the institutions that submitted national reports in response to the questionnaire is appended to this report. We cannot do full justice here to the richness and detail of the accounts given in these responses – we can only attempt to capture their tenor, and identify core themes and threads.

The purpose of this undertaking was to shed light both on the similarities and the differences between our processes, and this has been achieved. It is unsurprising that, as European Supreme Administrative Courts and Councils of State, there is a great deal of commonality between our systems, and patterns of convergence are evident. Some trends in decision-making practices are almost universal – an increasing caseload and measures introduced to cope with this; increasing support for research and reliance on such support; an ability to raise points *ex officio* in at least a few circumstances; the issuance of judgment in the name of the institution rather than any one judge. Yet, even in these instances, we usually see one or two jurisdictions operating differently.

There are also issues on which there is great diversity of practice, or stark divisions between different systems. Differences in size, from a handful of judges to hundreds, adjudicating anywhere from a few dozen cases to many thousands of cases; and the nature of individual courts and legal systems, including general supreme courts, specialised administrative courts, and several other arrangements, of course, lead to differences, but beyond this, these highly diverse practices and traditions coexist with many similarities. There is, for example, no consensus on the use and importance of oral hearings, which operate very differently in different systems, or on the question of dissenting judgments.

Another notable feature is reliance on convention and customary practice to govern even matters that are central to the decision-making process.

For example, the length of oral and written submissions is typically governed not by strict limits but by expectations of brevity, as are general timeframes for the issuance of decisions. Generally speaking, courts' deliberation processes are also governed by informal rules.

Preparing a report of this nature, which is based on the information provided by 28 jurisdictions through responses to a detailed questionnaire, inevitably raises a number of important methodological challenges. Questions may be interpreted or understood in different ways by different jurisdictions and this may influence the answers provided. Important points of detail may be difficult to distil from the responses to the questionnaires due to differences in the terminology used across jurisdictions and / or how particular terms or concepts are translated from the original language version of the responses provided. It is difficult to compare data and trends across jurisdictions accurately where the data provided may relate to different timeframes and different categories of cases etc. Any comparison of data and trends must always take account of the specific national context and the intricacies of each national legal system.

At our seminar in Dublin in March 2019, we had the opportunity for further exploration of questions of particular interest, such as: the extent and various uses of research to support decision-making; how different roles within the court are allocated, and their significance; and the deliberation of the court and dissenting opinions. A fruitful comparative dialogue, on the basis of the general report, provided many insights about our judicial processes, highlighting a number of potential areas for future investigation. The first was the importance of filter mechanisms that enable Supreme Administrative Courts and Councils of State to control which cases are adjudicated by them. It is apparent that this has a significant impact on internal processes generally, and the subject will be discussed further at the Berlin seminar in May 2019. The second was the idea of a cross-jurisdictional comparison of the number of cases before a court with the number of judges in that court, and also, perhaps, with the population in question. This would give a better sense of the relative workload in different jurisdictions. It was felt that data would have to be gathered carefully in this context, and filter mechanisms fully accounted for, before any such comparison could be meaningful and accurate.

The third point of discussion was a clear difference in philosophy and outlook in respect of the role of research assistance, and what limits are appropriate in this context. Some jurisdictions felt it was natural to make extensive use of such assistance, including in preparing draft judgments, whereas others felt this was not appropriate. Fourthly, there was also disagreement on the importance and role of dissenting judgments: do they tend to undermine the authority of court decisions, or improve the judicial process by highlighting other views and possible future changes? There was lively discussion of these points. These differences in outlook show the vibrant diversity of traditions amongst ACA-Europe participants, and highlight possible topics for further research and discussion.

The report has ten sections, each dealing with a discrete area canvassed by the questionnaire, from contextual matters such as the membership of courts and their caseload, to research

assistance, to deliberative practices, to the rendering of determinations. The final section briefly canvasses views on another major feature of our processes: change and reform. Our processes are continually being overhauled and reconsidered, and some of the most interesting and important reforms reported by respondents are noted here.

1. Structure of Supreme Administrative Court / Council of State

1.1 Nature of institution

The vast majority of the Supreme Administrative Courts / Councils of State in the 28 jurisdictions surveyed deal exclusively with matters of administrative law. In sharp contrast, the Supreme Courts of Cyprus, Ireland, Norway, the Slovak Republic, Slovenia,[1] Spain[2], Switzerland[3] and the UK have jurisdiction over all areas of law including civil, criminal and administrative law. In Serbia, the Supreme Court of Cassation is the highest court. It has a number of departments, including a civil department, which in turn has a panel specialising in administrative matters that decides on declared extraordinary legal remedies against decisions of the Administrative Court. In Malta, three institutions deal with administrative cases: the Administrative Review Tribunal, the First Hall of the Civil Court and the Court of Appeal. In Portugal, the Supreme Administrative Court has jurisdiction over administrative and fiscal disputes. And from 1 January 2020, the Curia of Hungary (Administrative and Labour Department), which effectively operates as a Supreme Administrative Court, will be replaced by a new High Administrative Court which will be a 'separate' Supreme Administrative Court.

1.2 Range of functions

1.2.1 There are interesting variations across the Supreme Administrative Courts / Councils of State in the 28 jurisdictions surveyed as regards the functions assigned to them. The following selected examples aim to provide a flavour of the rich diversity and range of functions undertaken by different Supreme Administrative Courts / Councils of State.

1.2.2 In Belgium, France, Greece, Italy and the Netherlands the Council of State is a Supreme Administrative Court and also has an advisory function.[4] The many functions of the Supreme Court of Cyprus include acting as the Supreme Council of Judicature and dealing with judicial appointments, promotions and discipline in that capacity. It is also the Electoral Court. In Finland, the Supreme Administrative Court may provide advice to the Government

[1] Within the Supreme Court of Slovenia, adjudication of administrative disputes is undertaken by the Administrative Review Department of the Supreme Court.
[2] The Supreme Court of Spain is the highest court in all areas of law (civil, criminal, administrative and labour), except for constitutional guarantees and rights, for which competence lies with the Constitutional Court. The Supreme Court of Spain is composed of five chambers, including the Administrative Chamber.
[3] The Federal Supreme Court comprises seven courts in total: two courts for administrative law, two courts for civil law, one court for criminal law and two courts for social insurance law.
[4] In Luxembourg, the Conseil d'État is a separate institution from the Administrative Court.

on legislative issues on request and may submit legislative proposals to the Government. The functions of the new High Administrative Court in Hungary will include 'jurisprudence-unifying activities (e.g. adopting uniformity decisions that are binding on all courts; analysing final decisions within the framework of so-called jurisprudence analysis in order to examine and explore the judicial practice of the courts; publishing so-called decisions on principles and court decisions on principles).'[5] The Supreme Court of Ireland is the final court of appeal, but it exercises first instance jurisdiction in two specific areas: (1) determining the constitutionality of Bills referred to it by the President of Ireland and (2) determining whether the President of Ireland has become permanently incapacitated.

2. Caseload

2.1 Number of serving judges

2.1.1 There is considerable variation in the number of judges serving on the Supreme Administrative Courts / Councils of State across the 28 jurisdictions surveyed. At the lower end of the scale are: Cyprus (13); the UK (12); Ireland (8)[6]; Luxembourg (5); Malta (where 2 magistrates preside over the Administrative Review Tribunal) and Serbia (the Supreme Court of Cassation has a panel within the Civil Department, specialising in administrative matters and consisting of two administrative judges and one Civil Department judge).

2.1.2 The Supreme Administrative Courts / Councils of State in the following jurisdictions have the highest number of serving judges: Greece (168), France (118)[7], Poland (107), Bulgaria (97) and Italy (96).

2.2 Number of cases received

2.2.1 There is also considerable variation in the average number of cases brought before each Supreme Administrative Court / Council of State each year. At the higher end of the scale are: Poland (nearly 18,000 cassation appeals on average per year in the period 2013-2017); Bulgaria (15,670 cases per year on average); the Netherlands (13,350 incoming cases per year on average in 2017 and 2018); the Slovak Republic (approx. 12,000 cases on average per year) and France (the litigation section of the Conseil d'État registered 9,864 cases in 2017).

[5] Section 11 and Chapter III of Bill No. T/3353.

[6] The relevant legislation provides for ten Supreme Court judges (the Chief Justice plus nine ordinary judges) but there are currently two vacancies. In addition to the eight judges currently serving on the Supreme Court (including the Chief Justice), the President of the Court of Appeal and the President of the High Court are ex officio judges of the Supreme Court.

[7] The Conseil d'État comprises approx. 300 members, of whom 200 operate within the institution. In total, 147 members were assigned to the litigation section in 2017 – 118 full time equivalents – with the remainder assigned to the advisory sections.

2.2.2 At the lower end of the scale are: Malta (the Administrative Review Tribunal receives an average of 100 cases per year); the UK (the Supreme Court received 228 applications for permission to appeal in 2017 / 18); Ireland (the Supreme Court received 234 incoming cases – including applications for leave to appeal – in 2017) and Luxembourg (246 appeal proceedings were instituted in the Administrative Court in 2017 / 18).

2.3 Number of cases adjudicated

2.3.1 There is also considerable variation across the 28 jurisdictions surveyed as regards the average number of cases adjudicated every year by the Supreme Administrative Court / Council of State.[8]

2.3.2 At the higher end of the scale are: Bulgaria (22,000 cases per year on average); Poland (nearly 18,000 cassation appeals on average per year were resolved between 2013 and 2017); the Slovak Republic (14,000 cases per year on average); the Netherlands (13,200 cases disposed of per year on average in 2017 and 2018) and France (the litigation section of the Conseil d'État rendered judgment in 10,139 cases in 2017 and 9,583 in 2018).

2.3.3 At the lower end of the scale are: Malta (the Administrative Review Tribunal deals with an average of 100 cases per year); the UK (the Supreme Court dealt with 199 applications for permission to appeal and heard 85 final appeals in 2017 / 18); Luxembourg (246 cases were filed and 256 decisions delivered in 2017 / 18) and Ireland (275 cases were dealt with, including applications for leave to appeal, in 2017).

3. Internal Organisation of the Supreme Administrative Court / Council of State

3.1 Chambers / divisions

3.1.1 Of the 28 jurisdictions surveyed, five reported that the Supreme Administrative Court / Council of State did not have chambers or divisions: Ireland, Lithuania, Luxembourg, Malta and the UK. In the case of both Ireland and the UK, it was reported that, while not having formal chambers or divisions, the Supreme Court usually sits in panels.

3.1.2 In the jurisdictions where the Supreme Administrative Court / Council of State does have chambers / divisions, the number of such chambers / divisions varied widely, as did the number of judges serving in each chamber / division. The best approach to adopt here – in

[8] As noted in the Introduction to this report, at the seminar in Dublin in March 2019 the idea was canvassed of undertaking a cross-jurisdictional comparison of the number of cases before a court with the number of judges in that court, and also, perhaps, by reference to population. The aim would be to get a better sense of the comparative workload for different jurisdictions. However, it was felt that data would have to be carefully gathered for this particular purpose, and filter mechanisms fully accounted for, before any such comparison could be done meaningfully and accurately.

order to give a general flavour of the diversity of arrangements across the jurisdictions – is to present a number of examples.

3.1.3 In Austria, the Supreme Administrative Court has 22 panels, each consisting of five justices and presided over by one justice. In Bulgaria, the Supreme Administrative Court is divided into two colleges, each of which has four divisions with 49 judges serving in each college. In Finland, the Supreme Administrative Court currently has three chambers with between seven and nine justices serving in each chamber. In the Netherlands, the Council of State has three chambers: the Special Planning Chamber with 25 judges; the Migration Chamber with 16 judges and the General Chamber with 38 judges. It should be noted, however, that as a rule, judges work in two chambers. In total, there are 35 / 36 FTE judges within the Council of State. The Administrative Division of the Supreme Court of the Slovak Republic comprises 10 sections; it has 26 judges and three or five judges serve in each section. The Supreme Administrative Court in Sweden has two chambers with seven judges serving in each chamber. In Serbia, the Supreme Court of Cassation has one panel comprised of three judges, which specialises in administrative matters.

3.2 Specialisation in chambers / divisions

3.2.1 Of the 28 jurisdictions surveyed, eight respondents indicated that there were no particular areas of specialisation by chamber / division: Ireland, Italy, Latvia, Luxembourg, Malta Norway, Sweden and the UK. Lithuania reported that judges specialise in certain areas (i.e. competition law, environmental law, social security law etc.), but that this did not require the creation of separate chambers / divisions. In the Supreme Administrative Courts / Councils of State where there is specialisation by chamber / division, the degree of any such specialisation, and the particular areas of specialisation, varied widely. Examples from the questionnaires provide a flavour of the diversity of approach across the jurisdictions.

3.2.2 In Bulgaria, the areas of specialisation include tax, social security, environment, competition, procurement, spatial planning etc. In Croatia, there is a very wide range of specialisation across the eight chambers of the High Administrative Court including, for example, two chambers which specialise in health insurance, retirement, social protection, rights of disabled persons, asylum and foreigners' rights. A similar arrangement is found in the French Conseil d'État where areas of specialisation are divided across 10 chambers. By way of example, the second chamber deals with post and telecommunications, sports, transport, extradition and evictions. In Greece, where the Council of State consists of six sections, one section (Section 2) deals with tax matters while another (Section 5) deals with environmental protection, cultural heritage and town planning. In Portugal, the Supreme Administrative Court has two sections, the administrative litigation section and the fiscal litigation section. The Supreme Administrative Court in Poland has three specialist chambers (Financial, Commercial and General Administrative). In the Supreme Court of Spain, the Third Chamber deals with administrative matters. The Third Chamber is divided into sections. For example, the Fifth Section is mainly concerned with town planning and

compulsory expropriation, the environment and the patrimonial liability of public administrations.

3.3 Movement of judges between chambers / divisions

3.3.1 Twenty of the jurisdictions surveyed stated that judges can move between chambers / divisions (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden[9] and Switzerland). Germany noted that while the *Präsidium* is able to move judges from one senate to another, judges usually remain in the same senate for many years. The Slovak Republic noted that while a judge may be a member of only one division of the Supreme Court, this did not exclude the possibility of their acting and deciding cases in a different division if any judges from that division were unable to act due to conflict of interest / recusal rules.

3.3.2 Where judges are permitted to move between chambers, the manner in which such movement is decided varies from jurisdiction to jurisdiction. One practice that is clearly common to a significant number of the jurisdictions surveyed is that the issue is determined by the President / Vice President / or other senior person at the Supreme Administrative Court / Council of State: Belgium (President of the Administrative Litigation Section); Croatia (President of the High Administrative Court); the Czech Republic (President of the Supreme Administrative Court); Finland (President of the Supreme Administrative Court, after discussion with the judge); France (Vice-President of the Council of State); Hungary (Head of the Administrative and Labour Department); Italy (President of the Council of State); the Netherlands (Chair of the Administrative Jurisdiction Division of the Council of State); Poland (President of Chamber, in agreement with the judge) and Spain (President of the Chamber).

3.3.3 In Bulgaria, movement between chambers is approved by the General Assembly of Judges of the Court. In Cyprus, it is determined by the Supreme Court itself. In Germany, the *Präisidium* has competence to determine movement between chambers, while in Greece the plenary session of the Council of State has this role. In Sweden, judges rotate once a year as per the decision of the plenary of the Supreme Administrative Court. In Portugal, the law provides for judges to move between different sections of the Supreme Administrative Court, provided they have served for more than two years at their post. However, the Higher Council of Administrative Courts can authorise this exchange without complying with the period of service requirement.

3.3.4 In the Slovak Republic, movement of judges between chambers / divisions is determined by the annual work schedule. The Supreme Administrative Court in Norway has a rotation system between its two divisions and the Appeals Selection Committee which operates on the principle that each judge shall serve an equal amount of time in the divisions

[9] Unless it is necessary to change the composition of the chambers for a period in order to decide a particular case.

and the Appeals Selection Committee throughout the year. In Switzerland, judges of the Federal Supreme Court may change courts when a vacancy corresponding to their working language (German, French or Italian) is available and they have the necessary competence. Where several competent judges are interested in moving, the principle of seniority prevails.

3.3.5 Eleven of the jurisdictions surveyed indicated that it is not possible for judges to be assigned to more than one chamber at a time: Belgium, Bulgaria, France, Greece,[10] Italy, Norway, Poland, the Slovak Republic, Spain[11], Sweden and Switzerland.[12]

3.4 Different levels of chambers

It is notable that none of the 28 jurisdictions surveyed indicated that there were different levels of chambers in their Supreme Administrative Court / Council of State in the sense of an 'ordinary chamber' and a Constitutional Review Chamber.[13] The possibility of a Supreme Administrative Court / Council of State sitting in different formations (i.e. extended formation, plenary etc.), which is common across the jurisdictions surveyed, is considered below [3.6.1-3.6.2].

3.5 Number of judges usually assigned to consider and decide a case

3.5.1 Ten jurisdictions reported that the Supreme Administrative Court / Council of State usually sits in panels of three (Belgium, Bulgaria, Cyprus, Czech Republic, Hungary, Latvia, Luxembourg, the Slovak Republic, Slovenia and Switzerland). Portugal reported that in each section the formation of the court usually comprises three judges, one of whom is the judge-rapporteur. Panels of five are the norm in nine jurisdictions: Austria, Finland, Germany, Greece, Ireland, Italy, Norway, Sweden and the UK. Croatia reported that the High Administrative Court sits in panels of either three or five judges depending on the matter at issue. In France, cases are decided by either a single judge, or by a chamber sitting alone (three judges) or by two combined chambers (nine members), or, more formally, by the litigation section (15 members) or the litigation assembly (17 members). The Netherlands reported that cases are decided by either a three-judge panel or a single-judge panel, depending on the complexity of the case. Lithuania and Malta did not provide a response to this particular question. In Serbia, the panel specialising in administrative matters within the Supreme Court of Cassation consists of two administrative judges, who are assigned to consider and decide cases. In Spain, the number of judges required varies depending on the

[10] The general rule is that each judge (councillor or associate / referendary judge) is appointed to one Chamber at a time. Assistant judges / referendaries are appointed to two Chambers at a time once they have completed three years of service.

[11] In principle, the judges of the Third Chamber exercise their functions only within that Chamber. In exceptional cases, however, they may sit in another Chamber of the Supreme Court, either to substitute for another judge (in order to establish a quorum) or in the event of disagreement (where there is a tied vote, judges from another Chamber may be used to break the tie).

[12] While this is possible in Switzerland, it is rare in practice.

[13] Portugal reported that its Supreme Administrative Court has the following levels: a plenary session, a plenary of each section and the sections.

nature of the proceedings at issue. For example, in order to hold a hearing, to deliberate or to pronounce judgment, representation in addition to the President must be as follows: (a) all the judges in the section for decisions on appeals in cassation and appeals for revision; (b) four judges in other cases. For procedural formalities, which are not concerned with examining the merits of a case, the presence of the President and two other judges will suffice.

3.5.2 The number of judges assigned to decide a case can vary in all of the jurisdictions that replied to this question, except for the Czech Republic, Italy and Luxembourg.

3.5.3 The factors determining how many judges are assigned to decide a case varied across the jurisdictions surveyed. In Belgium, judges either sit alone or in groups of three in accordance with the rules laid down in the coordinated laws of the Council of State. The number of judges assigned to a case varies in accordance with the complexity of the case. The importance of the matter at issue was another significant factor in some jurisdictions. In France, the composition of the judgment panel depends on the complexity of the case and may reflect, for instance, the aim of making a determination on an important question or the clarification of jurisprudence. The French Code of Administrative Justice sets out a list of persons or panels who may request that a case be referred to the litigation section or the assembly (these are: the Vice-President; the President of the litigation section; the President of the judgment panel to which the case is referred; the chamber; the combined chambers; and the public rapporteur).

3.5.4 In Hungary, the number of judges is determined by law and the Curia usually comprises a panel of three judges. However, where justified in view of the complexity or social significance of the case, the Curia may decide to proceed in a panel of five judges. The President of the adjudication chamber decides how many judges are assigned to consider and decide a particular case. In Ireland, decisions on whether the Supreme Court should consist of five or seven judges take into account the issues involved in the appeal, including their general and legal significance. Cases are assigned to judges of the Court by the Chief Justice, who also determines how many judges will consider and decide specific cases. In the Netherlands, the number of judges assigned to a case varies between one and three judges, depending on the complexity of the case. The decision on how to proceed is made by a judge, the chair of a unit (each chamber has three units), on the basis of a proposal from the legal support staff. The decision is based on the facts, the applicable law and the complexity of the questions of law raised in the appeal. In Switzerland, the number of judges assigned to a case varies depending on the importance of a case. A ‘standard’ case will be decided by three judges whereas cases concerning questions of legal principle or cantonal acts that are put to a referendum will be decided by five judges.[14] The President of the Court usually determines how many judges will decide a case, but each judge can request a five-judge configuration. In the UK, most appeals involve a panel of five judges, but the court sits in panels of seven if it may be asked to depart from previous Supreme Court authority, and, exceptionally nine or

[14] Cases involving obvious inadmissibility are determined by a single judge.

even 11 justices in cases considered to be of particular public importance. Panels must have an uneven number of judges.

3.6 Elevation of certain cases to a grand chamber or plenary session

3.6.1 Of the 28 jurisdictions surveyed, 22 reported that, in certain circumstances, it is possible for cases to be elevated to a grand chamber / plenary session / enlarged composition (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, the Netherlands, Norway, Poland, Portugal, Serbia, Spain, the Slovak Republic, Sweden and Switzerland). There was a degree of variation as regards the circumstances in which a case might be / would be elevated to a grand chamber / plenary session. It is not possible to capture fully here the full details provided in the answers to the questionnaires on this particular issue. Generally speaking, the factors leading to a case being elevated to a grand chamber / plenary session included: to ensure coherence in the development of jurisprudence; when a particular chamber / panel departs from a previous interpretation of the law; when important and / or complex issues are raised; and other specific factors that may be prescribed by legislation or the rules governing the procedures applicable to a particular Supreme Administrative Court / Council of State.

3.6.2 Four of the jurisdictions surveyed reported that there is no provision for cases to be elevated to a grand chamber / plenary session (Ireland, Luxembourg, Slovenia and the UK). Lithuania and Malta did not answer this particular question.

3.7 Assignment of certain additional roles to judges (e.g. rapporteur, case manager etc.) in relation to specific cases

3.7.1 Of the 28 jurisdictions surveyed, 26 reported that judges may be assigned certain additional roles in relation to specific cases: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Norway, Poland, Portugal, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland and the UK. Lithuania and Malta did not answer this particular question.

3.7.2 The types of additional role identified in the responses included: chairing or presiding over the panel hearing and adjudicating on a case; rapporteur / judge-rapporteur / reporting judge and case management judge.

3.7.3 Twenty jurisdictions reported that a rapporteur / judge-rapporteur / reporting judge is appointed to each case: Austria, Belgium, Bulgaria, the Czech Republic, Finland, France[15], Germany, Greece, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Serbia, the Slovak Republic, Slovenia, Spain, Sweden and Switzerland. Croatia reported that in appeal cases each judge is a rapporteur for the case assigned to her / him, while the other judge in

[15] The role of rapporteur involves studying the case and preparing a draft decision.

the Chamber is the President of the Chamber. In cases where the High Administrative Court acts as a court of first and last instance, each judge acts both as rapporteur and President of the Chamber for the cases assigned to him / her. France also has 'revisers', whose task is to look again at cases on the basis of the work done by rapporteurs and to form an opinion of their own which can either confirm the rapporteur's draft or refute all or part of it. In Germany, there is a rapporteur and a co-rapporteur for each case. In some (usually more complex) cases there may also be a pre-rapporteur.

3.7.4 Ten jurisdictions reported that the role of the rapporteur / judge-rapporteur / reporting judge includes preparation of a draft ruling or judgment: Austria, Belgium, Bulgaria, the Czech Republic, France, Germany, Luxembourg, Portugal[16], the Slovak Republic and Sweden.

3.7.5 The following examples aim to provide a general overview of the additional roles that may be assigned to judges and how those additional roles are allocated.

- In Austria, every incoming case is distributed to the relevant panel in accordance with the apportionment of responsibilities. One member of the panel is appointed as rapporteur by the President of the Supreme Administrative Court. The rapporteur prepares a draft ruling which the panel then deliberates and decides on.
- In Belgium, every case dealt with by the administrative litigation section has a judge-rapporteur whose role is to prepare a draft judgment. The role of judge-rapporteur is assigned by the President of the Chamber.
- Cyprus reported that it is often the case that judges are assigned additional roles that relate to matters concerning the courts and the courts system in general rather than particular cases. This is because the Supreme Court has overall responsibility for the administration of the courts system and is accountable for the use of public funds assigned to the courts.
- The Czech Republic reported that the role of rapporteur is determined by the work schedule. In Finland, the judges take it in turns to act as reporting justice. The role of reporting justice is determined as the monthly session lists are drawn up.
- In Greece, the rapporteur is usually appointed by the President of the relevant section. However, where a case is brought before the assembly of the Council of State the rapporteur is appointed by the President of the Council of State. In Hungary, a case manager judge is appointed by the President of the adjudication chamber, taking into account the need to balance judges' workloads.
- In Ireland, when the Supreme Court grants leave to appeal, the Chief Justice assigns a case management judge, who is responsible for ensuring that the case is prepared for oral hearing. Informally, one judge is normally assigned a primary role in preparing a judgment in the case, which will record all relevant matters such as the facts and

[16] Portugal reported that the rapporteur (who is appointed randomly from among the judges of the section) is responsible for giving a ruling on all the issues relating to the case. In particular, the rapporteur must provide a summary decision if the matter appears to be straightforward or if the application is manifestly unfounded.

procedural history of the case. Frequently, this judge will also have been the case management judge.

- In Italy, the role of judge-rapporteur is assigned by the President of the panel. The judge-rapporteur must provide the details of the case to the other judges on the panel and write the judgment once a decision has been reached.
- In Norway, the Courts of Justice Act states that proceedings shall be led by the longest serving justice in the division (the Chair Justice). Internal rules of procedure require that the justice who has gone the longest time without writing an opinion be assigned to write the opinion representing the majority or a unanimous vote. The dissenting justices (if any) decide among themselves who will write the dissenting opinion.
- In Poland, the composition of the adjudicating panel, including the presiding judge and the judge-rapporteur, is determined by the President of the division.
- In the Slovak Republic, the President of the section designates the judge-rapporteurs to whom cases are allocated.
- In Spain, judge-rapporteurs are appointed in accordance with the order laid down in the annual rules of allocation and distribution of cases.
- In Sweden, it is the Chair of the Chambers (the President or the Vice-President of the court) who assigns the role of rapporteur.
- In Switzerland, the President of the court appoints judge-rapporteurs. The judges participating in each case (apart from the President and the judge-rapporteur) are randomly selected by a special computer programme.
- In the UK, panel hearings are usually presided over by the President or Deputy President or, if they are not sitting, by the most senior judge on the panel. The 'Presider' presides over a (short) pre-court discussion, over the hearing in court and over the (longer) post-hearing deliberations and decides who is to write the leading judgment. The 'Presider' will also try to keep track of progress in producing the final judgment or judgments.

3.8 Significance of the role of Chief Justice or President in determining certain matters

3.8.1 The questionnaire asked about the significance of the role of the Chief Justice or President in determining a range of matters, including the assignment of cases to chambers or panels of judges; the number of judges assigned to consider and decide particular cases; and the assignment of certain additional roles to judges.

3.8.2 The responses to the questionnaires on this point demonstrated a wide degree of variation across the 28 jurisdictions surveyed. Given the degree of variation, and the level of detail underpinning the distinctive approaches adopted in different jurisdictions, it is not possible to capture the range of responses in a brief summary here. This issue was therefore examined in the context of the seminar and on the basis of presentations from selected

jurisdictions which included material on the significance of the role of the Chief Justice or President in particular contexts.

3.9 The position of Advocate General

3.9.1 The position of Advocate General only exists in Belgium and the Netherlands. The Belgian Council of State includes an *Auditorat* (Advocate General's Office).[17] This office comprises an auditor general, 14 first auditor heads of section and 64 first auditors, auditors and deputy auditors, all of whom are magistrates. Twelve auditors per linguistic role (French and Dutch) are allocated to the Legislative Section of the Council of State, and therefore do not form part of the Administrative Litigation section. The auditors assess the dossiers submitted to the Administrative Litigation section. They participate in the assessment of the case and draft a report which usually includes a summary of the facts of the case and the arguments of the parties as well as an examination of the merits of the case. Auditors have certain investigatory powers in this context. Auditors may also, *inter alia,* hear parties and any other persons, make any onsite findings, designate experts and determine their role.

3.9.2 The auditor's report is provided to the parties, who may respond to it. Auditors submit their opinions to the Administrative Litigation section at the conclusion of discussions in the public hearing, indicating what the auditor's decision would be if they were responsible for determining the case. Auditors are independent and are not subject to instruction by the Head of Section or the Council of State in relation to the content of reports or their opinions. Auditors are not parties to disputes but act as *amicus curiae*. The Litigation Section of the Council of State follows the conclusions of the auditor's report and opinion in more than 70% of cases. In certain circumstances (e.g. to ensure coherence of jurisprudence), the Auditor General, having considered the opinion of the auditor responsible for the report, may conclude that a particular case should be referred to the General Assembly or the combined chambers of the Administrative Litigation section. The members of the Advocate General's office are responsible for updating and conserving documentation relating to the jurisprudence and opinions of the Council of State, and for making it available in the form of automated files.

3.9.3 The Dutch Council of State reports that there are currently two (part-time) Advocates General. Since 2013, the Chairs of the three highest administrative courts may ask the Advocate General questions relating to particular cases, generally on matters of administrative law. The Advocate General is a member of the Council of State but is independent and does not confer with the judges assigned to individual cases. The Advocate General may attend court hearings and put questions to the parties. Parties have the right to comment on the Advocate General's conclusions. The Advocate General does not participate in the decision-making process and is not present in chambers after the hearing.

[17] The material included here is limited to an overview of selected key points. See the questionnaire prepared by the Belgian Council of State for further detail on the role and powers of the Advocate General and the relevant procedures.

3.9.4 It is interesting to note that, when asked if the position of Advocate General existed in their jurisdiction, six respondents replied in the negative, but proceeded to refer to other distinctive positions that exist in their particular legal systems: Cyprus (Legal Officer); France (Public Rapporteur); Germany (Representative of the Interests of the Federation at the Federal Administrative Court); Ireland (Attorney General); Luxembourg (Government Representative); Portugal (public prosecution magistrates who exercise functions at the Supreme Administrative Court) and Slovenia (Representative of the State). Of these six positions, the role of Legal Officer in Cyprus, Public Rapporteur in France and public prosecution magistrates in the Supreme Administrative Court of Portugal appear to have the most elements in common with what is typically understood to be the role of an Advocate General.

4. Research and Administrative Assistance

All of the Supreme Administrative Courts / Councils of State in the 28 jurisdictions surveyed reported that they enjoy a measure of research and administrative support, with the exception of Malta, which reported that no administrative assistance is provided. Although Finland reported that it does not have a 'research unit' for its judges, it highlighted its information services and library professionals in this context. There is a striking degree of variation in the type and level of research and administrative support provided to judges across the 28 jurisdictions surveyed. The responses dealing with research support provided interesting insights into the diverse nature of arrangements in individual Supreme Administrative Courts / Councils of State.

4.1 Research support

4.1.1 In Austria, 45 Research Associates assist the judges at the Supreme Administrative Court. In Belgium, certain Councillors of State benefit from the assistance of a Legal Attaché who may undertake legal research. Occasional research assistance may also be provided by Registrars, who are jurists. The Advocate General's Office also benefits from the help of multiple Legal Attachés. In Bulgaria, the judges of the Supreme Administrative Court are assisted by Judicial Assistants who undertake research. The High Administrative Court in Croatia has 15 Court Advisors, whose functions include research. In Cyprus, 11 Legal Officers are currently assigned to the Supreme Court. Five officials with legal education provide research support to the Supreme Administrative Court in the Czech Republic. Each judge also has two personal clerks who have particular roles, including the writing of draft judgments.

4.1.2 In Finland, two information service and library professionals provide support. The Litigation Section in the French Conseil d'État had nine law clerks and 21 trainees in 2017. In Germany, judges are supported by 11 Research Assistants, one per senate. There is also an information service composed of approximately 20 officials. In Greece, the Council of State

is supported by 48 Auditors of the Council of State who are full judges and constitute the first rank of judges in the Council of State. Hungary has a network of five Senior Advisors appointed by the President of the Curia in the Administrative Section of the Administrative and Labour Department (these members have an academic background or recognised expertise).

4.1.3 The Supreme Court of Ireland is supported by 10 judicial assistants, typically recent law graduates recruited for a period of three years. In addition, the Chief Justice is provided with specific executive legal support. In Italy, the Office of the Trial, which is composed of officials and trainees, provides research assistance and assists with the organisation of court work. In addition, a recent law provides that law graduates can spend a period of time in the courts as voluntary trainees. Within that framework, trainees may undertake legal research and assist with hearings, as well carrying out a range of other activities, under the guidance of judges.

4.1.4 In Latvia, in the Department of Administrative Cases, each judge has at least one Judge's Assistant and there are four Legal Research Counsel (each with their own area of specialisation) who act as senior advisors to the judges. In Lithuania, the Supreme Administrative Court employs assistants to judges in the form of consultants and advisors who provide administrative assistance and legal research support to judges at different levels. The Supreme Administrative Court has a reciprocal relationship with the Faculty of Law at the University of Vilnius, as a result of which interns also serve as paralegals.

4.1.5 In Luxembourg, up until very recently, judges did their own legal research. Since 1 January 2019, however, the Administrative Court has had a Legal Secretary with a doctorate in Law from the University of Luxembourg who takes on some legal research and prepares arguments for specific cases. In Portugal, the Supreme Administrative Court has a Legal Information and Documentation Division (which also includes the library) comprising 11 judicial assistants who have legal training. In addition, two officials provide administrative assistance.

4.1.6 In Malta, a judicial assistant provides part-time research support to individual judges in the Administrative Review Tribunal. A full-time court attorney is provided to each individual judge in the Superior Court. In Slovenia, judges are assisted by Judicial Advisors (10) and by judges (2) from the lower courts who are assigned to work at the Supreme Court. In the Netherlands, every case will involve a support lawyer, who puts together a draft decision in consultation with the judge. There were an average of 205 Full Time Equivalent (FTE) support lawyers in the period 2015-18.

4.1.7 In Norway, the Legal Secretariat comprises 25 law clerks, including the head and deputy head. In Poland, the Supreme Administrative Court judges are supported by judicial assistants. There are 33 judicial assistants in the Financial Chamber, 27 in the Commercial Chamber and 39 in the General Administrative Chamber. Serbia reported that its Case Law Department (6 judges and 7 judicial assistants) monitors and examines the jurisprudence of

the Administrative Court as well as the courts, international judicial authorities and international institutions monitoring the protection of human and minority rights. It notifies judges and judicial assistants of developments in jurisprudence.

4.1.8 In Spain, apart from the Library of the Supreme Court, research support is provided by the Technical Cabinet of Information and Documentation, whose Director is a judge. It is organised into five functional areas, the same number as the Chambers of the Court, and is composed of 75 lawyers and coordinating lawyers, experts in the different areas, who provide technical assistance to, and collaborate with and support, the judges of the Chambers in accordance with the terms set down by them. The administrative branch of the Supreme Court is currently staffed by twenty lawyers and five coordinating lawyers.

4.1.9 In the Slovak Republic, assistants (26) and officials (8) from the Department of Documentation, Analytics and Comparatistics provide legal research assistance. At the Supreme Administrative Court in Sweden, junior judges serve as law clerks (35), providing legal research and procedural support. In Switzerland, the Federal Supreme Court has clerks (90 FTEs), a documentation department (approximately 12 documentalists), an administrative unit (the general secretariat) and an IT department. In the UK, research assistance is provided mainly by eight judicial assistants to the judges. The judicial assistants are all qualified barristers or solicitors. The UK also noted that the library team at the Supreme Court provides important support in sourcing case law, journal and legislative materials, both for the judges and for the judicial assistants, on request and through regular updates.

4.1.10 Eleven jurisdictions reported that officials providing research support also provide a measure of administrative support: Austria, Belgium (partially), Hungary (sometimes, but not typically), Ireland (depending on the requirements and preference of the judge), Italy, Latvia, Lithuania (in certain cases of particular importance or difficulty), Norway (to a limited extent); Poland, Portugal and Sweden.

4.2 Research support pooled or assigned to individual judges?

4.2.1 There was a high degree of variation across the jurisdictions surveyed in terms of whether research supports are pooled or assigned to individual judges. It is interesting to note that in Norway, each *appeal* is assigned a designated law clerk, but the *judges* do not have personal law clerks.

4.2.2 Overall, 15 jurisdictions indicated that research support was assigned to individual judges, at least to some degree. In Austria, less than half of the research associates are assigned to individual judges. The remainder are pooled. In Belgium, the legal attachés are generally assigned to a specific Councillor of State, but there are few legal attachés and therefore it is not possible to assign one to every judge. In the Czech Republic, each judge has two personal clerks. In Cyprus, each Legal Officer is assigned to an individual judge. In Greece, each Councillor of State assigned to a case is allocated an auditor to assist in the preparation of the case. In Ireland, research support is assigned individually to judges. In

Latvia, Judge's Assistants are usually assigned to individual judges, while Legal Research Counsel (senior advisers) are assigned to specific cases corresponding to their field of specialisation. In Lithuania, assistants are assigned to individual judges and Advisors are assigned to judges who are rapporteurs in cases where it is considered that an advisor is needed. In Malta, a judicial assistant provides part-time research support to individual judges in the Administrative Review Tribunal. A full-time court attorney is provided to each individual judge in the Superior Courts.

4.2.3 In Poland, judicial assistants are assigned to individual judges. Spain reported that no lawyers are assigned to individual judges unless the President of the Chamber (e.g. the Administrative Chamber) so directs in order to enable specific support to be provided. In the Supreme Administrative Court of Portugal, judicial assistants in the Legal Information and Documentation Division support an average of two magistrates, depending on how they are allocated by the Department Head. All magistrates are assigned a judicial assistant to undertake research work considered important by the magistrate. In Sweden, research support is mainly pooled, but law clerks are assigned to individual judges in single-judge cases (where no leave to appeal is the most likely outcome). In the Federal Supreme Court of Switzerland, each court has a number of clerks and each judge has a clerk as a personal assistant. The general secretariat, the documentation department and the IT department are pooled. In the UK, judicial assistants are assigned to individual judges.

4.3 Research and Documentation Department

4.3.1 Of the 28 jurisdictions surveyed, 17 reported that they have a Research and Documentation Department or some broadly similar body (Belgium, Croatia, the Czech Republic, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Serbia, Spain, the Slovak Republic and Switzerland) and one jurisdiction is considering establishing such a body (Bulgaria).

4.3.2 In Belgium, the Council of State has a 'co-ordination office' comprised of four magistrates whose functions include, inter alia, keeping legislation updated, codifying / co-ordinating certain texts and making its documentation available to the court and the public. In Croatia, the High Administrative Court has a Department responsible for tracking the jurisprudence of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). There is also a Division that tracks the Supreme Administrative Court's own jurisprudence. The Supreme Administrative Court of the Czech Republic has a Special Department of Research and Documentation, while the French Conseil d'État has a Legal Research and Dissemination Centre (CRDJ) which undertakes research at the request of members of the Litigation section. Since 2008, it has had a dedicated 'comparative law cell'. In Germany, the Federal Administrative Court has a professional documentation and library service (Information Services).

4.3.3 In Greece, the jurisprudence and research office of the Council of State consists of three members: a Councillor or a Vice-President of the Court, an associate (referendary)

councillor and an assistant. Its functions include identifying the case law of the Council of State; drafting case law bulletins; monitoring the case law of the CJEU, ECtHR and the case law of other jurisdictions in general. In Ireland, a Judicial Researchers' Office, currently comprised of 12 researchers, provides pooled research support to all levels of court jurisdiction. In practice it provides pooled research support primarily to judges of lower court jurisdictions, where the judges are not directly assigned judicial assistants, and only occasionally provides research support to the Supreme Court. In Italy, the Ufficio Studi (Department for Training, Studies and Research) has a wide range of functions including commenting on the most important decisions of national and international courts, providing detailed explanations of the issues involved and highlighting changes in direction or continuity with previous decisions.

4.3.4 Latvia has three Legal Research Counsel in the Division of Case Law and Research who provide judges with advice concerning EU law and human rights law. If judges have any queries, they can contact these senior advisors who will provide written or oral opinions based on their research work. In Lithuania, the Judicial Research Department provides additional pooled research support. It is comprised of advisors who are law professionals with a PhD specialising in particular areas of law. Their functions include providing legal opinions; drafting final decisions of the court in accordance with the practice of the Supreme Administrative Court with a view to consistency; and preparing overviews of the court's practice and overviews of the practice of the CJEU and the ECtHR.

4.3.5 In the Netherlands, the Knowledge Unit (*kennisunit*) deals with 'legal information issues' in the broadest sense. It prepares legal notes, in particular regarding matters of administrative procedural law, which can become the basis of future law. It also offers legal support to the Advocates General. In Poland, the Judicial Decisions Bureau is a separate organisational unit within the Supreme Administrative Court. It oversees the uniformity of jurisprudence and the efficiency of proceedings in the administrative courts. To this end, it undertakes analyses, conducts inspections of the administrative courts of first instance and proposes solutions. Its role is also to provide research support for the work of the administrative courts. The output of its research work (studies, opinions and other publications) is made available to administrative judges via an internal database. In Portugal, the Legal Information and Documentation Division of the Supreme Administrative Court assists public prosecution judges and magistrates in carrying out their duties.

4.3.6 In Serbia, the Supreme Court of Cassation has a Case Law Department. In Spain, there is the Technical Cabinet of Information and Documentation, whose Director is a judge. It is organised in five functional areas, the same number as the Chambers of the Court, and is composed of 75 lawyers and coordinating lawyers who are experts in the different areas and provide technical assistance to, collaborate with and support the judges of the Chambers in accordance with the terms set down by them. The administrative branch of the Supreme Court is currently staffed by 20 lawyers and five coordinating lawyers. In Switzerland, the Federal Supreme Court has a documentation department. In the Supreme Court of the Slovak

Republic, the Department of Documentation, Analytics and Comparatistics provides legal research assistance.

4.3.7 As regards forthcoming developments in this area, an 'analytical unit' is currently being formed in Bulgaria at the initiative of the President of the Supreme Administrative Court. It will consist of judges who will be tasked with conducting research, analysing contradictory practice by court chambers and giving opinions on constitutional matters.

4.4 Specific support provided by assistants / référendaires

4.4.1 In order to gain a more detailed picture of the nature of the support provided to Supreme Administrative Courts / Councils of State by assistants / référendaires, the questionnaire identified a list of specific roles and inquired as to the extent to which assistants / référendaires performed those roles, if at all. The specific roles listed on the questionnaire were as follows:

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 with making 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 legal analysis;
f) Drafting sections of judgments;
g) Putting forward suggested or preliminary decisions for judge(s) to consider;
h) Any other element that you consider is relevant in this context.

4.4.2 It is clear from the material presented earlier in this section that there is wide variation across the 28 jurisdictions surveyed as to the extent and level of research support available to Supreme Administrative Courts / Councils of State. The specific qualifications and experience of the personnel performing such functions also vary considerably between jurisdictions.

4.4.3 Of the 28 jurisdictions surveyed, only one jurisdiction, Croatia, replied that its research support personnel did not perform any of the roles listed in the questionnaire.[18] Fourteen jurisdictions indicated specifically that their research support personnel performed all of the roles listed at (a) – (g) (Austria, Belgium, Cyprus, the Czech Republic, Finland, Germany, Hungary, Ireland, Latvia, Netherlands, Norway, Poland, Sweden and Switzerland). There are a number of important provisos here, however. Both the Czech Republic and Latvia noted that the roles performed by research support personnel would vary depending on assistants' experience and length of service. Germany noted that, although drafting sections of judgments and putting forward a suggested or preliminary decision for the judge to consider was not excluded from the role of research support personnel, it would be unusual in

[18] Given the very recent establishment of the new post of Legal Secretary in Luxembourg, details as to the functions to be undertaken by the person holding that post are not available at this point in time.

practice. Ireland indicated that it was not common in practice for judicial assistants to discuss aspects of a case with a judge orally or in writing or to put forward a preliminary decision for a judge to consider. In Norway, although law clerks draft sections of judgments to some extent, the main rule is that reasons and opinions are drafted by judges.

4.4.4 In Greece, all of the roles listed in the questionnaire are performed by assistants / référendaires except for drafting of judgments. In the Slovak Republic, all of the roles are performed except for comparative legal research. The UK noted that the role of drafting judgments is reserved exclusively for the judges. However, some judges may ask their judicial assistant to provide notes summarising the parties' written and oral arguments or key case law and providing short written opinions on the merits / outcome of the appeal. It was reported that the use of these made by judges varies and that some judges never do this. Judicial assistants do not put forward suggested or preliminary decisions for judges to consider, other than through informal case discussions and, occasionally, short written opinions on the merits of an appeal. The UK questionnaire also noted that while some judges request that their judicial assistants prepare pre-hearing notes, not all judges do so and some judges believe this to be inappropriate.

4.4.5 The role of preparing pre-hearing documentation is obviously less common in jurisdictions where oral hearings are not the norm (e.g. Austria).

4.4.6 In some cases, the extent of support provided depends on the requirements of individual judges (Austria, Bulgaria, Cyprus, Ireland, Italy, Norway, Poland, Portugal, Serbia and the UK).

4.4.7 As regards additional input by research support personnel, beyond the specific roles listed in the questionnaire, that respondents considered relevant, a number of jurisdictions provided specific examples.

4.4.8 In Austria, research associates are partly responsible for the systematic documentation of legal rules, which are then published online in the legal information system ('RIS'). Two research associates support the media spokesperson, two are responsible for tasks relating to ACA-Europe and other international matters, and two deal with inquiries relating to human rights (in particular statements concerning proceedings before the ECtHR and the Human Rights Committee). In Cyprus, Legal Officers assist the Supreme Court in the preparation of legal summaries for publication, anonymisation of court decisions, participation in Committees for legal matters pertaining to the Court, and any other matters as deemed relevant by the individual judge to whom they are assigned.

4.4.9 In France, the CRDJ performs a wide range of support functions, *inter alia* the filing of decisions identified by the 'troika' (the President of the Litigation Section and the other Assistant Presidents at their weekly meeting) as setting a precedent on one or more points. CRDJ officials are also responsible for drafting the press releases issued by the Council of State when a case is of interest to the media. The case law dissemination service also ensures

that decisions on, and analysis of, French and European databases are properly disseminated. In Latvia, senior advisors to the Supreme Court represent the court in other State institutions, for example the Legislature, and are often involved in judicial training.

4.4.10 In the Netherlands, the support lawyer is responsible for judging whether a particular decision is 'worthy of documentation' (i.e. is of such importance that it might act as the basis for a future decision). If it is of such importance, it will be included in one of the manuals (these compilations reflect the current state of the law and are an important source of information in many cases). In Serbia, judicial assistants perform a wide range of support duties, including, for example, recording the progress of cases through the Supreme Court of Cassation in an electronic database. In the Slovak Republic, research support staff are involved in anonymising court decisions and compiling statistics. In the UK, judicial assistants provide research support and input on judicial lectures by the judges to whom they are assigned. This is a substantial part of judicial assistants' workload and is also an area to which judges devote considerable time through their own personal research.

5. Oral Hearings

5.1 Frequency and importance of oral hearings

5.1.1 Practice in respect of oral hearings was a matter that admitted of significant diversity across the various jurisdictions surveyed. Of the 28 respondent countries, nine have oral hearings in all or almost all cases; that is, Ireland, Italy, the United Kingdom, Malta, Luxembourg, Cyprus, Bulgaria, Poland and Germany. Four further countries – Belgium, Greece, Hungary, and Serbia – have hearings in 80%-90% of cases.[19]

5.1.2 At the other end of the spectrum, 11 of the countries surveyed have no oral hearings, or very few (fewer than 5% of cases). One of these countries – Austria – has had only two oral hearings since 2016. A further two – the Slovak Republic, and the Netherlands[20] – have oral hearings in between 10% and 25% of cases. Spain did not provide a percentage, but noted that hearings are very rare.

5.1.3 Only France sits in the middle: 50% of cases before the French Conseil d'État receive an oral hearing.

5.1.4 The importance attached to oral hearings also varies. Ten jurisdictions described the impact of the oral hearing on the outcome of the case as important, vital, or influential. Five of these jurisdictions have oral hearings in all or a great many cases (Bulgaria, Cyprus,

[19] In Norway, there is a dual approach: where leave is given to appeal a *judgment*, all such cases are heard. However, appeals relating to interlocutory orders are written.

[20] In the Netherlands, 8,000 of the 13,400 cases had no oral hearing. These cases concerned immigration cases on appeal, in respect of which an oral hearing is held in the administrative court of first instance. In the other 5,400 (non-immigration) cases, an oral hearing was held in approximately 70% of the cases.

Ireland, Norway, and the UK), whereas the remaining five attached great importance to hearings when they happen, though they are not a feature of most cases (Austria, France, the Netherlands, Slovenia and Sweden).

5.1.5 Five jurisdictions said they gave equal weight to oral and written submissions;[21] three more said that the importance accorded to the hearing was entirely dependent on the case;[22] three said that hearings generally were not influential, but occasionally would change a result;[23] three said that importance would derive from the establishment of a new fact;[24] and one said that hearings were of little importance.[25]

5.1.6 In summary, responses in this section illustrated a significant divide between the participating courts as to whether the process in most cases is determined primarily by written submissions or by a mixture of an oral and written submission. The jurisdictions surveyed were fairly evenly divided between having hearings very frequently and very rarely. Within this, there was further variation in how important oral hearings are deemed to be: several jurisdictions have oral hearings regularly but do not see them as being highly influential in most cases;[26] several jurisdictions have very few hearings, but regard them as being very important on the rare occasions that they do take place.[27] Oral hearings clearly serve different purposes in different systems and practice here is very diverse. However, though some saw oral hearings as being of narrower or more limited importance, few considered them to be unimportant.

5.2 Decision on oral hearings when not compulsory

Amongst institutions in which oral hearings are not mandatory or generally held, the majority have some mechanism whereby parties can request a hearing, with guidance in rules of procedure on when to hold such hearings, but leave the decision with the court or President. In several countries, however, the holding of oral hearings is strictly governed by procedural rules. Switzerland reported an interesting practice whereby oral hearings are only held in the event that judges fail to agree after a written report has been circulated.

5.3 Time limits on oral hearings

5.3.1 The majority of jurisdictions surveyed do not have any formal time limits in place for the conduct of oral hearings. Most stressed, however, that the presiding judge informally keeps submissions to a reasonable time, and / or that there is a convention or tradition of

[21] Czech Republic, Lithuania, Malta, Serbia, Spain.
[22] Croatia, Lithuania, Poland.
[23] Belgium, Germany, Greece, Hungary.
[24] Finland, Italy, Luxembourg.
[25] The Slovak Republic. Portugal and Switzerland did not indicate the importance of hearings, but hearings are rare in these jurisdictions.
[26] E.g. Greece, which holds hearings in 80%+ of cases, but regards them as infrequently changing the result.
[27] E.g. Austria, Slovenia.

brevity in submissions, suggesting that informal practices are sufficient to keep cases to a reasonable timeframe. Two jurisdictions — Cyprus and Portugal— has specific time limits in place for appellants and respondents. Five jurisdictions — Ireland, Latvia, Norway, Spain, and the United Kingdom — set time limits for the hearing of individual cases: these are decided before, or at the start of, the hearing in question.

5.3.2 In respect of judicial interruption of oral hearings, two countries have specific periods of non-interruption before questions are asked. Ireland usually sets aside 15 minutes at the start of the submissions for parties to present uninterrupted; and in the Netherlands, each side is given five minutes at the start of the hearing to speak without questioning, and the opportunity to give a short, uninterrupted closing statement. Several jurisdictions — notably France, Lithuania, Malta and Sweden — have hearings not characterised by judicial interruption at all, unless submissions are repetitious or off-topic. On the other hand, several jurisdictions — especially Slovenia and the United Kingdom — noted that judges are very interventionist throughout hearings.

5.4 Subject matter limitation on oral hearings

Most of the jurisdictions surveyed confine the subject matter of oral hearings to the party's written submission, at least to some degree. Thirteen jurisdictions reported having clear restrictions in this regard.[28] Eight others reported having at least partial or in principle restrictions, but admitted some flexibility in their application.[29] Three jurisdictions (Austria, Spain and Sweden) noted that they had no such rule, but also that oral hearings in general were rare occurrences in these courts.

5.5 Judicial disqualification for opinions expressed in oral hearing

5.5.1 The jurisdictions surveyed took a diversity of approaches to recusal of judges for opinion expressed at an oral hearing. Twelve jurisdictions reported no specific rule disqualifying judge based on legal opinions expressed at oral hearings, or deemed it unlikely that the general rules on bias could be used in this way.[30] Seven jurisdictions reported having such a rule, though two jurisdictions noted that invocation of the rule was unlikely to

[28] Bulgaria, Cyrus, the Czech Republic, France, Greece, Hungary, Luxembourg, the Netherlands, Norway, Poland, Portugal, Slovenia, and Switzerland. Two other jurisdictions—Finland and Malta—noted other limitations, such as limitations to facts or the Court otherwise limiting the scope of the hearing. Serbia did not give a clear indication of the presence or absence of such a rule.
[29] Belgium, Germany, Ireland, Italy, Latvia, Lithuania, the Slovak Republic, and the United Kingdom.
[30] Austria, Belgium, Croatia, Cyprus, the Czech Republic, Germany, Hungary, Ireland, Luxembourg, Norway, Poland, Slovenia, and the United Kingdom.

succeed.[31] Six others have general impartiality provisions that could apply in such circumstances.[32]

5.6 Site visits

5.6.1 One unusual feature in the Administrative Court of Luxembourg should be noted. The Luxembourg Court regularly – in perhaps 15% of cases – carries out "on-site visits in order to formulate a definitive opinion of the intricacies of the case as well the primary factors which caused the dispute between the parties." Parties are often present at such visits. This, the Court reports, is "extremely fruitful" and can allow the Court to "reduce the gravity of the point of contention" in perhaps 70%-80% of cases, with parties reporting enthusiasm for the procedure. The Court describes this as an "atypical" approach, and this is reflected in the fact that no other jurisdiction reported such a practice. This interesting and unique adjunct to the hearing of cases may deserve more detailed attention.

6. Written Submissions

6.1 Length of submissions

6.1.1 The most common average submission length was 10-20 pages (10 jurisdictions). Seven jurisdictions reported having an average length of 5-10 pages. The remaining jurisdictions were outliers at the extremes. Malta and Sweden each reported an average length between zero and five pages. Ireland, Italy and Switzerland reported longer submissions, at between 20 and 30 pages, while Germany, Portugal and the UK have the longest average submission length at 30-40 pages. However, several jurisdictions stressed that there was significant variation in this regard, with submissions of above average length being common.[33] Sweden, despite its low average, noted that in many complex cases, for example involving tax issues, it would be usual to have more than 50 pages of submissions. Germany noted that on occasion, submissions can run to 1000 pages. Several jurisdictions also noted a trend towards more lengthy submissions; Luxembourg (average 10-20 pages), for instance, noted that longer submissions (50-100 pages) were increasingly becoming customary.

6.1.2 Interestingly, despite a burden of heavy caseloads and need for swift determination of cases, very few jurisdictions had any maximum length for submissions. Ireland has a general limit – 10,000 words – but this can be exceeded with permission. In Spain, cassation appeals

[31] Bulgaria, Greece, Italy, Latvia, Lithuania, Malta, Spain. Malta and Greece noted that judges did not typically comment on legal matters during a hearing.

[32] Finland, the Netherlands, Poland, Portugal, Serbia, Sweden. Additionally, Switzerland reported that a judge can be challenged for *ruling* during an investigation session, but not for expressing an opinion during deliberation. The Slovak Republic did not respond specifically to this question.

[33] Finland did not report an average, but rather noted great variation, from a few sentences to fifty pages. Serbia had no means of calculating such an average, noting a range of one page to several dozen. Spain did not provide an average.

are a maximum length of 50,000 characters including spaces, which is equivalent to 25 single-sided pages. Italy noted that, though there is no general maximum length, in certain proceedings (e.g. electoral matters) a 15-page limit applies.

6.1.3 Some jurisdictions noted mechanisms to aid with lengthy submissions. Greece and Latvia, for example, require a summary of submissions to be provided for long submissions. Several jurisdictions noted that there are general expectations and conventions that submissions will be brief and concise.

6.1.4 As written submissions are at the heart of most jurisdictions' consideration of a case – either in the absence of an oral hearing or in guiding and directing such a hearing – it is perhaps surprising that the average length of submissions is not longer and that it has not proven necessary in most places to have strict maximum lengths. It seems that informal expectations and conventions are sufficient in most instances to ensure no unnecessarily lengthy written submissions. In many jurisdictions, a short submission may be more than sufficient given the nature of the cases heard. However, should a trend towards longer submissions prove persistent and widespread, stricter restrictions may prove necessary. Most jurisdictions have found it necessary to limit the submission of material after hearings where these are held, presumably to encourage resolution of the case and avoid proceedings being prolonged.

6.2 Submission of further written submissions after hearings

In general, respondent jurisdictions do not allow further written submissions after an oral hearing has taken place. 18 jurisdictions reported either that this is not allowed at all (11), or is only allowed in exceptional cases (7), such as when a new argument has arisen at the hearing (e.g. UK) or when the court specifically invites it (Luxembourg). 10 jurisdictions report that this is generally allowed.

7. Consideration of the Case

7.1 Raising of points ex officio

7.1.1 By an overwhelming margin, it is within the capacity of respondent institutions to raise points of law in respect of their own motion or *ex officio*. Twenty-three of the respondent states reported having such a capacity in a wide range of circumstances. Obviously, there was variation within such practices. In Germany, for example, it was described as being not only allowable but obligatory to assess the case *ex officio* and raise relevant points of law; Sweden noted that the Court is limited only by the facts of the case, not by any legal arguments set out by the parties. Other jurisdictions (e.g. France and Norway) reported procedures to notify parties of the intention to raise a point *ex officio* and give them an opportunity to engage with it. Others (e.g. Hungary, Portugal, Spain) reported a specific set of rules, and limitations on raising such points. Latvia noted that where such a

point is raised it is usual to conclude that the lower court has failed to apply the law correctly, and it generally results in a *de novo* hearing in the lower court.

7.1.2 Three of the five jurisdictions that reported not having a general ability to raise points *ex officio* did suggest some ability to raise points in exceptional or extreme circumstances.[34] Only two – Serbia and the Slovak Republic – said that the scope of the case was entirely set by the plaintiff in the case.

7.2 Language

7.2.1 By a significant margin, respondent courts are monolingual in their operation. Twenty-one of the respondent countries are functionally monolingual. Latvia has a more nuanced position: it operates in Latvian, but can allow the use of other languages if a party requests this and all agree.

7.2.2 Six jurisdictions were reported to be multilingual in practice to some degree, though this does not mean that deliberation is multi-lingual in all cases, or that it incorporates all languages used by the court.

7.2.3 Four courts reported multi-lingual elements that do not necessarily affect deliberation. The operating language in Cyprus is Greek, but arrangements can be made to accommodate Turkish-Cypriot litigants or advocates. Finland operates in Finnish and Swedish, but Finnish is the language of the court's internal processes. Ireland has English and Irish as official languages, but noted that in practice almost all matters are heard in English, and deliberations take place in English. Malta operates in Maltese but can on occasion operate in English if the applicant does not understand Maltese.

7.2.4 Three jurisdictions have multi-lingual elements that have an impact on deliberation. Belgium operates in French, German and Dutch, with chambers divided on linguistic grounds, and the possibility of informal multi-lingual deliberation in certain circumstances. Interestingly, Luxembourg operates predominantly in French, with all decisions given in French, but with the court also deliberating in Luxembourgish, and documentation occasionally being produced in German and Luxembourgish. Switzerland requires briefs to be submitted in an official language (German, French, Italian or Rumantsch grischun) and proceedings are conducted and judgment rendered in the language of the judgment under appeal. Deliberation generally takes place with each judge speaking whichever official language is his or her mother tongue.

[34] Austria, Bulgaria, Ireland.

7.3 Pre-hearing deliberation

7.3.1 A majority of jurisdictions have some kind of pre-hearing deliberation. Nineteen countries report having some formal or informal deliberation in advance of hearings.[35] Most of these (11 jurisdictions) hold relatively regular, formal meetings for this purpose. The rest have more informal discussions, some of which are extensive. Hungary holds such deliberation in all cases. Germany holds extensive deliberation amongst members of the Senate, with discussion of extensive legal opinions written by the rapporteur and other members of the court. Some practices might not be described as deliberation, but serve a similar function. Italy described very informal discussions between judges, and Luxembourg has a meeting where the judge-rapporteur discusses the intricacies of the case with the other judges. In France, chambers hold weekly meetings to discuss their five or six most important cases, though this would not be described as "deliberation".

7.3.2 Nine jurisdictions (Belgium, Bulgaria, Croatia, the Czech Republic, Greece, Malta, Norway, Portugal and Serbia) reported having no pre-hearing deliberations at all.

7.4 Main deliberation (post-hearing) and votes on decision

7.4.1 In terms of the main or post-hearing deliberation, a great variety of practices were reported. Many jurisdictions (e.g. Germany) reported that the matter is largely governed by practice, tradition or convention rather than rigid rules. Luxembourg described its practices as "very liberal" and "spontaneous", in keeping with collegiality of a small court with long-serving judges. However, several interesting trends and practices can be observed.

7.4.2 Privacy is the norm in deliberation – it is not open to the public. Most jurisdictions have meetings where deliberations and votes take place (some, e.g. Luxembourg, have multiple meetings) either immediately after a hearing (France, Germany, Ireland) or after some time has passed for preparation of provisional opinions. Deliberations are often complimented by exchange of written material (see e.g. Latvia, which reported that after informal discussion, deliberation is largely undertaken on the basis of comments on draft written decisions; Portugal, which reports regular exchange of written notes on draft decisions; and Belgium). Some jurisdictions (e.g. Switzerland) rely primarily on written communication.

7.4.3 Several jurisdictions (e.g. Austria, Belgium, France, Germany, Portugal Serbia, Spain, Switzerland) take the rapporteur's presentation of the case or draft judgment as the focal point of deliberation. For example, in Austria, discussion begins with the rapporteur

[35] Some jurisdictions, such as Lithuania, always hold such deliberations on the rare occasions that they have oral hearings. Switzerland is in a unique position: it only conducts hearings in the event that judges cannot agree on a report following the usual deliberative practices.

discussing the case and suggesting a decision. Any other contributions from the panel are then heard, and the rapporteur is given the final word.[36]

7.4.5 Voting is usually by majority at the end of deliberations,[37] by oral declaration or show of hands. It is also common for consensus-based decision-making to render formal votes unnecessary; see e.g. Belgium, France, Luxembourg and The Netherlands.

7.4.6 It is common for judges to vote, deliberate and sit in order of seniority, with junior judges expressing their opinions first, and the other judges following in order of seniority (Finland, Greece, Hungary, Ireland, Poland, Slovak Republic, Spain, Sweden, UK). This is not always the case, of course; in France and Belgium, for example, during deliberation, any member of the court can speak in any order, regardless of seniority. Austria has something of a reverse of this system: though the rapporteur votes first and the President last, when the other judges vote, they do in order of the longest serving to the most junior.

8. The Decision

8.1 Judgment in the name of the court or individual judges?

8.1.1 Judgments in respondent jurisdictions are overwhelmingly rendered in the name of the court / institution or the State rather than in the name of any individual judge.

8.1.2 Only the two common law respondent jurisdictions – Ireland and the UK – reported judgments being handed down in the name of the judicial author rather than the institution. In these instances, the courts go to some lengths to ensure that some clear majority opinion of the court is reflected in one judgment if possible.

8.1.3 In all other 26 instances, the decision is institutional. It is often signed either by all judges or by the President of the court or the panel. It is usual in these jurisdictions for the judgment to be written by the judge-rapporteur, with comments from other judges, and occasionally assistance from research assistants or support lawyers. This is not exclusively the case: in the Netherlands, support lawyers draft a provisional judgment which the judges then contribute to and alter; in Norway, the writing of the judgment is assigned to the judge who has had the longest period since writing such a judgment.

8.2 Dissenting opinions

There is a more even distribution of responses on the issuance of dissenting or concurring opinions. Fifteen jurisdictions[38] generally allow for some other judgment to be issued,

[36] See also similar practices involving rapporteurs or law clerks in Slovenia and Sweden.
[37] In Ireland, unusually, the formal vote is taken in open court with the judges giving a judgment or agreeing with the judgment of another. The extent of consensus is determined during deliberations.
[38] Bulgaria, Cyprus, Finland, Greece, Ireland, Latvia, Lithuania, Norway, Poland, Portugal, Serbia, the Slovak Republic, Spain, Sweden, the UK.

ranging from a single dissenting opinion (Norway) to every judge being allowed to express either a concurring or dissenting view (e.g. Ireland,[39] Sweden,[40] the UK). A further 10 jurisdictions reported specifically not allowing any form of concurrence or dissent. Additionally, some jurisdictions do not fit neatly within these categories. Hungary allows dissenting opinions to be appended, but they are not publicly accessible,[41] and Slovenia allows dissenting opinions, but only in extraordinary review procedures. In the Czech Republic, a judge may not, in principle, deliver a dissenting or concurring opinion, although exceptions apply in certain circumstances.[42]

8.3 Judgment / order distinction

8.3.1 Judgments of the courts are generally rendered in writing, and a record of the judgment is entered in the IT system of the court or uploaded to the court's website. In some jurisdictions (e.g. Greece, Ireland, the Slovak Republic, the UK) there is a public pronouncement of the judgment.

8.3.2 Most respondent jurisdictions –16 out of 28 – observe some strict division – either by issuing separate documents or by having a strict division within documents – between the judgment, or statement of reasons of the court, and the order, or operative part of the ruling. Eleven jurisdictions[43] report that they do not, but several report a less firm internal division between the reasons and the operative section of court decisions. Italy reported no such distinction in general, but noted that, in certain cases where the determination has to be issued very quickly, a statement of reasons follows later.

9 Timeframes

9.1 Length of time to decide cases

9.1.2 The average time it takes to decide cases unsurprisingly varies greatly from jurisdiction to jurisdiction. At the lower end are Malta (2.5 months), Austria (4 months) and Luxembourg (4 months). At the other upper end, Cyprus' average is around 72 months (though changes in the structure of the court system are being implemented to reduce a backlog of cases). Greece (48 months), Belgium (26 months), and Ireland (25.5 months) follow (though Ireland and others have introduced reforms to reduce timeframes; see below [10.1] - [10.2].)

[39] Though generally allowed, in rare pre-enactment constitutional review proceedings, no dissents can be issued in Ireland.
[40] In Sweden, the dissenting judge signs the majority opinion, but their dissenting opinion is appended.
[41] An outvoted judge may append a dissenting opinion in a sealed envelope, which can be accessed only by the "appellate court, the person entitled to start disciplinary proceedings, the service court (in disciplinary proceedings), and the judicial panel of the Curia entitled to initiate or conduct uniformity proceedings."
[42] Exceptionally, each judge may issue a dissenting or concurring opinion where the court sits in an extended Chamber, as an Electoral Court or as a special chamber dealing with conflicts in relation to competence.
[43] Bulgaria did not respond to this question.

9.1.3 The average time taken across the 14 respondent jurisdictions is 15.5 months; the median time is 12 months. This average figure is inflated by the longer times in many jurisdictions: 10 jurisdictions report an average length of 18 months or more, six months more than the median time.

9.1.4 Many jurisdictions also report significant variation in the time it takes to resolve cases based on subject matter and associated case load, complexity etc.[44] These average figures, then, can give us only a very broad sense of how the systems operate. An interesting trend is that many jurisdictions noted a focus on reducing the times for processing cases, and the introduction of reforms aimed at improving this aspect of decision-making.

9.2 Mandatory time periods

9.2.1 Interestingly, despite this focus on increased expediency, very few jurisdictions have any overall mandatory timeframe. Only four respondent jurisdictions reported such a feature: Bulgaria has a one-month time limit from the date of hearing for the resolution of cases; Italy has a 45 day time limit for the issuing of a decision after deliberation has taken place; Lithuania has a rule that judgment should be delivered no more than 20 working days after a case is heard (with scope for a short extension at the discretion of the President); Serbia reports a rule that administrative disputes should be resolved within two years (and within 15 days of the hearing).[45]

9.2.2 Bulgaria reported challenges in meeting their one-month time limit, namely the complexity of the cases and the quantity of evidence to be discussed. However, in 2017, 13,403 of the 15,812 cases before the court were cleared within the one-month period, with a further 1,946 cases cleared within three months.

9.2.3 Certain jurisdictions have imposed targets on themselves or have targets by convention for the disposition of cases; for example, the French Conseil d'État attempts to resolve ordinary applications within a two-year period, and in 2017 succeeded in 95.1% of cases; Hungary and the Slovak Republic have a self-imposed target of resolving cases within a year.

9.2.4 Certain jurisdictions noted other requirements or measures related to the speed of cases: Cyprus has a constitutional provision requiring disposition of cases within a reasonable period of time, though the nature of this requirement varies with the context; the Czech Republic adheres to a principle that there should not be undue delay in the disposition of cases; Finland's Court President and the Presidents of Chambers ensure expediency and no

[44] Switzerland, for example, notes that some cases may be resolved within a few days, while others take over a year.
[45] Spain has an unusual time limit, whereby judgment must be pronounced within 10 days of cases being declared "ready for judgment".

undue delay; Ireland has a matter come before a judge of the court every two months after it has been heard until judgment is delivered, which keeps the matter active; Portugal reported a principle of effective legal protection, requiring decisions within a reasonable time, and the possibility of compensation for citizens subject to delays in the administration of justice. Several jurisdictions noted the overall ECHR requirement of expediency as a guiding principle for the courts.

9.3 Mandatory time periods for certain types of cases

9.3.1 Many more jurisdictions have mandatory time frames for deciding certain types of cases; 21 respondent jurisdictions suggested some rule to this effect.[46] Common categories for mandatory timeframes include:

- Elections, voting, referendum cases (the Czech Republic, France, Hungary, Italy, Lithuania, Poland, Slovenia, Serbia);
- Reviews of detention (Luxembourg, Norway, the Slovak Republic);
- Public procurement (Croatia) and interlocutory (injunction) proceedings relating to public competitions / administrative procedures for conducting public contracts (Greece);
- Preliminary rulings on constitutionality (France, Ireland); and
- Certain immigration matters (Latvia, the Netherlands).

9.3.2 Such limits vary from demanding immediate judgment (Norway, administrative detention) or close to it (48 hours for various matters in Slovenia, 48 hours for electoral disputes in Serbia) to 12 months. Thirty to 90-day periods are common.

9.3.3 Few specific problems were reported with meeting these time frames, and they seem generally to be met, though the volume and complexity of cases, staffing, and the need to hear some matters in plenary sessions were noted to be problems with the expeditious disposition of cases in general, and these would similarly create challenges in mandatory timeframe cases.

10. Reform

Several jurisdictions reported notable features or recent developments in research that are impacting on how cases are decided. A selection is included here.

10.1 Reforms increasing the speed of processes

10.1.1 Several countries (Croatia, Greece, Italy, Latvia, Poland) reported recent reforms (either to formal rules and procedures or to the internal workings of the court) aimed at

[46] This number includes Finland and Portugal, which noted that certain types of cases were treated urgently and with expedition – e.g. child welfare, psychiatric cases in Finland, electoral litigation and administrative acts affecting more than 50 people – but did not indicate a mandatory window for resolution.

increasing the efficiency of the decision-making process and deciding cases more quickly. Luxembourg has a long-delayed legal reform pending that would require quicker resolution of cases. There is a wide variety in terms of what these reforms consist of, but the common goal of increasing speed and efficiency shows, perhaps, the increasing pressure that will be placed on courts' decision-making in future, and the reforms adopted may help other jurisdictions to embrace changes that might help with this.

10.2 Reform in acceptance of appellate cases

10.2.1 Ireland is still adapting to a new workflow following the recent establishment of a Court of Appeal, which has substantially changed the caseload of the Supreme Court so that it deals almost exclusively with points of law of high public importance. The operation of this new system has been reviewed by a committee of the court and has led to new procedures. Spain has undergone a similar reform, with major alteration to the types of cases that are brought to the court, and the court given wide discretion to select which appeals are sufficiently interesting to rule on. In each instance, the court has been given the ability to focus on setting major precedents.

10.3 Reforms to hearings

10.3.1 Bulgaria is currently in the process of significantly reforming the way in which cases are heard, moving from open to closed sessions as the default for oral hearings. Though this reform should have entered into force at the start of 2019, it is being challenged before the Constitutional Court.

10.4 Major restructuring

10.4.1 Hungary is in the midst of a major overhaul of its administrative court system, which will take effect in January 2020. The effect will be profound, changing everything from the name of the institution to its seat to its nature and function, creating a distinctive entity to act as supreme administrative court, as opposed to a Department of the current Curia (more general Supreme Court). The questionnaire from Hungary sets out in some detail the future operation of the new High Administrative Court and the ways in which it is likely to differ from the present Curia. In addition, a new Code of Administrative Litigation and Code of Civil Procedure entered into force on 1 January 2018, which appears to have reduced the overall amount of litigation being entered into, but this reform is still too new for its effects to be fully known. In combination, it means that the situation in Hungary is undergoing significant alteration the ultimate effect of which will not be known for some time.

Appendix - Member and Observer Institutions that submitted a national report in response to the questionnaire

ACA Members				
	Country	**Institution**		**Website**
1	Austria	Verwaltungsgerichtshof	Supreme Administrative Court	https://www.vwgh.gv.at/english.html
2	Belgium	Conseil d'État	Council of State	www.raadvst-consetat.be
3	Bulgaria	Върховен административен съд	Supreme Administrative Court	http://www.sac.justice.bg
4	Croatia	Visoki upravni sud Republike Hrvatske	High Administrative Court of the Republic of Croatia	www.vusrh.hr
5	Cyprus	Ανώτατο Δικαστήριο	Supreme Court of Cyprus	http://www.supremecourt.gov.cy
6	Czech Republic	Nejvyšší správní soud	Supreme Administrative Court	http://www.nssoud.cz/Uvod/art/1
7	Finland	Korkein hallinto-oikeus	Supreme Administrative Court of Finland	https://www.kho.fi
8	France	Conseil d'État	Council of State	French: http://www.conseil-etat.fr/ English: http://english.conseil-etat.fr/
9	Germany	Bundesverwaltungsgericht	Federal Administrative Court	www.bverwg.de
10	Greece	Symvoulio tis Epikrateias	Council of State	www.adjustice.gr
11	Hungary	Kúria (Közigazgatási-Munkaügyi Kollégium) Future: Közigazgatási Felsőbíróság	Curia of Hungary (Administrative and Labour Department) Future High Administrative Court	http://www.lb.hu/index.php
12	Ireland	Cúirt Uachtarach na hÉireann	Supreme Court of Ireland	http://www.supremecourt.ie/
13	Italy	Consiglio di Stato	Council of State	https://www.giustizia-amministrativa.it
14	Latvia	Administratīvo lietu departaments	The Department of Administrative Cases	http://www.at.gov.lv/lv
15	Lithuania	Lietuvos vyriausiasis administracinis teismas	Supreme Administrative Court of Lithuania	Lithuanian: https://www.lvat.lt/ English: https://www.lvat.lt/en
16	Luxembourg	Cour administrative	Administrative Court	https://justice.public.lu/fr/organisation-justice/juridictions-administratives.html

17	Malta	Tribunal ta' Revizjoni Amministrattiva and Prim'Awla tal-Qorti Civili	Administrative Review Tribunal and First Hall of the Civil Court	http://www.justiceservices.gov.mt/courtservices/
18	The Netherlands	Afdeling bestuursrechtspraak van de Raad van State	Administrative Jurisdiction Division (AJD) of the Council of State	Dutch: https://www.raadvanstate.nl/ English: https://www.raadvanstate.nl/the-council-of-state
19	Poland	Naczelny Sąd Administracyjny	Supreme Administrative Court	Polish: http://www.nsa.gov.pl/ English: http://www.nsa.gov.pl/en.php French: http://www.nsa.gov.pl/fr.php German: http://www.nsa.gov.pl/de.php
20	Portugal	Supremo Tribunal Administrativo	Supreme Administrative Court	https://www.stadministrativo.pt/.
21	Slovak Republic	Najvyšší súd Slovenskej republiky	Supreme Court of the Slovak Republic	Slovakian: https://www.nsud.sk/ English: https://www.nsud.sk/the-supreme-court-of-the-slovak-republic/
22	Slovenia	Vrhovno sodišce Republike Slovenije	Supreme Court of the Republic of Slovenia	http://www.sodisce.si/eng/
23	Spain	Tribunal Supremo de España	Supreme Court of Spain	http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Tribunal_Supremo
24	Sweden	Högsta förvaltningsdomstolen	Supreme Administrative Court	Swedish: www.hogstaforvaltningsdomstolen.se English http://www.hogstaforvaltningsdomstolen.se/funktioner/english/the-swedish-courts/the-supreme-administrative-court/
25	United Kingdom	Supreme Court of the United Kingdom	Supreme Court	https://www.supremecourt.uk/

ACA Observers				
26	Serbia	Vrhovni kasacioni sud	Supreme Court of Cassation	Serbian(Cyrillic): http://www.up.sud.rs/cirilica Serbian (Latin): http://www.up.sud.rs/latinica English: http://www.up.sud.rs/english .
Guest Courts				
27	Norway	Norges Høyesterett	Supreme Court of Norway	Norwegian: https://www.domstol.no/hoyesterett/ English:https://www.domstol.no/en/Enkelt-domstol/-norges-hoyesterett
28	Switzerland	Bundesgericht	Federal Supreme Court	www.bger.ch