Administrative Justice in Europe - Portugal

Preliminary note

On January 1, 2004 the Portuguese "Reform of the administrative litigation" came into force.
The status of the administrative and tax courts [(ETAF) *Estatuto dos Tribunais Administrativos e Fiscais*] and the Code of Administrative Litigation [(CPTA) *Código de Processo nos Tribunais Administrativos*] play a major role in this reform.
Except as otherwise indicated, the answers will be given according to this new litigation.
The Questionnaire order shall be followed.

Preliminary Note

1. Major stages of the administrative justice:
- 1845-1933, system of the administrator, which consists in assigning the power to solve litigious questions to a body of the activate administration on consultation of another body, it being collegial;
- 1933 – System of administrative courts – the litigation control is ensured by actual courts that have the last word. However, the appointment of these court magistrates does not take place in the same manner as that of the judicial courts judges, since they are appointed by the government. This is why some say that these courts were still bodies of the active administration.
- 1984 – Status of the Administrative and Tax Courts [(ETAF) *Estatuto dos Tribunais Administrativos e Fiscais*], approved by the decree-law 129/84, of April 27, 1984 – system of administrative courts totally separate to the administration, having from then on the same characteristics as the judicial courts.
The procedure is centred on the legal appeal in rescission (legality litigation).
- 2004 – Status of the Administrative and Tax Courts [(ETAF) *Estatuto dos Tribunais Administrativos e Fiscais*], approved by the decree-law 13/2002, of February 19, 2002, amended by the Law 107-D/2003 of December 31, 2003 – the system of administrative courts is maintained, now with power of full jurisdiction.

2. According to the Code of Administrative Litigation [(CPTA) *Código de Processo nos Tribunais Administrativos*], approved by the Law 15/2002, of February 22, 2002, and amended by the Law 4-A/2003, of February 19, 2003, "*the administrative courts statute on the administration's respect for the legal standards and principles that bind it and not on its action suitability or appropriateness*" (article 3).
Therefore it means assessing the respect for the right and law (legality control) and not the respect for the rules of good governance (substance control).

3. According to article 2, § 2, of the Code of the Administrative Procedure [(CPA) *Código do Procedimento Administrativo*], approved by the decree-law 442/91, of November 15, 1991 and amended by the decree-law 6/96, of January 31, 1995,
"*2- For the purpose of this Code, the public administration's bodies are:*

a) The bodies of the State and the autonomous Regions carrying out administrative duties;
b) The bodies of public institutions and public associations;
b) *The bodies of local communities and their associations and federations*;
Nevertheless, it is important to underline the fact that the provisions of the CPA apply generally, "*to all the bodies of the administration which, in carrying out the administrative activity of public management, establish relationships with the individuals, as well as the acts of administrative nature carried out by the bodies of the State which, even if they are not integrated in the administration, carry out materially administrative duties"* (article 2, § 1) and to the "*acts used by concessionary entities in carrying out authority powers*" (article 2, § 3).

4. According to the CPA, the "administrative activity" may be carried out by regulation (articles 114 to 119), by administrative act and by administrative contract. However, it does not provide any definition for the concept of regulation; the concept of administrative act is given in article 120 and that of the administrative contract, in article 178.

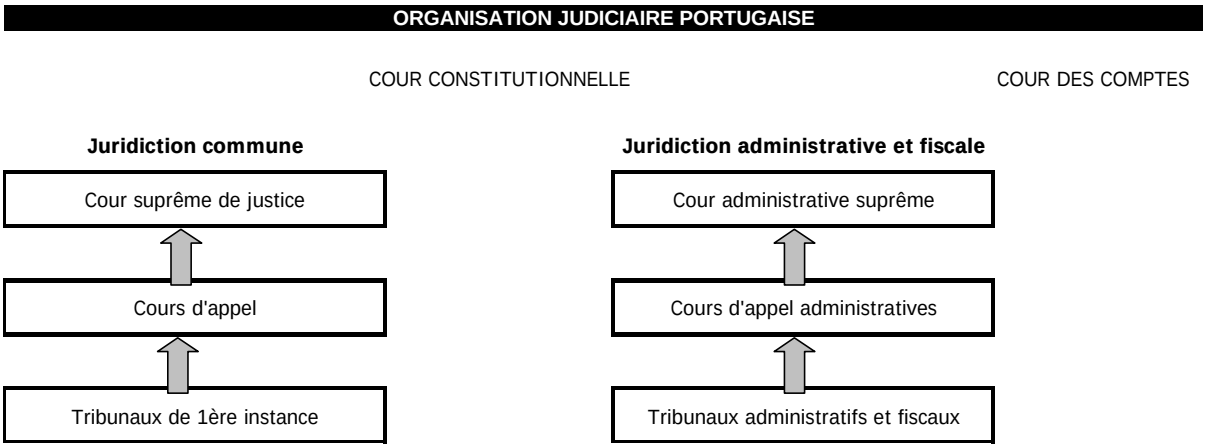
I - Who controls the administration's acts and action?

A - Competent bodies

5. Courts, totally separate and independent from the administration, ensure the jurisdictional control of the administration's acts and action legality.

6. According to article 110 of the Constitution of the Portuguese Republic (CRP), of April 2, 1976 (amended last by the Constitutional Law 1/2005, of August 12, 2005), "*The sovereignty bodies are the President of the Republic, the Assembly of the Republic, the government and the courts*".
The courts are independent and are only subject to law (article 203, CRP).
In addition to the Constitutional Court are the following court categories: a) the Supreme Court of Justice and the judicial courts of first and second degree; b) the Supreme Administrative Court and the other administrative and tax courts; c) the Court of Accounts (article 209, CRP).
The Supreme Administrative Court is the Supreme, above the administrative and tax courts hierarchy, without prejudice of the power particular to the Constitutional Court.
It lies with the administrative and tax courts to statute on the legal actions and appeals aiming to settle the disputes resulting from the administrative and tax legal relationships (article 212, CRP).
The constitutional provision, briefly indicated, is made concrete in the infra-constitutional laws.
The administrative courts operate in parallel with the judicial courts, that is the ordinary courts in civil and penal matters, and their structures are similar.
The settlement of disputes related to questions of a legal administrative nature generally lies with the administrative jurisdiction, even if, in certain punctual cases, the judicial courts may also have the competency regarding these cases.
The Constitutional Court may be responsible for adjudicating on all the cases where a matter of legal constitutional nature will be evoked, for example, when the

unconstitutionality of the legal texts behind which the administrative activities were carried out is claimed.



B - Status of the competent bodies

7. According to the Constitution and the Status of the administrative and tax courts, only the administrative courts are, generally, empowered to hear and determine disputes related to questions of legal administrative nature; the competency regarding the disputes of this nature by another jurisdiction assumes a punctual assignment of power by a legal text (this is, for example, the case in disputes on compensations for administrative expropriations, easements and requisitions, in which regulation is entrusted to judicial courts by the Code of expropriations).

8. The existence of the administrative and tax courts jurisdiction (category) is based on the Constitution (articles 209, § 1, *b)* and 212). They have their own status, the ETAF, approved by the Law 13/2002, of February 19, 2002.
The ETAF, in conjunction with the CPTA, enable to assert that the power and duties of the administrative courts, in the frame of the disputes they are entrusted to, are of the same type as the power and duties of the civil and penal jurisdiction courts. This means that they state the legal position, by pronouncing – simple assessment, sentence or constitutive – or executive declaratory judgments.

C - Internal organization and composition of the competent bodies

9. See 7.

10. According to the ETAF (article 8), the bodies of the administrative and tax jurisdiction are the Supreme Administrative Court [*Supremo Tribunal Administrativo* (STA)], two Appeal Administrative Courts, of second degree [*Tribunais Centrais Administrativos* (TCA)] and the administrative courts and the tax courts (courts of first degree)

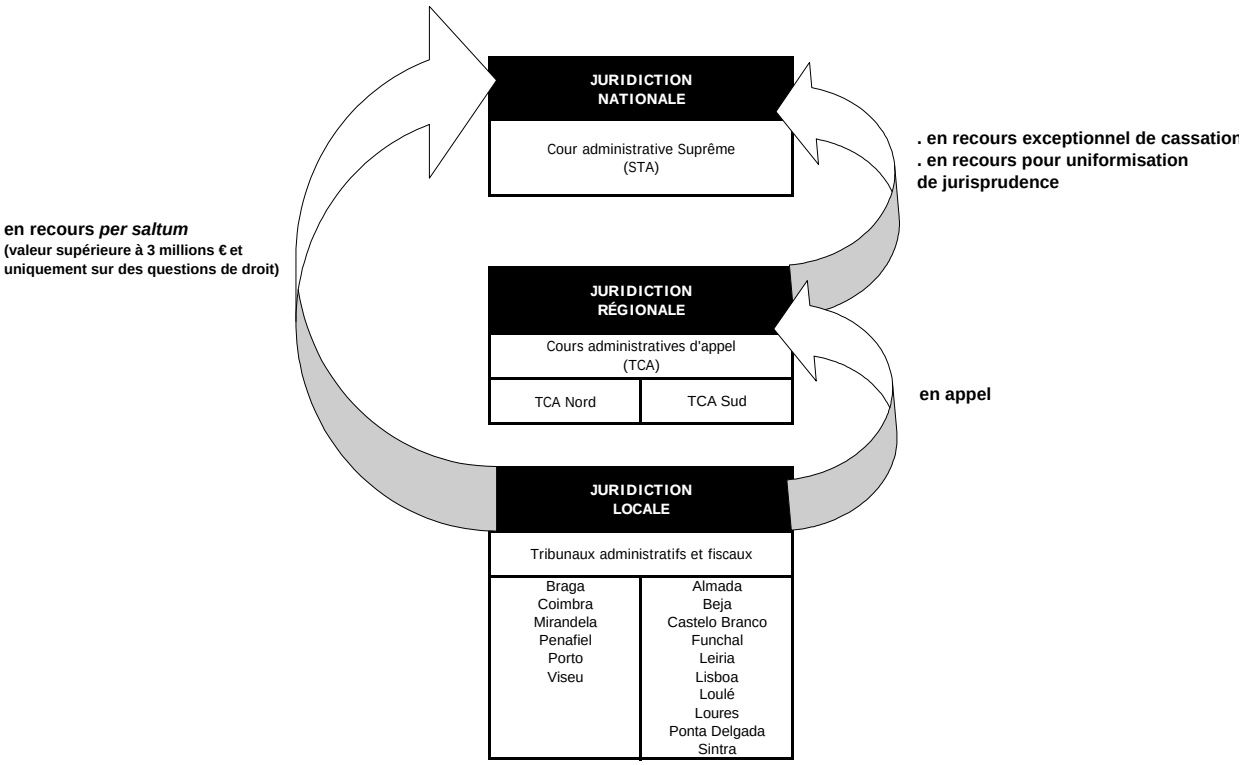
The administrative and tax courts of first degree assess the legality of the administrative decisions, with recourses before the Appeal Administrative Courts (TCA). Against the decisions reached by the Appeal Administrative Courts, an exceptional appeal to the Supreme Court is opened before the Supreme Administrative Court in the cases where the question vests "a fundamental importance" from a legal or social point of view or when the appeal is inevitable for "a better law enforcement".

Exceptionally, there might be a recourse before the STA to ensure the jurisprudence's unity when, on the same question of law, a decision will have been reached in the opposite direction, either by the Appeal Administrative Court or by the STA.

There are other situations, for example, in cases of civil liability of a value exceeding three million Euros where, the Supreme Administrative Court may be referred to *per saltum*, in appeal, if the parties raise questions of law only (article 151, 1, CPTA).

In certain particular cases also, due to the nature of the authorities that made the administrative decisions (for example, the President of the Republic, the Prime Minister), the assessment in first resort immediately lies with the Supreme Administrative Court, adjudicating in subsection, with a possibility of recourse before the section's (administrative or tax) plenary panel.

SCHÉMA DE L'ORGANISATION DE LA JURIDICTION ADMINISTRATIVE



D - The judges

11. The judges of the administrative jurisdiction may be judges of judicial courts assigned to the administrative jurisdiction or judges directly hired by the latter.
Their status corresponds to that of the career judges of the judicial courts.

12. The recruitment of the judges for the courts of first jurisdiction degree generally takes place through a test. The recruitment of the judges for the Supreme courts presumes a professional selection.

13. As for the judicial courts, in order to be a judge in the administrative and tax jurisdiction, he/she must be a Portuguese citizen and have a law degree that, In Portugal, validates five years of university studies. An initial specialization may also be required and eventually, there is various complementary training.

14. The ETAF provides for the promotion in the career of the administrative and tax jurisdiction judges which do not lie with the court where they carry out their duties (article 58). However, no text was published to regulate this standard.
Currently, the promotion in the career directly lies with the salary level.

The judges become judges of second degree (judge in appeal) or of the Supreme Court (adviser-judge) on a test or a professional selection, organized in case there are vacant positions to be filled.
The seniority in the career is one of the criteria taken in account, as well as the marking.
The appointment, assignment, marking and promotion lie with the Supreme Council of the Administrative and Tax Courts (article 74 of the ETAF).
The Supreme Council of the Administrative and Tax Courts is presided by the President of the Supreme Administrative Court (elected among the judges of the Supreme Court) and includes two members appointed by the President of the Republic, four elected by the Assembly of the Republic and four judges elected by their peers (article 75 of the ETAF).

15. The judges of the civil and penal jurisdiction may carry out duties in the administrative jurisdiction, by way of assignment, but the contrary is not possible. All the magistrates may carry out duties in the active administration, by way of assignment, by means of an authorization from the relevant magistrate's advisors, but the number of magistrates in this case is very limited.

E - Functions of the competent bodies

16. Article 2 of the CPTA stipulates:
"*Article 2*
Effective jurisdictional protection
1 – .
2 – To any right or interest legally protected, correspond the proper protection by the administrative courts, particularly in order to obtain:
a) The recognition of the subjective legal situations directly resulting from legal administrative standards or acts used according to the administrative law's provisions;
b) The recognition of the ownership of qualities or respect for conditions;
c) The recognition of the right to abstain from behaviour and, particularly, to the non issue of administrative acts, when there is a threat of future prejudice;
d) The cancellation or declaration of nullity or non-existence of administrative acts;
e) The administration's sentence to pay sums, to give things or to "perform facts";
f) The administration's sentence to naturally repair damages and pay compensations;
g) The settlement of disputes related to the interpretation, validity or execution of contracts for which assessment lies with the administrative jurisdiction;
h) The declaration of illegality of standards passed according to provisions of the administrative law;
i) The administration's sentence to use administrative acts legally due;
j) The administration's sentence to use acts and operations required to recover subjective legal situations;
l) The administration's formal notice to provide information, enable consultation of documents or provide copies;
m)The passing of appropriate summary measures to ensure the expedient effect of the decision".
It is to be noted that the assessment of the State's extra-contractual civil liability and the other public corporations lie with the administrative jurisdiction, except when this

liability is a result from carrying out the political duty or a judicial mistake committed by the courts of other jurisdictions.
This is therefore a litigation of full jurisdiction.

17. Article 15 of the CPTA stipulates:
"*Article 15*
Competence extended to the decision over the prejudicial questions
1 – When the competency regarding the action's object depends, totally or partly, on a decision over one or several questions lying with the competence of a court of another jurisdiction, the judge may stay adjudicating until the competent court pronounces.
2 – The reprieve is lifted if the court of the other competent jurisdiction is not referred to within two months or if the proceeding does not take place within the same delay, on account of the parties negligence.
3 – In the case provided in the previous paragraph, the administration litigation proceeding must be continued and the prejudicial question is only determined with the effects related to it".
Within the administrative jurisdiction, the Code provides a prejudicial reference mechanism similar to that of article 234 of the EEC Treaty.
Indeed, article 93 of the CPTA stipulates:
"*1 – When an administrative court is referred to with a new question of law presenting a serious difficulty and likely to arise in other disputes, its chairman may (...) proceed with the prejudicial reference before the Supreme Administrative Court for this latter to pronounce, by a contentious opinion, on the question, within three months.*
2 – (...)
3 – The preliminary rulings provided in § 1 do not apply to proceedings of a summary court (...). The question's examination may immediately be dismissed, permanently, when a panel made up of three judges, selected among those having the highest seniority in the administrative litigation section of the Supreme Administrative Court, considers that the conditions required for the reference are not spliced or that the question's importance is not of a nature to justify the issue of such an opinion.
4 – The opinion issued by the Supreme Administrative Court in the frame of the preliminary rulings does not bind it in regards to the new decisions it will have to make on the same question, as a reference or recourse".

18. The administrative and tax courts only carry out jurisdictional duties.

19. See 18.

F - Function and relationship distribution between the competent bodies
20. The CPTA provides three means to ensure the standardization of the law's interpretation:
- the preliminary rulings, in article 93 of the CPTA:
"*1 – When an administrative court is referred to with a new question of law presenting a serious difficulty and likely to arise in other disputes, its president may decide that all the*

court's judges intervene in the judgment, with a two third quorum, or, alternatively, proceed with the preliminary rulings before the Supreme Administrative Court for this latter to pronounce, by a litigation opinion, on the question, within three months.
2 – (...)
3 – The preliminary rulings provided in § 1 do not apply to proceedings of a summary court (...). The question's examination may immediately be dismissed, permanently, when a three-judge-panel, selected among the judges having the highest seniority in the administrative litigation section of the Supreme Administrative Court, consider that the conditions required for the reference are not combined or that the question's importance is not of a nature to justify the issue of such an opinion.
4 – The opinion issued by the Supreme Administrative Court in the context of the preliminary rulings does not bind it in regards to the new decisions it will have to make on the same question, as a reference or recourse".
- the "extended judgment" (judgment that the courts of first degree may also make), of article 148:
"*1 – The Chairman of the Supreme Administrative Court or Appeal Administrative Court may decide that all the judges of the section intervene in a recourse decision, when this is required or advisable to ensure the jurisprudence uniformity, according to a two third quorum.*
2 – The decision made under the conditions provided in the previous paragraph may also be requested by the parties and must be engaged by the reporter or his/her deputies, notably in case of a possible victory for a legal solution contrary to the jurisprudence previously established in the field of the same legislation and on the same fundamental question of law.
3 – (...)
4 – The ruling is published in the 1st or 2nd series of the gazette (Diário da República), depending on whether it is given by the Supreme Administrative Court or by the Appeal Administrative Court".
- recourse in standardization of jurisprudence, in article 152:
"*1 – The parties and the Public Department may address the Supreme Administrative Court, within 30 days after the disputed ruling became final, recourse in standardization of jurisprudence, when there is a contradiction, on the same fundamental question of law:*
a) Between a ruling of the Appeal Administrative Court and a ruling previously given by the same Court of by the Supreme Administrative Court;
b) Between two rulings of the Supreme Administrative Court.
2 – (...)
3 – The recourse is inadmissible if the direction followed in the disputed ruling is in compliance with the more recently consolidated jurisprudence of the Supreme Administrative Court.
4 – The section's plenary panel judge the recourse, and the ruling given are published in the 1st series of the gazette (Diário da República).
5 – The favourable decision reached by the Supreme court does not question the previous decisions on that which was disputed or the legal situations created according to them.
6 – (...)".

As we can see, the initiative of the preliminary rulings lies with the courts only, which share with the parties the possibility to engage an extended judgment; the parties and the Public Department only are empowered to lodge recourse in standardization.

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

A - Access to the judge

21. The CPTA stipulates: "Even if they are subject to administrative recourse, administrative acts having an external effectiveness may be disputed, particularly those in which content is likely to prejudice legally protected rights or interests" (article 51, 1).
With regard to this precept, the concept of horizontal "conclusion", as a condition of admissibility for recourse, seems to have been abolished.
However, as for the vertical "conclusion", which was a precedent condition in the previous order, the situation has not entirely been clarified yet.
Article 59, § 5, of the CPTA, may lead to believe that, in general, administrative recourse is optional. But it might also imply that provisions requiring a prior administrative recourse (the case of the application of certain disciplinary punishments, according to the relevant Disciplinary Status, of exclusion or probate of the final classification list, in the context of staff recruitment tests, as per the decree-law 204/98) are still in force or may be established.
The amendments of the CPTA with regard to this require a subsequent amendment of the CPA.

22. The competence to act is widely conferred. The CPTA addresses it, in a general manner, in its article 9, then in each type of proceeding.
"*Article 9*
Competence to act
1 – Subject to the provisions of the following paragraph, of provisions of article 40 of this Code [quality to act in the actions related to contracts] and of those related to the special administrative action established, the plaintiff is competent to act when he/she alleges to be a party in the disputed material relationship.
2 – Apart from the personal interest in the proceeding, any person, as well as the associations and foundations defending the interests involved, the local communities and the Public Department are competent to engage (and intervene), according to the legal provisions, in the main and summary proceedings aiming to defend values and properties protected by the Constitution, such as public health, environment, urbanism, land use planning, quality of life, cultural heritage and properties of the State, autonomous Regions and local communities".
As concerns the action to cancel administrative acts, article 55 stipulates:
"*1 – The following have the competence to dispute an administrative act:*
a) Whoever alleges to hold a direct or personal interest, notably because the act prejudices his/her legally protected rights or interests;
b) The public department;
c) The public and private corporations, concerning the rights and interests they are bound to defend;
d) The administrative bodies, related to acts used by other bodies of the same corporation;

e) The Chairman of the collegial bodies, with regard to the acts used by their respective body, as well as all the other authorities, in defence of the administrative legality, in the cases provided by law;
f) The persons and entities referred to in § 2 of article 9"

23. See 22.

24. Essentially, a distinction must be made:
- between what the CPTA means by "common administrative action" – which includes all the proceedings aiming to recognize subjective situations, of qualities, the conviction or the abstention from behaviour of the administration, the civil liability, the interpretation, the validity and the execution of contracts;
- What the CPTA means by "special administrative action " – includes the actions aimed at the main cancellation of an administrative act, or the declaration of legal nullity or non-existence of such an act; the sentence to use a administrative act legally due; the declaration of illegality of standards; as well as the actions in which substance is related to the cancellation of administrative acts.
The common administrative action may be introduced at any time, subject to the provisions of the substantive law (prescription, expiry). However, recourses to cancel contracts must be lodged within six months from the contract's signature or, with regard to third parties, from the date when they took cognizance of them (article 41).
As for the special administrative actions, tending more often to cancel or declare the nullity of administrative acts, article 58 stipulates:
"*1 –Recourse against void or non-existing acts is not subject to any delay.*
2 – Except otherwise provided, recourse against rescindable acts must be lodged within the following delays:
a) One year, if it is filed by the Public Department;
b) Three months, in the other cases.
3 – The calculation of the delays referred to in the previous paragraph respects the system applicable to the delays provided in the Code of Civil Procedure to file the actions.
4 – If the one-year-delay has expired, recourse will be admissible, beyond the three-month-delay set in paragraph b) of § 2, if it is proven that, according to the rules of the audit in the presence of the parties, in this particular case, the filing of the action within the set delay could not have been required from a normally diligent citizen, on grounds of:
a) The administration's behaviour which led the interested person astray;
b) the delay must be considered justifiable, with regard to the ambiguity of the applicable normative context or the difficulties caused, in this particular case, by identifying the disputed act or by its qualification as an administrative act or as a standard;
c) a situation of justified impeachment occurred".
And then, there are various delays, according to the request or the scope (for example in the pre-contractual litigation, in the injunctions).

25. The administrative acts are disputable, without restrictions, according to article 51, 1, of the above-mentioned CPTA (see answer 21.). Also disputable are the materially

administrative decisions reached by the administrative authorities or by private entities acting in accordance with standards of administrative law (article 51. 2). In this way, a constitutional imposition is therefore respected (article 268, § 4).
Article 4, § 2, of the ETAF excludes from the field of the administrative and tax jurisdiction the disputes related to "the acts used in carrying out political and legislative duty".
However, this does not mean that these acts cannot be disputed in other jurisdictions. For example, the Constitution of the Portuguese Republic entrusts the Constitutional Court with the judgment of "recourses related to the loss of power and to the elections performed at the Assembly of the Republic and in the regional legislative assemblies", as well as the "actions questioning elections and deliberations of bodies of political parties, for which the law provides a possibility of recourse" (article 223).

26. Before the administrative jurisdiction of first or second degree, there is no screening procedure.
Before the STA there is a screening procedure in the three following fields:
- Preliminary rulings of article 93 of the CPTA (see answer 20):
the question's assessment is immediately dismissed, permanently, when a three-judge-panel, selected among those having the highest seniority in the administrative litigation section of the Supreme Administrative Court, considers that the conditions required for the reference are not combined or that the question's importance is not of a nature to justify the issue of such an opinion;
- Exceptional appeal to the Supreme Court in article 150
"*Article 150*
Appeals to the Supreme Court
1 – Exceptionally, an appeal for the decisions reached in 2nd resort by the Appeal Administrative Court may be lodged before the Supreme Administrative Court, when a question, for its legal or social relevance, vests a fundamental importance or when recourse admissibility reveals to be clearly necessary for a better application of law.
(...)
5 – The decision related to the question of whether, in this particular case, the conditions of § 1 are combined lies with the Supreme Administrative Court and must be subject to a summary prior examination, by a three-judge-panel among those with the highest seniority in the administrative litigation section".
- Recourses in standardization of jurisprudence, in article 152 (see answer 20):
"*Article 152*
(...)
3 –*Recourse is inadmissible if the direction followed in the disputed ruling is in compliance with the most recently consolidated jurisprudence of the Supreme Administrative Court*".
In the most typical case of the screening procedure, which is that of exceptional appeal to the Supreme Court, in article 150, the average duration between the filing of recourse and its dismissal is one week.
The screening procedure was filed with the «Reform of the administrative litigation»
The procedure's legality has not been questioned yet.

27. There is not special form for the originating processes or for jurisdictional recourses. However, in the case of the originating processes, the plaintiff must indicate a series of elements related to the identification of the court referred to, the defendants, the facts and arguments the claim rests upon and the claim.
Jurisdictional recourse is lodged by a request containing the conclusions and where the defaults imputed in the judgment are enounced.

28. The courts of the administrative and tax jurisdiction proceed with the computer-managed briefs (those received from January 1, 2004).
The exhibits and documents are presented by computer, e-mail or data communications. The presentation by data communications requires the use of an advanced signature file of the signatory.
The presentation of exhibits and documents in physical medium implies their scanning by the registry, except in the case where scanning is not required.

29. The judicial procedures imply the payment of justice costs and fees. File the actions and recourses imply rights to pay (initial justice tax).

30. In the frame of each legal proceeding lying within the administrative jurisdiction, the petitioner must be compulsorily assisted by a lawyer.
No specialization is required from the lawyers.

31. Any person without property may access free legal proceedings.
The eligibility to legal aid is decided by the social security services manager of the petitioner's place of residence or head office. In case of a refusal, the person liable may refer to the courts.

32. No particular penalty is provided in case of an unjustified or abusive request.

B. The legal proceedings

33. The CRP allots the right of all for a cause concerning them to be subject to a decision pronounced in the frame of a fair hearing. The CPTA stipulates that the "*court ensures a status of effective equality for the parties in the legal proceeding, both with regard to the exercise of options and use of arguments for defence and to the application of injunctions or penalties*" (article 6). The law provides for exceptional cases where measures may be pronounced against a person when he/she was not heard. The CPTA expressly imposes the duty of cooperation and good faith among all the participants in the legal proceedings. In the particular case of recourses in cancellation, the CPTA, after having established that the court must pronounce on all the causes of invalidity that were claimed against the disputed act, unless he/she cannot have the indispensable elements thereto, stipulates that the court "*must identify the existence of invalidity causes other than those that were claimed*" (article 95).
34. According to the constitutional and legal terms, the courts are independent and are subject to law only. Also in the constitutional and legal terms, the judges are irremovable and may not be liable for their decisions, subject to exceptions entered in the law. The

judges on duty may not carry out any other duty, except for teaching and scientific research. Moreover, the appointment, assignment, mutation and promotion lie with the competence of the college bodies, constitutionally provided.
The impartiality of the legal proceedings is guaranteed by the procedural provisions related to cases of impeachment – no judge may statute on a case where him/herself or one of his/her relatives is a party, or where he/she will have to intervene in another capacity – and in suspect cases – cases of a slight possibility of partiality, for example serious enmity or significant enmity between the judge and one of the parties.

35. Generally, and within the limits of the power of competency regarding each court and the argument involved, constitutive, amending or extinctive facts may be claimed after filing the request or the appeal.
There are also particular situations of proceeding's objective amendment. For example, "*When the suspension of the legal proceeding where the disputed act is inserted will not have been pronounced, with a capacity of conservation, and this proceeding continues during the hearing, its object may be extended to cancel new acts that will be used in the frame of this proceeding, as well as the formulation of new claims that may be cumulated*" (article 63, 1, CPTA).

36. In the common administrative actions, the general rules of the civil procedure apply. In the special administrative actions, in particular those aiming to cancel administrative acts, in addition to the intervention of the administrative authority, the relevant third parties may intervene, that is those who might be prejudiced if the action succeeds.

37. The Public Department's intervention is more limited than in the past. It may present its conclusions in defence of the citizen's fundamental rights, of particularly important public interests, or concerning public health, environment, urbanism, land use planning, quality of life, cultural heritage and properties of the State, autonomous Regions and local communities. This intervention takes place ten days after the notification of the administrative procedure's junction or the presentation of the defendant's conclusions and it is notified to the parties.

38. In the past (cases engaged before 2004), the Public Department before an administrative court, including the Supreme Administrative Court, presented its conclusions in all the legal proceedings where it was not a petitioner. It cannot do this any longer and no other entity is entitled to.

39. The legal proceedings may end without a judicial decision, for various reasons, such as desertion, withdrawal, impossibility or non-suit to statute. But the following may also prevent the hearing from continuing: for example, initial request stained with a default, plaintiff's default of judicial personality or capacity, indisputable nature of the disputed act, plaintiff or defendant default of quality to act, coalition's illegality, non-identification of third parties concerned, illegality of the claims accumulation, foreclosure, lis pendens and final judgment.

40. Except for particular cases (urgent proceedings, for example), the registry proceeds, ex officio, with the subpoena of the defendant public authority and the third parties concerned, as well as the recourse's notification.

41. The parties must indicate the facts and the arguments of law that they base their conclusions upon, as well as tender the proof of these facts.
In the frame of his/her inquiry's powers, the judge may order proof search that he/she considers as necessary to the manifestation of the truth (for ex. article 90 CPTA).
The burden of proof is distributed according to the substantive law.

42. The close of the hearings is followed by the in-camera sitting of judges who are bound to pronounce, and when they deliberate on a fact, the judges statute immediately after the relevant public hearing.
In the Supreme courts (STA and appeal administrative courts), the sessions are presided by their presidents or vice-presidents and the other judges of the section may attend.
Until 1984, and in the Supreme courts, the representative of the Public Department attended the in-camera sitting.

B. The judgment

44. The sentence or the ruling starts with the identification of the parties and the object of the case, as well as the questions that the court must determine. Then the motives and the final decision follow. The motives may be drawn up in the form of reasons adduced, with details about the facts established. The judgment must also indicate, interpret and apply the applicable legal standards.
When the judge or the reporter considers that the question of law to be determined is simple, notably because it was already assessed by a court, in a uniform or iterated manner, or that the request is obviously unfounded, the request's ground may be succinct, and may simply consist in a reference to the previous decision, with an attached copy.
The judgment must indicate the grounds of fact and law that were decisive for the decision, under pain of nullity. It may also be nulled if it does not pronounce on all the questions that should have been assessed.
The jurisprudence establishes a systematic distinction between the questions and the arguments. The court must assess the questions, but it is not bound to pronounce on the parties arguments.

45. The disputed acts legality is essentially assessed in relation to (constitutional, legal or regulatory) national law and to the jurisprudence of the national courts. But there are also many cases of claim of the community law instruments (for example, with regard to public contracting) or international law instruments, as well as the jurisprudence of various proceedings, especially the CJCE and the CEDH (for example, in a disciplinary matter).

46. As mentioned in (2.), "*the administrative courts statute on the respect by the administration for the legal standards and principles that bind it and not on its action's suitability or appropriateness*" (article 3).

In regards to legality control, the assessment by the court does not include any limitation other than that of its own inquiry means.
The distinction between the acts used in carrying out linked powers and the acts used in carrying out full powers to act tends to subside, in relation to the fault verification. In fact, certain aspects that were considered in the past as lying with the act's usefulness are from now on considered as lying with the legality block. This is for example the case for the rule of justice, the rule of proportionality.
In certain cases, the fault's assessment in the parameters retained may be confused with the control of the very margin of the administration's free assessment or prerogative of evaluation, for example, in the case of the marking assigned to a civil servant. The jurisprudence tends to assert that in these situations, the court cannot control the administrative authority's assessment unless there is an obvious or gross fault.
The court must pronounce on all the causes of invalidity that were claimed, as well as identify itself the existence of causes of invalidity other than those that were claimed (article 95, CPTA).

47. Except otherwise planned, the parties in the proceeding must pay the expenses. These expenses include the "justice tax" and the legal fees. The justice tax is calculated according to the amount for the case. The legal fees are all the costs engaged by the party who won its point. The amount of the sentence as for the representation expenses (lawyer's fees) is set by the court between one tenth and one fourth of the justice tax to be paid.
Generally the losing party bears the costs of the procedure. If a party partially wins its point and partially loses, the costs must be proportionally distributed.
The law sets the subjective and objective exemptions.

48. At the Supreme Administrative Court and in the Appeal Administrative Courts, the case is judged by a panel; in the administrative courts, it is judged by a sole judge or a panel, according to the type of case and its amount.

49. In all the proceedings of the administrative jurisdiction, separate opinions are authorized.

50. The sentences or rulings are given in writing, and then notified to the parties. In certain cases, the sentence may be dictated to the clerk of court at the end of the judgment public hearing related to the facts, if there were also oral debates related to the legal aspect of the cause (for ex., articles 659, 4, do CPC, 103 do CPTA).

D. The judgment's effects and execution

51. The courts decisions bind all the public and private entities.
But there are multiple cases. For example:
- In an action to sentence to pay a compensation for civil liability, the judgment, insofar as it cannot be appealed, has a general compulsory force: there is no debate, in no proceeding;

- For recourse in cancellation, the judgment related to the cancellation of an administrative act, for a specific fault, does not prevent the administration from using an act having the same content, insofar as the fault in question is not repeated.
In addition, the CPTA provides in article 161 that the effects of a judgment that became final having cancelled an unfavourable administrative act or recognized a legal situation as favourable to one or more persons may extend to third parties in the same legal situation, whether they referred to justice or not, insofar as no sentence became final in relation to them. This is valid only for perfectly identical cases, notably in the field of public service and tests, and only when five judgments were pronounced in the same direction and became final or, in case of a mass trial, when three cases were determined in this same direction.

52. In recourse lodged against the standards enacted according to administrative law provisions, the court may decide that, for reasons of legal security, equity or public interest of an exceptional importance, its declaration of illegality having a general compulsory force will produce effects only when the appeal's delay expires.
53. The execution of the administrative courts decisions against the administrative authorities is provided in detail in the CPTA (articles 157 to 179).
The execution of the administrative courts decisions against the administrative authorities is provided in details in the CPTA (articles 157 to 179).
The judgments sentencing the administration to perform facts or give things must be spontaneously exerted by the administration itself within three months at most, except in case of legitimate grounds for failure.
By default of a spontaneous execution, the court may set a penalty until the execution, as well as the very content of the acts and operations to be adopted.
The convictions sentencing the administration to pay a specific amount must be exerted by the administration itself within 30 days.
By default of a spontaneous execution, the court may refer to the Supreme Council of Administrative and Tax Courts that decides on an endowment entered in the State Budget.
The cancellation of an administrative act means that the administration has the duty to recover the situation that would exist if the cancelled act had not been used. It has three months to do so. By default of this execution by the administration, the court may specify the content of the acts and operations to be adopted.
In all cases, the illicit failure of the decisions commits the civil liability of the administration and the persons carrying out duties there, as well as their disciplinary liability.

54. One of the desiderata proclaimed in the "Reform of the administrative litigation", evoked in the introduction, is that of the reduction in slowness of proceedings. To this effect, the number of administrative courts increased. However, at the same time, this jurisdiction's conditions of assignment were extended and the available procedural means increased.
It is not possible to have a complete concept of this reform's result yet.

E - The rights of review

55. In most of the cases, the parties refer to the administrative courts of first degree (TAC) (article 44 of the ETAF); but the administrative courts of appeal (TCA) as well as the Administrative Supreme Court (STA) operate, essentially, like remedy courts. The Administrative Courts of Appeal may statute in first resort in some rare cases – for example, the actions for revision based on the civil liability of the Public Department's judges and magistrates within the administrative courts (TAC).
The STA may statute in first resort, essentially in the proceedings related to actions or omissions, in administrative matters, of the following authorities:
President of the Republic; Assembly of the Republic and its President; Council of Ministers; Prime Minister; Constitutional Court and it's President, President of the Supreme Administrative Court; Court of Accounts and its President; President of the Supreme Military Court; Supreme Council of the National Defense; Supreme Council of the Administrative and Tax Courts and its President; Attorney General of the Republic; Supreme Council of the Public Department.
- In the actions for revision based on the civil liability of the Public Department's judges and magistrates with the Supreme Administrative Court and the Administrative Courts of Appeal.
As remedy courts, the Administrative Courts of Appeal operate, generally, as courts of appeal and the STA as a court of cassation.

56. To each case an amount is assigned, which represents the request's economical utility.
Recourse against decisions having been judged on merits, at the first degree of jurisdiction, may be formed in the cases of an amount superior than that of the court's resort where the judgment is disputed.
The competence rate of the administrative courts is currently 3,740.98 €; that of the TCAs are 14,963.34 €.
-Where the jurisdictions of appeal and cassation statute in first resort, their competence rate is that of the administrative courts of first degree.
The cases related to intangible assets and standards issued in carrying out the administrative duty are considered of an undeterminable amount. In these cases, recourse is always admissible.
It is also possible to lodge recourse, for example, against the decisions regarding penalty or ending the proceeding without pronouncing on the merits.
The courts of second degree (Administrative Courts of Appeal – TCA), adjudicating on the appeals lodged against the decisions of the administrative courts, judge facts and law (article 149 CPTA).
The Supreme Administrative Court (STA), which statutes on the appeals lodged against the TCA decisions or the TCA decisions adjudicating in first resort (appeal before the plenary panel), judge on law only (article 12 of the ETAF).

F. Urgent proceedings and summary judgments

57. The CPTA establishes a distinction between proceedings of a summary court and summary proceedings. They are both more accelerated than the normal proceedings. The competent court for the summary proceedings is the one competent on the merits. All the instances are subject to the same regulation in the frame of the summary proceedings.

58. The proceedings in a summary court provided are as follows: recourse against administrative acts in electoral matters; recourse against administrative acts related to works contracting, public works concession, service delivery and good supply; injunctions for information communication, consultation of files and delivery of copies and injunction for the protection of rights, liberties and guarantees, and in the cases of recourses, the request in cancellation or in declaration of nullity. As for the injunctions, the request varies according to the object of dispute. In the cases of injunctions aiming to protect a right and vesting a particular emergency, the court may statute within 48 hours. Generally, the actions, recourses and injunctions provided in the CPTA have no suspensive effect. But the CPTA provides that the interested person may ask the adoption of summary measures, measures of anticipation or conservation, of a nature to ensure the utility of the sentence to be given. Among these measures are: the reprieve from execution of an administrative act or a standard; the provisional admission to tests and exams; the provisional assignment of a property's benefit; the provisional authorization to start or continue an activity or to adopt a conduct; the provisional settlement of a legal situation, notably by imposing the administration to pay a down payment on benefits alleged to be due or as provisional reparation; injunction to adopt a conduct or abstain from it addressed to the administration or an individual, notably a licensee, for violation or founded worry of violation of the administrative law standards.
Usually, the petitioner must prove the existence of damages difficult to repair; the measure is ordered if it is likely to result as damaging for the public interest or private interests higher than the petitioner's damages (article 120).

59. The summary regulation is the same for the disputes opposing individuals and the administration and for the disputes related to the various public law communities.

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

60. As we have noticed (see 21.), generally, administrative recourse can be considered as optional. But it might also imply that provisions requiring prior administrative recourse (case of the application of certain disciplinary sentences, according to the relevant Disciplinary Status, of exclusion or probate of the final classification list, in the frame of staff recruitment tests, as per the decree-law 204/98) are still in force or may be established.
Whether the prior administrative recourse is compulsory or optional, the administration may reach a decision favourable to the petitioner and thus settle the dispute.

61. The CPTA provides the possibility to bring together an arbitration court to determine the following questions: a) questions related to contracts, including the assessment of administrative acts in relation to their execution; b) questions of extra-contractual civil liability, including the exercise of the right for revision; c) questions related to administrative acts that can be impeached for other grounds than their invalidity, according to the substantive law.
In all these cases, if there are third parties involved, they have to accept the arbitration agreement.
There are other independent regulation proceedings, in various fields (press, media, stock market, insurance), but their materially administration decisions may, however, be subject to jurisdictional recourse.
The mediator of the Republic (*provedor de justiça*) examines the citizen's claims and draws up recommendations, but he/she does not have the power of decision.

62. See 61.

IV – Justice Administration and statistical data

A. The means available to the justice in administration control

63. The date related to the annual budgets (years 2003, 2004 and 2005) of the Department of Justice, the courts of the common jurisdiction and the administration and tax jurisdiction are summarized in the following tables:

Budget do Ministère de la Justice (M€)			
	2003	2004	2005*
Personnel	769,2	788,8	940,9
Dépenses courantes	254,6	226,3	245,5
Capital	5,2	5,4	6,6
Total Fonctionnement	**1029**	**1020,5**	**1193**
Investissement	102,6	88,7	86,6
Total Ministère Justice	**1131,6**	**1109,2**	**1279,6**
% MJ du Budget de l'Etat	2,3	2,3	2,5

*budget corrigé en septembre 2005

Juridiction commune
Budget de la Cour suprême de justice**, Cours d'appel et tribunaux de 1ère instance (M€)

	2003***	2004	2005*
Personnel		391	375,7
Dépenses courantes		104	97,8
Capital		0,5	1,9
Total Fonctionnement		**495,5**	**475,4**
Investissement			
Total Ministère Justice		**495,5**	**475,4**

*budget corrigé en septembre 2005
** a partir de 2005, la CSJ ne fait plus partie de la structure du Ministère
*** jusqu'en 2003 les dépenses en personnel étaient comprises dans une rubrique plus vaste, ce qui ne permet pas une désagrégation correcte

Juridiction administrative et fiscale
Budget de la Cour administrative suprême, Cours administratives d'appel et tribunaux administratifs et fiscaux de 1ère instance (M€)

	2003**	2004	2005*
Personnel		18,9	22
Dépenses courantes		0,8	1
Capital			0,1
Total Fonctionnement		**19,7**	**23,1**
Investissement			
Total Ministère Justice		**19,7**	**23,1**

*budget corrigé en septembre 2005
*** jusqu'en 2003 les dépenses en personnel étaient comprises dans une rubrique plus vaste, ce qui ne permet pas une désagrégation correcte

64. On December 31, 2004, the administrative and tax jurisdiction had 189 magistrates (38 adviser-judges, 28 judges of 2nd instance and 123 judges of 1st instance), including 25 adviser-judges, 16 judges of 2nd instance and 85 judges of 1st instance in the administrative field.
The common jurisdiction had, on December 31, 2004, 1,776 magistrates (75 adviser-judges, 360 judges of 2nd instance and 1,341 judges of 1st instance).

65. On December 31, 2004, the percentage of magistrates transferred to the control of the administration was 10.6% (administrative and tax jurisdiction) in comparison to the total number of magistrates, all jurisdictions taken into account.

66. The Supreme Administrative Court has a technical and documentary support office, where 12 assistants with a legal training are assigned, assisting the advisory-judges in their work, and 8 administrative assistants in the rulings data processing.

67. The Supreme Administrative Court's library has a vast collection of works, essentially in Portuguese language, as well as numerous collections of legal periodicals.

68. All the magistrates have desktop and portable computers, integrated in a network.

Moreover, and in addition to *Internet* access, all the magistrates and civil servants have free access to various legislation, jurisprudence and literature data bases.

In terms of proceeding, the Supreme Administrative Court has a computing file management program, a new application being under consideration to also enable this Supreme Court to manage all the files in an exclusively digital format.

69. The administration and tax jurisdiction has, in addition to the Higher Courts sites, a gateway page to the administrative and tax jurisdiction, integrated in the Administrative and Tax Courts Computing System (SITAF), which aims to computerise all the pleadings and the management of the briefs presented before the courts of the administrative and tax jurisdiction.

70-72. Data related to the recorded, processed and stored cases, for the years of reference 2003 and 2004 (due to the application of the SITAF (see 69), data related to the courts of first instance for the year 2004 are not available yet):

73. In regards to the average duration of the cases, per proceeding:

74-75. -Information not available.

76. A particular concern of the jurisdictions in regards to the effects of the sentences on the public budgets is not drawn up. However, of course in certain cases the court judges in equity, taking into account, in these cases, the economical situation of the victim as well as the agent.