

**XVII<sup>eme</sup> colloque entre les Conseils d'Etat  
et les juridictions administratives suprêmes  
de l'Union Européenne**

**Vienne du 8 au 10 mai 2000**

**R a p p o r t**

**Grèce**

Answers to the questionnaire set out in the course of the preparation for the XVII meeting of the Councils of State of the European Union

## 1. Preparatory questions concerning domestic law

1.1 The following derive from the combination of Articles 94 and 95 of the Hellenic Constitution: the annulment disputes are in principle subject to the jurisdiction of the Council of State. Thus, according to the formal-organic criterion which has prevailed in the case law in Greece, disputes arising from any executive administrative act, i.e. act of an authority belonging to the executive power, are in principle subject to the competence of the Council of State deciding in the first and final instance. In exceptional cases, an application for annulment can also be lodged with the Council of State for others acts in accordance with the functional criterion; acts of legal entities and organisations of private law with a *sui generis* character, thus exercising also apart from their private law functions- activities falling within the ambit of public law. In this category one would include the Bank of Greece in relation to its currency policy or to its privileges. However, Article 95 para. 3 of the current Constitution has permitted the legislature to transfer certain categories of annulment disputes to the competence of ordinary administrative courts of lower degrees, the appellant jurisdiction of the Council of State being, however, reserved. Following this constitutional delegation, Law 702/1977, as amended by Law 2721/1999, the three-membered Administrative Court of Appeal has been granted the competence to decide in first instance applications for annulment of individual administrative acts concerning among others, appointments and, generally, the labour status of the civil servants of the public sector and of legal entities of public law, except for the promotion to the higher posts the implementation of the education legislation and certain aspects of the town planning legislation such as the revocation of expropriations that have already been executed, arrangements, land attachments, pecuniary and land allocation those responsible to compensate for compulsory purchases and the domination of constructions as lacking building permission. All the above amendment disputes are subject to the appellant jurisdiction of the Council of State. On the other hand, the

substantive administrative disputes or disputes of full jurisdiction are subject to the ordinary administrative courts according to Article 94 of the Constitution. According to the prevailing view of the case law of the Council of State, it is up to the legislature to turn some annulment disputes into substantive disputes and subject them to the full-on the merits control of the Council of State. Thus, apart from disputes arising from material acts of the administration or from contracts, in which one of the contracting parties might be the public or a legal entity of public law, the three-membered Administrative Courts of First Instance has also assumed the competence, according to Law 702/1977 as amended by Law 2721/1999, of deciding among other disputes arising from executive administrative acts issued in the context of the implementation of the legislation concerning social security, protection of handicapped individuals, public lodgings etc. The decisions of the courts on these issues are subject to an appeal before the Administrative Courts of Appeal and to a cassation before the Council of State. Consequently, all administrative disputes arising from administrative acts are subject in principle, either in the first instance or on appeal, to the control of annulment or of cassation- of the Council of State. Exceptionally, there are certain disputes, getting less and less, concerning the relations between the state functions which are not subject to the judicial control. The acts which generate these disputes, such as the decree of the parliament dissolution, are considered as acts of state (*actes de gouvernement*) and due to their intrinsic liaison with the exercise of political powers escape the judicial control.

1.2 As cited above, all decisions of the Administrative Court of Appeals handed down in the context of annulment disputes are subject to an appeal before the Council of State by the defeated party. The decisions of the Administrative Courts of First Instance are subject to an application for cassation before the Council of State in cases where no appeal can be lodged either according to law or because the time limit to lodge an appeal has been expired.

1.3 The Council of State when deciding on an application for annulment can either annul the challenged act or reject the application. The annulment judgments result in the challenged act been annulled *erga omnes*. All judgements -annulling the act or rejecting the application- have the effect of *res judicata* for the administrative issue

that has been decided in the trial and they are binding both for the Administration for the litigants in every trial between the same parties when the same issue is raised. The Council of State may order the Administration, through an annulment decision, to take a certain course of action when the challenge refers to an omission on the part of the Administration to perform an act which is mandatory by law. When deciding annulment disputes, the Council of State cannot reform or amend the challenged act, since this power is exclusively akin to cases of full jurisdiction and it is up to the competent administrative courts when deciding such cases. In relation to the suspension of administrative acts challenged through an application for annulment, our jurisdiction provides for a special suspension procedure decided by a three-member Committee of the Council of State, in which the assistant judge of the Council who is acting as reporting judge can also take part. Finally, the Council of State when deciding substantive disputes, such as the cases of disciplinary sanctions, may modify the challenged act.

1.4 According to the Constitution, the compétence of the Council of State is strictly limited to the resolution of administrative disputes that might affect civil rights and obligations. The Constitution prescribes that criminal cases are decided exclusively by criminal courts.

1.5 Answer to this question as already been given under 1.1.

1.6, 1.7, 1.8, 1.10 The existing constitution of 1975 has raised in Article 20 the right to receive legal protection by the Courts to a constitutional status. The constitution competence and functioning of the Courts is elaborately determined in Articles 93-100 of the Constitution so as the relevant criteria set out by Article 6 of the European Convention on Human Rights are satisfied. Accordingly, the prescriptions of Article 6 of 6 of the Convention form to a large extent part of the existing constitutional law. Consequently the provisions of this Article apply before all courts irrespectively of the nature of the dispute.

1.9 As cited under 1.1, only the acts of state enjoy immunity from judicial control

## 2. Applicability of Article 6

### 2.1

A. As described above, the largest part of the regulatory ambit of Article 6 of the Convention has become part of our constitutional law. The constitutional legislator has nevertheless, left the ordinary legislator to determine the terms and conditions of the right to receive legal protection (regulation of the nature of the remedies, conditions of admissibility, such as the time limits, requirement to pay stamps and deposit facts, existence of two degrees of jurisdiction, exclusion of the right to appeal and/or to cassation). In all these cases, according to a fixed case law of the Council of State the ordinary legislature is free to regulate these requirements provided that certain limits are not trespassed beyond which the right to receive legal protection is eliminated or its exercise is rendered substantially difficult. Accordingly, the Council of State has upheld the constitutionality of the legislation establishing a monetary threshold in tax and customs cases below which there is no right of appeal. By the same token, it has upheld the constitutionality of the legislation according to which there is no right of appeal or cassation of decisions concerning the elections of the Bars. Furthermore, the Council of State has upheld the constitutionality of the retroactive nature of legislation applying to pending cases before the courts, even when these cases have been decided and are not subject to appeal. However, in recent cases concerning social security, the Council of State struck down on grounds of unconstitutionality the legislation setting a maximum in the bonus received by those entering into pension so as to apply also to cases finally decided.

2.2 As cited above all range of administrative activities is subject to judicial - annulment or substantive- control. The question as to the applicability of Article 6 of the Convention in the proceedings before the Administration has already been treated. It has accordingly been decided that disciplinary cases of civil servants are not covered by Article 6 and therefore the procedural guarantees of impartiality set out in this Article do not apply in the administrative proceedings. The crucial issue on this case was the alleged illegality of the composition of a Appellate Service Council, which had decided to fire a public servant because some members of this Council had also participated in the proceedings before the Service Council of First Instance. The plenary

of the Council of State has also overruled in another recent decision the allegations for violation of Article 6 of the Convention on the grounds that the possible deficiencies of the administrative proceedings are covered in the process before the Council of State due to the its power to review the merits of the case and perform a thorough control.

2.3 In doubtfull cases, the Council of State has taken the view that the limited scope of judicial control only applies to the sovereign activities of the Administration relating to its organisation and functioning or to the general public interest.

B.

2.4.1 When deciding in its capacity as a court of annulment, the Council of State is restricted to the objective control of legality of the challenged act, without deciding rights and obligations of a civil nature, except as a collateral issue and in the course of the issue proceedings in order to determe the existence of *locus standi* of the applicant, which is broader than a right or an obligation.

2.4.2 Apart from the field of the sovereign spehre of activities of the Public Administration, such as its organisation and functioning, it is not possible systematically to exclude the application of Article 6 of the Convention (and, consequently. of Article 20 of our Constitution) according to the nature and character of the relevant legislation. Merely in some cases, like those conserning the protection of antiquities, where the notion of public interest provails, the latitude of discretionary powers of the Administration is wider and the extent of judicial control narrower.

C.

2.5 Administrative acts issued after planning legislation, are in principle subject to a judicial control for annulment.

2.5.1 Planning legislation and the corresponding qualifications to property rights have raised questions relating to the acceptable time limits for the commitement of private property. Accordingly, the case law of the Council of State has created the concept of

reasonable time within which of private property without expropriation is commitment acceptable. This period cannot exceed eight years.

2.5.2 Disputes arising in the field of retribution of agricultural land have become substantive so as the citizens can have full protection. By way of contract, disputes arising in the context of the legislation for the protection of sites of particular natural beauty or of cultural heritage monuments can merely be challenged through an application for annulment which results in limited judicial control. Even in these cases however, all the procedural guarantees of Article 20 of the Constitution and of Article 6 of the European Convention on Human Rights also apply.

2.6 Environmentally dangerous or disturbing activities are treated through the set up of zones within which a special planning regulation is required based on a balance between the potential environmental dangers and its side effects on the neighbouring proprietors.

2.6.1 As cited above, our legal system does not employ a gradation in the fields of application of Article 20 of the Constitution and of Article 6 of the Convention. The differentiation only refers to the latitude of judicial control according to the nature of the dispute as annulment or substantive.

## 2.7 Taxation (litigation in matters of)

Irrespective of whether taxation disputes fall within the scope of article 6 of the ECHR, they are subject to the procedural and substantive guarantees of a fair trial provided by the Constitution. Furthermore, although in Greek law a distinction is made between taxes and the so-called "compensatory" duties or charges, depending on whether the purpose of the levy is to generate public revenue or to defray the cost of a specific public service, this distinction has no bearing on the issue of fair trial. It is relevant only in order to determine the scope of para. 1 and 4 of article 78 of the Constitution, which provide that no tax shall be levied or appropriated, unless imposed by an Act of Parliament and further that the power to determine the basis and rate of taxation, as well as the abatements and exceptions, cannot be delegated to the executive.

## 2.8 Social Security litigation

2.8.1. Claims or disputes concerning individual determination, related to welfare or social security matters (benefits, contributions, or refunds), are adjudicated on the merits by the Ordinary Administrative Courts. Thus, the decisions of the relevant administrative authorities (Social Security officers or Local Social Security Boards) are subject to an appeal de novo before the District Administrative Court of the First Instance. The decision of this Court is subject to an appeal on the merits before the Regional Administrative Court of Appeal. That, in turn, is subject to a "cassation"- an application for an order to rescind and reconsider for error of law - before the Council of State. On the other hand, delegated legislation passed under social security statutes, can be challenged before the Council of State by way of an application for judicial review.

2.8.2 The case law of the Council of State has put a special stress on Article 6 of the Convention in that subject matter. Of particular importance are the limits placed on the retroactive effect of provisions impinging upon vested social security rights.

## 3. Major problems in the application of Article 6

3.1, 3.2, 3.3, 3.5 By and large, the application of Article 6 of the Convention does not pose any significant issues or challenges, since most of the fair trial requirements established by that Article, are already entrenched in the Constitution.

3.4 To all intents and purposes, current rules of procedure have practically eliminated almost any trace of inequality of arms between the parties, whether they are private persons, or public authorities.

#### 4. Publicity of judicial proceedings

4.1, 4.2, 4.6, 4.7 It is a fundamental rule of judicial procedure, established by express constitutional provision, that all courts shall sit for the hearing of cases and pronounce their judgements in public. Exceptionally, a hearing in camera is permitted only by ruling of the court, on the ground that publicity would be against the interest of morals, or upon a finding that, due to the exceptional circumstances of the case, the exclusion of the public is required to protect the private or family life of the parties. Any of the parties, or all of them, may dispense with the presentation of oral argument, if they so wish, without notifying the court or the other parties, however even in these cases the conclusions of the reporting judge will be presented in open court. Under a new rule of procedure, effective from 16.9.99, the court is granted discretion to strike out, proprio motu, by summary order patently inadmissible or unmeritorious claims for relief. The applicant has a right to ask for the reinstatement of the case for full hearing, in such cases though, should the application be dismissed, costs will be tripled as a penalty. So far, the court has made no use of this provision, nor been called to pronounce upon its constitutional implications, in the determination of a case.

4.3-4.5 A decision vitiated by procedural irregularity of any sort will be rescinded and remanded for rehearing. It will not be retained for reconsideration by the Council of State, since, under the Constitution, the Council of State has only appellate jurisdiction in matters of "cassation".

#### 5. Admissibility of evidence

5.1 The elements of proof admissible in proceedings before the Administrative courts are established In the Code of of Procedure before the Administrative Courts. It is clear from the provisions of this Code, that illegally obtained evidence is not admissible.

5.1.1. Under article 19 of the Constitution, the secrecy of private communications and correspondence Is Inviolable. Interception is permitted only upon an order of a Judicial authority, in the interests of national security or in the context of an investigation of serious crimes, as provided by statute. Furthermore, under Article 370A of the Criminal Code, illicit wire tapping is a criminal offence. Under Article 444 of the Code of Civil Procedure no recording of the voice, or picture, or representation of another person is admissible in evidence against him, unless proven to have been made with his consent.

5.1.2 In the 19/1993 Record of Plenary Session, the Supreme Court on Civil and Criminal matters (Areios Pagos) has issued a Directive that the public prosecutor may, upon Information, however obtained, inquire whether a member of the judiciary has sought to intervene with a colleague in order to influence the outcome of a case.

5.2 In cases brought before the Council of State or the Administrative Court of Appeal by means of application for judicial review, the court will take into account the evidence on the administrative record of the case as well as any evidence produced by the parties until the day of the hearing. Moreover, should the administration fail to comply with an interlocutory order to produce the full record of the case, that failure is construed as an admission of material facts stated in the application. Still, since the court has no power to substitute its own judgment for that of the administration (provided that sufficient reasons are given, supported by the evidence on the administrative record, taken as a whole), questions of proof, generally do not arise, unless the applicant is pleading that the administration has acted upon a "misapprehension", [error, or "incorrect basis"] of fact. In that case, the rules of evidence of the Code of Civil Procedure will apply, that is the applicant will have the burden of proof of her statements. As for cases heard on "cassation", the Council of State will examine only errors of law or procedure which appear on the judicial record of the proceedings before the lower courts (initiating documents, pleadings and submissions, interim orders, If any, and final judgments). It will, however, review the statement of reasons for the ruling of the lower court and remand for reconsideration, when the lower court has applied incorrectly the relevant rules of evidence.

Finally, in adjudication on the merits of cases brought before the lower administrative courts on appeal de novo, the parties must submit to the court the documents or depositions put forward in evidence until the day before the trial.

5.3 Under Art. 159-168 of the Code of Procedure before the Administrative Courts an expert can be appointed from an official list kept at the Civil Court of the seat of the Administrative Court. They are subject to the same rules of exemption or disqualification as the members of the judiciary. In cases heard before the Council of State, the expert will present to the court a written report with his conclusions.

5.4 In applications for judicial review, new grounds for review can be put forward and new evidence can be submitted only until the day of the hearing. However, the applicant may not raise before the court new issues of fact, if he failed to put forward his arguments in the course of quasi-Judicial, case-and-comment, or objection proceedings before the administration.

## 6. Parties to the case

6.1, 6.2 Any Individual or legal person is "recognized" or "entitled" to bring an application for judicial review before the Council of State or the Administrative Court of appeal, provided he can show sufficient Interest in the matter. In proceedings initiated by an application for judicial review, the parties must be represented by counsel. The application may be signed and filed by the applicant himself, in that case however the oral presentation of argument by counsel cannot be dispensed with. If the applicant cannot afford a counsel, he may apply to the court to appoint one for him. The availability of judicial review Is not limited to such cases where the prejudice alleged by the applicant amounts to a violation of right or of an interest protected by the relevant statutory scheme. Instead, the jurisdiction of the court may be invoked by any person aggrieved or adversely affected in fact by the decision. The Court will refuse to entertain an application only where the applicant has no personal stake in the outcome of the case, be it only a stake in the preservation of an existing factual situation, or where the interest alleged is moot or remote. Corporations can also apply for judicial review, upon a Showing of direct prejudice in their Interests, material or not. In the case of trade unions and professional bodies, or voluntary associations, their interest to challenge decisions not directly affecting them in their rights and

obligations, will be determined by reference to their goals, as defined in their Articles of Association. They may not however challenge a decision, when there is between their members a conflict of interest in the matter. Third parties may not Intervene In support of the application, as this would amount to a circumvention of the statutory limits for judicial review. By contrast, any party having interest in the matter, may intervene In support of the decision attacked. His procedural rights will be the same with those of the principal parties. A ruling dismissing the application is binding only between the parties. A ruling allowing the application, that is a ruling quashingt the attacked administrative decision, will be binding against the world. For that reason, should the application be allowed, a third party, not invited by service of process to join the defense, may, upon a showing of prejudice, apply for vacation of the order and rehearing of the case. An application for cassation, by contrast, is available only to the losing party before the lower court. No intervention Is allowed. The application must be signed by counsel. A party who cannot afford a counsel must first apply to the court to appoint one for him.

6.3 The availability of judicial review or the right to intervene in support of the defending authority is not limited to those who have a right to take part in the administrative procedure, although de facto participation in those proceedings may confer sufficient interest to apply for judicial review or join the proceedings.

6.4 Neither applicant nor Intervener need (although they may) Invoke a constitutional right. Standing depends entirely on the Impact the attacked administrative decision may have on their interests.

## 7. Public pronouncement of the judgment

Under para. 2 of Art. 93 of the Constitution Court judgments must be pronounced In open court. In practice though, only the decree is announced In open court. The full text of the judgment, with the statement of reasons can be obtained from the Secretariat (Registry) of the Court.

## 8. Reasonable Delay of Definitive Judgments in Administrative Law-Suits.

8.1 a) Whenever a quasi-Judicial procedure before an administrative body is available, judicial redress can be sought only against the decision of that body, not against the decision which is subject to the quasi-judicial appeal.

b) Failure of the administration to produce the record of the case may result in delays. In case of persistence, despite a letter of reminder by the reporting judge, the court will issue an interlocutory order. The reporting judge, with consent of the Section President, or presiding judge may also allow a request of the parties to postpone the hearing. The request enters the official record of the case only if made in open court, before the beginning of the hearing. Under the new rules of procedure, effective from Sept. 16 1999, if the hearing will be postponed once, if applicant defaults at the hearing. If he defaults for a second time, the case will be dismissed.

c) The right to lodge an appeal on the merits before the Court of Appeal or a "cassation" before the Council of State has been restricted in the case of small claims. The Council of State may grant leave to apply for cassation, if the applicant shows that the case may have wider financial or other implications for him.

d) There is no fixed order of priority in the calling on cases. The reporting judge and the Section President will decide on a case-by-case basis, depending on the importance or urgency of the case or the date of initiation of proceedings.

8.2 a) The Council of State has no jurisdiction to award compensation upon annulment of an administrative decision declared illegal. To that effect the applicant will have to sue the State in tort before the Ordinary Administrative Courts, for an award of damages with interest from the day of the deposit of the suit.

b) In cases of annulment of a dismissal from office, the civil servant is automatically reinstated with back-pay. In case of non-payment he may sue in tort. His seniority is restored and the administration is under duty to consider him for promotion as if he had been in service during the intervening period.

The State is not liable in tort in case of unreasonable delay in judgment. The judge however may be held personally liable for damages, in proceedings instituted upon an application of the aggrieved person before a special court (the so-called "judicial misfeasance" or "miscarriage of justice" court), established under Art. 99 of the Constitution, if the delay is found to amount to nonfeasance or "denial of justice".

8.3 a) The average time for processing and deciding a case before the Council of State was, according to the statistics of the year 1998 2-2<sup>1/2</sup> years. For the Administrative Courts of First Instance it is 1<sup>1/2</sup> years and for the Administrative Court of Appeal 2<sup>1/2</sup> years.

b) The number of cases filed in the Administrative Courts of First Instance during the year 1998 was 53162. Another 80086 were pending on Dec. 31 1997.

c) The number of judgments delivered by the Administrative Courts of First Instance during the same year (1998) was 49795. However the number of cases decided is 54213, if we take into account the cases disposed by consolidation of proceedings and the cases disposed by order of closure of proceedings.

d) The number of cases filed in the Council of State during the year 1998 was 7229. Another 33348 were pending on Dec. 31 1997.

e) The number of judgments delivered by the Council of State during the same year (1998) was 5279. Another 6701 cases were withdrawn by the applicant.

f) Currently, there are 29104 cases pending before the Council of State and 88007 pending before the Administrative Courts of First Instance.

8.4 a) The reporting judge has no formal powers of case that would allow for an effective monitoring of time-scale.

b) The President of the Court and the Section Presidents will take into account the possibility of consolidation of cases, or the similarity of issues, when assigning cases to a reporting judge, who will be responsible for the Instruction and the preparation of the case for the hearing.

c) There is no formal procedure for introducing legislative, institutional, or administrative and managerial changes on the initiative or advice of the Court.

9) Jurisdiction, Scope of Review and other Issues

9.1 The question has been answered above (questions 1 and 3.2)

9.2 If a member of the court, who has taken part in the hearing retires while the case is still under advisement, a new hearing is scheduled, unless the deliberation of the case has been concluded by voting on the rulings and the decree.

9.3 The Issue is examined in the Report to Colloquium.