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Legal Research Service
Matter followed by: G Delaloy / MG Bonfils

The administrative justice in Europe.

Reference: Questionnaire on the assessment and typology of administrative control in the 25 Member States of the European Union, transmitted June 7 2005 by l'ACEJASUE.

This questionnaire aims to know as specifically as possible the methods, bodies and means of control of the administration's acts and actions in the 25 Member States of the European Union.

Considering the diversity of these Member States' legal systems, the questions raised attempt to encompass the different situations while trying to obtain specific answers in particular cases.

Complementary explanations may be presented in italics under a question. They integrate elements shown in the Recommendation R (2004) 20 of the European Convention on Human Rights. The text is appended.

Inasmuch as possible, it is advisable that the answers systematically underline the difference between the subordinate courts and the supreme courts.

Preliminary

1.

If the principle of separation of the administrative and judicial authorities originates in the edict of Saint-Germain-en-Laye of February 1641, it was established, in its modern accepted meaning, by the revolutionary law of August 16 and 24, 1790. The creation, in Year VIII (1799), of the councils of prefecture and the Council of State, heir of the king's council, completed the birth of French administrative justice.

Thanks to the recognized special nature of the rules applicable to the administration by the Court dispute tribunal's Blanco ruling of February 8, 1873, and according to the law of May 24, 1872, that enabled the Council of State to become a full-fledged adjudicator making its own decisions, according to the system called "delegated justice," whereas until that time the final decision lay with the executive power, administrative law will develop, and consequently the administration's control will assert itself.

Since the early 19th century, the powers of the Council of State, of the administrative courts of appeal, created in 1987, and of the administrative courts, which in 1953 succeeded the councils of prefecture as common law judges in the administrative disputes of first resort, never ceased to assert themselves at the initiative of the legislator or the adjudicator him/herself, so as to exert ever broader and more efficient control of the administration's acts and actions.

2.

Despite the development of a cost-benefit analysis of the action of the administration, the judge does not pronounce on the appropriateness of the selections made by the administration. In this sense, he/she does not exercise control over the administration's "good working order." However, he/she checks that the operation is in compliance with the law, meaning that the administration acted in compliance with all written standards imposed upon it according to the hierarchy of the standards established by French public law.

He/she may be led to cancel, even amend a disputed administrative decision. He/she may also sentence the administration to compensate the victim of harm or loss brought about by its decisions or actions. If he/she sometimes must rule on appeals bringing the public power's liability into play for a malfunction of the administrative services, the jurisdictional control only intervenes in case of imposition on a right. The adjudicator is therefore always led to weigh an individual right against the public interest and his/her control aims to ensure a balance between the prerogatives attributed to the administration and the constraints upon it. Administrative law aims to conciliate the powers granted to the administration for accomplishment of its missions with the respect for the rights and freedoms attributed to individuals in order to recover the structurally unequal relationships between the administration and the citizens for whom it is responsible.

This guarantee of rights is also ensured by a power distribution between both orders of courts: while the adjudicator is a guardian of public liberties, the judicial judge was attributed a special competence to settle disputes questioning administrative policy, at the moment when certain individual rights such as, for example, the right of ownership, are concerned.

Therefore the entire system of jurisdictional control of the administration's policies tends to protect the population's rights through subjecting the administration to the rules of law.

3.

In France, the term administration may mean alternatively a body or an activity. In its organic meaning, the administration encompasses the State, the local governments and the public institutions which depend upon it.

In its functional meaning, the administration is also made up of private corporations responsible for the execution of administrative public service, whether or not they exercise prerogatives of public power, as opposed to those responsible for the execution of industrial and commercial public service that remains subject to private law and the judicial judge's control.

4.

The administration's acts are of two types: unilateral acts and contracts.

As for unilateral acts, they have or do not have a decisive character, depending on whether or not they modify the legal organization by producing legal ramifications likely to provoke grievances. Among the decisions are the regulatory acts, whose scope is general and impersonal, and individual acts in which parties concerned are identified by name.

In contractual matters, the classification is organized around the administrative nature or private law of the contract to which the administration is a party.

I - Who controls the administration's acts and policies?

A – The competent bodies.

5.

The administration's control is ensured by administrative courts independent of the administration (separation of the administrative and judicial functions) and separate from the judicial courts (jurisdictional dualism). A control may also be ensured by administrative agencies, but then these agencies' decisions themselves are subject to jurisdictional control.

6.

There are two orders of courts: the judicial order and the administrative order, each made up of common-law courts and specialized courts.

The judicial courts include the civil courts and the penal courts. In first instance, the common law civil court is the regional court (TGI); the specialized civil courts are, notably: the small claims court, the commercial court, the industrial tribunal, the court of social security matters, and the court of rural leases. The penal courts are: the police court, the criminal court, and the court of Assizes. All appeals of the civil and penal court judgments are brought before the court of appeal except for the appeals of rulings of the court of Assizes which lies with another court of Assizes. The rulings of the courts of appeal may be subject to appeal before the Court of Cassation, the supreme court of the judicial order.

The administrative tribunal is the administrative court of common-law in first instance. The specialized administrative courts are numerous and diverse, such as, for example, the financial courts (regional account chambers and Court of Accounts), the social security courts (county commissions and central commission of social security), the disciplinary courts (Court of budgetary and financial discipline, Higher Council of magistrate, ordinal courts, university courts…). The appeal of their judgments is, in principle, brought before the administrative courts of appeal, whose rulings lie, in appeal, with the Council of State. In addition to its role of cassation, in which capacity, like the Court of Cassation, it only exercises control over the proper application of the rules of procedure and law by the jurisdictional decisions contested before it, the Council of State is also, in certain disputes such as that of the regulatory acts of the ministers, judge in first and second resort.

The concurrence of competence with both orders of courts is determined by the Jurisdictional Conflict Court, made up of an equal number of members of the Court of Cassation and of the Council of State.

The Constitutional Council supervises the laws' compliance with the Constitution; it does not have competency regarding the administration's acts or policy.

Judicial order	**Administrative order**
⇑ Court of Cassation ⇑ ⇑ ⇑	Council of State

<table>
<tr><td colspan="4">Court of Appeal</td><td rowspan="2">Court of Assizes</td><td>Administrative Court of Appeal</td><td>Specialized Administrative Courts of Appeal</td></tr>
<tr><td>TGI</td><td>Specialized civil Courts</td><td>Police Court</td><td>Criminal court</td><td>Administrative court</td><td>Specialized Administrative Courts</td></tr>
<tr><td colspan="2">Civil Courts</td><td colspan="3">Penal Courts</td><td></td><td></td></tr>
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B - Status of the competent bodies.

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8.

The administrative court is not subject to any provision of the Constitution that is related only to judicial courts. However, the Constitutional Council attributed constitutional validity to the existence and independence of the administrative courts (by a decision of January 23, 1987). It also attributed a reserve of competence to each order of court.

The disputed powers and duties of the administrative courts are specified by law in the code of administrative justice. The sensitive questions of boundaries between both orders of courts are determined by the Jurisdictional Conflict Court.

C - Internal organization and composition of the competent bodies.

9.

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10.

The administrative courts (37 in number) and the administrative courts of appeal (8 in number) are organized in chambers whose number and specialization vary according to the court's staff and the choice of internal organization made by the head of the court. As for the Council of State, it only has one section (the litigation section) with jurisdictional responsibilities (the other sections, called "administrative," assure the advisory function of the Council of State). The litigation section is made up of 10 subsections dedicated to certain litigation matters. The judgment panel for common law is the union of two of these subsections (9 members); if the case is more delicate or sensitive, it might be judged in the litigation section (meeting of the subsection presidents, of the section president and his/her deputy presidents; 17 members) or in litigation Assembly (meeting of the section presidents presided by the Council of State's Vice-President; 13 members).

D. The judges.

11.

The members of the administrative courts traditionally do not have the capacity of "magistrates" in the meaning of the French Constitution, a status reserved for the members of

the judiciary order. In fact, they come under the general status of public service. This is why the texts applicable to the administrative court members did not include any original rule in comparison to those applicable to other civil servant bodies for a long time. However, in the eighties, this situation saw an evolution which reinforced the statutory independence of the administrative court members, such that the primary trend today is to liken them to magistrates; this, incidentally, is how they are referred to in certain texts and all the rules governing their career's development ensure them, de facto, complete independence.

While the judicial order's magistrates are gathered in one single body, the administrative judges belong to two different bodies: that of the Council of State's members and that of the members of the administrative courts and administrative courts of appeal. However, if the rules applying to them have long been found in various text, the Council of State's members, like those of the administrative courts and the administrative courts of appeal, are from now on subject to the provisions of the administrative justice code.

12.

Recruitment methods for administrative magistrates are of two types: the "normal" recruitment through a school's admission test and lateral recruitment.

Since 1945, the auditors (first grade in the body of Council of State members) have been recruited through the National School of Administration, just like the members of the administrative courts and the administrative courts of appeal.

Recruitment via a test combines with the "exterior round," enabling the government to appoint within the administrative court a limited percentage of members it itself selected. The proportions between both methods of entry vary according to the court, the exterior round being more restrictive within the Supreme Court. A portion of the appointments outside the Council of State is reserved for the members of the administrative courts and administrative courts of appeal. The appointments in the exterior round are justified by the concern over recruiting persons who acquired professional experience with other civil servant bodies – servicemen, diplomats, prefects... – or in other occupations – academics, attorneys... – and therefore being able to provide the administrative courts with valuable talents. They are pronounced upon proposition or after the opinion of the Council of State's Vice-President.

In the courts of first resort and of appeal, in addition to the exterior round itself, a permanent system of lateral recruitment, there is another form of lateral recruitment called "complementary recruitment," done through a test. Conceived as an non-standard method of recruitment and organized on a temporarily basis, it became the habitual norm and permits meeting the needs brought on by the increase in litigation activity.

13.

While, for the judicial order, the National School of Magistrates prepares exclusively for the exercising of magistrate's duties, the National School of Administration prepares indiscriminately for the high level civil service.

The administrative court's history, originally one with the active administration, explains the existence of this common melting pot for training of future administrators and administrative order magistrates.

Candidates for the administrative magistrate complementary test must pass tests that are specifically legal (as opposed to the National School of Administration's test, more general) and, once appointed, receive specific internal training, also attended by the magistrates appointed via the exterior round.

14.

At the Council of State, the rules for promotion are similar to the common law of civil in the promotion level; however, they greatly diverge with respect to promotion. There are two levels in the grade of Councillor of State, eight in that of maître des requêtes (master of petitions), four in auditor first class, and seven in auditor second class. The promotion level is based on seniority. The grade promotion derogates from common law insofar as no list is established of officers slated for promotion. All promotions are made by decree, on a proposal from the Minister of Justice. Yet only those whose names are introduced by the Council of State's Vice-President deliberating with the section presidents may be promoted. In addition, the introductions must be submitted for the advisory commission's opinion. If, theoretically, the promotions within the Council of State are made by selection, in practice the introductions are made according to the order on the list, that is, by following the rule of seniority, which makes it possible to ensure the Council of State's members true statutory independence.

The single body of the administrative courts and administrative courts of appeal incorporates three grades: councillor, first councillor, president. Hierarchical advancement is achieved by seniority, except for access to the three last levels of the president's grade, which is made by selection, and after registration on an annual roster of eligibility, established by proposition from the Higher Council of the Administrative Courts and Administrative Courts of Appeal. Grade promotion is made by selection through registration on the list of officers slated for promotion, which is established by proposition from the Higher Council of Administrative Courts and Administrative Courts of Appeal.

15.

The administrative magistrates may, if they wish, temporarily leave their jurisdiction to accomplish the statutory mobility instituted for body members recruited through the National School of Administration. This mobility may be exercised both in the "active" administration and in the private sector.

They also may exercise external temporary duties through placement, temporary assignment, delegation, detached position, or leave of absence.

E - Functions of the competent bodies.

16.

French administrative law has competencies both regarding the appeals of full jurisdiction and law litigation.

The law litigation includes three types of appeals: appeal for excess of power, appeal to assess legality and appeal to declare illegality.

The appeal for excess of power allows asking for cancellation of a unilateral administrative act due to its illegality, that this illegality results from the incompetence of the act's perpetrator, a technicality, an abuse of power or violation of the law. Administrative contracts cannot be subject to this type of appeal, except in the context of the prefectorial application for judicial review enabling the prefect to obtain the direct cancellation of all local governments' acts.

The appeal to assess legality permits obtaining, on a court's referral, of the judge's assessment of the legality of an administrative, unilateral or contractual act without any direct consequences.

The declaration of illegality, which can only be exercised by exception, has no effect on the act referred to and is only authorised in relation to that which is judged.

In full jurisdiction litigation, the judge's powers are much broader than in the law litigation of legality since he/she may, beyond the cancellation, pronounce sentences and, more generally, substitute his/her own decision for that which is deferred to him/her. This litigation is exercised in very different domains, mainly contractual and extra-contractual liability litigation, but also in some special disputes, such as tax, electoral disputes, facilities classed for environmental protection, or the litigation regarding edifices in danger of decay.

Finally, it is important to mention a third category of litigation: litigation of suppression corresponding to the exercise, not of appeals against an act or related to an act, but of proceedings against persons with a view to pronounce a penalty in cases of damage to material integrity or the allocation of public domain (traffic violations). This type of litigation also encompasses lawsuits exercised before the disciplinary courts.

17.

The administrative judge, like the judicial judge, has in principle full jurisdiction enabling him/her to rule on the whole of the matter including on questions which, considered separately, appear to lie with another court or another order of court.

However, it can happen that an real difficulty for which a solution is required for resolution of the proceeding justifies referring the question to the judicial court, notably in relation to property law and ownership, nationality, condition and capacity of persons, or when it is necessary to rule on the existence, validity and scope of a convention of private law. The judge who establishes the existence of a prejudicial question must defer from ruling on substance until receiving the competent authority's decision about the question he/she refers. The administrative judge is bound by the decision of the court to which the prejudicial question was posed and must comply therewith.

Mutually, when a dispute is referred to him/her, the administrative judge may wonder about how to qualify a particular act or situation. Then he/she must defer from ruling and pose a prejudicial question to the administrative court. Sometimes also, the solution of a legal proceeding brought before a court of judicial order questions the regularity of an individual, regulatory, or even contractual administrative act. The civil judge will then have to invite the parties to refer to the administrative judge with an appeal for assessment of validity. Finally, the civil courts may themselves only interpret regulatory acts, while the repressive courts are competent, according to the penal code, to assess the legality and interpret both regulatory and individual administrative acts.

18.

In addition to their jurisdictional powers and duties, the administrative courts carry out advisory duties.

The Council of State is responsible for advising the government. It is compulsorily referred to for all bills before they are passed by the Council of Ministers and before they are filed before Parliament, as well as draft orders before they are passed by the Council of Ministers. It is also referred to for draft decrees that the legislator provided to be made in Council of State and decrees amending decrees made in Council of State. Finally, the Council

of State is referred to for all draft community acts addressed to the French government by the European Commission for the government to indicate whether the provisions considered would fall under the domain of the law if they were made by French authorities. If this is the case, the draft act is forwarded to the French Parliament for opinion.

In all the other cases, consultation of the Council of State is not compulsory but the government may always submit text to it for opinion.

In addition, the government may submit to the Council of State a question raising a particular legal problem for clarification.

The administrative courts and the administrative courts of appeal may also be brought to give their opinion on the questions submitted to them by the prefects. All questions concerning the powers and duties of the French regional prefects are submitted to the Administrative Court of Appeal, the others to the administrative court.

19.

The duality of the French Council of State's powers and duties leads to two types of groupings: the administrative sections and the litigation section.

This double membership of the members leads them, when they are faced with a disputed case involving text regarding which they had competency in the administrative group, to spontaneously abstain from taking part in the judgment. This practice of backwardation also allows prevention of any violation of the judgment panel's rule of impartiality, as interpreted by European jurisprudence. The European Court of Human Rights has never pronounced on grounds drawn from the cumulated advisory and litigation functions within the French administration courts as that would be contrary to the convention.

F - Function and relationship distribution between the competent bodies

20.

Article L. 113-1 of the code of administrative justice provides that, when the judges empowered to rule on the merits of the case are referred to with a request raising a new question of law, presenting a serious difficulty and arising in many disputes, they may, by a decision with no possibility of appeal, defer from ruling and forward the case's brief to the Council of State which examines the question raised within three months. The Council of State's opinion in the context of the litigation in progress does not bind the court that referred to it. However, it has authority insofar as it introduces the position the supreme judge to be referred to will adopt on the question in the litigation. Therefore this mechanism makes it possible to prevent in advance jurisprudence variances between subordinate courts.

II - How do the courts control the administration's acts and policy?

A. Access to the judge.

21.

Except in matters of public works or summary proceedings, the administrative court may only be referred to by way of appeal lodged against a decision. Such is the rule of the "preliminary decision", established by the code of administrative justice (art. R.421-1), and with the aim to bind litigation. Not only does this come into play in litigation for excess of power, but also in tort action, and notably that of indemnity. In this latter case, the preliminary

decision is obtained by exerting a previous claim to the administrative authority. This claim's express or implicit dismissal constitutes the decision subject to the litigation. The litigation's liaison may also intervene during a proceeding, a litigation of the indemnity as in excess of power, by the defendant's wish not to oppose this inadmissibility based on principal.

22.

Any physical person who is empowered to go to court may refer to the administrative judge. This capacity is assessed according to the rules of civil law. Therefore non-emancipated minors, as well as the major persons placed "under the safeguard of justice" due to mental faculties or to penal convictions leading to their legal judicial interdiction are not able to go to court. However, the administrative jurisprudence admits that certain persons, while they are incapacitated according to the civil code, have the capacity to exercise appeal for excess of power against decisions affecting "the fundamental principle of the right to habeas corpus."

Institutions and groups may also go to court insofar as they have the legal status. Non-declared associations cannot vindicate economic rights in court but their "legal existence" confers them a capacity enabling them to exercise appeal for excess of power against the decisions prejudicing the collective interests for which they are responsible.

23.

The requirement of an interest having power to act is at the very head of the conditions for an appeal's admissibility. Except for the exceptional case where a public authority is vested with a legal warrant empowering it to act against the measures it considers as illegal (case of a prefectorial application for judicial review), the interest justifies the exercise of the appeal. This interest, whose existence is assessed at the time of the appeal, may be of a different nature: moral or material, individual or collective. In all cases, it must be personal, legitimate and pertinent. The first of these requirements prevents a person from acting without warrant on behalf of another, or claims only its quality as a citizen, consumer or elected official to oppose an act's legality. The necessity of a protective interest opposes the fact that an appeal aims to safeguard an irregular or immoral situation. Finally, the status from which the petitioner acts must be related to the disputed decision. In addition, the interest must be direct and certain, that is directly and certainly wronged by the disputed decision.

As artificial persons, groups may lodge an appeal against the measures affecting their own interests (existence, estate, activity, operating conditions) as well as asking for damages for the material and moral damage they suffer. But they also may go to court to defend the collective interest of those they represent, insofar as the regulatory or individual disputed measure harms this collective interest.

24.

The appeals must be exercised within two months from the official notification measure of the disputed decision (art. -R. 421-1, of the code of administrative justice). The requirement of an official information measure includes derogations: in case of an implicit decision or when the decision's de facto cognizance is enough to actuate the delay (theory of acquired cognizance).

As for regulatory decisions, the delay is actuated in regards to all the interested parties through their publication or posting. As for individual decisions, the delay is actuated, in

regards to the addressee, through the notification he/she receives of the decision; and on the condition that this notification mentions both the delay's existence and duration and the appeals that might be exercised against the decision (art. -R. 421-5, -of the code of administrative justice).

This delay is a free delay: neither the day of delay's actuation or that when it ends is counted.

The appeal's delay may be interrupted by three events that can be added but each only coming into play once: the existence of an administrative appeal for consideration or a hierarchical administrative appeal; the exercise of an appeal before an incompetent court; an application for legal aid.

The code of administrative justice provides special delays of other durations in relation to political elections, mayor's and deputies elections, in relation to classified systems or in the litigation of rulings to escort to the border.

The appeal's delay may also be longer: three-month-delay in Madmouzou, Papeete and New Caledonia and an additional delay of distance: one additional month for persons living in an overseas French state or territory, when the court is in France (or vice-versa); and two additional months for those living abroad.

25.

Two categories of acts cannot be appealed against: the government's acts and measures of interior order.

The government's acts are political acts due to the matters in which they intervene. These are, on the one hand, the acts or domestic law related to the relationships between the constitutional public authorities and, on the other hand, acts of international law related to the relationships between the French State and the foreign States or international organizations.

The measures of interior order essentially include measures for management and internal discipline in military and penitentiary establishments and educational institutions, whose significance is considered too low to be submitted to the administrative judge's oversight. However, the judge accepts to have competency regarding these measures which would have appreciable effects on protected rights and liberties or on a statutory situation.

26.

Only appeals to the Supreme Court before the Council of State are subject to a prior admission procedure (art. L. 822-1 of the code of administrative justice). This procedure enables exclusion of inadmissible appeals or appeals not resting upon any serious argument, at the end of a court proceeding, and without inquiry.

27.

The form of the appeal is free but it must be written in French. It indicates the particular elements to identify its author (name, address) and the appeal's object (statement of facts, arguments, as well as statement of conclusions submitted to the judge).

There is no obligation as to the request's format, neither in relation to its volume, nor to the use of dactylographic or reprographic processes. The court's only requirement for the material presentation is related to the signature of the request, either by the petitioner him/herself or by his/her agent.

These admissibility conditions may be regularized in the appeal's delay if the initial request does not address it.

28.

The dematerialization of procedures before the administrative courts is currently subject to two experiments.

One aims to enable the different parties in a case (about one million people) to follow, in real time, the progress and state of their case (in the end a stock of 300,000 classified briefs) via the Internet network.

As for the online -procedures, their experiments were made possible through the decree No. 2005-222 of March 10, 2005 related to experimentation of e- filing and communication of requests and memorandums and notification of decisions. With the parties' prior agreement, the requests, memorandums, exhibits and decisions made on the case's inquiry are sent electronically to the parties or their agent.

The decree is completed by a ruling of the minister of justice specifying, on a proposal from the president of each court, the area for the experiment; this is, for the Council of State, tax litigation.

This experiment is planned for up until December 31, 2009.

29.

The stamp duty was suppressed for the requests recorded since January 1, 2004.

30.

-Before the administrative courts (art. R. 431-2 of the code of administrative justice), representation by counsel is imposed in matters of full jurisdiction, essentially monetary or contractual litigation. The other disputes are implicitly excluded from the rule of compulsory representation. Before the administrative courts of appeal (art. R. 811-7 of the code of administrative justice), the obligation of counsel is the rule (only exceptions: disputed excess of power in relation to public service and disputed highway traffic violations).

Before the tribunals as well as before the courts, the State is exempt from having a lawyer.

The rule of compulsory representation is broader before the Council of State: this is the rule in cassation (except for some exceptions: for example, the litigation of social aid). With respect to excess of power in first and last instance, counsel is not compulsory.

If the absence of a lawyer is sanctioned by inadmissibility, the judge must, in principle, request the regularization of a certified default in this domain.

31.

The administrative legal proceedings fees must be at the cost of legal aid, which is granted, subject to resources, by the legal assistance offices established at the head office of each district court and the Council of State once the request appears serious.

The decisions of the legal aid offices can be appealed only before the president of the administrative court, the administrative court of appeal, or the president of the Council of State's litigation section.

The remuneration settled by the State to the legal practitioner is, in case of total assistance, exclusive of any other remuneration, and, in case of partial assistance, variable

according to the proportion of assistance allotted depending on the petitioner's resources. This assistance excuses its beneficiary from advancing the legal fees.

32.

According to articles R. 741-12 and R. 776-1 of the code of administrative justice, the judge may impose upon a person presenting a request the judge considers abusive a fine whose amount is left to the judge's discretion depending on the nature and seriousness of the abuse, however not exceeding 3,000 Euros. This fine may be pronounced only during a court proceeding. In practice, it remains exceptional.

B. The legal proceeding.

33.

The rules of the litigious administrative proceeding are firstly the task of the administrative judger, through, on the one hand, the establishment of the proceeding's general rules, like that of the regularity of the court's composition, notably in relation to the rule of impartiality, and, on the other hand, the general rules of procedure, of which some are general rules of law, like the proceeding's contradictory nature (the general rules may be excluded by law only).

These rules have gained, for several years, from the influence of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular its article 6, and from Community law. They are also subject to the Constitutional Council's protection, which established as principles of constitutional value both the rule of respect for the defendant's rights and its corollary, the rule of the audit in the presence of the parties.

The litigation administrative proceeding is essentially written; in addition, it is inquisitorial (the judge controls the legal proceeding and leads the inquiry).

The formalization of these rules in the code of administrative justice comes under the regulatory power, which is principally responsible for drawing up the rules of the administrative court proceeding, the legislator setting the procedural rules guaranteeing freedoms.

34.

Prevention of partiality lies with both the relevant court's members, who may spontaneously abstain from sitting and ask to be replaced (art. R. 721-1 of the code of administrative justice), and with the party in the proceeding who may demand the magistrate's impeachment if there is "a serious reason to question his/her impartiality" (art. L. 721-1 -of the same code).

This challenge request must intervene at the end of the hearing, at the initiative of the party him/herself or his/her agent serving as proxy. This request, addressed to the court's clerk of court, must, under penalty of inadmissibility, specifically indicate the challenge's grounds and be accompanied by particular exhibits to justify it. The court member referred to in the challenge request shares his/her observations before this request is adjudicated upon.

The jurisprudence came to specify the situations in which it is possible to question a judge's impartiality. For example, it is the case, when an agency or agent having taken a stand on a question makes a decision, a fortiori a judgment, on the same question; it is the same if a

public agent has a particular interest in a case where he/she must make a decision. If a judge cannot take part in the judgment of his/her decision, the author of a claim similarly cannot take part in the judgment given following this claim's filing.

35.

If, in principle, all the arguments must be introduced within the appeal's delay, the petitioner remains open to present new arguments beyond this delay insofar as they are related to a "legal cause" that is the foundation of one or more arguments developed in the litigation appeal's delay. In the litigation of excess of power, there are two "legal causes": internal legality and external legality.

There are certain derogatory systems to these rules, such as in tax matters.

Other exceptions include the arguments of public order that, once the request is admissible, may be raised at any time in the proceeding for reasons of their nature and significance.

36.

A third-party's intervention may be voluntary or compulsory.

Through voluntary intervention, a third party may support the conclusions of one of the original parties.

As for compulsory intervention, it aims to prevent the succession during the legal proceedings that could bring up the solution that will be given to a dispute in progress.

Therefore it aims to prevent the third party's opposition enabling a person to question a judgment that, pronounced in a proceeding where he/she was not present or represented, infringes on his/her rights.

37.

Before the administrative courts, it is the responsibility of the government's commissioner to conclude. He/she sets out the questions that each appeal introduces for judgment and introduces, by independently formulating his conclusions, his/her assessment, which must be impartial, of the circumstances of the particular case and the applicable rules of law, as well as his/her personal opinion on the solutions, according to his/her conscience, called for in the dispute submitted to the court.

As a member of the court, he/she does not have, like the public department before the judicial courts, the quality of party to the proceeding.

38.
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39.

The legal proceeding may end before the judgment when the procedural points of law intervene. They vary and may be classified in three categories:

– acquiescence, that is, the defendant recognizing the petitioner's claims;
– withdrawal, that is, the act where the petitioner totally or partly renounces his/her claims;

– dismissal, which results either from the disappearance of request's object, or a legislative validation justified by an imperious ground of general interest, either from the petitioner's death or the dissolution of the petitioning artificial person.

40.

Article R. 611-1 of the code of administrative justice provides that the request and the memorandums, filed or addressed to the registry, are communicated to the parties. The registry must communicate the request and its certified copy to the parties, as well as the first observations of the defendants, whatever be their content, with the attached exhibits. All the other parties' provisions are only compulsorily communicated if they contain new elements.

41.

In administrative litigation, as in private legal proceedings, the burden of proof bears on the plaintiff. However, this principle sees mitigation in administrative litigation, notably when the elements of proof are in the hands of the administration or, in the case of liability, in the hypothesis of presumptions exempting the petitioner from establishing the fault he/she alleges and oblige the administration to prove that it committed no error.

Considering the inquisitorial nature of the proceeding, the administrative judge, who has significant investigatory powers, actually contributes significantly in establishing the facts. If need be, he/she may impose the communication of documents or proceed him/herself to certain investigations by directly examining acts or documents, by visiting locations, by attending hearings or expert assessments.

42.

Article L. 6 of the code of administrative justice establishes the principle where "the debates take place in public hearing". However, the judge may, exceptionally, decide a hearing in the absence of a public "if the safeguard of the public order or the respect for the privacy of the persons or secrets protected by law is required" (art. L. 731-1 -of the code of administrative justice).

The debates start in the same manner at the Council of State and in the subordinate courts by the introduction of the report established by a member of the judgment panel or by the magistrate judging alone who specifies the state in which the case is presented to be judged (this report only consists of recalling the petitioner's claims and the record of the memorandums exchange). However, while at the Council of State only the parties' lawyers are admitted to introduce oral observations, before the inferior courts, the parties may introduce in person or through counsel oral observations to support their written conclusions (the oral observations cannot contain new arguments but must be used to support the written arguments). Foreigners may ask to be assisted by an interpreter and aphasic persons may be accompanied by a person who will speak for them. The judge may also hear the agents of the competent administration or ask information from any attending person that one of the parties wishes to have heard.

The government's commissioner takes the floor last to introduce the questions raised by the case to be judged and introduce his/her assessment of the circumstances of the particular case and the applicable rules of law, as well as his/her opinion on the solutions called for by the dispute.

If the parties cannot take the floor in the hearing to answer the government's commissioner, they still have the capacity to produce a note in deliberations in order to

complete their observations taking into consideration the arguments developed by the government's commissioner.

43.

The case is "deliberated in the absence of the parties" (art. R. 741-1 -of the code of administrative justice). Only the members of the judgment panel attending the deliberations actively take part in the deliberation by voting on the solution to apply to the dispute. As a member of the judgment panel, the government's commissioner usually attends deliberations; but he/she does not take part in it and, in particular, does not take the floor.

In addition, during the deliberations, the clerk of court or, in the case of the Council of State or a specialized court, the secretary as well as other magistrates of the same court or of different courts, may attend as auditors.

C. The judgment.

44.

The judge must examine each of the arguments referred to him/her and answer them with the grounds for his/her decisions in accordance with two rules: the rule of evidence and the economy of argument.

Legal decisions must, in the absence of contrary legislative provisions, always be justified. The rulings of the judge in chambers are not excluded from this rule. However, if the judge is bound, in principle to answer all the arguments, except for the inoperative ones, he/she is not bound to answer all the arguments developed in support of these arguments or to rule on the probative value of each of the documents or attestations produced to support the petition. The solution will seem obvious insofar as it logically results from the decision's grounds.

The rule of economy of argument enables the judge to retain one argument only to pronounce the cancellation of an administrative decision while several arguments raised in the request might be founded.

There are certain cases where the motivation may remain very concise (decisions of non-admission of appeals to the Supreme Court, orders of the summary proceedings judges).

45.

Control of the legality of an administration's act or policy is made in reference to a prioritized and complex set of written or non-written standards and where rules of domestic law can be found (Constitution and rules of constitutional value, laws, general rules of law, administrative regulations) as well as rules from community law (treaties, secondary community legislation, general rules of community law) and international conventions, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms. In domestic law, the Constitution prevails over international law; however, this latter prevails over the law, even subsequent.

46.

The rule of legality has varying requirements as it is interpreted and implemented by the administrative court. Notably, it is important to bear in mind that it does not exclude administrative authorities having freedom of action illustrating what is called their “full power to act”.

When the administration has a choice between enacting a decision and abstaining from any decision or between two or more decisions of different content but equally compliant with the law, the judge is not always bound to oversee the appropriateness of the choice made by the administration.

In addition, subjection to the rule of legality is more or less rigorous depending on whether the jurisdictional oversight is introduced as a “normal control” or a ”restricted control”. It will be restricted in the case where the decision whose legality is to be assessed was made in exercising discretionary power, that is, when the legality of the decision that the administration chose as most expedient has to be assessed. In this case, the administrative judge will control whether the decision is based on a factual error, legal error, or of abuse of power, but the control of the facts’ legal qualification will only consist of censure of the obvious mistakes of assessment. On the contrary, in the usual cases where the administration’s decision is guided by legal criteria and where, therefore, the judge carries out a normal control, all the errors in the legal qualification of the facts will be censured.

In certain cases, normal control and restricted control are exercised according to specific terms. Thus, the restricted control does not include the search for an obvious error of assessment when the decision results from a sovereign administration’s assessment (example of examination juries).

On the contrary, the normal control can be detailed by applying the theory of the audit which allows confronting a decision’s advantages and disadvantages; the decision will only be legal if it is adequately proportional to the facts (example of the legality’s assessment regarding statements of public utility in relation to expropriation).

47.

Before the administrative courts, the costs, that is the fees resulting from the execution of specific measures ordered by the judge or directed related to their execution, and the unrecoverable costs are in principle at the expense of the losing party.

However, the judge may, due to specific circumstances in the case or due to the party’s casual or dilatory attitude during the proceeding, decide to put part or all of the costs at the onus of the winning party.

Finally, when the losing party is insolvent, the State, responsible for the correct operation of the administrative justice, must replace the costs’ principal debtor.

48.

Article L. 3 of the code of administrative justice provides that “judgments are given in a collective format, except as otherwise ordered by law”.

The judgments of the subordinate courts are in principle given by a three-member panel, but at any time the judgment panel or the court’s president may decide to enter the case in the role of the court by adjudicating in plenary formation.

At the Council of State, the judgment panels of common law are either the united subsections (with a 5-member quorum), or the subsection judging alone on ordinary cases

(with a 3-member quorum). Any case may be referenced to two other panels, more formal: the litigation section or the litigation assembly.

The derogations provided by the law to the rule of community, are nevertheless common, notably in first instance, and relate mainly to the summary proceedings judge, the judge adjudicating alone on the disputes restrictively listed by the code of administrative justice, the highway traffic violations judge, the president of the judgment panel adjudicating by an order ending the dispute or referring to an administrative court, the judge for escort to the border.

49.

The rule of secrecy of deliberations has a double meaning: not only does it impose ong the judges to deliberate in the absence of both the public and the parties and their lawyers, but it also forbids disclosure, at any period and to anyone, of the nature of the discussions and the pronouncement of each magistrate. Eventually, it leads to the judgment's irregularity, mentioning that they were given by a consensus of votes or revealing the individual opinion of each of the judges.

50.

Article L. 10 of the code of administrative justice establishes the principle where "the judgments are public." This public ness is ensured by the decision's public reading, which, for practical reasons, no longer takes place orally but by the posting of the decision. Further, the parties are notified of the posting.

No delay is given to the clerk of court for proceeding with the notifications, except if the decision is related to a summary proceeding, in which case it must be announced without delay. On average, the notification takes place within two to three weeks.

D. The effects and execution of the judgement.

51.

In principle, the legal authority of the judged matter is relative: it depends on the dispute's elements, determined by the parties, its object and its cause. This is true both for the full jurisdiction decisions and for the decisions on appeal for excess of power.

In certain cases, the final judgment is vested with absolute authority. This is the case for judgments pronouncing a cancellation for excess of power whose authority is not limited to the parties in the dispute but, as the cancelled act is supposed to never have existed, affects everyone.

52.

The cancellation of an administrative act implies in principle that this act is deemed to never have taken place, but recently the Council of State (decision of May 11, 2004) specified that the judge may decide to make an exception to this rule, in exceptional cases where the cancellation's retrospective nature would lead to consequences, on public and private interests, going far beyond that which justifies respect for the principle of legality. Then he/she may decide that the cancellation only takes effect from the time of his/her decision or

even that it will come into force at a later date to allow time for the administration to adopt the measures required to avoid a legal vacuum.

53.

For a long time, the administrative judge refused to address injunctions to the administration, including for the execution of his/her decisions. The only recourse for the decision's beneficiary was to launch another appeal against the administration's inertia. From now on, the law of February 8, 1995, confers to the administrative courts the possibility of addressing to the administration injunctions to take an execution measure in a determined direction or to rule again in a pre-determined timeframe. The court must be referred to with conclusions in this regard. Public corporations or private law institutions responsible for management of a public service are subject to this injunction. As for individuals, these provisions are useless and the administrative judge has long held injunction power with respect to them.

This injunction power is matched with a possibility of penalty. This latter must be requested, except before the Council of State, which can pronounce it automatically and in addition enjoys the support of a cell specifically responsible for following the execution of its decisions.

54.

The law of September 9, 2002 on guidance and programming for the law reinforced the means available to the administrative court to reduce judgment delays. Objective agreements were concluded between the Council of State and the administrative courts of appeal which expect an increase of 60% in the number of magistrates between 2003 and 2007, the reinforcement of the staff of the Clerk's office and legal assistants in order to double the number of cases judged per year.

In addition, an appeal for responsibility of public power for exceeding a reasonable delay, applicable to European jurisprudence, is open to those to be tried. Since September 1, 2005, it comes under first and last instance under the jurisdiction of the Council of State.

E – Grounds for appeal.

55.

The competence within the administrative order is determined according to a double criterion. The material criterion (field of the disputed administrative decision or type of appeal exercised against it) enables the appointment of the category of competent administrative court to have jurisdiction regarding an appeal. If several identical courts are possible, the territorial criteria are exercised.

According to the material criterion, the administrative court of common law in first instance is the administrative court. If the administrative court of appeal of common law remains theoretically the Council of State, the administrative courts, which benefit in law only from a court ratione materiae, are, in practice, the most often competent.

Acts taken by a body of national jurisdiction, disputes of individual order for civil servants appointed by decree of the President of the Republic, appeals relating to regional and European elections, as well as, in the interest of a proper administration of the law, acts whose scope of application surpasses the jurisdiction of one single court are all notable exceptions to

this distribution according to the material criteria; they lie in first and last instance of the Council of State's competence. This latter is the only judge in matters of cassation.

If no court ratione materiae is competent in first instance according to a special text, the administrative court with jurisdiction on the territory is, in principle, the one in the jurisdiction of which is based the authority whose act or action is disputed, or, exceptionally, notably in relation to contracts, according to a conventional clause determined by the parties. The administrative court of appeal territorially competent is the one in whose jurisdiction the administrative court that gave the disputed judgment has its head office.

56.

A party to the legal proceeding of first instance who is not satisfied with the administrative court's judgment may appeal against this judgment within two months from the decision's notification. Except for in cases of exceptional expense, the petition in appeal must be introduced by counsel. The administrative courts of appeal are most often judges of appeal of the administrative tribunals. However, the Council of State is judge of appeal for disputes related to municipal and cantonal elections, the appeal to assess the legality or for the decisions made by the summary proceedings judge ordering measures required to safeguard a fundamental freedom.

For certain types of disputes, restrictively listed in the code of administrative justice, there is no appeal and the only possibility of opposing the judgment is the appeal to the Supreme Court before the Council of State. As a judge of cassation, the Council of State does not judge the case again. It settles for verifying the respect for rules of procedure and ensuring that the inferior courts properly apply the rules of law.

F. Urgent proceedings and summary judgments.

57.

Certain proceedings permit asking the judge in chambers, within more or less a brief delay, provisional or protective measures to safeguard the petitioner's rights.

The law clearly distinguishes when judge in chambers rules in an emergency – the emergency having then to be established by the plaintiff for the judge to pronounce a provisional measure within a few days (interim stay of execution, freedom summary proceeding or protective summary proceeding) – and when he rules in the context of summary proceedings that can be qualified as ordinary (establishment summary proceeding, inquiry summary proceeding or provision summary proceeding).

The judge in chambers is, within each court, a magistrate adjudicating alone. More specifically, it is the president of the administrative court or administrative court of appeal or an experienced magistrate that he/she appoints to ensure the duties of the judge in chambers. At the Council of State, this latter appoints the president of the litigation section as well as the Councillors of State that he designates for this purpose.

58.

The interim stay of execution enables to obtain, in case of emergency, the suspension of the execution of an administrative decision until a judge has ruled on this decision's legality. The petitioner must demonstrate that there is serious doubt about this legality. The judge in chambers pronounces within a delay ranging from 48 hours to one month or more, depending on the emergency.

The freedom summary proceeding will enable to obtain from the judge in chambers all the measures required to safeguard a fundamental freedom that the administration is alleged to have seriously and obviously illegally infringed upon. The judge then pronounces within 48hrs.

The conservation summary proceeding enables asking the judge for any useful measure even before the administration has made a decision. The requested measure must be necessary and must not oppose an existing administrative decision. The judge pronounces within a delay ranging from a few days to one month.

There are other types of summary proceedings for which the emergency condition is not required: the establishment summary proceeding that enables to obtain the appointment of an expert to quickly establish facts likely to be the cause for a dispute before the court ; the inquiry summary proceeding that permits ordering an expertise or any other inquiry measure, even in the absence of any administrative decision; the provision summary proceeding that allows asking an advance on an amount due by the administration.

59.

In addition to the above-mentioned summary proceedings, there are urgent proceedings specific to certain disputes. In tax matters, for example, the tax summary proceeding allows disputing a refusal opposed by the administration to a petition for deferment of a debt lodged in case of a contestation of an imposition. The audiovisual summary proceeding enables the president of the Conseil Supérieur de l'Audiovisuel to ask the president of the Council of State's litigation section to order the companies of the audiovisual sector to comply with their obligations.

In contractual matters, the pre-contractual summary proceeding allows asking the judge to sanction the dereliction of advertising responsibilities and competitive call for bid required in relation to public contracting and public service delegation. The proceeding to oppose rulings of escort to the border is an urgent proceeding enabling foreigners to continue, and, in that event, to obtain without further delay the cancellation of the prefectorial rulings ordering their being escorted to the border due to the irregularity of their situation on the French territory.

Finally, there are also special regimes of suspension of administration acts subject to the only condition of existence of a serious doubt as to the legality of the act in question and instituted for the benefit of the prefect in the context of oversight over the local governments' acts as well as various public authorities.

III – Can administrative disputes be settled by non-jurisdictional proceedings?

60.

French administrative law favoured the administrations control by the judge; therefore it developed the non-contentious administrative procedure to a lesser degree. But the overwhelming of the courts and a more democratic approach in relations between the administration and the citizens led to a multiplication of special proceedings of administrative appeal, including some established as a compulsory prerequisite to the referral to the judge. The administrative appeals of common law are the appeal for reconsideration addressed to the disputed act's perpetrator and the appeal to a higher body addressed to the immediate supervisor of the disputed act's perpetrator. Special administrative appeals are provided for by

the texts and relate for example to optional or compulsory prior claims in matters of contributions to and collection of public debts, professional orders, regulated professions, discipline of military servicemen and women.

61.

The mediator of the Republic and his/her delegates may be referred to, for an amicable settlement, for disagreements between the administration and individuals. If he/she does not have power of decision, he/she may draw up recommendations for the administration.

Along the same lines, the independent administrative authorities have, in certain particular lines of business, a power of investigation and the possibility to formulate opinions or recommendations for the public authorities. Some of them enjoy a power of a regulatory nature, and many are empowered to make individual decisions, creating rights and obligations towards the persons concerned, as well as imposing sanctions.

Part of the activity of these commissions is similar to a jurisdictional activity: it is notably this way when these authorities use, through prohibition to practice or sometimes very heavy fines, their sanctioning power, which is comparable to that of courts. The appeals against these authorities' decisions are brought before the administrative or judicial courts.

62.

Conciliation, transaction and arbitration are methods to settle disputes that do not have as much room in administrative litigation as in private law disputes. But the multiplication of disputes related to significant sums, for example in relation to police force's refusal of assistance, or application of contracts, as in matters of public works, calls for development of these methods to settle disputes.

Conciliation may be of a conventional or legal origin. Certain contracts, essentially public contracting, may provide that an eventual disagreement will be submitted to a local personality like the prefect or the head of the equipment services department or to a collegial agency like the board of the professional association of architects. The conciliation phase is then a compulsory prerequisite before referring to the judge.

Article L.211-4 of the code of administrative justice provides the administrative tribunals with general jurisdiction for conciliation. But this provision is rarely used, considering the very nature of administrative litigation and the fact that in contractual matters there is already a mechanism for the amicable settlement of disputes with the committees of amicable settlement of the markets.

The right to compromise is given to public corporations to settle their disputes. Most of the time, the transactions they sign with private individuals constitute private law contracts and do not fall within the competence of the administrative judge. The administrative judge nevertheless verifies so ensure transaction does not disregard a rule of public order notably when he/she is asked to approve this transaction.

On the other hand, the public corporations are subject to a ban on principle to appeal arbitration. Only the law can lift this prohibition in certain cases (art. L.311-6 of the code of administrative justice) and, when this appeal of arbitration is authorized, it is optional. The parties in a dispute may decide to have right to appeal only through an appraisement bond and not through an arbitration clause. In the absence of special provisions, the arbitration procedures involving public corporations follow the rules of common law. The arbitral sentence regularly pronounced has legal authority. It can be appealed before the administrative court of appeal.

IV – Court administration and statistical data.

A. The means available to the court in administration.

63.

Years	Staff	Operation	Subventions	Investments	Total budget of court admin.	Total budget of court	Total general budget of State
2003	122,67	25,58	0,27	4,75	153,27	5 037	273 812,1
2004	130,54	27,56	0,02	12,3	170,43	5 283,2	283 690,25

** The amounts are in million of euros*

As the table indicates above, for the years of reference considered, the average budget allocated to the court is about 5 billion Euros (5.04 in 2003; 5.28 in 2004), and represents 1.85% of the State's budget (1.84% in 2003; 1.86% in 2004).

The administrative court constitutes a relatively modest part of the court budget (3.04% in 2003; 3.23% in 2004), and still less of the general budget (0.06%), even though its budget increased by 11.2% between 2003 and 2004.

64.

	Administrative court and administrative court of appeal		Council of State	
	2003	**2004**	**2003**	**2004**
Active staff in the corps	830	891	199	207

65.

	Administrative court and administrative court of appeal		Council of State	
	2003	**2004**	**2003**	**2004**
Magistrates allocated to administrative control	814 or 98 %	874 or 98 %	141 or 71 %	146 or 74 %

66.

The law of September 9, 2002, on guidance and programming for the court enabled the administrative courts to recruit part-time legal assistants from among the law students, who provide assistance on the magistrates' jurisdictional tasks.

Within the subordinate administrative courts, there were 147 legal assistants as of December 31, 2003, and 185 as of December 31, 2004. There is approximately one legal assistant per chamber. At the Council of State, there were 15 legal assistants in 2003 and 2004 including 14 allocated to the litigation section. Contract employees, 64% of the legal assistants have a postgraduate school degree (Baccalaureate+5).

In late 2003, 34 litigation assistants (registry's agents) were helping the magistrates of the courts of first instance and appeal. They were 42 in the following year. Not all the courts have litigation assistants. 49% of them have graduate degrees (Baccalaureate +3 or +4) and 20% have postgraduate degrees.

The function of legal assistant (employees available through other administrations) is tending to disappear. They were only 10 as of December 31, 2003, and 6 as of December 31, 2004.

In addition, at the Council of State, 7 employees allocated to the legal research service assist with research required for their briefs investigation, and create, for all the courts of administrative order, tools for the diffusion of litigation information (jurisprudence specifications, legal press reviews, legal watch).

67.

In addition to the dematerialized documentation, the Council of State's library enjoys rich resources of about 75,000 works and some 250 subscriptions to periodicals, mainly related to the various fields of public law. A lending system between libraries allows completion of the documentary sources in the other fields, notably in relation to private law.

Each court also enjoys its own documentation service.

68.

Each Council of State employee enjoys a desktop computer, and each magistrate has a portable computer; all are connected both on the internal network and the Internet network. All the management tasks, and an increasing part of the jurisdictional work (software for briefs management, assistance in writing decisions, internal and external legal databases at the Council of State, development of dematerialized procedures) are therefore performed thanks to the computing tools.

Several free-access workstations offer a permanent connection to the sites of the main French private legal editors.

69.

The Council of State has an Internet site updated daily for publication of the major litigation decisions reached. The Council of State's studies and public reports are put online on this site, which also offers, in form of a data sheet, practical assistance to those to be tried who wish to refer to the administrative court.

Each court of the administrative order has an Internet page, linked to the Council of State's Internet site, but accessible from any search engine.

B. Others statistics and calculations.

70.

	Council of State		Administrative Courts of Appeal		Administrative courts	
	2003	**2004**	**2003**	**2004**	**2003**	**2004**
Cases entered	9 905	12 074	15 640	14 347	128 422	149 008

71.

	Council of State		Administrative Courts of Appeal		Administrative courts	
	2003	**2004**	**2003**	**2004**	**2003**	**2004**
Cases judged	11 135	11 001	16 700	19 829	127 035	137 189

72.

	Council of State		Administrative Courts of Appeal		Administrative courts	
	2003	**2004**	**2003**	**2004**	**2003**	**2004**
Cases in stock (as of 12/31)	8 993	10 122	40 058	35 031	197 913	209 439

73.

Specify according to the court levels and indicate if this is a theoretical delay or an actual delay, and how this delay is calculated.

	Council of State		Administrative Courts of Appeal		Administrative courts	
	2003	**2004**	**2003**	**2004**	**2003**	**2004**
Average judgment delay	10 months and 15 days	12 months and 15 days	2 years and 5 months	1 year and 9 months	1 year and 6 months	1 year and 6 months

74.

	Administrative Courts of Appeal		Administrative courts	
	2003	**2004**	**2003**	**2004**
Satisfaction rate[1]	16.51 %	20.13 %	24.75 %	24.56 %

[1] As the data related to the rate of cancellation of administrative acts and of sentencing of the administration is not available, it is only possible to indicate the rate of cases totally or partly acceding to an original submission, including the appeals filed by the administration itself.

75.

Decisions reached by subject:

Matter	Council of State		Administrative Courts of Appeal		Administrative courts	
	2003	**2004**	**2003**	**2004**	**2003**	**2004**
Agriculture	176	258	419	584	2,115	2,388
Social aid	158	112	78	50	890	836
Armies	30	21	140	112	490	320
Local governments	129	191	384	642	3,315	3,581
Public accounting	30	7	27	19	23	26
Tax litigation	539	788	5,328	6,312	26,403	26,115
Culture	16	5	5	4	25	25
Distinctions	6	7	9	13	23	20
Domain – road system	78	97	261	262	1,710	2,056
Rights of persons and public freedoms	192	201	338	284	1,947	2,064
Economy	158	77	89	38	308	270
Education – research	191	116	136	192	1,672	1,518
Elections	57	217	46	56	544	1,031
Environment	146	101	231	292	1,412	1,466
Public institutions	24	13	15	20	114	155
Foreigners	4,014	3,318	1,550	1,871	27,430	30,272
Expropriation	81	60	86	118	480	415
Civil servants and public agents	1,206	1,258	2,243	2,809	15,792	17,835
Courts	130	64	107	106	167	205
Housing	32	59	235	143	4,332	4,351
Markets and contracts	169	126	743	754	4,593	4,949
Pensions	728	1,181	460	397	3,728	6,900
Police	158	147	421	540	6,572	7,892
Postal and telecommunications administrations	54	35	11	4	54	48
Occupations	428	375	162	216	1,122	1,234
Radio and television broadcasting	55	53	0	1	22	23
Repatriates	7	38	60	94	108	130
Public health	136	251	458	550	3,882	3,662
Social security and mutual insurance companies	102	89	246	404	621	373
Sports	29	35	17	24	112	141
Transportation	50	40	19	150	211	89
Labor	177	171	387	493	2,444	2,644
Public works	77	56	551	506	4,459	3,412
Urbanism and development	438	440	1,369	1,714	9,240	9,931
Miscellaneous	16	36	69	55	669	782

C. Economics of the administrative court.

76.

The studies and research on the issues of law economics are developing, but seem mainly to be focused on the way the economic agents adapt to modifications in their legal environment and the economic effects of the rules of law in the countries of Romano German tradition.

If the judge considers the economic and financial consequences of his/her decisions for those being tried, for example by modifying their effects over time, the rules of equality and independence governing his/her action prevent him/her from setting the amount of damages, which must be fair and integral, depending on financial conditions.

In addition, he/she tends to tighten his/her control over the laws of validation and rules out that a simple financial ground might justify an intervention by the legislator to modify the legal proceeding’s result.