October 2005

Answers to the questionnaire on the inventory and typology of review by the courts of administrative authorities in the 25 Member States of the European Union

DENMARK

Answers to the preliminary questions:

1. Danish public administration has traditionally been relatively informal. Administrative law in general is a relatively new academic subject in Denmark, though fragments of administrative law have always existed. Prior to the first Danish Constitution from 1849 the courts did perform some review over the administration of the King. The constitution meant that the courts' authority to perform such reviews in general were formalized and secured.

A decisive development, however, started among Danish legal theorists in the 1920's with a corresponding development at the courts. Perhaps one of the most significant developments in the judicial review by the courts is in fact accelerated by the creation of the office in 1955, of the Parliamentary Ombudsman who has constantly pressed for the development of requirements relating to administrative procedure, and the courts have also taken such an approach and gradually manifested some of those procedures and also general legal principles that should be guiding the public administration. This general development partially led to the adoption of the Administrative Procedures Act, which went into effect in 1987.

Court rulings over the last 50 years also show a marked tendency to reduce areas that previously were considered to be outside the courts' competence.

2. The review by the courts of administrative acts and actions aim to submit administrative authorities to the rule of law and protect individual rights. The courts do not review the functioning of the administration.

It is determined in section 63 (1), of the Constitution that the courts can review the "limits of administrative authority". It has been an ongoing discussion in

Danish legal theory as to what this concept means. According to earlier perception the courts must be considered incompetent in relation to the free (unfixed) discretion of the administration, and also in relation to decisions which according to statutory provisions, the so-called provisions of finality, had been kept clear of judicial review.

Today the perception is, however, that the courts are not incompetent in that sense. The courts can try all questions, but in practice the review process varies in intensity.

The intensity of the review depends on several factors. If the question is whether the administration has had the necessary authority to make a decision, this will be tried in depth. If it is a question of pure interpretation, where the content of a statutory provision must be determined, the administration's general understanding of the rule will be tried in depth. If, on the other hand, a statutory provision has been phrased imprecisely, and there is room for a certain amount of supplementation from the administration, the courts will normally be more cautious. The balancing of various (partially) contradictory considerations involved in administrative discretion will normally not be tried. Also, pure questions of expediency fall outside the review of the courts.

Generally, Danish courts are relatively moderate and cautious when deciding whether to turn down an administrative decision. As a starting point the courts trust the administration. The reason for this is that the administrative authority has a specially trained staff, and must follow certain rules of administrative procedure. Still, it happens rather frequently that administrative decisions are turned down.

3. By looking at the scope of application of the Administrative Procedures Act, an administrative authority may generally be defined as any public legal entity. This definition also covers administrative boards and administrative tribunals. Societies, associations, institutions etc. that are based on a private legal framework are not considered to be administrative authorities and nor is Parliament and its institutions, the Ombudsman or the courts.

4. The Danish classification of administrative acts identifies both individual acts that contain an administrative legal decision (unilateral act) towards a person, a group of persons or a legal person, as well as general normative acts that provide general provisions within a certain area.

Administrative acts by which an administrative authority signs a contract, e.g. with a private company, fall outside the scope of unilateral administrative acts.

Answers to section I of the questionnaire:
Who reviews administrative acts?

A - Competent bodies:

5. In many areas, e.g. taxation, the review of administrative acts will be undertaken by general bodies within the administration, e.g. The National Taxation Board, before it can then be reviewed by the courts. In other areas such general bodies do not exist and the review is then performed by the courts.

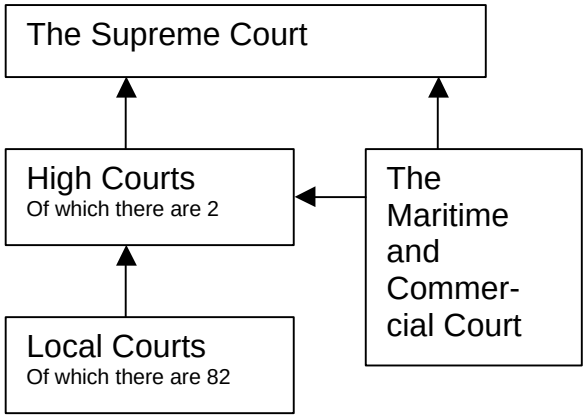
6. The Danish Court System consists of three levels. The basis of the system consists of 82 local courts that are geographically spread throughout the country. Cases will generally be lodged at the local courts, the judgments of which can generally be appealed to one of the two High Courts, which will then make the final judgment in the dispute.

Major cases are initially lodged at the level of the High Courts, the judgments of which may be appealed to the Supreme Court. The court system has only one permanent specialized court: The Maritime and Commercial Court in Copenhagen. For the purposes of this questionnaire the Maritime and Commercial Courts is, however, not relevant and will not be described further apart from the fact, that the Maritime and Commercial Court will always act as a court of the first instance, and that its judgments can in some cases be appealed to the High Court, in others directly to the Supreme Court.

All the courts are competent to review administrative acts. In some administrative areas it is prescribed that a disputed administrative act has to be reviewed at the High Court in the first instance. In no situation is the review assigned to a specialized chamber.

Chart 1 below provides an overview of the court system.

Chart 1. The organization of the Danish court system



B – Rules governing competent bodies:

7. The authority of the courts to review any administrative act is laid down in the Constitution (section 63). Generally the courts are competent to perform a full review of all aspects of an administrative act. General legal principles for this review have evolved through case law and under influence of legal theory. In older legislation there were occasionally provisions according to which certain administrative acts were final. This, however, does not exclude all aspects of judicial review by the courts. In any event the courts can always make a review of whether the act meets all formal requirements and whether it respects general legal principles.

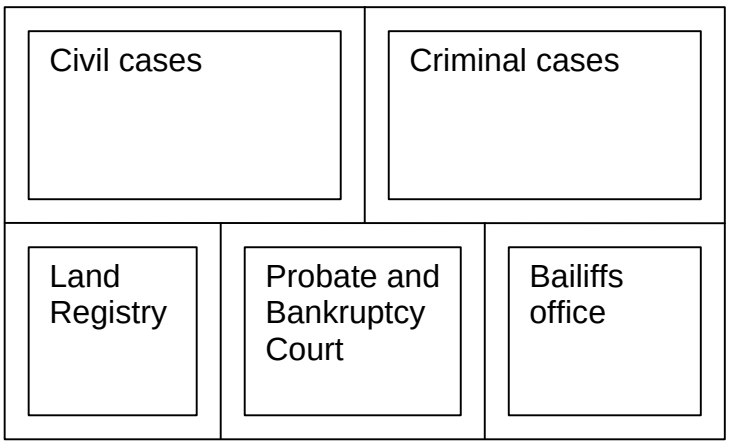
8. There are no administrative courts or tribunals in Denmark. For further explanation see e.g. the answer to question No 60-62.

C – Internal organization and composition of competent bodies:

9. Judicial review is assumed by ordinary courts. Formally each court on the local level performs the task of reviewing civil and criminal cases along with task such as the registration of rights concerning real property, the Bailiffs office, which will perform service of injunctions, executions of e.g. judgments and certain instruments of debt, and there will be probate and bankruptcy proceedings.

The review of administrative acts is generally considered to be a civil lawsuit. The judgements and decisions by the local courts can (with a few exceptions) be appealed to the High Court. The High Courts consist of several chambers of which none are specialized in any particular field as is also not the case for the two chambers of the Supreme Court. Chart 2 below provides an overview of the internal organization of a local court.

Chart 2. The internal organization of a local Court



10. Denmark does not have a system of administrative courts.

D – Judges:

11. Judges who review administrative acts do not belong to a specific category. In principle all judges can review any case brought before the Danish courts.

12. See the answer to questions 11 and 13.

13. Judges (and deputy judges) must have a law degree from a Danish university. Generally judges have a professional background as deputy judges, lawyers or as civil servants of at least 10 to 15 years before they are appointed.

14 – 15. Once a judge is appointed he or she can decide to remain as such for the rest of that person's professional career. The judge may however also apply for transfer to another court within the designated level, e.g. the local courts, or e.g. apply for a position at the High Courts or vice versa, or decide to leave the court system in order to pursue a different carer all together, e.g. in the public administration or as a lawyer.

E – Role of competent bodies:

16. Generally (for exceptions see also the answer question No 2, 7 and 46) the courts can perform a full review of an administrative act. Apart from reviewing the lawfulness of an act, the judge may therefore overrule an act, cancel contracts awarded by an administrative authority or order the administrative authority to make a certain act, e.g. give a license, give permission to something etc. According to modern Danish legal theory the courts can also modify an act when, compared to the authorities, the courts are in an equally good position to appreciate all aspects of a case. The main tendency is, however, that the court will not modify the act but rather order the authority to reconsider the act according to the principles stated in the court ruling. In addition the judge can award damages to any party that might have suffered harm from the authorities' unlawful act or as a result of the absence of a required act.

17. There are no mechanisms for the delivery of preliminary rulings.

18. The competent courts only have a judicial function.

19. See the answer to question number 18.

F – Allocation of duties and relationship between competent bodies:

20. The highest courts of appeal, i.e. the High Courts and the Supreme Court, do not have an instrument or a procedure to ensure the harmonisation, uniform application and interpretation of the law as such. Each separate court review will concern the parties involved. A ruling by one of the High Courts and especially by the Supreme Court, that clarifies the understanding of the legislation or central legal principles etc. will however always have a significant effect on the way the lower courts interpret the legislation.

Answers to section II of the questionnaire:
How are administrative acts and actions reviewed by the courts?

A – Access to justice:

21. The court can only review cases at the request of a party (see the answer to question No 22). It is also a precondition that there is an actual act by the administrative authorities. This act may however be constituted by the authorities' refusal to make a certain decision. It is generally not a precondition that all means of administrative recourse are exhausted. Such a procedure is, however, prescribed by law in some areas.

22. Any person, group of persons, legal entity (private or public), company etc. whose rights or interests are affected by an administrative act can challenge the act at the courts. Two state authorities, e.g. ministries, cannot file lawsuit against each other. However, it happens that a local authority e.g. a municipality/commune files a court case against another municipality or against a state authority, see also the answer to question No 23.

23. A court case may be inadmissible if the party lodging the case has no legal standing, i.e. a relevant interest in the review of the act. In recent years the Danish courts have experienced an increasing number of cases concerning the review of broad and general (normative) administrative acts, for instance cases about the legality of Denmarks accession to the Mastricht Treaty and the legality of a major bridge construction project etc. In these

cases the review of the act can be considered to be of significant importance for any person living in Denmark or in a general area, and the courts have under such circumstances shown a tendency towards allowing individuals or groups of individuals to file cases against the State/the authorities (actio popularis). See also the answer to questions No 21 and 22.

24. Generally there are no time-limits before which an applicant has to bring legal proceedings against the authorities in question. There are a few exceptions where a time-limit is prescribed by law, e.g. the review of a ruling by the National Taxation Board must be brought before the courts no later than six months after the ruling was completed by the board. In such cases there is an obligation to give the claimant relevant information and advice concerning such time-limits. If the plaintiff has a valid explanation for not observing the time-limit, the courts may decide to review the case even though such time-limits were not respected.

25. All administrative acts are open to review by the courts.

26. Cases lodged before a local court are not subject to a screening procedure. Before a ruling can be appealed to the High Courts, a general screening procedure applicable to all civil cases will be administered by the High Courts, i.e. if the case has an economic value no higher than 10.000 DKK, (approximately 1,340 EURO) the appeal is subject to the permission of the independent Board of Appeals. If a question of inadmissibility arises before the High Court the question of inadmissibility is subject to an oral or a written hearing right after a party has appealed, in a procedure that normally involves one judge.

With a few exceptions proceedings concerning the judicial review of administrative acts rendered by central national authorities and central administrative boards must be lodged at the High Courts in the first instance. A judgement rendered by the city court and appealed to the High Court cannot subsequently be appealed to the Supreme Court, unless permission is given by the independent Board of Appeals. There is no screening procedure at the Supreme Court concerning cases appealed from the High Courts.

27. There are no formal requirements to the writ other than that it is in writing and signed. The writ must however also make it possible to identify the complaint and e.g. identify the administrative act and the administrative authority in question etc.

28. The possibility of bringing proceedings via the Internet is under consideration. Amendments of The Danish Civil and Criminal Procedure Code have been adopted to ensure that documents received by the courts electronically will have the same legal status as other documents. The implementation, however, awaits the development of a technical system that meets the necessary security demands.

29. There is a registry fee for lodging an application for judicial review and a fee when the case is deemed ready for the final hearing and deliberation. If a person is financially disadvantaged it is possible for that person to apply for public legal aid, which would then also cover these pecuniary charges.

30. It is neither legally nor in practice compulsory to use a lawyer/advocate at any level in the Danish court system, though the vast majority of litigants will actually choose to have legal representation. The court may, however, in situations where the court has serious doubts as to whether the unassisted plaintiff is capable of handling the proceedings in a proper manner, order the plaintiff to hire/be assisted by an advocate. Such a decision can be appealed to a higher court.

31. The costs of the proceedings may be paid through legal aid. Financial aid is based on the financial situation of the applicant and the importance and implications of the case. Legal aid is granted by an administrative body outside the court system. This body is an administrative authority and its decision to e.g. refuse legal aid, is in principle an administrative act that is open for review by the courts.

32. In practice the answer is no.

B – Main trial:

33. The fundamental principles governing the main trial hearing are, that the hearing is public and oral, that the court can only consider evidence that is presented during the hearing, that the parties themselves are in control of what is to be reviewed and what legal arguments and evidence should be presented, that the parties be given opportunity to contradiction (e.g. cross examination of witnesses etc.) and that in the end it is the prerogative of the court to asses the evidence presented to it. These principles derive from national law and national and international case law from e.g. the European Court of Human Rights.

34. The Danish Constitution states that the judiciary is an independent body. The Government can neither dictate the rulings of the courts nor has the government the power to dismiss a judge. The impartiality of the judiciary has thereby effectively been ensured. Additionally, there are detailed statutory provisions on impartiality. Each party may contest the impartiality of the judges. The court will rule on the issue and the ruling is subject to appeal. Furthermore, parties can lodge complaints at the Special Court of Indictments and Revision that has the power to reprimand and/or dismiss a judge. The Danish courts are also paying close attention to the rulings of The European Court of Human Rights.

35. In the court of the first instance the applicant may rely on any legal argument or information. There are limits as to what changes the case can undergo during appeals. This insures that the case being presented to the higher court has the same substance as it had when it was presented to the lower court. This is to insure that every case can receive a judicial review in to instances.

36. A third party with a legal interest in the outcome of the court case can intervene and support one of the two original parties to the case.

37. The State does not have a representative who can submit pleadings in cases concerning administrative law.

38. The Danish system does not contain an institution or a person who plays a role analogous to that played by the French commissaire du gouvernement.

39. The proceedings can come to an end prior to a decision made by the court in two ways. The party that lodged the case may at any time during the proceedings choose to discontinue the action. The parties may at any time conclude a friendly settlement.

40. Except for the initial writ, which the court will serve on the adverse party, it is up to the parties of the case to forward the various applications, pleadings etc. to each other.

41. See the answer to question No 33.

42. It is a general principle that all hearings take place in public, but the deliberations of the judges will always take place in camera. Only under very special circumstances may or must the hearing itself take place in camera, and then mainly because the information disclosed during the hearing will be very sensitive, e.g. cases concerning the forcible removal of children from their parents. Camera hearings can also be used by the court as an instrument to maintain order in the court room during the hearing. See also the answer to question No 33 and 36.

43. Deliberations take place in camera after the closure of oral argument. Only judges appointed to the case take part in the deliberation, and the only other person allowed in the room during deliberation is a secretary/law clerk responsible for the protocol. These provisions are laid down by law and date back to 1936. A judge is not excluded from handling a case where the judge has publicly stated opinions on e.g. general aspects of the law relevant to a specific case. The opposite would be the case if a judge publicly states an

opinion on the outcome of a case not yet heard by the court. This is not likely to happen in practice.

C – Judgement:

44. Traditionally the grounds given in a Danish judgment will be brief and concentrate on the deciding points of the case. Grounds can be given in a more elaborated fashion and can contain general remarks according to the preferences of the judges. Danish judges are reluctant to give obiter dicta.

45. The most common reference norms will be found in the Danish legislation, e.g. the Administrative Procedures Act. Reference to both Community Law and the European Convention on Human Rights and the jurisprudence stemming from these legal areas is not uncommon. It is unlikely to find grounds given solely with reference to the personal conviction of the judge.

46. As mentioned earlier in the answers of questions No 2, 7 and 16, the courts can perform a full review of an administrative act, but in some areas the courts will display restraint. The courts can always perform a full review of the correct interpretation of the legislation. The courts can likewise perform a full review of whether the administrative authority applied the legislation in question correctly. In the case of a vague or flexible regulation the courts will normally review questions of whether the regulation is applicable or not, but show restraint when it comes to the authorities' appreciation of the facts. The courts fully review whether or not the administration has applied criteria in its decision that are relevant and in conformity with the goals of the specific regulation and with general legal principles. For instance the court will examine whether the party concerned has been properly heard by the administration and whether the administration has observed the principle of proportionality.

47. According to the proceedings and the outcome of the case the court will decide which of the parties should pay the costs of the case as a lump sum.

The courts may decide that the parties shall share the cost or that neither party pays cost to the other party.

48. The number of judges involved in the case is determined by the judicial level. At the local courts only one judge will take part. At the High Courts three judges will take part. At the Supreme Court at least 5 judges will take part, a number that may be increased according to the importance of the case and to the principles at stake.

49. Where a case is heard by several judges, each judge is free to hold a dissenting opinion – an opportunity that is used quite often.

50. Judgements are always delivered in writing and can additionally, if one or both parties should so wish, be delivered orally in court. The parties will be notified of the delivery date in advance. The sole exception to this is a special procedure at the Supreme Court where the court in consultation with the parties may decide, that the case in question is suitable for a more speedy written procedure. Under these circumstances the oral hearing is replaced by the written procedure, and the parties are not informed of the delivery date in advance.

D – Effects of decisions and execution of judgement:

51. The doctrine of stare decisis is not in use in Denmark. The judgement will of course always be binding on the parties of the case (res judicata), and the fact that the administrative authorities are obliged by the Constitution to respect the rulings of the courts, ensures that the general lessons learned from the case will influence future administrative praxis. The effect of a ruling on later judgements by the courts is determined by various factors. A court ruling from a high court and in particular from the Supreme Court holds a considerable amount of authority, especially when the ruling is recent. This authority may be reduced over time, especially in areas where society has undergone significant changes.

52. The court cannot put a time-limit to the effects of a judgement.

53. It is laid down in the Constitution that the administrative authorities must comply with the courts' final decision, and they do so in practice. Failure to implement the decision would bring major embarrassment on the authorities in question and they could be held liable. Additionally, public officials responsible for such a lack of compliance could face disciplinary, civil and criminal proceedings. Theoretically it is possible to ensure the implementation through injunction by the Bailiffs office. In the reverse situation, at least to some extent, the administrative authorities have the power to implement a decision according to which a private person owes e.g. a tax by offsetting the debt by withholding a percentage of that person's salaries, or social welfare payments. In other situations the authorities will have to seek execution through the Bailiffs office.

54. There is a constant effort in Denmark towards reducing the time needed for the disposal of cases before the courts. Different measures have been implemented to achieve this, e.g. modern technology and the introduction of written preparations prior to the hearings. There is a clear awareness among judges that no excessive delays in the preparation must occur. This awareness is partially inspired by the rulings by the European Court of Human Rights. Other measures are under consideration such as simplified proceedings in small cases. If a case has been delayed to such an extent that it would be an infringement of the European Convention on Human Rights, compensation may be awarded.

E – Remedies:

55. The judicial review performed by the lower and higher courts is in principle the same. See also the answer to question No 23.

56. As described in the answers of questions No 26 and 35, the general rule is that a case can be appealed to a higher court for a new full review, the exception being cases before the local courts of an economic value no higher than 10,000 DKK (approximately 1,340 EURO). If the case has no economic value, it will be open for appeal. With a few exceptions applications for judicial

review of administrative acts done by central authorities and central administrative boards shall be lodged at the High Courts in the first instance, whose judgements can then be appealed to the Supreme Court.

F – Emergency proceedings and summary jurisdiction / applications for interim relief:

57. There are no general emergency and summary jurisdiction proceedings, and the lodging of an application at the court will not free the plaintiff from complying with the administrative act in question. It is assumed in Danish legal theory that a person cannot be held liable for failure to comply with an administrative act which is later on overruled by the courts. It is also assumed that the courts under extraordinary circumstances and as an exception may give the applicant interim relief from complying with the act. The above mentioned assumptions are supported by Supreme Court rulings. An example from Danish case law concerned a question on EU competition law where bringing the case before the Court of Justice of the European Communities was considered. The Supreme Court pointed out, that under such circumstances, and when interim relief was warranted under EU law, a Danish court could also give interim relief during the proceedings before the Court of Justice of the European Communities. Quite often the administrative authorities declare that they will not seek to implement the act as long as the court proceedings are pending.

58. See the answer to question No 57.

59. See the answer to question No 57.

Answers to section III of the questionnaire:
Can administrative disputes be settled by non-judicial bodies?

60. The Danish system of settling administrative disputes is based on the principle that by far the largest amount of specific disputes should be resolved by the administrative authorities in a system of recourse to higher authority.

61. Additional to the general system of recourse as mentioned in the answer to question No 60, Denmark has many independent administrative boards. These boards have been created in order to ensure a uniform and coherent administrative praxis. The boards are composed of members with a special insight in the administrative area in question, and the chairperson will (often) be a judge, thus ensuring compliance with fundamental legal principles. They can be seen as a substitute to administrative courts, and the decisions of the board may be brought before the courts. Furthermore Denmark has an independent Ombudsman who on his own accord or at the request of e.g. a private person can choose to review every aspect of the administrative act.

Using the system of recourse as mentioned in No 60 and/or one of the administrative boards (and/or recourse to the Ombudsman) does not preclude recourse to the judicial courts. It is in some areas a precondition for recourse to the courts, that administrative recourse has been exhausted. The Ombudsman is not a part of the administrative system of recourse, and recourse to the ombudsman is never compulsory.

62. A dispute over an administrative act may always find its solution in a friendly settlement. No special procedures other than described in answers to questions No 60 and 61 exist to achieve this.

Answers to section IV of the questionnaire:
Administration of justice and statistic data.

A – Financial resources made available for the review of administrative acts:

63.

Chart 3. Overview of what proportion of the Danish State budget is spent on the administration of the Danish court system

Year	State budget (mio. EURO)	Allocated to the admin. of the courts (mio. EURO)	Percentage allocated to the admin. of the courts
1994	71,580	169.2	0.24 %
2003	91,160	218.5	0.24 %
2004	94,602	238.5	0.25 %

64. The total number of employees at the Danish Courts by March 2005, excl. Greenland and the Faroe Islands:

Judges:	340
Temporary judges:	28
Deputy judges:	282

65. All judges and deputy judges can find themselves in a position where they will be reviewing administrative acts.

66. Generally judges do not have secretaries/assistants with a university degree in law. One exception is the Supreme Court, where the judges are to a certain extent assisted by deputy judges.

67. Danish courts have libraries and the means to acquire any material relevant to a case, e.g. books, law journals, legislation, and relevant case law.

68. All Danish courts have access to information technology like the internet and additionally an intranet within the court system. All courts thus have the

means to search the internet for relevant websites and national and international case law made accessible on the internet. All courts have computer networks, and computers are used for a wide variety of tasks such as file management, data bases, for writing decisions and correspondence etc.

69. There is a general website for all Danish courts. See www.domstol.dk. Additionally all Danish courts have their own website where general information about the specific court in question is available, e.g. practical information such as location, opening hours, phone and fax numbers, a list of pending cases and general instructions and guidelines to the public concerning different kinds of court proceedings. The websites of the Supreme Court, the Maritime and Commercial Court and to some extent the High Courts also make short summaries of judgments accessible.

B – Other statistics and figures:

70. - 73. The charts 4 – 6 below contain information regarding the civil lawsuits before the Danish courts, i.e. the number of cases lodged, heard and consequently still pending by the end of the year 2003 and 2004. There are some data available concerning the average time it takes a case from being lodged and till a judgement is reached. It is not possible to give specific information about what percentage of these cases concern administrative acts except for the Supreme Court (cf. chart No 7).

Chart 4. Local courts

Reference year	Cases lodged	Cases disposed of	Cases pending 1/1 2005	Average time to judgment, real time
2003	127,335	128,683	38,523	14.0 months
2004	130,229	132,334	-	13.7 months

Chart 5. The High Courts

Reference year	Cases lodged	Cases disposed of	Cases pending 1/1 2005	Average time to judgment, real time
2003	4,481	4,431	4,538	27.3 months* 12.7 months**
2004	4,180	4,605	4,114	26.9 months* 12.3 months**

* Cases in the first instance at The Eastern High Court.
** Appealed cases at The Eastern High Court.

Chart 6. The Supreme Court

Reference year	Cases lodged	Cases disposed of	Cases pending 1/1 2005	Average time to judgment, real time
2003	304	259	429	23 months
2004	282	200	460	23.8 months

74. It is not possible to indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts, since no such data have systematically been gathered.

75. It is possible to indicate the volume of litigation per field concerning the cases heard at The Supreme Court. Please see chart 7 below.

Chart 7. Volume of pending litigation per field at the Supreme Court

	2003		2004	
Administrative field	Number of cases	% of all adm. cases	Number of cases	% of all adm. cases
Taxation	37	39,8 %	54	46.2 %
Expropriation	3	3.2 %	3	2.6 %
Work related injuries	10	10.8 %	7	6.0 %
Employment	1	1.1 %	4	3.4 %
Social pensions	1	1.1 %	4	3.4 %
Injuries on medical patients	8	8.6 %	8	6.8 %
Others	33	35.5 %	37	31.6 %
In all	93	100.1 %	117	100.0 %

C – The economics of administrative justice:

76. No.