



**Seminar organized by the Supreme Court of Ireland and
ACA-Europe**

**How our courts decide: The decision-making processes
of Supreme Administrative Courts**

Dublin, 25 – 26 March 2019

Answers to questionnaire: Netherlands



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

ACA Seminar

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

Dublin, 25-26 March 2019

Supreme Court of Ireland

Questionnaire

I. Introduction

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

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

1.3 The Dublin seminar on the 25th and the 26th March 2019 for which this preparatory questionnaire is being distributed is envisaged as a sister seminar to that which will be organised by our German colleagues in conjunction with the General Assembly of the 12th to the 14th May 2019 in Berlin. While there may be some small and unavoidable overlap between the issues raised it is intended that the Dublin Seminar will focus on the decision making process of the court whereas the Berlin Seminar will focus on access to the Supreme Court and its functions including, for example, the question of whether ‘filters’ are provided for in administrative procedural law.

1.4 Further, while this project is independent of the ACA-Europe transversal analysis project on ‘The Quality of Judgments’, there will be an inevitable link between certain elements of the questionnaire formulated for that project and aspects of this questionnaire.

1.5 Please note that when answering the questions in this questionnaire it is not (with the exception of the statistical questions regarding caseload under Part C) necessary to consider proceedings which lead to the making of provisional orders.

1.6 In addition, in the event that your institution undertakes legislative functions such as providing advice on proposed legislation as well as the function of adjudicating cases in the context of court litigation, it is not necessary to include information pertaining to the legislative functions when responding to the below questions.

II. Questions

A. Background questions in relation to your Supreme Administrative Court/Council of State

1. What is the formal title of your Supreme Administrative Court/Council of State ('institution')? Please provide the name of your institution in your national language and the English translation if possible.

Afdeling bestuursrechtspraak van de Raad van State

Administrative Jurisdiction Division (AJD) of the Council of State.

2. What country/jurisdiction does your institution serve?

The Kingdom of the Netherlands.

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

The Hague.

4. Please provide a link to your institution's website (if available), including a link to the English or French version or pages of the website if available.

<https://www.raadvanstate.nl/>

<https://www.raadvanstate.nl/the-council-of-state.html> (English)

B. The Structure of your Supreme Administrative Court/Council of State

5. Please provide an outline of:

(a) The main functions of your institution (e.g. a first and last instance court, court of cassation or court of appeal);

The Administrative Jurisdiction Division is both a court of last instance and a court of first and only instance.

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

The Dutch Council of State holds both a Supreme Administrative Court and an Advisory body. The Administrative Jurisdiction Division of the Council of State is the highest Administrative Court with a general administrative jurisdiction. The Advisory Division of the Council of State provides the government with independent advice on:

- all Bills introduced in Parliament by the government;
- all orders in council, before they are promulgated by the Crown;
- all treaties that the government puts before Parliament for approval;
- all matters on which its advice is required by law, such as the Budget Memorandum and expropriation orders;
- other matters on which the government seeks the Council's advice.

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

The Supreme Court in The Hague is the highest court in criminal and civil law cases. There are four last instance courts for administrative law proceedings in the Netherlands, three of them with a specific jurisdiction: 1. the Supreme Court (Tax law), 2. the Administrative High Court (e.g. social security, social assistance and civil-servants law) and 3. the Trade and Industry Appeals Court (socio-economic, energy and competition law). The Administrative Jurisdiction Division of the Council of State is the highest Administrative Court with a general administrative jurisdiction.

C. Caseload

6. How many judges¹ serve on your institution?

In the years 2015-2017, an average of 38,7 full time equivalent (fte) of judges (state councillors; 'staatsraden' in Dutch) served in the AJD. The Council of State Act permits a maximum of 10 state councillors to work both in the AJD and in the Advisory Division. At this time only two state councillors work in both Divisions. Next to our "own" state councillors there are nine state councillors 'in special service' (*in buitengewone dienst*); seven of them work for the other highest courts and function as the linking pin between the highest Administrative Courts, the other two are advocate-generals.

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

¹ Please include figures concerning judges only and not the number of Advocates General (which will be dealt with under question 11) or judicial assistants/clerks/researchers (which will be dealt with under question 13).

² In this question 'cases' means the average number of incoming cases per year, whether litigious (in which the judge(s) decides a dispute) or non-litigious (where a case in which there is no dispute is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not deal solely with administrative law cases (for example, civil and commercial law, criminal law etc). It refers to both cases decided in writing and by oral hearing. It includes applications submitted to a Supreme Administrative Court before any filtering process is undertaken if such a mechanism exists.

Through the years 2015-2017, there was an average of 12.350 incoming cases. In 2017 and 2018, there were 13.350 incoming cases.

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

In the years 2015-2017, an average of 12.300 cases has been disposed of. In 2017 and 2018, there were 13.200 cases disposed of. A case is 'disposed of' when a decision has been reached, with or without an oral hearing or when an appeal has been withdrawn. Of these cases, an average of 8.500 cases were done in the Immigration Section. These last cases are generally decided upon without an oral hearing and do not always contain the grounds of the decision (the so called art. 91 para 2 Immigration Law-cases).

D. Internal organisation of the Supreme Administrative Court

9. Does your institution have chambers/divisions?

Yes.

10. If yes, provide the following details:

a. How many chambers/divisions?

Three:

1. The Spatial Planning Chamber
2. The Migration Chamber
3. The General Chamber

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

1. Spatial Planning Chamber: 25
2. The Migration Chamber: 16
3. General Chamber: 38

c. The nature of particular areas of specialisation in your Supreme Administrative Court by chamber or otherwise (if any) (e.g. commercial division, environmental division etc.).

Each chamber is subdivided into three different 'units', each covering certain cases / aspects of law.

³ Please indicate the average number of cases that come to an end in your Supreme Administrative Court each year either through a judgment or any other decision that ends the procedure, whether it has been considered in writing or by oral hearing.

1. In the Spatial Planning chamber the caseload is divided between three units dealing with their “own” geographical part of the Netherlands. Cases concern spatial planning, zoning, noise hindrance, environmental matters, nature protection and aviation law.
2. In the Migration Chamber all three units deal with asylum cases, while (for example) only one unit also deals with cases concerning the Dublin Regulation and fines for violations of the Aliens Work Act.
3. The General Chamber covers a variety of topics, for example financial administrative law, education law, election law, and (enforcement of) building and environmental permits. Three units are specialized in specific areas of administrative law.

d. Do judges move between chambers/divisions? If yes, how is such movement determined?
 All judges are assigned to two chambers. There are no specific rules which regulate their movement to other chambers. The assignment of a judge to a chamber is a competence of the chair of the AJD, in which he will involve their experience, expertise and, correspondingly, their preference.

e. Is it possible for a judge to be assigned to more than one Chamber at a time?
 As stated, judges are generally assigned to two chambers.

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

There are no different levels of chambers within the AJD. The AJD does not have a Constitutional Review Chamber; constitutional review is part of the work of all Chambers (and of all highest courts). Please note that the Netherlands do not have a separate Constitutional Court. That said, we would like to mention the different ‘working groups’ or ‘knowledge groups’ within the Council of State and the AJD:

- One working group (the ‘CrEU’, the Commission on the Law of the European Union) deals with European administrative law and monitors developments in European law. This group has an advisory task and will, among other things, advice upon preliminary rulings concerning the interpretation of European Law and the Charter of Fundamental Rights of the European Union.

- A comparable working group is the Constitutional Commission (*Constitutionneel Beraad, CB*), which discusses matters relating to our Constitution and fundamental rights.

Note that both the CrEU and the CB have an advisory role for the AJD and the Advisory Division of the Council of State.

- Other working groups deal with questions relating to a specific field of administrative law, such as the working group on Spatial Planning (*RO-beraad*) and the GDPR-group (*AVG-overleg*). Some working groups deal with cross border fields of law, such as the Fine Forum (*Boeteberaad*), for criminal/administrative cases, and the Commission on Damages and Civil Law (*Commissie Schadevergoeding en Burgerlijk recht*), for cases on the edge of administrative and civil law.
- Then there is the Commission on Administrative Procedural Law (*Commissie bestuursprocesrecht*) and – last but not least – the Commission on the Unity of Law (*Commissie Rechtseenheid*), which main task is to contribute to the unity of the law between the four highest administrative courts and unity of the law between the Council of State and the Supreme Court in the application of civil and criminal law.

Please note that none of the above mentioned working groups has jurisdictional power; their aim is to facilitate discussion and advice upon matters of the law within their specific expertise and thus improving the quality of the decision making process.

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

Cases are decided by either a three judge panel or a single judge panel, depending on the complexity of the case. The ‘Grand Chamber’ (a five judge panel) is mentioned below at question 42.

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

- (i) Based on what rules or factors?
- (ii) Who decides how many judges are assigned to consider and decide a particular case?

As a rule first instance courts (districts courts) decide the vast majority of their cases (90 - 95%) with one judge panels, and the rest (5-10%) with three judge panels. For the highest administrative courts it is the other way around. The AJD decides most cases in the Spatial Planning and General Chamber (60-65%) with a three judge panel, and the rest of the caseload with one judge panels. In the Migration Chamber however the vast majority of the cases is handled by one judge panels, and approximately 10% by three judge panels.

As stated, the number of judges which are assigned to a case will normally vary between one

and three. This will depend on the complexity of the case. The decision to appoint either one or three judges is made in an early phase of the procedure, in the so called ‘phase of instruction’ (*instructiefase*). The decision is made by a judge, chair of an unit (each chamber had three units), after a proposal from the legal support staff. This decision is based on the facts, the applicable law and the (complexity of the) questions of law raised by the appeal.

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

This depends on the complexity and the scope of the case. As explained below (question 42), a Grand Chamber is formed when this is deemed apt in the light of the development and the unity of law. A Grand Chamber contains a maximum of five members. The AJD does not have a plenary session which has jurisdictional power.

j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case? If yes, specify the additional roles and explain how these roles are assigned.

In every three judge panel deciding upon a case there is one chair, one rapporteur and one member. If one of the judges on a case is also the (acting) chair of one of the chambers (mentioned under question 10b), then he or she will automatically be the chair on the case. Otherwise the assignment to be chair of the panel is based on seniority. The appointment of the rapporteur is done by the chair of the ‘units’ (also mentioned under question 10b). The rapporteur is in charge of the research at the court hearing. All members have equal say in the outcome of the case.

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

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

This is done by the legal support staff according to the Regulation on Case assignment. This regulation adopted by the President of the court, the chair of the AJD.

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

This is done by one of the judges who is chair of a working unit.

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

This is done by the panel itself.

(iv) Any other matters you consider relevant in this context. For example, are there any other special panels, General Assemblies or bodies of judges to which cases are assigned.

There is a special panel for motions to challenge a judge or judges, and a panel who decides on request to be withdrawn from a case.

11. Does the position of Advocate General exist in your legal system? If yes, please indicate:

(i) The number of Advocates General or equivalent members of your institution;

Currently, there are two (part-time) Advocates General. They are appointed councillor in special service (*staatsraad in buitengewone dienst*) but they are, unlike the 'normal' state councillors, not a member of the Jurisdiction Division of the Council of State.

(ii) The function of the Advocate General in the context of your institution;

Art. 8:12a GALA offers the chairs of the three highest administrative courts the possibility to ask the Advocate General a question which is related to a particular case. The questions will generally involve a matter concerning general administrative law. The possibility to ask questions to an Advocate General exists since 2013. Since then, a conclusion has been reached in fifteen cases; two conclusions are still pending.

(iii) The extent to which the Advocate General participates in proceedings before your institution.

The Advocate General is a member of the Council of State but has a strictly independent role and does not confer with the judges assigned to the case. The Advocate General can be present at the court hearing and ask questions to the parties. Parties have the right to comment on the conclusion of the Advocate General within two weeks after the conclusion has been sent to them (art. 8:12a, para. 5 GALA). The Advocate General doesn't participate in the decision making process and is not present in chambers after the hearing.

E. Research and Administrative Assistance

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

Every case will involve a support lawyer, who will draft a concept decision in consultation with the judge. The support lawyer can be a state civil servant (*ambtenaar van staat*) when he is experienced enough to draft concept decisions on his own, without supervision. The amount of time available to prepare a case, is decided by awarding points to the grounds of appeal, whereby a ‘simple’ ground will get one point, a relatively complex ground two and a complex ground three. By adding up those points, a decision will be made if the case should be judged by a single judge or three judge panel, and the amount of time available for the preparation of the case, which might vary between two to twenty working days.

Apart from the general support offered by a library, secretaries and the administration of cases, the Council of State has a separate unit which deals with ‘legal information issues’ in the broadest sense of the word. This Knowledge Unit (*kennisunit*) will write legal notes regarding matters of (especially) administrative procedural law which can be the basis of future law. It also offers legal support to the Advocates General.

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

The last three years, a number of 195.5 FTE (2015), 213.1 FTE (2016) and 242.3 (2017) of support lawyers have provided legal support. On average, there has been 205 FTE of support lawyers in the period 2015-2018.

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

No. The administrative assistance – regarding the planning of cases for example – is offered by employees with a background in administration.

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

There are no support lawyers who are assigned to individual judges. In principle, every support lawyer can be paired with each judge who works in a certain chamber.

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

Apart from the aforementioned Knowledge Unit, there is no other department which provides pooled research support.

17. To what extent, if at all, do assistants/*référéndaires* provide support to judges in your institution as regards specifically:

(a) Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing of a case;

this is an important task of the support lawyers.

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

the preparation of the case will also involve legal research, which is done by the support lawyer

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

every concept decision is discussed between the judge and the support lawyer, as a rule both orally and in writing

(d) Consideration and evaluation of the relevant law;

see under b)

(e) Undertaking comparative law analysis;

when this is relevant, this part of the research will be done by the support lawyer

(f) Drafting sections of judgments;

this is one of the main tasks of the support lawyer, together with the task mentioned under g)

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

this is also one of the main tasks of the support lawyer

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

The support lawyer also has the responsibility to judge whether a particular decision / judgment is 'worthy of documentation', i.e. is of such importance that it might inspire future decisions. In practice, this means that the decision will also be included into one of the manuals, of which there are circa twenty. Those manuals reflect the current state of law and are an important source of information in many cases, to both the support lawyers and the judges. The manual regarding the GALA is maintained by the Knowledge Unit, while the other manuals are held up to date by support lawyers who work in one of the other units.

F. Oral hearings

18. Is there an oral hearing in all cases?

No, because of the specific procedural law for immigration cases in appeal written judgment without a hearing is the standard in immigration cases (95% = 8.500 cases a year) and a court hearing is the exception (5% = 400 cases). In most cases dealt with by the other two chambers a court hearing is the standard.

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

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

In 2017, a total of 12.838 cases were dealt with at the Administrative Jurisdiction Division of the Council of State, in which an oral hearing was held 2.956 times. In 8.752 cases was decided without an oral hearing; among those were circa 8.500 immigration cases. In the remaining 1.130 cases the appeal was inadmissible or referred to another court (of appeal).

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

Generally speaking, parties are entitled to an oral hearing with the court; in immigration cases however an oral hearing will take place with the district court (first instance court), but with the AJD in appeal the oral hearing only takes place 2 to 4 % of the cases. Article 8:56 of the GALA states that after the end of the preliminary inquiry by the court the parties shall be invited at least three weeks in advance to appear in court at the time and place specified in the invitation. According to article 8:57, however, the court may order that there shall not be a hearing, but only if (all) the parties consent to this. Additionally, according to article 8:54 of the GALA the court may close its inquiry, before parties have been invited to appear in court, if continuation of the investigation is not necessary because: (a) the court manifestly lacks jurisdiction, (b) the appeal is manifestly inadmissible, (c) the appeal is manifestly unfounded; or (d) the appeal is manifestly well-founded. In these situations, the investigation will be closed and a hearing will not be held.

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

Parties can request for a hearing, but this request does not always have to be honoured (see above).

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

In most cases, deliberation takes place before the oral hearing, either face to face or through the exchange of written views or preliminary judgements. There are no formalities in this regard.

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

Yes, parties are allowed five minutes each for oral submissions at the beginning of the hearing.

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

Aside from the five minute period at the beginning of the hearing, parties are also allowed to make short final remarks at the closing of the hearing. Other than that, parties are not permitted to address the court uninterrupted. During the largest part of the oral hearing parties are expected to answer questions asked by the judges.

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

Generally speaking, the oral hearing is confined to matters set out in the statements or written submissions. The court is not permitted to go beyond the scope of the grounds of appeal (non ultra petita). However, discussion can arise with regard to subjects that the court is expected to rule on ex officio (regardless of the grounds for appeal), such as the admissibility of the appeal. Of course judges can also make inquiries about the context of the case, check what's really at stake, and try to reach a solution that will benefit all parties.

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

In almost all cases, the inquiry is closed at the end of the oral hearing, whereafter parties are not allowed to submit further documents. In exceptional circumstances, the court can decide to re-open the inquiry, whereafter parties are (once again) allowed to submit written submissions. In fact, re-opening of the inquiry is often done with the sole purpose of allowing parties to submit further written submissions or evidentiary documents.

25. Is it possible for a judge to be excluded from proceedings based on a legal opinion expressed during an oral hearing giving rise to the perception of bias?

Yes. According to article 8:15 of the GALA at the request of a party, any of the judges dealing with a case may be challenged on the ground of facts or circumstances which could prejudice the judicial impartiality. If the judge who is been challenged doesn't step down a three-judge panel - of which the judge who has been challenged is not a member – will thereafter decide upon the challenge.

G. Written submissions of parties

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

- | | |
|-------------|-------------------------------------|
| 0 – 5 pages | ☐ |
| 5-10 pages | ☒ |
| 10-20 pages | ☐ |
| 20-30 pages | ☐ |
| 30-40 pages | ☐ |
| 40-50 pages | ☐ |
| 50+ pages | ☐ |

In the Immigration Chamber, submissions are generally 0-5 pages long.

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

No.

H. Consideration of the case

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

Yes. The court will raise points of its own motion about matters deemed to be of 'public order' (e.g. competence / jurisdiction of the court, admissibility of the appeal, ne bis in idem). Also the court shall supplement the legal basis of the grounds of the applicant on its own initiative. The court may supplement the facts on its own initiative (art. 8:69 GALA).

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

The assigned panel of judges decides upon the case. It will receive legal input (previous relevant case law, considerations, possible ways for deciding the case, etc.) from one or two assigned support lawyers. Besides that there are several working groups (see above) who may advise the panel of judges on the possible outcome and reasoning in a particular case. But the panel decides.

23. Does your institution deliberate in a number of different languages? If so, please provide some detail. For example, does your institution have more than one official language? Dutch is the official language of the court. Deliberations only take place in Dutch.

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

If yes, specify the relevant rules etc.

As a rule, the chair of a panel of three or five judges individually asks input from the support staff and the judges on the panel. Starting with the support lawyers, then the rapporteur, the other judge and only thereafter giving his/ her own opinion. Opinions have to be delivered in person and orally; an absent judge cannot deliver his opinion through one of the other judges or give a written opinion (art. 43 Act on the Council of State).

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

Before the court hearing - besides oral deliberation - opinions may be put in the (digital) case file or shared amongst judges and support staff by e-mail. After the hearing the judges deliberate amongst each other in chambers and seek for consensus. If necessary they will vote, and then majority rules.

26. Where there is an oral hearing, to what extent does the oral hearing (as opposed to written submissions) influence the court's discussion, deliberation and decision-making?

Generally, after the preparation of a case an oral hearing will follow to hear the arguments of the parties involved, to clarify the facts and to answer the questions the judge(s) might have. The oral hearing may influence the decision to such an extent that the outcome will be opposite to the initial draft decision.

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

No.

I. The decision of the institution

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

The decisions are delivered by a one judge or three judge panel on behalf of the institution. In a three judge panel the individual judges are not free to deliver a separate (dissenting or concurring) judgment. On delivering a judgement, a panel of judges will take into account the jurisprudence of the court and internal guidelines in order to safeguard legal unity within the institution.

29. If the decision is delivered on behalf of the institution, does one judge write for the institution? If not, please explain how the judgment of the court is written for your institution. Are there formal rules or informal practice governing this?

Support lawyers will provide a draft judgment. The final judgment is work in progress and based on the file, the findings of the hearing, the draft and the remarks, additions, alterations, of the judges deciding the case.

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

We are not sure what is meant with 'recorded'. There is no audio or video recording of the reasoning and deliberations in chambers. That's secret. The judgment itself - written or oral - is provided with reasoning. As a rule, the court shall give judgment in writing within six weeks after the closing of the investigation, usually at the hearing (art. 8:66 GALA). The version of the ruling on paper is provided to the parties. Most decisions are also published on the website of the Council of State (www.raadvanstate.nl) on a weekly base. The court may give judgment orally immediately after the closing of the hearing (art. 8:67 GALA).

31. Is there a distinction in your Supreme institution between the Judgment (i.e. reasons) and the Order (i.e. the operative ruling of the court)?

No. Both the reasoning of the judgment and the Order have to be given at the same time, orally or in writing.

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

No

J. Timeframes for the decision-making process

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

The average time in 2018 for handling a case from introduction into the system to a conclusion, based on the total of cases, was 17 weeks. On average it took 28 weeks to deliver a judgment in the Spatial Planning Chamber, 37 weeks in the General Chamber and 8 weeks in the Aliens Chamber.

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

No, not in general and not in the GALA. However, if a case is not decided within a reasonable timeframe this may lead to financial compensation of immaterial damages (article 6 ECHR). A uniform period of four years has been set as the reasonable time for the disposal of disputes under administrative law involving an objection procedure and court proceedings at two separate court instances. This period includes two years for the objection procedure and the application for judicial review (based on six months for the objection to the administrative authority and 18 months for review by a district court) and two years for the appeal. If these time limits are not adhered to, the state must pay € 500 in compensation for non-pecuniary damage for every six months by which the reasonable time is exceeded. This stems from a judgment given by the Administrative Jurisdiction Division of the Council of State of 29 January 2014 (ECLI:NL:RVS:2014:188, also contains an English version of the judgment).⁴

⁴ This was the first judgment given by a grand chamber in an administrative law case. The five-member grand chamber comprised the President of the Administrative Jurisdiction Division, the Presidents of the Central Appeals Court for Public Service and Social Security Matters and the Administrative Court for Trade and Industry and a justice of the Supreme Court (the latter three being Extraordinary Councillors), and a State Councillor from the Administrative Jurisdiction Division.

The complexity of a case, the way in which the administrative authority and the courts have dealt with the case, or the conduct of the aggrieved parties in the proceedings may constitute justification for exceeding the reasonable time limit. For example, if the administrative authority or the courts call in an expert witness, this may mean, in certain circumstances, that the proceedings take longer than four years.

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

Yes, there are. For example the Spatial Planning Act (Wet ruimtelijke ordening) allows a maximum of twelve months to decide an appeal in specific cases. The Crisis and Restore Act (Crisis- en Herstelwet) allows (in general) six months for a decision. The Election Act (Kieswet) allows six days for a decision after receiving the appeal. The Immigration Act (Vreemdelingenwet 2000) allows the AJD 23 weeks to come with a final judgment in immigration cases. And there are many more. We can provide a more detailed list on request.

36. If there are no mandatory timeframes for deciding cases, is there a certain amount of time that it is considered appropriate for the decision-making process to take? If yes, please provide details.

In general and as stated above, a reasonable timeframe under article 6 ECHR is two years before financial compensation will be determined to be appropriate. As a internal guideline the objective is to finish a case in the Spatial Planning Chamber within 52 weeks, in the General Chamber within 40 weeks and in the Aliens Chamber within five weeks.

37. If there are mandatory timeframes applicable to the decision-making process in your institution, is it ever difficult for the court to abide by these timeframes? If yes, what are the main reasons for this?

Yes. If there are many cases with a mandatory timeframe – at the same time - it sometimes is not possible to abide these timeframes. In the Netherlands the legislator often makes use of mandatory timeframes. Furthermore, cases with mandatory timeframes will be prioritized, which has a negative effect on the handling time of all the other cases.

38. If there are no mandatory timeframes for deciding cases, but by convention or practice, there is a certain amount of time that is considered appropriate for the decision-making

process to take, is it ever difficult for the court to abide by this timeframe? If yes, what are the main reasons for this?

Yes. The number of cases and the complexity of cases are the main reasons, and of course the number of experienced support lawyers and judges to deal with the caseload..

K. Developments over time

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

No. The last time the General Administrative Law Act was significantly changed was in 2013. Nor has the internal working practice undergone significant changes.

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

N/a

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

N/a

L. Further comments or observations

42. Is there anything about your institution and/or its particular decision-making processes that you believe is not captured in the questions above, or any contextual information that you believe would aid our understanding of the decision-making processes in your court?

A few developments need to be mentioned. Some new instruments play an important role in the decision making process since 2013. That is the possibility to refer a case to an Advocate General, and to refer a case from a three judge panel to a Grand Chamber (five judge panel) in the light of the development and/or the unity of law (art. 8:10a, para. 4 GALA). In most Grand Chamber cases an Advocate General is requested to provide a conclusion.

Another instrument that has come into play is the *amicus curiae* ('friend of the court' or, as the Council of State prefers, 'those who think along' (*meedenker*)). The chair of the AJD can ask other persons than those who are the interested parties for their opinion on the case. This possibility can be of added value when the judgment involves the interpretation of technical issues or when a decision is of particular importance to the development and/or the unity of law. Since these interests can also be served by the referral of a case to an Advocate General, one case (about the interpretation of the administrative warning by an administrative

authority) has seen a combination of the involvement of 25 *amici curiae*, a conclusion by the Advocate General and a judgment by the Grand Chamber. The opinions of the amicus curiae were reflected upon by the Advocate General in his conclusion.

A third and “new” instrument is the ‘overview decision’ (*overzichtsuitspraak*), where a concrete case is used to give an extensive outline of the case law of the Council of State on a specific matter, such as damages stemming from lawful planning law (*planschade*) and the ladder of sustainable urbanization (*ladder van duurzame verstedelijking*). These decisions have been well received by practitioners of administrative law.

Thank you for completing this questionnaire.