

XXIInd Congress of the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union

Preventing backlog in administrative justice

General report

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First of all I should like to say, on behalf of the Luxembourg presidency of the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union (ACS), what an honour and privilege it is to have been asked to compile the general report for the Association's XXII colloquium.

The purpose of the colloquium will be to analyse and compare the different procedures used to prevent a backlog of cases from building up before Councils of State and supreme administrative jurisdictions while at the same time ensuring that administrative justice is dispensed **properly and fully**. Preventing a backlog of cases is not merely an essential aspect of administering justice efficiently; it is also **crucial for Europe as a whole**. As the European Court of Human Rights has stated on more than one occasion:

"(...) The Convention requires States party to organise their judicial systems in such a way that their courts may effectively meet all the relevant requirements (see, among others, the judgment handed down in Duclos v. France of 17 December 1996, paragraph 55) and, in particular, may guarantee all individuals the right to a definitive ruling within a reasonable

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time (see, for example, *Frydlender v France* of 27 June 2000 (Grand Chamber), paragraph 45)".

The umbrella reference "Councils of State and supreme administrative jurisdictions" covers a **multitude of courts and jurisdictions** and we must keep this fact in mind. Some reports, such as those compiled by the Councils of State of Belgium and Turkey respectively, fail to acknowledge the status of said Councils as "supreme administrative jurisdictions". Other courts which may be classed as "supreme", such as those in Malta, Cyprus and Denmark and which have their roots in the Anglo-Saxon system, do not hear administrative cases per se but instead hear appeals in respect of administrative acts pursuant to the law and the ordinary law system.

Consequently, despite the potential risk of misrepresenting somewhat the actual situation as regards the roles and status of the various courts, to simplify matters for the purposes of this presentation we would suggest using the generic terms "higher administrative court" or "high administrative court".

The complexity of the actual roles and status of the various courts is also evident in the parameters used to compare the different processes adopted to expedite legal proceedings.

The workload on higher administrative courts can vary depending on the **tasks** assigned to them.

Some, such as the Administrative Court of *Austria* and the Council of State of *Belgium*, rule in both the first and final instance in the majority of cases. This is certainly true of the Council of State of Belgium where the latter is hearing actions for annulment of acts passed by the administrative authorities, except in cases involving foreign nationals. It is clear, then, that the risk of a backlog of cases building for such courts will be considerably greater than for, say, courts ruling in the second (e.g. *Luxembourg*) or even third (Councils of State of *France* and *the Netherlands*) instance.

Another parameter against which to compare the various systems is the issue of whether higher administrative courts hear both **cases involving points of fact and those involving points of law**, or solely those involving points of law. Naturally, a high administrative court ruling as a court of cassation and deliberating on compliance with legislation and procedural rules will have a lighter caseload than one serving a substantive role and ruling on cases involving points of fact and those involving points of law.

In this context, there are several different categories of court.

First, there are the high administrative courts which primarily have jurisdiction over **issues of law**. However, there are some exceptions to this rule, for example the Federal Administrative Court

of *Germany*, the Council of State of *France* (except where it is ruling in certain instances as a court of first and final instance), the Supreme Administrative Court of *Poland*, the High Court of Cassation and Justice of *Romania*, the Supreme Courts of *Estonia*, *Slovakia*, *Cyprus* and *Hungary*, and the Supreme Administrative Court of the *Czech Republic*. The Administrative Court of *Austria* falls into a sub-category insofar as it only examines cases involving points of fact where it has previously been established that the government has failed to observe the rules on preliminary administrative proceedings.

Second, there are the higher administrative courts, which only hear cases surrounding points of law exclusively when ruling on **actions to quash** judgments handed down by administrative courts ruling in the final instance.

Such courts include the Supreme Administrative Court of *Portugal*, the Councils of State of *Belgium* and *Greece* and the Supreme Administrative Court of *Bulgaria*.

Third, there are the higher administrative courts which rule both on **cases involving points of fact and cases involving points of law points**, by sitting, where appropriate, within an appeal court with jurisdiction to overturn the disputed legal ruling at hand.

Such courts include the Council of State of *Italy*, the Supreme Administrative Court of *Finland*, the Supreme Court of *Denmark*, the Supreme Court of *Slovenia*, the Supreme Administrative Court of *Sweden*, the Supreme Court of *Norway*, the Supreme Administrative Court of *Lithuania*, the Administrative Courts of *Luxembourg* and *Croatia* and the Court of Appeal of *Malta*.

Finally, some countries such as *Norway* and *Denmark* have a **single Supreme Court, which rules on all cases** regardless of their nature.

By contrast, the system in *Malta*, for example, makes provision for a multifaceted Supreme Court comprising a Constitutional Court and a Court of Appeal, which hears administrative cases.

It is also important to note that when analysing the various methods of preventing a backlog of cases from building up, we should not lose sight of the requirements laid down in **Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)** in respect of the right to a fair trial. Although not providing an exhaustive analysis of compatibility with the ECHR, reference will be made during the course of the report to the case law of the European Court of Human Rights, which has stated:

"It is not the responsibility of the European Court of Human Rights to dictate to the national authorities the measures to be implemented to ensure that said authorities' appeal systems comply with the requirements laid down in Article 6. The Court's role is simply to establish whether, in the cases brought before it, the systems in question achieve results which

meet the requirements laid down in Article 6" (judgments in *Boner v United Kingdom* of 28 October 1994, paragraph 43 and *Maxwell v United Kingdom* of 28 October 1994, paragraph 40).

Furthermore, although Article 6 of the ECHR does not *require* States to establish higher administrative courts of appeal or cassation, where such higher administrative courts exist they must comply with the provisions contained in Article 6, including the principles of the right to be heard and of the rights of the defence.

However, since the right to a ruling within a reasonable time is a key requirement in Article 6 of the ECHR, the European Court of Human Rights is keen for measures to be introduced to prevent a backlog of cases from building up (see judgment in *Garcia Manibardo v Spain* of 15 February 2000, paragraph 38) while at the same time ensuring that such measures do not disproportionately undermine the right to access to a court (paragraph 45). Moreover, due account is taken of the specific status of supreme courts, specifically those ruling at the cassation stage, vis-à-vis measures which derogate from the general provisions governing a fair trial (see judgement in *Ekbatani v Sweden* of 26 May 1988, paragraph 31).

With these considerations in mind, this report will look at both the various methods employed to prevent and reduce the backlog of cases, and the performance criteria by which to assess the effectiveness of those methods.

I. Methods used to prevent submission of vast numbers of appeals

1. Legal representation by a lawyer

Mandatory representation by a lawyer or other qualified legal professional could, in principle, be a useful means of discouraging defendants whose appeals have little chance of being successful from pursuing their actions. The more experienced the lawyer, the more likely he or she is to be able to act as an effective '**filter**' for cases. Naturally, the ethical stance of a lawyer will be a crucial factor and there is always the risk that an unethical

practitioner will, on the contrary, result in more appeals doomed to failure being brought before the courts.

Ultimately, however, the involvement of a lawyer generally results in appeals and the relevant grievances being drafted more efficiently, which in turn makes it easier for the competent court to hear the appeal and this expedites proceedings.

It should be noted that in line with the case law of the European Court of Human Rights, the legal systems in many Member States of the Council of Europe require that a defendant engage a lawyer before he or she may bring an appeal before a supreme court and that this requirement in no way contradicts the provisions contained in Article 6 of the ECHR (see judgement in *Gillow v United Kingdom* of 24 November 1986, paragraph 69).

As a general rule, the government is not required to engage a lawyer and is normally represented by one of its own qualified legal representatives. Accordingly, mandatory legal representation, where required by law, only applies to individuals.

In *Germany*, respondents must be represented either by a lawyer or by a university professor who is qualified by the same state exams which are required for becoming a judge. A similar system applies in *Slovenia*. In *Austria*, *Spain*, *Luxembourg* and *Portugal*, defendants must be represented by a lawyer otherwise their applications will be denied. The same applies in *France* to actions for annulment before the Council of State, although representation by a lawyer is not mandatory in disputes concerning ownership rights or contracts. Under *Maltese* law, a lawyer must be present to sign documentation pertaining to proceedings but need not be present for the actual hearing unless ordered to attend by the Supreme Court. *Poland* and *Belgium* require defendants in cassation proceedings to be represented by a lawyer. In *Slovakia*, *Greece* and the *Czech Republic*, legal representation by a lawyer is mandatory although exceptions are made in certain cases.

In some countries such as *Poland* and *Luxembourg*, defendants may be represented by a tax advisor in dispute concerning tax matters.

In cases before the Court of Justice of the European Union (hereinafter “*CJEU*”) where the latter is ruling on preliminary reference proceedings, the rules governing representation of the parties are the same as those applied before the national court by which the question has been submitted.

A minority of countries permit defendants to bring action without representation by a legal professional.

This is the case in *Croatia*, *Estonia*, *Latvia*, *Lithuania*, *Finland*, *the Netherlands*, *Turkey*, *Cyprus*, *Belgium*, the *United Kingdom* and *Bulgaria*. Indeed in *Cyprus*, procedural rules are relaxed somewhat where an individual chooses to represent him- or herself.

In *Sweden*, in the majority of cases individuals represent themselves and appear in person. This is because administrative courts in Sweden have a clear investigative role and thus are actively involved in investigating the cases brought before them.

In general, the rules governing the professional qualifications required by a lawyer are not particularly strict.

In *Belgium* defendants may be represented by trainee lawyers. In other countries, standard professional qualifications are sufficient and lawyers need only be registered with the relevant Bar Association (this is the case in *Germany, Poland, Estonia, Austria, Hungary, Portugal* and *Luxembourg*). No professional qualifications are required in *the Netherlands*.

Specific provisions stipulating requirements as regards professional qualifications only apply in five countries. Twelve years of professional experience (not including training periods) is required in *Italy*, although this period may be reduced to six years subject to a highly selective examination. In *Bulgaria* and *Cyprus*, lawyers must have five and two years' professional legal experience respectively. In Denmark, only lawyers who have practised regularly before the Court of Appeals for at least five years may represent clients before it. In *France*, only lawyers registered specifically with the Council of State (i.e. those listed on the register of lawyers for the Council of State or the Court of Cassation) may represent clients before the latter; such lawyers must also specialise in representing clients before both the Council of State and the Court of Cassation.

2. Restrictions on the right of appeal

The right of appeal may be restricted by legislation or regulations or even by established case law. This report will not cover basic restrictions such as the deadline within which appeals may be lodged, conditions governing the interest in lodging an appeal, and *locus standi* since such conditions are common to virtually all national legal systems.

The case law of the European Court of Human Rights in respect of the right of access to a court makes clear that such a right is subject to conditions of admissibility and leave to appeal provided that the substance of the right is not undermined. In the context of higher courts, the European Court of Human Rights has acknowledged that **leave-to-appeal systems are not in breach of the ECHR** (see aforementioned judgment in *Ekbatani*, paragraph 31) and also that the admissibility of appeals in cassation may be subject to more formal conditions, while at the same time prohibiting overly formal or incoherent applications which are in breach of the right of access to a court pursuant to Article 6 of the ECHR (see judgements in *De Geouffre de la Pradelle v France* of 16 December 1992, paragraph 38, *Santos Pinto v Portugal* of 20 May 2008, paragraph 44, *Dattel v Luxembourg* of 30 July 2009, paragraphs 36-47, and *Erablière v Belgium* of 24 February 2009, breach of Article 6 via a judgment by the Council of State of Belgium ruling inadmissible an application which, as regards the mandatory statement of facts, made reference to facts appearing in the disputed document annexed to the application).

Some countries place no restrictions on the right of appeal.

This is the case in *France* (where the right to bring a case before the Council of State has a constitutional value), *Slovakia*, *Italy*, *Austria*, *Luxembourg*, *the Netherlands*, *Belgium*, *Lithuania*, *Cyprus* and *Romania*. The right to lodge appeals before the *CJEU* is absolute.

Others have introduced various 'filtering' mechanisms.

The most rigorous and most effective means by which to deter appeals would appear to be the leave-to-appeal system. However, such a system only applies in the case of higher administrative courts ruling in principle in both the first and final instance.

The Federal Administrative Court of *Germany* also employs this system and all appeals are subject to leave to appeal being granted. Leave to appeal to the Federal Administrative Court has to be granted – either by one of the High Administrative Courts or by the Federal Administrative Court - subject to the following legal conditions: a) the fundamental significance of the case (e.g. case raising questions which cannot be answered by referring to existing case law), b) the deviation from case law of – primarily - the Federal Administrative Court itself and the Federal Constitutional Court, c) crucial procedural errors. As the Federal Administrative Court itself has acknowledged, the leave-to-appeal system serves as an extremely efficient filtering mechanism. In general, the court gives leave to appeal on 400 cases each year out of 1.600 (not counting the cases of 1st instance).

A similar system in *Sweden* also filters cases rigorously and as a result leave to appeal is only granted in some 2% of cases.

The *Norwegian* Constitution stipulates that restrictions on leave to appeal may be applied by law. Accordingly, the role of the Supreme Court is limited to that of ensuring that case law remains coherent and consistent and an appeal may only be lodged where leave has been granted by the Supreme Court's Appeals Committee, which comprises four judges. Leave to appeal is only granted in cases in which significant legal issues are raised and is denied in 85% of cases.

Finland follows a leave-to-appeal system in specific areas for which provision is made by law, namely taxation, asylum and immigration, disputes concerning construction permits and certain aspects of social security. Leave to appeal is only granted in 17% of cases.

Denmark only employs the leave-to-appeal system in landmark cases.

The *Portuguese* system is similar to that of Germany insofar as the only appeals permitted are those pertaining to consistency with established case law and those solely involving points of law. The ultimate aim is to restrict appeals to those which "*address an issue which, on account of its legal or social interest, is of fundamental significance or where it is clear that an appeal must be heard by the Supreme Court in order for legislation to be applied more effectively*". It is not, therefore to introduce a third level of jurisdiction in relation to administrative appeal courts. Appeals on points of law are filtered by a panel of three judges.

A similar system of filtering appeals on points of law before the Supreme Court is applied in *Latvia* and *Slovenia*.

In *Belgium*, provision is made for summary proceedings to determine whether an appeal on a point of law is admissible. Such proceedings are conducted in camera without any actual hearing; a brief statement of reasons is issued and a ruling is handed down by a single member of the Council of State. Moreover, the appeal is not suspensive. Finally, where an appeal which is clearly inadmissible is ultimately officially deemed inadmissible, a fine may be imposed on the appellant.

France employs a similar system before its Council of State. The European Court of Human Rights has no objection to such proceedings in principle (see aforementioned judgment in *Ekbatani v Sweden*, paragraph 31).

In *Hungary*, only appeals on procedural issues having no bearing on the substance of a case may be heard before the Supreme Court.

In *Malta*, there are no restrictions on appeals against rulings by ordinary-law courts, however, appeals against rulings handed down by *ad hoc* administrative courts are only permitted where so authorised under organic law.

The *United Kingdom* system appears to afford the competent courts the greatest discretion as to whether or not to grant leave to appeal, with both the courts which handed down the original ruling and those before which the appeal is lodged having jurisdiction to grant leave to appeal. Leave to appeal is granted where the appellant's grievance can be defended and where the case is in the public interest. These criteria are interpreted restrictively.

In other countries, leave to appeal is granted in all circumstances except in a number of specific cases as stipulated by law.

This is true of *Bulgaria*, *Greece* and the *Czech Republic* (in respect of appeals in cassation). In both Greece and the Czech Republic, provisions prohibiting a general appeal or an appeal in cassation are interpreted restrictively in the interests of the litigant. Nevertheless, legislation referring disputes before the higher administrative court to lower administrative courts are interpreted in such a way as to lighten the workload of the higher administrative court.

Another restriction is that related to the significance of the case in **monetary** terms, a restriction which, in principle, is permitted by the European Court of Human Rights (see the aforementioned judgement in *Santos Pinto v Portugal*, paragraph 44), despite the fact that in administrative terms it is difficult to put a monetary value on a dispute.

In *Greece* appeals in cassation are not permitted where the monetary value of the case in question is deemed to be below a certain threshold (€40,000, or €200,000 in the case of contracts, except where the appeal raises a significant issue of law or where consistency with established case law is at issue).

In *Spain*, appeals in cassation before the Administrative Chamber of the Supreme Court are only permitted where the monetary value of the case in question is below €150,000.

In *Slovenia*, the threshold is €20,000.

Having to put down **surety** to cover the cost of proceedings can also serve as a deterrent (see European Court of Human Rights, judgment in *Z et al v United Kingdom*, paragraph 93, compared with *Annoni di Gussola et a v France* of 14 November 2000, paragraph 50).

Under the *Maltese* system, where the appellant cannot raise **surety**, leave to appeal will only be granted where there is deemed to be a reasonable chance of the appeal being upheld.

Finally, the requirement that **all prior channels of administrative appeal provided for by law be exhausted** can also contribute towards settling disputes before they reach the higher administrative courts and thus relieve the pressure on the latter.

Such a requirement applies in *Belgium, France* and *Luxembourg*.

It is clear from this analysis, then, that the most 'efficient' restrictions on the right of access to higher administrative courts are to be applied overwhelmingly to instances of appeals in cassation preceded, in general, by a hearing with full review before the competent lower courts.

3. Penalties for abusive appeals

This may seem a rather radical approach liable to undermine the fundamental right of access to a court (although see the ruling of inadmissibility by the European Court of Human Rights in case no. 25308/94 in *Veriter v France* in respect of fines imposed by the Council of State of France for an unlawful appeal).

However, a modern trend is developing of penalising unscrupulous defendants who seek to manipulate and abuse the administrative justice system and who, in so doing, are overwhelming it.

This trend is plain to see in the recent case law of the European Court of Human Rights. Ever since its inception, said Court has been reluctant to apply Article 35(3) of the ECHR which permits it to dismiss appeals it deems to be an abuse of the right of application. In a case involving a German civil servant who was complaining that the higher administrative courts in Germany had refused to reimburse him the sum €7.99 paid for magnesium tablets prescribed for him by his doctor, the Court had no hesitation in declaring his appeal abusive and therefore inadmissible. Its ruling was based on the fact that the stakes of the case were negligible and that the case itself raised no landmark issue, as well as on the fact that such cases significantly increased the workload not only of the national courts but

also of the European Court of Human Rights itself (ruling handed down on 16 February 2010 in *Bock v Germany* (appeal no. 22051/07)).

Judging by national reports, Member States are split more or less down the middle when it comes to the penalties imposed for lodging abusive appeals.

On the one hand, there are some countries in which no penalties whatsoever are imposed.

This is the case in *Croatia, Poland, Great Britain, Slovakia, Luxembourg, Romania, Bulgaria, Turkey, Latvia, Sweden, the Czech Republic, Germany and Denmark*. In the case of Denmark, the system of filtering appeals means that penalties are redundant, however, indirect penalties may be imposed in the form of trial costs (such indirect penalties are also applied in *Luxembourg*).

In other countries, penalties are imposed in a number of ways.

In *Estonia*, the Supreme Court may impose penalties for abuse of procedural rights, breach of faith or delaying tactics characteristic of bad faith.

In *Spain*, the Supreme Court generally requires payment of costs but rarely imposes fines.

In *the Netherlands*, the maximum penalty for an abusive appeal is payment of costs.

The Court of Appeal of *Malta* may, either at the defendant's behest or if its own motion, double the penalties imposed on the appellant and the damages payable to the defendant where an appeal is "frivolous or vexatious", without the appellant having been either informed of the application in advance or given the right to put his or her case in respect of the penalty imposed.

In *Lithuania*, stamp duty may be payable by appellants lodging foolhardy appeals.

In *Portugal*, parties and their lawyers (and not only the appellant themselves) acting in bad faith are liable to incur a fine and be required to pay damages, either at the behest of the injured party or parties or of the Supreme Court's own motion, but subject to respect for the principle of the right to be heard.

In *Belgium*, provision is made for a maximum fine of €2,500 for "a manifestly abusive appeal"; such fines are imposed by the initiative of the auditor of the Council of State in adversary proceedings (for details of cassation proceedings see above).

In *Austria*, a maximum fine of €726 may be imposed for unlawful, unjustified or frivolous appeals. However, no such fine has ever been imposed on account of doubts as to the compatibility of such a measure with Article 6 of the ECHR.

By the same token, in *Greece* a fine of up to €700 may be imposed on an appellant or their lawyer a) where an appeal is clearly without grounds, b) where, during the course of proceedings, the appellant demonstrates bad faith, or c) where an appeal has been lodged despite established case law to the contrary. Such a penalty is imposed automatically by the Council of State in a definitive ruling in respect of which reasons must be stated but no adversary proceedings are required.

France has a similar system but it is used "very infrequently".

In *Slovenia*, an appeal may be lodged against a penalty in respect of which reasons have been stated.

In *Cyprus*, counsel for a party who fails to attend a hearing or acts in bad faith is personally liable for additional procedural costs.

Before the *CJEU*, costs incurred due to unreasonable or vexatious conduct on the part of an even victorious party may become payable by said party.

II. Means used to expedite cases

1. Fast-track proceedings

Some countries do not employ any means by which to expedite cases, although certain **urgent** ones may be dealt with on a priority basis.

This is true of *Austria, Finland, the Czech Republic, Denmark and Slovenia*.

In *Germany*, no such means are employed on the grounds that the Federal Administrative Court, in principle, only hears cases involving issues of law.

In other countries, the lack of any fast-track proceedings is justified by the fact that neither the parties nor the courts themselves have any control over the speed at which a case proceeds: the legislature lays down strict deadlines within which appeals may be lodged and limits the number of submissions which may be made.

This is the case in *Luxembourg*.

Other countries operate strict time limits in cases in **certain fields**.

This is the case in *Estonia* (extradition) and *Slovakia* (right of asylum). In cases concerning refugees, too, the number of submissions may be limited to one per party (*Luxembourg*).

The Netherlands also makes provision for mandatory fast-track proceedings in cases concerning refugees and extradition.

In *France*, strict time limits are applied to cases concerning deportation and residence of foreign nationals, as well as in those surrounding housing rights, although said time limits are not mandatory. In some cases such as disputes concerning municipal or cantonal elections, exceeding the stipulated deadline may result in a disclaimer of jurisdiction by the higher court.

Some countries follow a system of **simplified or summary proceedings**.

This is the case in *Poland*. Fast-track proceedings before the Supreme Administrative Court derogate to some degree from the principles of the right to be heard and of a public hearing and the requirement that a ruling be handed down by a panel of three judges. The decision as to whether fast-track proceedings may be permitted in a particular case is taken either by the Supreme Administrative Court of its own motion or, in certain circumstances, at the request of one of the parties provided no objection is lodged by the other party within a period of 14 days. In such a scenario, a judge sitting alone rules in Council.

In the *United Kingdom* and *France* urgent cases are heard by a judge sitting alone who, in principle, issues a written ruling.

In other countries, either in specific scenarios stipulated by law or in cases which are deemed to be urgent or where such measures are considered justified (e.g. *Malta*, *Turkey* and *the Netherlands*), the standard deadlines applicable to proceedings may be curtailed; such curtailments may affect the time within which an appeal may be lodged, evidence submitted or submissions made, and the time granted to judges to issue their ruling.

In *the Netherlands*, the urgency of a given case is assessed on a discretionary basis by the presiding judge and very few cases are ever deemed to be urgent. In effect, then, Dutch judges are responsible for how effectively justice is administered in the Netherlands and the complexity of a particular dispute may result in an application for fast-track proceedings being denied.

In *Italy*, applicable time limits are cut by half in specific cases stipulated by law and which concern issues of particular public interest (e.g. public procurement contracts, appointments by the *Consiglio dei Ministri*, privatisation rulings and so forth).

Very short deadlines may be imposed in cases pertaining to electoral issues (*Hungary*, *Portugal*, *Latvia* and *Lithuania*), refugees and extradition (*Portugal*), infringement of fundamental freedoms (*Portugal*, *Slovenia*, *Lithuania*) assault and battery (*Bulgaria*) or public procurement contracts and tax disputes (*Sweden*).

In *the Netherlands*, a draft law makes provision for fast-track proceedings for large-scale property projects intended to boost employment and stimulate the economy.

The *CJEU* also adopts a system of fast-track proceedings in urgent cases whereby the deadline for making submissions may be shortened.

In some countries, provision is made for fast-track proceedings for applications which are either obviously inadmissible/have no grounds or obviously admissible (**straightforward cases**).

In *Germany*, applications which are inadmissible may be dismissed without a hearing.

Fast-track proceedings are also possible in *Spain* for inadmissible applications.

In *Cyprus*, fast-track proceedings may be employed in cases which are obviously inadmissible, have no grounds or which reveal delaying tactics, however; the appellant's case is heard before such proceedings are instigated.

The same system applies in *Finland*, although there the parties may or may not be heard in advance where appropriate.

Similar proceedings may be held in camera in *Austria*.

In *the Netherlands*, an examining judge may dismiss an application without giving the parties a hearing. However, the obvious nature of an appeal's inadmissibility or of whether it does or does not have grounds is interpreted selectively in view of the risk of infringement of the rights of the defence. Moreover, a ruling by such a judge may be challenged. Summary proceedings of this sort are generally employed in cases involving foreign nationals.

In *Greece*, a panel of five judges rules in camera. However, if an appeal is rejected, the appellant may, within six days of the ruling, demand that the case be heard in public; in such cases surety must be put up, thus deterring unwise appeals.

In *Italy*, when dismissing an appeal, at the end of summary proceedings the Council of State must give a concise statement of reasons for its ruling and must make reference to the point of fact or law which prompted its ruling.

A similar system applies in *Slovakia*.

In *Poland*, summary proceedings in Council are only applied in the case of applications which are obviously inadmissible.

In *Belgium*, the concept of "short pleadings" (*débats succincts/korte debatten*) has prevailed following the adoption of legislation in 2007. Where it appears that an application for annulment is irrelevant or requires only brief discussion (short pleadings), the member of the Auditor's Office responsible for the case immediately submits a report to the President of the chamber handling the case. The President then orders the parties to appear at the earliest possible opportunity. If the President agrees with the conclusions outlined in the report, the case is settled there and then. Neither the legislation itself nor the decree implementing it lay down the circumstances under which the short-pleadings system may be employed. The Belgian government has presented this new system as a "cornerstone of fast-track proceedings" with a view to avoiding two successive sets of proceedings, one suspensive and one for annulment. This means that a single ruling can be handed down quickly as regards both suspension and annulment.

Compare this system with that for assault and battery in force in *Bulgaria*.

A similar system is used in *Italy* and is considered to be an "extremely efficient" means of preventing a backlog of cases.

In *Austria*, where an appeal goes against established case law, the examining judge notifies the appellant of this and gives the latter a short period of time within which to respond. Once the stipulated deadline has passed, it is assumed that proceedings are to be stayed.

A similar system of settlement via expiration of a deadline is also applied in *France*. The presiding judge on the panel may, without any prior investigation or hearing, dismiss appeals which are obviously inadmissible or which either fall outside the jurisdiction of the administrative court or which raise issues identical to those upon which a judgment has already been passed in a prior ruling.

Finally, in *Portugal* provision is made for summary proceedings in which no evidence is examined and no conclusions are issued. Where a case is straightforward, particularly one in which the facts are backed up by documentary evidence and said facts are undisputed, subject to the consent of the parties a ruling may be passed by a judge sitting alone. The case is settled via a preparation order and does not pass to the investigation or discussion stage.

A similar system is applied in *France* but is not subject to the prior consent of the parties "where it appears that settlement of the case is already clear"; in such a situation, the presiding judge on the panel issues an immediate ruling.

In the case of applications or appeals which are clearly inadmissible or appeals which are obviously unfounded, the *CJEU* may, having heard the opinion of the Advocate General and without having conducted a hearing, rule via a straightforward order citing grounds. In preliminary reference proceedings, a similar model is applied where the response to the preliminary question poses little or no difficulty in view of established case law.

3. Number of judges sitting

It is clear from the various national reports that in some countries², although a **judge sitting alone** is the norm in courts of first instance, this is only very rarely the case for high

² *Spain, the Czech Republic*

administrative courts in the EU and indeed is only so in appeals concerning procedural formalities or where a case is straightforward.

However, the *United Kingdom* appears to be an exception to this general rule and it is customary for judges to sit alone in higher courts except in cases which raise important or complex issues; in such situations, panels of two or three judges pass their rulings.

In *Germany*, at the Federal Administrative Court each ruling has to be given by five judges. Leave to appeal is decided upon by three judges and a single judge may decide only in cases of proceedings to determine court costs.

In *Poland*, *Portugal* and *Belgium* the system of judges sitting alone is used both in cases concerning procedural matters and in summary proceedings pertaining to straightforward issues (see above).

In other countries such as *Slovakia*, a judge sitting alone may only rule on cases concerning procedural matters.

In *France*, interlocutory proceedings or proceedings ordering or permitting cassation complaints are dealt with by a judge sitting alone although the matter may be referred to a panel of judges where appropriate.

In *Sweden*, straightforward cases are settled by a judge sitting alone; leave to appeal is also granted or denied by a single judge.

The same system is used in *the Netherlands* for straightforward cases, with rulings being handed down by a judge sitting alone following a proposal by the presiding judge.

In *Slovenia*, rulings on inadmissible appeals of a procedural nature are generally handed down by judges sitting alone.

In *Malta*, rulings are usually passed by a panel of three judges. However, the majority of appeals against rulings by *ad hoc* administrative courts are dealt with by a judge sitting alone.

4. Citing of reasons

According to the European Court of Human Rights, although Article 6(1) of the ECHR requires courts to state reasons for their rulings, it does not require that a detailed response be provided to each argument put forward by the appellant. By contrast, the court must nevertheless have actually examined the key issues raised before it even where it provides only brief reasons for its ruling (see most recently the judgment in *Albert v Romania* of 16 February 2010).

The European Court of Human Rights added: "[...] *the scope of this requirement may vary depending on the nature of the ruling. Account must also be taken of the wide range of arguments which a litigant may raise before a court and the differences between the various States party in terms of legal provisions, customs, doctrine and the presentation and drafting of rulings and judgments. Hence, the issue of whether a court has failed to cite reasons for a ruling as required pursuant to Article 6(1) can only be analysed in the light of the actual*

circumstances of a given case" [judgment in *Gorou v Greece* of 20 March 2009 (Grand Chamber), paragraph 37]. Accordingly, as regards prior proceedings to examine a cassation complaint and determine its admissibility by an established body within the Court of Cassation, the European Court of Human Rights has acknowledged that a supreme court is not failing to adhere to the requirement to give reasons for its ruling where it cites a specific legal provision as the sole reason for its dismissing an appeal which has no chance of success and provides no further reasoning (see judgement in *Salé v France* of 21 March 2006, paragraph 17, and *Burg et al v France*, No. 34763/02, 28 January 2003).

In some countries, the higher administrative court is **required to provide full and detailed reasons for its rulings.**

This is the case in *Greece, Luxembourg, Bulgaria, Romania, Poland, Spain, Croatia, Slovenia and Germany.*

The Supreme Administrative Court of *Poland* is required to respond to all arguments cited in a cassation complaint (pursuant to a resolution adopted by said Court sitting in plenary).

The *CJEU* is required to respond to all arguments, although not necessarily "*to provide a detailed and point-by-point presentation of all reasonings cited by the parties to a dispute*".

In *Estonia, Sweden, Lithuania, France, Slovakia and Austria* merely citing the ruling against which the appeal was lodged is sufficient while in *Italy*, the requirement to state reasons is relaxed in summary proceedings. Moreover in *Austria* a detailed reasoning may be required according to the complexity of the case.

Under systems such as those in *Norway and Sweden* where appeals must be approved in advance, decisions rejecting appeals need only cite the relevant legal provisions.

France also operates a system of summary reasoning where cassation complaints are denied. Such practice in no way breaches the aforementioned case law of the European Court of Human Rights.

In *Belgium*, the Council of State does not necessarily examine all arguments raised. Where the argument raised results in quashing or cassation, no other arguments are examined where none of them will result in a more definitive or extensive quashing or cassation. Hence, the effects of a ruling which is quashed on account of an internal irregularity are more extensive than those of one quashed on account of an external irregularity. In the latter case, it is sufficient to rework the document in question to ensure that it complies with the relevant rules of procedure. On the other hand, where an appeal is denied on account of all the arguments raised having been rejected, all arguments must then be examined.

France also applies such a judicial-approval system designed to keep the examination of arguments to a minimum in cases involving annulment except in the fields of town planning, as required by the legislature. Furthermore, in the case of 'grounds of appeal which are inoperative, those which have no bearing on the outcome of the dispute are not examined. Such a system drastically reduces the requirements in terms of citing reasons for a judgment whilst continuing to fulfil the obligation to respect the right of defence.

However, quite a different system operates in *Turkey* whereby quashing of the basis for external lawfulness automatically releases the court from the obligation to examine the arguments in connection with internal lawfulness.

5. Requirement that a hearing be held

According to the European Court of Human Rights, the absence of a public hearing in courts of second and third instance may be justified by specific features of the proceedings in question provided that a public hearing has been held at the first-instance stage. Accordingly, leave-to-appeal proceedings or proceedings focusing exclusively on points of law rather than fact may fulfil the requirements laid down in Article 6 of the ECHR even where the appeal court or court of cassation has denied the appellant the opportunity to put their case to it in person (see, among others, the judgement in *Monnell and Morris v United Kingdom* of 2 March 1987, paragraph 58 as regards leave to appeal and in *Sutter v Switzerland* of 22 February 1984, paragraph 30, as regards the court of cassation).

The situation varies widely from country to country in respect of hearing requirements.

Some countries **do not permit any derogation from the requirement that a hearing be held.**

This is the case in *Luxembourg* and *Malta*.

In others, proceedings are generally in the **written form only.**

This is the case in *Finland*, *Cyprus*, *Austria*, *Norway* (only for questions of leave to appeal), *Spain*, *Portugal*, *Sweden*, and the *United Kingdom*.

In **exceptional cases**, a **hearing** may be required where either one party or both parties so request.

This applies in *Turkey*, *Estonia* and the *Czech Republic*.

By contrast, a **higher administrative court may decide to conduct proceedings entirely in writing** where it believes that the case file is full and complete.

Such a decision is subject to the consent of either the appellant or the interveners (*Latvia*) or of all parties (*Germany* and *the Netherlands*). In proceedings before the *CJEU*, the latter may decide not to conduct a hearing unless so requested by either of the parties.

As already discussed, written proceedings are also often the norm in **simplified** proceedings or proceedings intended to '**filter**' cases being brought before appeal courts³ or in **cassation** proceedings.

In *Slovenia*, written proceedings are standard where the facts of a case are not in dispute or where an appeal has clear grounds.

By contrast, where a high administrative court is ruling in both the first and the final instance (e.g. the *Czech Republic*) or is hearing complex points of fact, public hearings are required (*Portugal*).

Finally, in *Lithuania* the law details the types of cases in which a public hearing may not be required. Such cases are generally those in which either there is clear evidence of the alleged unlawful act or the parties fail to appear in person.

6. Penalties for failure to collaborate in the administration of justice

In *Germany*, additional costs are payable by parties failing to attend a hearing.

The *United Kingdom* also operates a system whereby additional costs are levied on parties employing delaying tactics which have resulted in extra court costs.

In *Germany*, too, parties who refuse to divulge information they hold are also subject to a penalty, namely their being prohibited from alleging fresh facts or arguments. The content of a document cited by the appellant will be presumed if the opposing party fails to produce it.

In *Norway*, *Malta* and *Portugal* parties failing to attend proceedings may also be required to pay extra court costs or damages.

Where the authorities refuse to submit an administrative file, a court may impose a fine; this is the case in *Poland*.

The same applies in *Estonia*, *Lithuania* and *Romania* where a party causes proceedings to be postponed, wastes court resources, acts unfairly or in bad faith or fails to produce the documents or evidence required within a given time (draft legislation to this effect is currently before the *French* parliament).

Some systems stipulate that proceedings be dropped where a) no action is taken by the appellant within a given time (*Italy*), b) where the parties fail to request that proceedings be continued following certain types of interlocutory acts (e.g. *Belgium* following submission of the Auditor's report), or c) where the appellant fails to attend the hearing (e.g. *Malta*). Such provision is also made in *Luxembourg*, for example, where an application is rendered null and void if the appellant fails to serve it on the opposing party within one month.

In *Germany*, in the case of proceedings pending confirmation, if the appellant fails to pursue proceedings within two months, the law states that a stay of action must be deemed to have occurred.

In *Cyprus*, if, once the stated deadline by which submissions must be made has passed the appellant fails to enter an appearance, the proceedings will be time-barred. If the defendant fails to enter an appearance to make a counter-submission, the case will continue to be heard on the basis of the allegations made by the appellant.

Where the authorities refuse to disclose the administrative file in full, either the public official responsible is held criminally liable (*Italy*) or the appellant's allegations are deemed to have been proven (*Italy*, *Greece*, *Belgium* and *Slovenia*).

In the case of appeals before the *French* Council of State, where, despite a formal notice, the defendant makes no submission, he or she is deemed to have accepted the allegations made by the appellant.

³ *Poland*, *Belgium*, *Italy*

Under systems such as those in *Luxembourg* and *Malta* which make provision for mandatory deadlines by which submissions must be made and/or evidence submitted, documents submitted after the deadline are not taken into consideration during the proceedings.

7. Public-policy arguments – reopening deliberations

The court's obligation to raise public-policy arguments of its own motion reinforces the mechanisms for safeguarding the principle of legality, but at the same time increases the court's workload and lengthens the proceedings, since the parties must be heard. Accordingly, pursuant to a recent judgment, when ruling on an annulment action, the *CJEU* is now obliged to inform the parties that it is likely to base its ruling on an argument raised of its own motion and to ask them to submit observations on the stated argument (ECJ, 2 December 2009, *Commission v Ireland*, case C-89/08 P).

In some systems, the national administrative court is bound by the terms of the application and may not raise arguments of its own motion.

This is the case with *Slovakia*, *Hungary* and apparently *Denmark*.

Other national reports state that the court is **required to raise public-policy arguments** (*Luxembourg*).

Lastly, in other systems, the court may or may not invoke public-policy arguments as it pleases.

This is the case in *Cyprus* and *Austria*.

In any case, when a public-policy argument is raised, the rule of thumb is to submit the argument to the parties for them to challenge it via **additional written or oral observations**.

This system applies in *Italy*, *Sweden*, *the Czech Republic*, *the Netherlands*, *Greece*, *the United Kingdom*, *Romania*, *Belgium*, *Portugal*, *Cyprus*, *Malta*, *Germany*, *Austria*, *Lithuania*, *France* and *Luxembourg*.

While in some countries a public-policy argument may be raised even during the deliberation stage⁴ or after the investigation has been closed⁵, in others it is no longer possible once the case has reached the deliberation stage.⁶

8. Shortening of deadlines

The issue of shortening deadlines barely arises in systems where the setting of deadlines for proceedings is left up to the court; this is without prejudice to the minimum deadline laid down by law in certain cases, such as the deadline by which a hearing must be held.

This is the case in *Germany* and *Estonia*, for example.

In some countries, there are **no powers whatsoever** to shorten deadlines since the latter are set out in full by law.

This is the case in *Italy*, *Bulgaria* and *Romania*. In other countries, such as *Belgium*, where the courts do have the option to exercise such powers, they rarely do so in practice. In *Denmark*, deadlines of which the defence has been notified may not be shortened.

Another method consists of the option for the administrative court to shorten deadlines via an **agreement reached between the parties**, at the request of the parties in **urgent cases**, or even **on a discretionary basis**.

The system of agreement between the parties is applied in *Cyprus*, and that of a request by the parties in urgent cases in *Luxembourg* and *Malta*. The English system gives the court a great deal of latitude in terms of shortening deadlines.

Lastly, in some cases the law makes provision for deadlines to be shortened in the case of emergency or summary proceedings.

⁴ *Luxembourg*

⁵ *France*

⁶ *Turkey e. g.*

9. Use of electronic resources

Some countries **permit case documentation to be submitted electronically**.

Electronic transmission is permitted in *Germany* (only by secure channel allowing electronic signature), the *United Kingdom*, in *Croatia*, *Finland*, *Romania*, *Latvia* and the *Czech Republic*, whereas this technique is being implemented timidly and on a pilot-project basis in Belgium for cassation proceedings. In proceedings before the *CJEU*, documentation may be submitted electronically provided that the signed originals are forwarded within six days.

Apparently in other countries where it is permitted, this technique is **not widely used**.

This is the case in *Spain*.

Other countries do not allow the electronic submission of appeals, but do allow the electronic transmission of submissions and observations.

This system is used in *Sweden*.

Other countries **do not allow appeals to be submitted by e-mail**.

This is true of *Poland*, *Cyprus*, *Austria*, *Norway*, *Luxembourg*, *Malta*, *Denmark*, *Greece* and *Turkey*.

In other countries still, **electronic communication is to be installed**, although efforts are being made to seek out appropriate security measures to identify senders.

This is so in *Estonia*, *Slovakia*, *Slovenia*, *Bulgaria*, *Italy*, *France* and *Portugal*. Draft legislation is currently under discussion in *the Netherlands* and *Lithuania*. Pending the legislation, *French* case law has allowed the possibility of sending documents electronically, provided that they are followed by a written document to authenticate them. Lastly, in *Turkey* the lawyers' portal on the website of the administrative courts enables them to consult administrative files online.

10. Are strict deadlines applied to proceedings?

Some countries apply a rigorous system of strict deadlines for making submissions and submitting documents. When the assigned deadlines are not met, the documents or observations are no longer taken into account in the proceedings.

This system is applied before the *CJEU* (except in unforeseen circumstances or in the event of force majeure) and in *Luxembourg*, *Lithuania* and *Belgium*.

In Belgium, this rigorous system in annulment disputes has been introduced as "a fundamental reform of proceedings". It is hoped that "the act of ruling out any postponement will accelerate the proceedings and reduce the time spent processing cases".

Other systems, while prescribing binding deadlines, have nevertheless provided for the **possibility of extending those deadlines** in cases of justified and unforeseen obstacles or force majeure.

This is so in *Portugal* and the *Czech Republic* in the case of justified and unforeseen obstacles and in *Romania* and *Spain* in the case of force majeure.

In *Norway* and *the Netherlands*, exemptions may be granted in individual cases depending on the specific nature of a given case (Denmark seems to fit this example).

A similar system applies in *Poland* and *Sweden* where account is taken of the significance of the documents or observations that the parties would like to submit.

In *Estonia*, if documentation for proceedings does not meet the formal requirements stipulated, a new deadline is authorised by which to remedy the shortcomings.

In *Turkey*, the practice is to take into account even documents that have been submitted during the deliberation phase.

Croatia imposes no limit on the number of submissions which may be made.

There are also **flexible systems** where deadlines for proceedings are set at the discretion of the court and can be changed at the court's discretion.

This is the case in *Germany*, *Slovakia*, *Bulgaria*, *Cyprus*, *France* and the *United Kingdom*.

Lastly, the *Greek* system does not involve exchange of submissions; each party submits to the court administration its documents for the proceedings and does so no later than six days prior to the hearing. Failure to meet this deadline does not result in inadmissibility.

As previously mentioned, where rigorous deadlines are applied, the penalty for failing to submit documents or for submitting documents late is that said documents are no longer taken into account in proceedings. However, this does not prevent the proceedings from moving forward.

This applies in *Italy* and *Slovenia*. Accordingly, a respondent who has not made a defence response may appear and defend himself. In *Belgium*, the appellant's reply is then replaced by his option to submit a statement of detailed grounds - except, apparently, in *Hungary* and *Denmark*, where the appeal can be declared inadmissible.

Finally, it should be pointed out that some **courts have deadlines by which they must hand down a ruling**. The role of such obligation in preventing backlogs should not be underestimated.

Turkey requires judges to rule within 15 days of the case entering the deliberation phase, which happens during the final hearing.

In *Bulgaria*, the Supreme Administrative Court must hand down a ruling within one month of the hearing that marks the end of the examination of the dispute; even though the deadline is indicative, it is usually met.

In *Hungary*, the first hearing must take place within 60 days of the application.

11. Option of submitting additional observations

In some countries, there is **no statutory limit on the number of submissions that may be made**.

This is the case in *Slovakia*, *France*, *Germany*, *Italy*, the *United Kingdom*, *Finland*, *Romania*, *Greece*, the *Czech Republic* and *Sweden*.

In others, **no exceptions** are allowed to legislation or rules of procedure stipulating a limit on the number of submission.

This is so in *Spain* and before the *CJEU*.

In yet other countries, additional documentation pertaining to proceedings may only be submitted in the cases **specifically listed in the relevant legislation**.

This applies in *Portugal*.

Under other systems, the **court itself** stipulates the number of submissions required to investigate the case.

Although in *Germany* judges may fix a deadline to submit final statements, belated statements may only be barred from consideration if the delay was caused by negligence and was meant to delay proceedings. Also the opponent must be given the opportunity to comment even on a belated statement.

In *Luxembourg*, the president may require that additional submissions be made "in the interest of the investigation of the case". The documents may be submitted up until the time of the report by the examining judge to the court.

Similarly, in *Poland* and *Slovenia*, additional documents may be submitted in the interest of the investigation.

In *Denmark*, the court gives quite a bit of latitude with regard to additional documents for the proceedings.

In *France*, the parties may even submit a note during the deliberation phase, i.e. after the hearing.

In the *United Kingdom*, this is only allowed under special circumstances.

In *Belgium*, where an appellant intends to raise a public-policy argument, they may do so at any stage in the proceedings and therefore make an additional submission further developing their argument.

12. Closing statements

A minority of countries require a closing statement to be made to end the written proceedings.

In *Slovenia* and *France*, the court may require a closing statement to be made.

In *Portugal*, proceedings require closing statements to be drafted in the final conclusions, but there is no penalty for not doing so.

In *Denmark*, closing statements must be submitted no later than two weeks prior to the hearing.

In cases before the *Belgian* Council of State where the latter is ruling in cassation, the reply or statement of detailed grounds must take the form of a closing statement formulating all of the arguments put forward by the appellant. The Council of State then rules after duly considering the closing statement.

13. Option of citing new arguments

In several countries, the parties **are authorised to cite new arguments** during the proceedings.

This is the case in *Estonia*, *Austria*, *Germany*, *Portugal*, the *United Kingdom* and *the Netherlands*. In *Austria* however, no new facts may be alleged in the appeal or during the procedure before the Administrative Court.

In *Luxembourg*, the option of citing new arguments is the counterpart to the authorities' right to provide new grounds or to replace grounds with regard to the contested measure.

In *Greece*, the appellant may submit new arguments via an additional appeal no later than 15 days prior to the hearing.

In *France*, if new arguments are to be admissible they must relate to the same legal cause(s) as those cited in the deadline for the appeal.

Other countries do not allow the submission of new arguments.

New arguments may be submitted in *Norway*, *Sweden*, *Spain* and *Denmark* but only in exceptional circumstances, while in *Belgium* and *Cyprus* such arguments may only be cited where they pertain to public policy.

Before the *CJEU*, new arguments are permitted where they have their basis in aspects of law and of fact raised during the proceedings.

In *Italy* and *Malta*, the ban on citing new arguments does not prejudice the right of parties to develop and specify their arguments during the proceedings.

It should be noted that during **cassation proceedings**, some countries do not allow the judge who is ruling on a decision of a lower court to have knowledge of an argument that the first judge did not have the opportunity to examine.

This is the case in *Belgium, Bulgaria, Poland the Czech Republic and Lithuania*. In *Latvia*, the authorities are not authorised to cite new grounds in support of the act in question during proceedings.

For the higher administrative courts ruling as **appellate courts** and not as courts of cassation, the option of citing new arguments that were not cited before the court of first instance is permitted.

This is so in *Finland, Germany and Norway*. In *the Netherlands*, discussions have been held within the Litigation Division as to the scope of appeals. Strictly speaking, appeals involve only a review of the ruling handed down by the court of first instance. Since a ruling is being reviewed, only those arguments which were cited before the first court are admissible (this is the practice before the *CJEU*). However, if interpreted more broadly, as a second chance for a ruling, indeed a 'retrial' allowing the legality of the administrative act in question to be reviewed, fresh arguments may be heard. In recent years, the Litigation Division of the Council of State has tended to favour the review interpretation over the retrial one and has barred all fresh arguments, even those justified on the basis of the ECHR.

Finally, where a distinction is drawn between new arguments and new applications, in *Luxembourg*, for example, new arguments are permitted whereas new applications are not. In *Malta*, there is no such option on the grounds that to introduce new demands would constitute them being sprung unannounced on the other party, thereby depriving the latter of a level of jurisdiction.

14. Penalties in the event of proceedings extending beyond a reasonable time

Pursuant to the judgment in *Kudla v Poland* of 26 October 2000 handed down by the European Court of Human Rights, States party must make provision within their national legal systems for **efficient channels of appeal and redress in the event that national courts fail to pass rulings within a reasonable time**.

Such penalties may entail giving litigants the right to expedite proceedings under way or (after the fact) requiring the State to compensate individuals for the injury suffered as a

result of the excessively long duration of legal proceedings (aforementioned judgement in *Kudla v Poland*, paragraphs 150 et seq.).

Most national legal systems make provision **for financial compensation** for injury suffered as a result of the excessively long duration of legal proceedings.

Although in some countries a decision as to compensation is made by the authorities⁷, in most compensation is awarded by the courts. This model also applies in EU law insofar as Articles 268 and 340 of the Treaty on the Functioning of the European Union may be cited in support of an application for compensation pursuant to an appeal lodged against the European Union.

In *the Netherlands*, compensation for non-material damage may be awarded by the national administrative court following an application by the injured parties at any stage during proceedings.

In *Croatia* such a decision may only be taken by the Supreme Court.

In *Germany*, applications based on a breach of Article 19(4) of the Constitution concerning the right for citizens to have a ruling passed on their case within a reasonable time are often successful.

In *Poland*, a panel of three Supreme Administrative Court judges issues such rulings (however, the European Court of Human Rights has ruled that Poland's system of financial compensation is inadequate and this has prompted fresh legislative reform).

In other countries' legal systems the civil courts are responsible for making good material and non-material damage via rulings of fault-based extra-contractual liability on the part of the State (*Malta, Portugal, Belgium, Italy, Spain and Luxembourg*).

In *France*, the Council of State rules in both the first and final instance for fully compensating parties for damage suffered.

It would appear that in *Netherlands* compensation is only effected for non-material damage, a scenario which we believe to be inadequate in the light of the ECHR.

In some countries, **provision is also made for cases to be expedited.**

Under such systems, cases facing excessive delays may be heard as priority cases if the parties so request (*Sweden* pursuant to the Act of 1 January 2010, the *Czech Republic, Finland and Slovenia*).

An application to expedite proceedings may also be lodged with the President of the Supreme Court in *Latvia* and *Slovenia* or with the supervisory authority governing administrative courts (*Mission Permanente d'Inspection des Juridictions Administratives in France*).

If so requested by the parties, the Supreme Court of *Croatia* may order a ruling to be passed on a case.

A similar – and apparently successful – system whereby parties to proceedings may apply to a high court for a deadline to be set by which a ruling on their case must be passed is also in place in *Bulgaria*.

In *Cyprus*, the Supreme Court may expedite a case of its own motion.

⁷ *Sweden and Latvia*

In *Slovenia*, in addition to awarding financial compensation, the President of the Supreme Court may also replace a judge where proceedings are deemed to be taking too long.

A so-called *recurso de amparo* for safeguarding of fundamental rights may be lodged before the Constitutional Court in *Spain*.

Some national reports (*Czech Republic, Spain, Latvia and Lithuania*) also highlight the option of disciplinary penalties being imposed on judges failing to pass a ruling within a reasonable time.

In a handful of countries, the national legal system **makes no provision** for penalties where rulings are not passed within a reasonable time.

This is the case in (*Turkey, Austria, Denmark, Luxembourg, Romania and Greece*).

Equally, in the *United Kingdom* and *Lithuania* no specific measures are applied since there are no significant problems with backlogs in these countries.

However, some countries (*Slovakia, Estonia and Luxembourg*) report no significant problems of backlogs of administrative disputes.

15. What constitutes a reasonable time?

It is important to recall that, according to the European Court of Human Rights, what constitutes 'reasonable' in the context of duration of proceedings pursuant to Article 6 of the ECHR is to be determined in line with the circumstances of the case at hand and having regard to the criteria established in the case law of the European Court of Human Rights, specifically the complexity of the case, the conduct of the appellant and of the authorities involved, and the stakes of the case for the parties (see, among others, the judgment in *Leandro Da Silva v Luxembourg* of 11 February 2010).

Many national reports state that such case law is followed when determining whether a given action has continued beyond a reasonable time (*Spain, France, Latvia, Estonia, Germany, Poland, Malta, Romania, Portugal, Italy, Norway, Sweden, Luxembourg and Belgium*). The same is true of the CJEU.

In *Belgium*, this is a general legal principle and also applies to the procedure before the administration.

Several reports mention that the countries in question have been criticised by the European Court of Human Rights for failing to pass rulings within a reasonable time in administrative cases.

This is the case in *Poland, Austria, Cyprus, Denmark and Belgium* (in the latter for a case before the Council of State which lasted six years including excessive delays on the part of the Auditor in submitting his report).

In Sweden, one particular case lasted six years, three years of that time before the Supreme Court; by way of compensation the latter reduced the special charge by half.

Proceedings lasting over three years were deemed to have exceeded a 'reasonable time' by the Constitutional Court of the *Czech Republic*.

In *France*, the Council of State criticised as excessively long the duration of a) a case lasting seven years and six months in respect of an action for damages brought before an administrative court and b) a case lasting two years and one month in respect of an action seeking the quashing of a refusal to submit medical records brought before an administrative court (the time taken was deemed to have been excessive given the straightforward nature of the case).

In other countries such as *Greece*, the issue has not yet been raised before the national courts.

In *the Netherlands*, a distinction is drawn between criminal cases and other cases. For the purposes of administrative fines, the time period runs from the point at which an individual is first notified that they have been accused of a crime to, i.e. a good time before the case is actually brought before a court of first instance (a similar system applies in *Luxembourg*). In such scenarios, established case law holds that a reasonable time is deemed to have been exceeded where proceedings last longer than two years at the first-instance stage and longer than four years at the appeal stage. In other cases, the Litigation Division of the Council of State considers a total duration of five years to be excessive (comprising one year for an administrative complaint, two years at the first-instance stage and two years at the appeal stage). In line with the case law of the European Court of Human Rights (judgement in *Koua Poirrez* of 30 September 2003), the duration of any preliminary reference proceedings before the *CJEU* is not taken into account. By contrast, the duration of any preliminary reference proceedings before the national Constitutional Court *is* factored in when calculating the overall duration (aforementioned judgement in *Bock*, paragraph 37).

Finally, in *Croatia* a deadline of three years from the date on which the matter in question is brought before the administrative body is used to gauge whether the duration of proceedings is to be deemed reasonable.

III. Criteria by which to gauge performance

1. Quantitative and qualitative criteria by which to gauge the performance of supreme courts and the legal value of these criteria and the bodies issuing them

In general, the issue of how efficiently high administrative courts perform must be gauged against two requirements which may be contradictory but which must nevertheless be fulfilled: a) the need to provide the necessary tools via which to assess the **efficacy** of administrative justice, and b) the equally crucial need for safeguards to ensure that justice remains **independent**.

With these principles in mind, it should be noted that:

- on the one hand, while it is broadly possible to gauge performance directly and indirectly from a quantitative standpoint on the basis of backlogs, ascertaining the qualitative side of that performance is more problematic since it is important to avoid any kind of interference – or indeed any kind of assessment of the value of rulings passed (a role which is devolved to higher courts where appropriate) – by an external authority;

- on the other, in more than half the countries surveyed, where evaluation criteria do exist, they are not provided for via a binding rule but via an internal administrative monitoring process.

An analysis of the report has highlighted a number of different practices.

a) Stipulation of performance criteria

Some countries have adopted **specific legislation** stipulating performance criteria.

This is the case in *Bulgaria*, where the criteria governing the procedure for "certification of judges" are laid down by law.

In *Turkey*, too, the Judges and Prosecutors Act details the general and specific criteria governing evaluation of judges' performance.

In *France*, an organic law on finance legislation sets out indicators in the form of targets.

In *Belgium*, a draft Royal Decree also makes provision for a list of mandatory evaluation criteria.

In *Slovenia*, an article concerning the rules governing the country's courts lays down quantitative criteria in certain types of proceedings.

Finally, in *Romania* quantitative and qualitative criteria are laid down in accordance with a law passed in 2004.

In other countries, while there is no specific legislation setting out such criteria, there is nevertheless an **underlying standard** pursuant to which performance-assessment measures and, in turn, criteria may be laid down.

This is the case in *Germany*, where Article 19(4) of the Constitution underlines the need for "effective judicial protection", thereby making the courts responsible for investigating cases effectively in terms both of aspects of fact and aspects of law and within the shortest possible time.

In *Italy*, the Council of the Presidency of the Italian Administrative Judiciary (CPGA) determines, pursuant to legislation, the number of cases each court must hear every month.

In most countries, such criteria are determined via **internal administrative processes** in reports or through statistics, merely for planning and organisational purposes and without being in any way binding.

In the *United Kingdom*, for example, although some targets are set by the courts services, they are not intended to gauge court performance and are in no way binding on judges.

In *Germany*, the principle of efficacy is fleshed out both formally (via rulings passed stipulating reasonable time periods) and informally via working groups within various federal courts which have drawn up detailed and wide-reaching evaluations with a view to producing statistics.

In all other countries – indeed the vast majority of countries surveyed – assessment criteria are determined via formal procedures, **internal reports** and **statistics** for administrative purposes.

This is the case in *Austria, Cyprus, Spain, Estonia, Finland, Greece, Hungary, Latvia, Norway, Poland, Slovakia, Sweden, France* (in addition to criteria stipulated in the aforementioned organic law) and *Lithuania*.

The *CJEU* also applies this system, drafting an annual report summarising the Court's activities and containing statistical data. In addition to this report, the President of the *CJEU* has also issued a practical guide detailing the organisational criteria governing cases brought before it, i.e. how cases are processed by it and the time limit within which rulings must be passed on those cases.

In other countries, assessment criteria are compiled via **informal internal procedures which do not detail any exact figures** but which aim to keep the burden on courts to a minimum.

Such a system is applied in *Luxembourg, Denmark, Portugal* and the *Czech Republic*.

In some countries there are **no criteria at all**.

This is the case in *Malta* and *Belgium* (at least pending adoption of the draft Royal Decree).

b) Application of performance criteria

Countries have adopted a number of different approaches in seeking to apply performance criteria while at the same time ensuring that administrative justice remains independent.

In those countries (the majority of countries surveyed) in which the criteria are applied for the purposes of **administrative planning and organisation**, application is generally **via courts themselves** or **by the country's supreme administrative court**.

This is the case in *Austria, Cyprus, Denmark, Finland, Latvia, Luxembourg, Poland, Portugal, Sweden, France* and *Lithuania*. The same procedure applies at the *CJEU*. In *Germany*, quantitative performance criteria evaluated by the courts are not only referred to in assessing the judges' performance, but are also used by the ministries of justice of the *Länder* to implement a statistic-based Manpower Requirement Planning System.

In other countries, the criteria are applied via **specific bodies**.

In *Spain*, they are applied by the General Council of the Judiciary (CGPJ), in *Greece* by a commission of various specialist advisors, in *Hungary* by the National Council of Justice, in *Norway* by the National Courts Administration and in *Slovenia* by the Judicial Council.

In yet other countries, responsibility for implementing performance criteria falls to the **Ministry of Justice**.

This is so in the *Czech Republic* and *Slovakia*.

In a handful of countries where **performance criteria are based on specific legislation** or at least on underlying standards, the methods used to apply them still vary widely.

In some cases, either **judges themselves** or the **bodies which represent them** assess court performance.

This is the case in *Belgium*, where the criteria to be implemented once the draft Royal Decree is adopted will be applied by judges themselves.

In *Bulgaria*, the method used to certify judges will be drawn up and implemented by the country's Supreme Judicial Council, while in *Turkey*, the criteria laid down by law are applied by the Supreme Council of Judges and Public Prosecutors.

In others, **no specific provision is made to implement the performance criteria**.

In *Italy*, although the CPGA may stipulate by law the number of cases that each administrative court must hear each month, no provision is made for actually implementing its decisions.

In yet other countries, a system is applied whereby courts vote on **achieving certain targets** specified at the time of implementing the criteria; at the end of the period in question, the results are reported to parliament.

Such a system is applied in *France*.

In none of the countries in which criteria (be they quantitative or qualitative) are applied is there any **binding procedure** as such, despite the fact that in several countries assessment of their performance can have a direct impact on judges' careers.⁸

c) Choice of performance criteria

For the most part, in those countries in which assessment criteria are implemented it is clear that, to date, quantitative performance evaluation is slightly more widespread (particularly when applied for the purposes of internal and administrative planning) than **qualitative assessment**, which, entailing a greater likelihood of interference in an independent justice system, remains in the minority despite being on the increase.

Many countries apply quantitative assessment criteria only.

This is the case in *Austria, Cyprus, Denmark, Spain, Estonia, Italy, Luxembourg, Norway, Poland, the Czech Republic, Slovenia* (prior to reform currently under way), *Sweden*, and the *United Kingdom*. The same system is also applied at European level for the *CJEU*. Reform is under way in *Belgium* and the *Czech Republic*, both of which are about to incorporate qualitative assessment criteria into domestic law.

Despite a degree of subjectivity surrounding such an approach, some countries evaluate rulings from a qualitative standpoint.

This is true in *Bulgaria, Greece, Hungary, Latvia, Portugal, Turkey, the Netherlands, Romania, France, Germany* and *Lithuania*, all of which apply qualitative assessment criteria.

2. Statistics on the average duration of proceedings before a high administrative court and average duration of proceedings from first-instance stage to final ruling by a high administrative court

Statistics are available for most of the countries which contributed to this report.

However, at the outset it is important to underline that the time periods in question, even where specified, should be analysed with a degree of circumspection if useful conclusions are to be drawn. The figures should therefore be examined more closely in light of the following factors:

⁸ *Portugal, Bulgaria, and Germany*

- The fact that there is no uniform system by which to compare the various national processes

First of all it is important to bear in mind the significant differences between countries in terms of organisation of the justice system as outlined in the introduction. Although in the vast majority of countries a distinction is drawn between administrative and judicial systems, in others no such distinction is made. By the same token, in some countries a high administrative court may rule both at the first-instance stage and on appeal or in cassation, while in others no supreme court is officially designated to rule systematically at the appeal stage. In addition, some countries have a federal structure.

It is also crucial to factor in the differences between countries in terms of internal proceedings. The average duration of proceedings may be based on a wide range of potential durations depending on such factors, among others, as: a) the subject matters of cases, b) whether proceedings are being conducted orally or in writing, c) whether they are at the review, first-instance or leave-to-appeal stage, and d) whether or not they are urgent.

- The fact that there is no uniform system as regards available information and that said information is sometimes either inaccurate or irrelevant vis-à-vis the issues raised

Where statistics or numerical data exist, they frequently fail to distinguish between different types of proceedings; they also sometimes fail to draw a distinction between judicial proceedings and administrative ones. As a result, the stated average duration of proceedings may be misleading, all the more so since the data recorded by the various courts will not necessarily be of the same type, due not only to different methods of gauging performance but also to the fact that national justice systems themselves differ widely.

Such reservations aside, the majority of countries for which indicators or statistics are available have supplied the information contained in the table below, either on the basis of those statistics or via cross-referencing or via assessment.

<i>ECJ</i>	In 2009, average duration of preliminary reference proceedings and direct applications proceedings was 17, 1 months, and the duration of proceedings on appeal was 15,4 months	N/A	
<i>Austria</i>	+/- 20 mois	n/a	Tendance sur 5 ans : légère diminution
	+/- 20 months	N/A	Tendency over 5 years: slight diminution
<i>Belgium</i>	Duration for issuing a ruling on a cassation case 6.7 months (71% of rulings issued within 6 months)	33 months	Belgium has in principle no high administrative court heading up the system of administrative courts. Recent trend has been towards longer duration to new procedures and types of dispute
<i>Bulgaria</i>	N/A	N/A	High administrative court also hears disputes at first-instance stage
<i>Croatia</i>	36 months	N/A	
<i>Cyprus</i>	Between 30 and 36 months	Between 42 and 48 months	
<i>Czech Republic</i>	6 months	10 months at first-instance stage + 6 months = 16 months	
<i>Denmark</i>		20.7 months	Statistics do not distinguish between civil and administrative proceedings
<i>Estonia</i>	N/A	11.5 months	No data for a specific case
<i>Finland</i>	(Between 5 and 16 months depending on the case), average of 10.2 months but pertains to other courts as well as the high administrative court	N/A	No statistics on the total duration of proceedings from the first-instance stage to a final ruling by Supreme Administrative Court; durations vary depending on the nature of cases
<i>France</i>	11 months (2009)	42.5 months	Duration relatively stable over 3 years despite slight overall decrease in durations. Duration of 42.5 months extrapolated from statistics at each stage
<i>Germany</i>	1/ Review proceedings (review of points of law) 13 months; 2/ Complaints, leave to appeal 4 months; 3/ Ruling passed in first instance 11-19 months	1/ Main proceedings 30.8 months (at first- and second-instance stage) + Any appeal maximum of 13 months (see above), so 43.8 months in total	Does not apply to all proceedings [urgent actions, for example, are decided on in an average of 1.9 months (first resp. second instance)]. Approximate figures given that Germany is a federal State (see report)
<i>Greece</i>	N/A	N/A	
<i>Hungary</i>	(Since 2009, cases must be ruled upon within 4 months) To date, between 10 and 12 months	6 months + 10 to 12 months = between 16 and 18 months	
<i>Italy</i>	Normal proceedings: 30 months Fast-track proceedings: less than 12 months	Normal proceedings: 48 months Fast-track proceedings: 30 months	
<i>Latvia</i>	Between 2 and 6 months	40 months	
<i>Lithuania</i>	10 months in 2009	15 months	Durations having become longer in recent years. Duration from first- to final-instance stage determined via assessment.
<i>Luxembourg</i>	N/A	N/A	
<i>Malta</i>	N/A	N/A	
<i>Norway</i>	6 months	N/A	
<i>Poland</i>	12 months	3-5 months	
<i>Portugal</i>	7 months	24 months at first-instance stage + 7 months = approximately 30 months	
<i>Romania</i>	88% less than 6 months, 12% more than 6 months	N/A	
<i>Slovakia</i>	Maximum of 48 months	Between 6 and 24 months at the first-instance stage + maximum of 48 months, so maximum potential duration 96 months	Not possible to determine an average or minimum duration, only a maximum one
<i>Slovenia</i>	10 months in appeal cases, 12 months for cassation cases	12 months at first-instance stage + 10 months at appeal stage or 12 months at cassation stage = approximately 20 months	
<i>Spain</i>	20 months	29 months at first-instance stage + 20 months at cassation stage = 49 months	
<i>Sweden</i>	N/A	N/A	

<i>The Netherlands</i>	Statistics on average duration of a case before the Litigation Division of the Council of State: between 3 and 11 months in 2008 depending on chamber	N/A	
<i>Turkey</i>	N/A	N/A	
<i>United Kingdom</i>	N/A	N/A	

Given the wide range of data collected and the diverse evaluation methods used, it is difficult to draw any conclusions based on figures alone. Nevertheless, certain trends can be identified.

The duration of proceedings before high administrative courts can range from two months⁹ to 48 months¹⁰. This range of durations is without doubt due to the variety of roles a high administrative court may be required to perform as well as to the varied nature of national systems in place. However, it is clear that the average duration of proceedings before higher administrative courts is a little over a year.

With respect to the total duration of proceedings from the first-instance stage to a final ruling being passed by a high administrative court, the risk of error is greater still. However, it is nevertheless clear that the average duration is over two years.

Looking at trends over time, where the figures supplied cover periods of longer than one year, it is clear that durations have increased in line with increased numbers of cases in some countries¹¹ and, conversely, declined (albeit it only slightly) in others.¹²

3. Significant differences in the duration of proceedings or depending on the nature of a case

It is evident that in most countries which provided information the duration of proceedings varies. To gain a clearer understanding of the actual situation, we need to compare the figures obtained against both the diverse range of administrative procedures followed and the content of the data collected (some countries' data pertain to their respective high administrative courts and that of others to all levels of jurisdiction, while in yet other countries no distinction is drawn).

⁹ The minimum in *Latvia*, for example

¹⁰ The maximum in *Slovakia*

¹¹ *Belgium, Lithuania*

¹² *France, Austria*

By the same token, in many scenarios the nature of a case will determine the type of proceedings followed. In some countries specific types of proceedings are applied in certain cases¹³, while in others administrative rules of procedure influence the duration of proceedings but may apply to a wide range of situations¹⁴. In yet other countries, the nature of some cases will determine whether proceedings take more or less time despite no specific procedural requirements having to be observed.¹⁵

The table below provides a detailed summary of the methods used in different countries; information concerning the figures stated is given in the form of a caveat.

	<i>Variation depending on nature of case</i>	<i>Variation depending on type of proceedings</i>	<i>Method of evaluation – Caveats – Comments</i>
<i>ECJ</i>	No	No	
<i>Austria</i>	Yes, depending on the complexity of the issues involved	N/A	
<i>Belgium</i>	Yes. Proceedings concerning land planning, social security disputes and public health take longer. Shorter durations in civil-service disputes.	Yes, fast-track proceedings in cases concerning inadmissibility or external illegality where discussion is not possible.	There is a general upward trend in durations due to the increasing complexity of cases, the broadened scope of reviews of lawfulness and the greater number of authorities and their involvement
<i>Bulgaria</i>	No	Yes, depending on the type of proceedings only (ruling on	

¹³ For example, fast-track proceedings concerning admission and deportation of foreigners in *the Netherlands*, international protection in *Luxembourg*, asylum in *Slovenia* and so forth.

¹⁴ Interim appeals in *Lithuania*, suspension of judgments in *Greece*

¹⁵ Environmental law in *Germany*, external illegality in *Belgium*

		substantive issues, ruling on point(s) of law, whether or not at first-instance stage, etc.)	
<i>Croatia</i>	No	Yes (inadmissible cases)	
<i>Cyprus</i>	Yes, depending on the complexity of the facts of a case	N/A	
<i>Czech Republic</i>	Yes, depending on the complexity of cases	Yes, depending on number of judges sitting	
<i>Denmark</i>	Yes, if the nature of the case requires a report or investigation, for example	Yes, in the case of a preliminary question, for example	
<i>Estonia</i>	Yes. In tax cases, proceedings last an average of 344 days; the average duration for all other cases is 122.5 days	N/A	Based on statistics received from courts of first instance
<i>Finland</i>	Yes, varies between 5 and 16 months depending on the nature of a case	N/A	
<i>France</i>	N/A	Yes, durations and types of proceedings can vary widely. Cases involving special circumstances of either the	

		appellant or the authorities take longer. Shorter durations in urgent proceedings, in which a ruling is passed within 72 hours	
<i>Germany</i>	Yes. Proceedings concerning environmental law, public service law and administration of economic affairs take longer. Shorter durations in cases involving asylum and social security law.	Yes. Judgments in cases in which the court is ruling at the first-instance stage take longer than those involving reviews of points of law (12 to 13 months), while proceedings in respect of leave to appeal will be resolved within 4 months. Cases involving preliminary proceedings or questions will take longer.	These data pertain only to the Supreme Administrative Court and not to federal administrative courts.
<i>Greece</i>	N/A	Yes, appeals in cassation 5 years, appeals in respect of action <i>ultra vires</i> 3 years on average, and suspension of a judgment a few days	
<i>Hungary</i>	Yes, depending on the nature of cases	N/A	
<i>Italy</i>	No	Yes, if the case is eligible for fast-track proceedings	
<i>Latvia</i>	Yes, if the case is particularly complex	Yes, if senators cannot reach a unanimous decision, often depends on the complexity of the case	
<i>Lithuania</i>	N/A	Yes, since durations of	

		proceedings can vary by up to 9 months.	
<i>Luxembourg</i>	In exceptional circumstances, yes: in cases involving international protection (foreign nationals)	Yes, different proceedings followed in cases of international protection	
<i>Malta</i>	N/A	N/A	
<i>Norway</i>	N/A	N/A	
<i>Poland</i>	In exceptional cases, yes; where the case requires in-depth analysis on account of its complexity	In principle, no, since cases are scheduled in line with the Supreme Court's timetable	
<i>Portugal</i>	N/A	N/A	
<i>Romania</i>	Yes	N/A	
<i>Slovakia</i>	Yes	N/A	
<i>Slovenia</i>	Yes, in cases involving asylum	Yes, in cases involving asylum	
<i>Spain</i>	Yes, for example in cases involving fundamental rights	Yes, since fast-track proceedings are possible	
<i>Sweden</i>	Yes, proceedings involving tax, social security and	Yes, proceedings involving preliminary questions take longer. Shorter durations thanks to new procedure to settle	

	construction-permit issues take longer	and expedite more straightforward cases	
<i>The Netherlands</i>	Yes, in cases involving admission and deportation of foreign nationals	Yes, fast-track proceedings in cases involving admission and deportation of foreign nationals	
<i>Turkey</i>	N/A	N/A	
<i>United Kingdom</i>	Yes, depending on the complexity of cases	N/A	

In terms of the nature of cases, at least two thirds of the 29 countries which contributed data stated that durations of proceedings varied (of the 10 remaining countries, some made no specific mention of durations and only Italy and Bulgaria stated that there was no variation in duration depending on type of proceedings). Longer durations are primarily due to varying degrees of complexity of cases and the field of law involved (social security, taxation, environmental, etc.), while the duration of cases involving fundamental rights and legislation governing foreign nationals, which often require a priority hearing, tend to be shorter.

In terms of the type of proceedings, the majority of countries reported that fast-track proceedings were possible, such proceedings being either dependent upon or regardless of the nature of a given case (see table). The data revealed that in many of those countries provision is made for emergency proceedings¹⁶ and that variations in the duration of proceedings may also be due to a) whether or not interim rulings have been passed¹⁷, b) whether or not internal proceedings have been conducted to filter out and settle cases deemed to be straightforward¹⁸, and c) scenarios in which the point under examination is one surrounding external legality only and in respect of which little discussion is possible.¹⁹ It is also clear that the duration of proceedings will vary depending on the scope of a particular judge to review a case

¹⁶ *France, the Netherlands, Italy, Spain and Belgium*

¹⁷ Pertaining to suspension of a judgment, for example in *Greece*

¹⁸ *Sweden*

¹⁹ *Belgium*

(examination of substantive issues or of a point of law, review ruling or not, etc.) and whether an issue is involved which must be submitted to another court system (e.g. in the case of preliminary references).

The degree of such variations may be deemed either significant²⁰ or minor²¹ depending on whether they are viewed against the backdrop of actual practice and organisational structures in specific countries or whether they are compared against one another.

In this respect, the *CJEU* is a special case insofar as there is virtually no difference between durations of proceedings before it.

4. 'Guidance' rulings to prevent a flurry of appeals following contradictions in case law

It is clear at once that, as emphasised in the Belgian report, even though they extend the duration of proceedings, preliminary questions submitted to the *CJEU* and (where provision is made for such a process) to the Constitutional Court, can also help to prevent a deluge of appeals.

However, that said, in a significant minority of countries there is no system of preliminary referral to the **high administrative court**.

This is the case in *Lithuania, Denmark, Cyprus, Spain, Estonia, Latvia, Malta, Norway, Italy, Slovakia, Sweden* and *Turkey*. Naturally, neither is there any such system for the *CJEU*.

Nevertheless, a number of more informal practices are adopted. In *Italy*, priority is given to hearing cases likely to give rise to a flurry of future appeals, while in *Romania* provision is made for a system of dialogue between the Supreme Administrative Court and the lower administrative courts.

A similar arrangement applies in the *United Kingdom*, where informal dialogue between the presidents of the lower and higher courts can facilitate the lodging of an appeal in a case which raises landmark issues.

Other countries apply a range of various systems via which preliminary questions may be submitted to the high administrative court.

²⁰ In *France*, e. g.

²¹ In *Lithuania*, e. g.

This is true in *Portugal*, where, in instances in which a new and important issue is raised before a trial judge which is likely to arise in future cases, a preliminary question may be submitted to the Supreme Administrative Court and the latter required to issue a mandatory interpretation within three months.

In *Hungary*, a fast and flexible system is followed whereby any administrative court may contact the Supreme Court via e-mail for a preliminary ruling.

In *France*, pursuant to an act passed in 1987, administrative courts may request an opinion from the Council of State "prior to ruling on an application raising a fresh issue of law, posing a significant difficulty and arising in multiple disputes".

In *Germany*, there used to be a system whereby a request could be made by the Higher Administrative Courts (courts of second instance) concerning the interpretation of federal law. However, this system proved to be of no practical relevance and was abolished in 1997.

5. Ratio of judges at high administrative courts to cases processed annually

The ratio of judges at a given high administrative court to cases processed annually must take into account a number of considerations, all of which form an integral part of the respective courts' internal procedures. Accordingly, those internal procedures must be analysed in detail. The system in some courts and in some proceedings whereby rulings are passed by a panel of judges rather than a judge sitting alone means that the figure recorded more likely pertains to the number of cases in which judges have been involved rather than the number upon which they have actually ruled. Thus, comparing statistics for such cases with those in which a ruling has been passed by a judge sitting alone risks distorting the overall findings. Another variable is the fact that, depending on the courts in which proceedings are conducted and, in some cases, even on the type of proceedings being conducted within one and the same court, judges may issue many different types of rulings (interlocutory decisions, rulings on substantive issues or issues concerning points of law, rulings in the first instance or at the review stage, rulings in the context of a judgment or report, etc.) and thus may also be required to rule in many different types of proceedings. Finally, some countries only hold data on their respective high administrative courts while others record statistics for all courts. Despite these factors, the table below sets out several key trends.

	<i>Ratio of judges at high administrative court to cases processed annually</i>	<i>Method of assessment – Caveats – Comments</i>
<i>ECJ</i>	In average, in 2009, each president of chamber has participated at approximately 90 judicial decisions. Other judges have contributed to approximately 70 decisions of such nature.	
<i>Austria</i>	In 2008, each judge ruled on between 178 and 195 cases.	
<i>Belgium</i>	During the period 2008-2009, each judge passed 39 definitive rulings.	In view of the reforms under way and the additional tasks in respect of which reports and interim rulings are passed which are not included in the calculation, and the fact that disputes involving foreign nationals and administrative cassation cases are not included either, the figures should be viewed with caution.
<i>Bulgaria</i>	N/A	
<i>Croatia</i>	Each judge rules on an average 270 cases per year	
<i>Cyprus</i>	Each judge rules on an average of 70 cases a	This figure does not include cases in which the parties have reached an agreement or

	year.	which have been removed from the register. If such cases are factored in, the figure rises to 140. The jurisdiction of an administrative judge also extends to issues involving constitutional law, appeals in criminal matters, electoral disputes and so forth.
<i>Czech Republic</i>	In 2008, each judge issued 130 rulings.	
<i>Denmark</i>	No ratio is available since the number of judges and thus their capacity is fixed by law.	
<i>Estonia</i>	In 2009, each judge ruled on an average of just under 25 cases a year (cases decided by judgment or reasoned rulings) and 107 cases of leave of appeal per judge (with no publicly available motivation).	
<i>Finland</i>	Each judge is involved in approximately 900 cases.	This figure refers to the number of panel-based rulings in which a given judge has been involved.
<i>France</i>	Each judge rules on an average of 80 cases a year	
<i>Germany</i>	Each judge rules on 35 cases.	Between 180 and 200 rulings are passed each year by panels of judges.
<i>Greece</i>	Each judge rules on an average of between 50	

	and 55 cases a year.	
<i>Hungary</i>	Each judge rules on an average of approximately 120 cases a year.	
<i>Italy</i>	Each judge rules on approximately 200 cases a year.	Each judge also issues some 120 interim rulings.
<i>Latvia</i>	Each judge rules on approximately 130 cases a year.	
<i>Lithuania</i>	Each judge is involved in 1,154 rulings as a chamber member and issues reports on 600 cases	The number of cases settled was up by a third on 2009 due to a rise in the number of proceedings
<i>Luxembourg</i>	During 2009, each judge passed an average of 69 rulings.	This figure is down on the previous year.
<i>Malta</i>	N/A	
<i>Norway</i>	N/A	
<i>Poland</i>	In 2009, each judge ruled on approximately 150 cases.	
<i>Portugal</i>	In 2008, each judge ruled on approximately 49 cases.	
<i>Romania</i>	Each judge rules on approximately 32 cases a	

	year on average.	
<i>Slovakia</i>	N/A	No statistics available but despite two fewer judges, all pending cases were settled.
<i>Slovenia</i>	Each judge passes approximately 158 rulings.	
<i>Spain</i>	In 2008, each judge ruled on an average of approximately 278 cases.	This figure does not distinguish between definitive rulings and dismissals of cases as inadmissible.
<i>Sweden</i>	The ratio is one judge to every 562 cases settled	
<i>The Netherlands</i>	In 2009, each judge ruled on approximately 200 appeals.	
<i>Turkey</i>	Each high-ranking judge (<i>maître des requêtes</i>) would appear to rule on approximately 478 cases a year.	
<i>United Kingdom</i>	N/A	

The widely differing results²² are not only due to the many different factors to be taken into account and the specific features of national legal systems as stated in the introduction. However, a number of unique characteristics are apparent: in some countries, proceedings serve not only as an opportunity for a dispute to be heard but also for advice to be given and as such opinions must also be drafted (in addition to simply passing rulings).

²² If one compares the Baltic States, which are similar in size, the figures range from 25 cases per judge per year in *Estonia* to 1,154 cases per judge per year in *Lithuania*

In 17 out of the 29 countries surveyed, judges are ruling on fewer than 200 cases a year, i.e. fewer than four a week, while in others they are ruling on more than 200 cases a year; as such, there is considerable variation in the figures for the number of rulings passed. A more in-depth analysis of the legal systems of and statistics for the various countries would give a clearer picture of the underlying situation. The *CJEU* tends to pass more than 200 rulings a year.

6. Ratio of judges to staff

The findings concerning the ratio of judges to staff are relatively precise. However, some uncertainty remains insofar as the concept of 'staff' is not a uniform one and may refer to legal staff in the strict sense (clerks, legal practitioners and assistant judges depending on the country in question) or to all manner of administrative and technical support staff.

That said, however, the table below summarises the findings concerning the ratio of judges to staff.

	<i>Ratio of judges to staff</i>
<i>ECJ</i>	On average, three legal assistants and three administrative assistants per judge
<i>Austria</i>	Just under one assistant for every three judges
<i>Belgium</i>	2.2 administrative staff per judge, although this figure will drop in view of the current reform of disputes involving foreign nationals
<i>Bulgaria</i>	Just over four assistants per judge
<i>Croatia</i>	One assistant per judge
<i>Cyprus</i>	Officially, the ratio is one assistant per judge but in reality it is a little less
<i>Czech Republic</i>	Each judge has two assistants
<i>Denmark</i>	No set ratio
<i>Estonia</i>	Just under two clerks per judge
<i>Finland</i>	Approximately four staff, two rapporteurs and two employees per judge
<i>France</i>	On average across all three levels of jurisdiction, just under one assistant per judge
<i>Germany</i>	One assistant for every five to six judges
<i>Greece</i>	No staff
<i>Hungary</i>	Just under one assistant per judge
<i>Italy</i>	No assistants, only administrative personnel; two members of staff per judge
<i>Latvia</i>	One assistant per judge
<i>Lithuania</i>	Approximately two members of staff per judge
<i>Luxembourg</i>	No staff
<i>Malta</i>	One member of staff per judge
<i>Norway</i>	Either just under one (clerks) or approximately two (including couriers, archivists, IT staff, etc.) assistants per judge
<i>Poland</i>	Just over one assistant per judge
	Just under one member of staff per judge, plus a documentation

The variation between countries is fairly broad: depending on the administrative organisational structures in place and the practices followed within the various courts, assistants may or may not be used. Equally, where assistants are used, they may number anywhere between one and 20. Looking at the table, though, several 'groups' of countries emerge.

In some countries, for example, judges appear not to have staff. Where national reports state that this is the case, we might reasonably assume that the countries in question interpret the concept of 'staff' fairly narrowly (i.e. as referring to specialist legal practitioners such as assistant judges, clerks, rapporteurs, etc.), since in general there are always support staff of some kind working at the various courts. Four countries fall into this group and between them account for 14% of the countries surveyed.

These countries are: *Greece, Italy, Luxembourg and Turkey.*

In other countries (the largest group) the ratio of staff to judges is less than one.

This is the case in *Germany, Austria, Cyprus* (despite the fact that, officially, each judge should have one assistant), *Spain, France, Hungary, Norway, Portugal, Romania, Slovakia and Sweden.*

In eight other countries, judges are supported by between one and two assistants

These countries are: *Belgium* (administrative officers), *Estonia, Latvia, Lithuania, Malta, Poland, the Czech Republic and Slovenia.*

Finally, in a handful of countries, judges have more than two staff.

This is the case in *Bulgaria, Finland* (bearing in mind that there may be between two and four staff depending on whether one understands the concept to include only staff in the strict sense or all staff including administrative officers), the *Netherlands and Turkey.*

Judges ruling at the *CJEU* each have three legal staff and three assistants.

7. Specialist judges only dealing with a specific type of case and origins of such specialisation

Most countries appear to have specialist judges although not all make official provision for them. The presence of specialist judges is due mainly to the fact that judges as a whole tend to build up specific expertise in and detailed knowledge of certain topics depending on the types of cases they hear and on account of the organic separation of chambers (a system which applies in many countries).

However, in such scenarios, provision is generally made for a judge to switch between or be assigned to different chambers on a permanent basis, which leads us to conclude, in the context of this report, that such specialisation results neither from specific training (not required) nor experience (where it is possible to switch between chambers).

Such an interpretation is debatable but for the purposes of this report it is a straightforward one and makes it easier to determine whether judges do specialise by distinguishing such 'roundabout' specialisation from scenarios in which countries make specific provision for judges to specialise or require them to do so on account of the technical nature of some specific fields of law.

	<i>Specialist judges present and origin of this specialisation</i>	<i>Comments</i>
<i>ECJ</i>	No. There is no specialisation either in internal proceedings or in the Court's administration.	
<i>Austria</i>	Yes. At least one judge on each panel of judges under federal law must be qualified to hold judicial office. In the panels involving matters of fiscal administration, at least one member must be qualified for higher level service in financial administration; in all other panels one member must be qualified for service in the general civil administration. Each panel is made up of a panel president and the required number of other judges.	
<i>Belgium</i>	No: No provision is made in law for specialisation. Within the two main divisions of the Council of State, (Auditor's Court and Council), judges specialise depending on the cases they are hearing. However, cases may be reassigned depending on requirements or judges' individual preferences	In addition to Auditor's Court and Council, the Council of State is further divided into a legislative division and a litigation division and judges may not switch between these divisions.
<i>Bulgaria</i>	No, since although by law the Supreme Administrative Court is split into divisions and panels each handling specific disputes, it is the President who assigns cases. Accordingly, no official provision is made for judges to specialise and they do so on a random basis.	
<i>Croatia</i>	The Court has three departments: Social law; Financial and civil service law; Property law. The real division among cases is a result of internal work distribution.	
<i>Cyprus</i>	No specialisation	
	No. In general, no provision is made in law for specialisation but some chambers do	

A number of trends can be identified using this method of assessment and the findings are outlined in the table above.

In eight of the 29 countries surveyed (27.5% of countries) there are specialist judges; such judges have either formally trained in the particular field in which they specialise or else have built up their expertise through positions as more or less permanent judges in a chamber handling cases in a specific field.

This is the case in *Germany, Austria, Finland, Greece, the Netherlands, Poland, Slovenia* and the *United Kingdom*.

In 20 countries (two thirds of those surveyed) judges are not required by law to specialise in a particular field as such. Despite chambers in the majority of countries specialising in particular fields (which thus results in individual judges within those chambers coming to specialise in those fields), the option to move between chambers and potential transfers provided for under rules of internal procedure prevent specialisation per se even though on the basis of more detailed analysis the methods adopted are debatable.

That said, it is perhaps logical (and indeed obvious from the data supplied) that none of the smallest countries²³ within the latter group have specialist judges; for the group as a whole, specialisation, where it exists, is a more 'fluid' concept borne out of both structural conventions (division into specialised chambers) and practical considerations (assignment of cases, judges shifting between chambers and so forth not only as a result of internal decisions and in line with rules of internal procedure, but also on the basis of the volume and type of cases to be dealt with).

²³ *Baltic States, Cyprus, Malta and Luxembourg*