

Seminar organised by the Hellenic Council of State and ACA-Europe

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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from Administrative Law Chamber of the Supreme Court of Estonia

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act X

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers X



2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- | | |
|-------------------------------------------------|-------------------------------------|
| Constitutional provision | <input type="checkbox"/> |
| General provision of a legislative nature | <input checked="" type="checkbox"/> |
| Specific legislation | <input checked="" type="checkbox"/> |

Private individuals involved in carrying out administrative proceedings:

In Estonia, the right to exercise public authority belongs to the 1) state (through its institutions), 2) local governments, 3) public-law legal persons (e.g. the Defence League, Estonian Unemployment Insurance Fund, the Estonian Bar Association, and the Estonian Public Broadcasting etc), 4) free professionals (notaries, trustees in bankruptcy), 5) private legal persons performing public duties.

The state's and local governments' relationships with its personnel are governed by the Civil Service Act (CSA). According to the CSA § 5 public service is a public-law service and trust relationship between the state or local government and an official to perform the functions of the authority, which is the exercise of official authority (1); the employment relationship, governed by private law, between the state or local government and a person to perform the functions of the authority, which is solely the work to support the exercise of official authority (2).

It is important to note, that the CSA § 5 does not include the personnel of other public-law legal persons or private law legal persons in the definition of civil servants. Therefore, the CSA does not apply to people working for public-law or private legal persons. These institutions can only conclude employment contracts with their personnel. Therefore, people who carry out administrative proceedings on behalf of public-law legal persons or private legal persons are private individuals. (Since "legal entities governed by private law" are not covered by the questionnaire, the following answers concern mostly individuals who carry out administrative proceedings in the name of public law legal persons).

For example: Estonian Unemployment Insurance Fund (Töötukassa) is a public-law legal person that has the authority to register or refuse to register someone as an unemployed person and to grant or refuse to grant unemployment insurance benefits to someone (both of which are administrative acts). People who work for Töötukassa are considered employees, not civil servants. Civil Service Act does not apply to them. The Estonian Health Insurance Fund (Tervisekassa) has the competence to grant or refuse granting health benefits (incapacity for work benefit, dental care benefit); make decisions related to financing healthcare services; determining the validity of health insurance. Like in the previous example, people who work for Tervisekassa are not considered to be civil servants.



Private individuals that have supportive role in administrative proceedings:

Delegating supportive tasks to private individuals is generally allowed (organising meetings, accounting, IT support etc) either by concluding employment contracts (CSA § 7(5)) or by outsourcing the service. General principles that govern delegating supportive tasks to private persons are laid down in Administrative Co-operation Act.

There is also specific legislation allowing for outsourcing specific supportive tasks. For example, the Planning Act § 130(1) states that authority that organises spatial planning work may conclude, with a party interested in the creation of the detailed spatial plan, an administrative contract to delegate to such a party the creation, or the commissioning of the creation, of the plan. The authority may not, by such a contract, delegate creation of the plan or the carrying out of any procedural operations required to create the plan. (This means that the performance of administrative proceedings itself cannot be delegated, only drawing up technical documents that require expert knowledge).

It is important to note that private individuals performing these supportive tasks cannot be considered public servants, but as “workers” for the purposes of Article 45 TFEU in the light of CJEU C-20/16, Bechtel.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

General principles for delegating administrative tasks to private persons are laid down in Administrative Co-operation Act (ACA). This Act regulates both the delegation of tasks of ordinary administration (e.g. snow removal from roads, the organisation of public transport, the provision of sewerage services) and the delegation of tasks of public authority (including the transfer of the right to issue administrative acts). In the latter case, the most important criterion is that the delegation of a task involving the exercise of public authority must be authorised by law.

According to ACA § 4 the Act regulating the grant of authority to perform administrative duties which require the authority to exercise executive power prescribes the contents of the authority of the executive power and the administrative duties, the agency or body that exercises administrative supervision over the performance of administrative duties and the further organisation of the performance of administrative duties if an administrative contract is terminated unilaterally or if any other reason exists that prevents a legal or natural person from continuing further performance of the administrative duties.

Another criterion, which follows from the case law of the Supreme Court, is that the core functions of the state may not be delegated to private-law entities (the power to punish, including the enforcement of imprisonment (*see answer to vi*)).

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- | | |
|--------------------------------------------|--------------------------|
| Directly by law | X |
| By an administrative act | X |
| By contract | <input type="checkbox"/> |
| OtherBy administrative contract..... | X |

By law: A public-law legal person derives its competence to issue administrative acts from the law, whereas a private individual who performs this task on behalf of the legal person, does so based on a private-law employment contract. E.g. according to The Labour Market Measures Act § 8(3) The unemployment insurance fund makes a decision to register or refuse to register a person as unemployed no later than on the second working day after the submission of a proper application.

By an administrative contract: The Ministry of Climate concludes an administrative contract with the private legal person Environmental Investment Centre, authorizing the latter to perform an administrative task of organizing the allocation of funds obtained from trading in the emission allowances trading system, including the evaluation of applications and decision-making on their approval.

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?

Please provide specific examples from legislation and case-law.

- | | |
|-----------------------------------------------------|--------------------------|
| Preparation of the administrative act | X |
| Issuance [adoption] of the administrative act | X |
| Implementation of the administrative act | X |
| Other | <input type="checkbox"/> |

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

- | | |
|----------------------------------------|--------------------------|
| Advisory tasks | X |
| Decision-making tasks | X |
| Control and verification tasks: | |
| Establishment of the facts | X |
| Legal qualification of the facts | X |
| Other | <input type="checkbox"/> |



vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

- No
- Yes (please specify)

If yes, which legal instrument provides for the corresponding prohibitions?

- Constitution
- Legislation
- Other

Please indicate any relevant case-law.

The leading case establishing limitations to delegating state duties is Supreme Court's decision from 16. May 2008 in case no 3-1-1-86-07. At the time the Public Transport Act allowed a private company that had entered into an administrative contract with the state to check whether passengers had a valid public transport ticket and, in the absence of such a ticket, to impose a fine. The Supreme Court held that the provision allowing a private company to impose misdemeanour fines was unconstitutional. The Supreme Court found that the exercise of punitive power is a core function of the state, the delegation of which to private persons is not permissible under any circumstances.

In 4. February 2026 case no 3-25-144 the Supreme Court found that carrying out imprisonment is also a core function of the state, which cannot be delegated under any circumstance (4. February 2026 case no 3-25-144). For context, disputes concerning conditions of detention are considered public-law disputes and fall within the jurisdiction of the administrative court. The actions and decisions of a prison are classified as administrative actions or administrative acts.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

- Participation in examinations
- Selection based on criteria
- Other

There is no general legal framework governing criteria for employees of public-law legal entities. However, specific legal requirements may apply to certain positions, usually more senior roles. For



example, the Estonian Health Insurance Fund (Tervisekassa) has the competence to grant or refuse granting health benefits (incapacity for work benefit, dental care benefit); make decisions related to financing healthcare services; determining the validity of health insurance. According to the Estonian Health Insurance Fund Act (EHIFA) member of the management board must be a person with higher education whose permanent residence is in Estonia and who has the knowledge, professional qualification and impeccable reputation necessary for directing the Estonian Health Insurance Fund (EHIFA § 25(1)).

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register
- Selection from a list/register based on criteria
- Absolute discretionary power of the Administration
- Selection by the citizen [upon a declaration]
- Other

Public-law legal persons are generally free to decide for themselves how they recruit individuals. Specific laws or statutes may require a competition to be held for certain positions. For example according to EHIFA § 24(1) The chairman of the management board shall be appointed by the supervisory board. The supervisory board shall organise a public competition for selection of candidates for chairman of the management board. The procedure for the competition shall be provided in the statutes of the Estonian Health Insurance Fund. Other members of the management board shall be appointed by the supervisory board on the proposal of the chairman of the management board.

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

- No
- If yes,
- General normative act (e.g. Code of Administrative Procedure) **X**
- Specific normative acts **X**
- Codes of Conduct, good practices (soft law)
- Other

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

- Incompatibilities **X**
- Impediments

- Criminal or disciplinary liability
- Other

The law provides a general basis for when an official conducting administrative proceedings must recuse themselves. According to Administrative Procedure Act § 10 a person acting on behalf of an administrative authority shall not participate in an administrative proceeding if:

- 1) he or she is a participant in the proceeding or acts as a representative of a participant in the proceeding;
- 2) he or she is a relative (parent, child, adoptive parent, adopted child, brother, sister, grandparent or grandchild), spouse , registered partner or relative by marriage (the spouse's or registered partner's parent, child, adoptive parent, adopted child, brother, sister, grandparent or grandchild), or if he or she is a family member of a party to proceedings or of a representative of a party to proceedings;
- 3) he or she is in a professional, service or other dependent relationship with a participant in the proceeding or his or her representative;
- 4) he or she is in any other manner personally interested in the resolution of the matter or other circumstances give reason to doubt his or her impartiality.

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

- Withdrawal of the certification
- Disbarment from the professional association
- Imposition of a fine or other penalty
- Personal liability of the private individual (civil, criminal, disciplinary)
- Revocation of the administrative act in the issuance of which the private individual collaborated
- Civil liability of the State
- Other

If a person, who conducts administrative proceedings on behalf of a public-law legal person, makes a mistake (e.g. an unlawful procedural act), it is considered an act of the administrative authority. Externally, liability for such a mistake lies with the administrative authority, not with the individual. Internally, such a mistake may, depending on the nature and severity, constitute a breach of the employment contract.

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

- Yes



No

ii. If yes, at what stage are the checks carried out?

A priori

A posteriori

At any time

iii. How are checks activated?

Following a complaint/administrative appeal

Ex officio

iv. How extensive are the checks?

Checks based on sampling

Mandatory checks for all actions

v. What is the nature of the checks?

Of legality

Of the substance, of appropriateness

vi. What is the type of checks?

On persons

On actions

vii. Are the conclusions of private individuals binding on the Administration

Yes

No

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

No

Yes

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se)

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration)



ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes

private disputes

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

In the case-law of the Supreme Court, there have been cases concerning the delegation to private individuals of tasks that support administrative proceedings. For example, in 15. December 2022 judgement in case no 3-20-1310 and 19. April 2007 judgement in case no 3-3-1-12-07 the following situation was at issue:

Section 130(1) of the Planning Act (PA) allows a local government to conclude an administrative contract with a person interested in the preparation of a detailed plan (a developer) for the transfer of the preparation of the plan or the commissioning thereof. This is not permitted where the detailed plan seeks to amend an adopted comprehensive plan (PA § 130(2)). In both of the above-mentioned cases, the initial documents in the planning procedure for the detailed plan that amends the comprehensive plan, including the commissioning of the assessment of the need for a strategic environmental assessment, were ordered by the developer and not by the local authority. The Supreme Court explained that the legislator intended to grant local governments a stronger role in the planning procedure. Where the local government itself prepares the plan or commissions its preparation, the possibility of taking different interests into account in a balanced manner may be more effective than in cases where the detailed plan is commissioned by a developer who has a direct interest in the profitability of the development activity and, consequently, in the adoption of the planning solution most favourable to that developer. In proceedings for a detailed plan that amends the comprehensive plan, public interests and the municipality-wide integrated solution arising from the comprehensive plan must be taken into account more strongly than usual. Therefore, in such proceedings, the developer's role as the preparer of the plan or as the party commissioning its preparation is prohibited.

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

People who are appointed as a senior managers in state and local government bodies are civil servants according to the Civil Service Act (CSA) § 7(1) and (2). Private individuals are not senior managers there.

People who are appointed as top executives in a public law legal person are private individuals, but that is not because of their role, but because a governance choice was once made that certain public authority functions would be carried out by public-law legal persons.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

Senior managers in state and local government bodies are civil servants according to the Civil Service Act (CSA) § 7(1) and (2). Only executives at public law legal persons do not belong to the hierarchy of civil service. Most notable examples are Health Insurance Board and Estonian Unemployment Insurance Fund. But also the rector and department heads of public universities.

iii. What criteria does the Administration use to select external senior managers?

Mainly education and previous work experience.

iv. What is the nature of the duties of external senior managers?

- | | |
|-----------------|-------------------------------------|
| Decision-making | <input checked="" type="checkbox"/> |
| Advisory | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

v. Does error on the part of a senior manager give rise to:

- | | |
|------------------------------|-------------------------------------|
| Civil liability of the State | <input checked="" type="checkbox"/> |
|------------------------------|-------------------------------------|



Personal liability of the manager (civil, criminal, disciplinary)

2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Foundations of Estonian public service were laid at a time when the ideology of New Public Management (hereinafter NPM) was recognised. The core idea of NPM was to place the public sector within a private-sector operating model. Accordingly, underlying principles such as competition, openness, flexibility, greater managerial autonomy, performance management, and customer orientation were considered important. The Ministry of Finance commissioned an analysis in 2023 on updating the civil service, which criticises using this model. Since organizational effectiveness is assessed through objectives, a paradox arises in applying NPM to the civil service, because the objectives in public administration differ from those of the paradigm in which private entrepreneurs operate and private management functions. According to the analysis, a better model would be New Public Governance or joined-up governance.

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

No.

iii. In which public services and agencies is this type of organisation used?

The Administration stricto sensu	X
Public enterprises	X
Other public entities	<input type="checkbox"/>

iv. Are the policies for achieving the objectives designed:

At national level	X
At regional level	<input type="checkbox"/>
By subject-matter	X
By taking into account specific public entities	X
Other	<input type="checkbox"/>



v. Have specific objectives been set out for the action of the Administration? Please provide examples.



On a state level the government has adopted a strategic document "[Estonia 2035](#)" Action Plan which sets out long-term strategic goals of the state. This includes objectives to (A) increase the unity of governance and ensuring the smooth functioning of the state, (B) improve the quality and availability of state and local government services and reviewing the division of responsibilities. Ministries are responsible for implementing it.

Specific state and local government authorities may have their own strategic documents. For example Estonian Environmental Board's (Keskkonnaamet) "[Strategy for 2022 – 2025](#)". This strategy sets out the objectives of Environmental Board, the activities for achieving those objectives, and the indicators used to assess performance. For example, one objective is to improve environmental awareness among people in Estonia and to steer behaviour towards more environmentally sustainable practices. The activities envisaged to achieve this include: (1) increasing the scope of preventive and awareness-raising activities and integrating them into the authority's services; and (2) developing automated notifications within its services in order to prevent unintentional environmental violations and reduce the time clients spend searching for information. The indicators used to measure performance are: (1) increased environmental awareness, and (2) a decrease in the number of violations.

If yes, is their accomplishment:

- | | |
|-----------|--------------------------|
| Optional | X |
| Mandatory | <input type="checkbox"/> |

Does failure to meet these objectives lead to:

- | | |
|------------------------------------------------------|--------------------------|
| Personal consequences for the senior managers | <input type="checkbox"/> |
| Legal consequences for the assessed organisation | <input type="checkbox"/> |
| Financial consequences for the assessed organisation | X |

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

Theoretically, Civil Service Act allows to pay officials an additional variable pay up to 20 percent of the basic salary of the official. The variable salary may be paid as a performance payment, as an additional payment for the performance of additional duties or as a bonus for exceptional service-related achievements. Whether or not this incentive is used to encourage achieving the objectives of the administrative authority, is totally up for discretion of the management. There is no obligation arising from legislation to pay additional payment for the achievement of an institution's strategic objectives.



vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

Compliance with the regulatory framework	X
Effectiveness	X
Efficiency	X
Economy	X
Achievement of strategic objectives	X
Other	<input type="checkbox"/>

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration	<input type="checkbox"/>
Mediation	<input type="checkbox"/>
Other	X

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

* Please elaborate on your answer, citing any relevant legislation and/or case-law

All disputes regarding public procurement (procedure) must be reviewed by The Public Procurement Review Committee before a complaint can be filed in the administrative court. It is a mandatory out-of-court dispute adjudication body according to the Public Procurement Act §187(14). Members of The Public Procurement Review Committee are independent and appointed to the office by the Government of the Republic for up to a five-year period. This is the only case where ADR-like mechanism is recognised for disputes involving administrative law. This cannot be really considered an arbitration though, because it is mandatory and the parties cannot choose the members of the Review Committee.

2. Settlement and Mediation

* Please elaborate on your answers, citing any relevant legislation and/or case-law.



i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

It's explicitly allowed by the law. According to Code of Administrative Court Procedure § 154(1) the parties may, until a concluding disposition concerning the complaint enters into effect, conclude the proceedings by a compromise. Where the compromise limits the rights of a third party, it must also be agreed by the third party. The court does not approve a compromise that is unlawful, interferes with the rights of a person who has not been added to proceedings or is impossible to carry out.

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

A settlement may be concluded in court only if court proceedings have been initiated, i.e. if a complaint has been filed.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

Indirectly, yes. CACP § 158(3) states that when assessing the lawfulness of an administrative decision issued or an administrative operation carried out based on the exercise of discretionary powers, the court also verifies whether the administrative authority complied with the limits and purpose of those powers and observed other rules that govern their exercise. The court does not conduct a separate assessment of the expediency of a discretionary decision. When verifying the lawfulness of an administrative decision or operation, the court does not engage in an exercise of the discretionary power instead of the administrative authority.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

The court has a duty to facilitate the conclusion of a settlement if, in the court's opinion, this is reasonable (CACP §154(4)).

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?

Administrative Court that as the authority to decide the case.

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

Yes

Which court has jurisdiction over disputes concerning such enforcement?

Administrative Courts.

ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

a legislative provision

a general principle of law

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes
No

ii.a. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Is it mandatory or optional?

If it is optional, does it require:

The mutual agreement of the parties
Only the intention of the Administration
Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee
By the administrative authority involved in the dispute
Other

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings
At any stage of the litigation proceedings



Is there a specific piece of legislation governing the mediation process?

Yes

No

If yes, please specify:

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

How is the impartiality of the mediator ensured?

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

ii.b. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

Is it mandatory or optional?

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision

A general principle of law



ic. If arbitration is optional, does it require:

- The mutual agreement of the parties
- The sole intention of the Administration
- The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

- After approval by a special committee
- By the administrative authority involved in the dispute
- Other

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

Disagreements arising from the performance of such contracts are not considered to be matters of public law and therefore do not fall within the jurisdiction of administrative courts. Disputes arising from the performance of a public procurement contract are resolved by civil courts. Arbitration is in principle permissible and is governed by the general rules of civil procedure.

iv. How are the independence and impartiality of the arbitrator ensured?

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

vi. In arbitration concerning administrative disputes:

yes / no

- Is there an obligation to make publicly available the basic information and documents relating to the proceedings?
- Is the participation of third parties permitted?
- Is legal representation mandatory?
- If yes, is legal aid available?
- Is the hearing public?
- Is the arbitral tribunal obliged to give reasons for its award?
- Is the arbitral award made publicly available?

vii. During the proceedings, the applicable system is:

- the adversarial system
- the inquisitorial system

viii. What powers does the arbitral tribunal have?

- Reviews the legality of administrative acts of a non-pecuniary nature
- Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)
- Annuls/amends an administrative act of a non-pecuniary nature
- Annuls/amends an administrative act of a pecuniary nature
- Addresses only recommendations to the Administration
- Restricts itself to awarding compensation for damages

Does the arbitral award have effect:

- Erga omnes (with regard to all)
- Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

- Yes
- No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Is it possible to waive the right to judicial review?

Which courts have jurisdiction?

What is the scope of the judge's review according to case-law?

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, *Eco Swiss China Time Ltd v Benetton International NV* and C-168/05 *Mostaza Claro v Centro Móvil Milenium SL*, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?