

ADMINISTRATIVE JUSTICE IN EUROPE

Greek report

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Introduction

1. The creation of administrative jurisdictions has been provided for in Greece since 1833. The Controller and Auditor General was the first created as an administrative body and qualified administrative jurisdiction on certain administrative litigations it was subjected to. The Council of State was planned by royal decree in 1833 as a body with the character of a King's Council rather than a real jurisdiction, in spite of some capabilities of a jurisdictional nature which were attributed to it. The Constitution of 1844 abolished the Council of State and established the system of "sole jurisdiction", according to which jurisdictional control of the administration's action in Greece belonged to civil jurisdictions, aside from exceptions especially introduced by law. In 1911, the Constitution of 1864 was revised, and the State Council, having the nature and capabilities of an administrative cancellation jurisdiction, was created. However it only began operating, finally, in 1929. The State Council's competence for cancellation did not have any effect on the competence of the civil jurisdictions concerning the administrative disputes in full litigation.

The system of "sole jurisdiction" was completely reformed by the Constitution of 1952, which ascertained that administrative disputes should be judged by "ordinary administrative courts". However, it authorized, temporarily, the maintenance of the system of the sole jurisdiction until the establishment of these administrative courts. Under the empire of the Constitution of 1952, competent administrative tax courts were created.

The Constitution in force - from 1975, reviewed in 1986 and 2001 – provides a complete system of administrative justice, whereby administrative disputes of any nature will be subject, without exception to the competence of the administrative jurisdictions. This system was carried out by the law 1406/1983 in which paragraph one sets the

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general rule, whereby “the ordinary administrative courts” are competent for all administrative disputes for which the law attributes full jurisdiction to the nature of disputes (see offence question 55 B). The State Council, archetypal judge of recourses for excess of power, as well as judge of cassation, also remains competent to judge the appeals against rulings of the administrative courts of appeal given on the recourses for excess of power.

2. The primacy of the rule of legality governing the action of the administration in Greece is based on the Greek Constitution. Specifically, articles 26 par. 2, 43 and 50 of the Constitution in force establish the rule of legality that is the action of the administration must be subordinated to the rules of law set by acts of the legislative body. This submission of the administration to the rules of law is ensured by the jurisdictional control exerted over acts of the administration. Therefore the rule of legality aims to indirectly subject the administration to the electorate, bearer of popular sovereignty. The Greek legal order that actually rests on the principle of popular sovereignty presupposes the jurisdictional control over the harmonization of the Administration’s activity with the rules of law. The need for jurisdictional control over the legality of the administrative action in Greece then enters into the logic of the rule of law, which is constitutionally guaranteed. Under this aspect, the control over the legality of the administration’s action aims to protect the citizen; however, the interests and the rights of the citizen are guaranteed by the provisions of the Constitution relating to public freedom and are provided by the legislation, but can be affected by the administration’s action. The jurisdictional control over this action notably aims to prevent the administrative bodies from prejudicing the citizen’s protective interests or subjective rights. Among the main means of protection of the citizen, that of the jurisdictional protection against any illegal act of the administration is guaranteed by the Greek Constitution (art. 20); it might result in the cancellation or the modification of the administrative acts that prejudice the citizen’s protective interests or subjective rights. Furthermore, the cancellation of the illegal act, or the recognition of its illegality, can lead to compensation for damage caused to the citizen. In conclusion, control over the administration’s acts and action in Greece is not a simple control over the correct operation of the administration, but fits into the logic of the rule of law through its double objective: guarantee the respect for the rule of legality as well as protection of the citizen.

3. An bodily definition might consider as an Administration, all entities where the administrative bodies provided by the Greek legal organization are integrated, in other words those whose bodies are competent to exert public power. The broader intervention of the Administration in economic and social life in Greece led to the multiplication of the purposes of administrative action, as well as the creation of a new type of entities, whose organization and operation are governed in principle by rules of private law. All these entities come under the Administration, considered in a broad sense.

4. The classification depends on the criteria selected. This is how we can proceed to the following distinctions: Unilateral acts and administrative contracts; individual acts and regulatory acts; enforceable acts and non enforceable acts.

I. - Who controls the acts of the administration?

A. The competent bodies.

5. Aside from the courts, control over administrative action is carried out: a) by the administration itself (via the different administrative recourses [see offence questions 21 and 60] as well as guardianship control) and b) by the mediator (see offence question 61). This type of control differs from jurisdictional control because the bodies exerting it are, more or less, linked to the administration and, above all, it leads to acts that are not endowed with the authority of final judgment (see offence question 51).

6. In Greece there is a distinction between the administrative jurisdictions on one hand and the civil and penal jurisdictions on the other hand (art. 93 par. 1 of the Constitution). The organization of both litigation branches follows the traditional pyramidal form on the subject: At the head of the civil and penal jurisdictions is the Court of Cassation; then the Courts of Appeal and the Courts of first instance; finally, at the base of the pyramid, the justice of peace. The State Council is at the head of the administrative jurisdiction; then is the Administrative Courts of Appeal and the Administrative Courts of first instance. The third Supreme Court, the Controller and Auditor General has competency, without appeal, regarding certain specific administrative disputes (listed in art. 98 of the Constitution). Conflict of Authority is settled by a Special Superior Court (art. 100 of the Constitution).

B. - Status of the competent bodies.

7. The power of the ordinary jurisdictions to have competency regarding acts of the administration (see question 10) is recognized by the jurisprudence and is due to the interpretation of the constitutional concept of “administrative litigation”.

8. The rules related to the administrative justice, the competence of the administrative courts and the status of the adjudicators are, essentially, provided by the Constitution (see appendix) and law (e.g. bodily law on the State Council, Code of administrative litigation procedure etc.). Administrative justice is not treated differently in comparison to judicial justice: In favour of the adjudicators (State Councillors, Masters of the Requests and Auditors of the State Council, judges of appeal and judges of jurisdictions of first instance) the same constitutional guarantees of independence, functional and bodily are recognized (see offence questions 14-15 and 34) as those recognized in favour of the judicial judges; in addition the fundamental principles of the audit in presence of the parties, of the respect of defence rights, motivation of the justice decisions, and the public nature of proceedings govern the administrative legal proceeding as well as the civil legal proceeding (see offence questions 33, 42, 44).

C. - Internal organization and composition of the competent bodies.

9. There are no specialized chambers.

10. According to the provisions, rather comprehensive in this subject, contained in the constitutional text, the control over the administration (in the bodily meaning of the term according to a well-established jurisprudence) is carried out by the administrative jurisdictions (art 94-95): State Council (the inventory of its powers is drawn up by art. 95 par. 1), Administrative Courts of appeal and Administrative Courts of first instance. The State Council is the archetypal judge of recourse for excess of power. The law can empower the Courts of Appeal or the Courts of first instance to have competency regarding recourse for excess of power against a specific category of cases (art. 95 par. 3). 3). In this case the State Council is the judge of appeal against their decisions. The Courts of first instance and the Courts of Appeal have competency regarding recourses of full jurisdiction, the State Council being, in this case, the judge of cassation. The State Council might have competency, in first and last resort, regarding recourse for full litigation (art. 93 par. 1 par. c. This hypothesis is rather rare; for an example, see offence question 30). The administrative courts have a general nature; there are no administrative jurisdictions specialized in specific disputes.

The ordinary jurisdictions are competent when the administration acts without calling on prerogatives of public power and sets itself on an equal footing with the citizens (e.g. concluding a contract of private law, recruitment of contractual staff to face unforeseen and urgent needs).

The competence of the Controller and Auditor General as well as an administrative jurisdiction is constitutionally defined (art. 98).

In Greece there is no Constitutional Court, such as for example the Constitutional Council in France. As the control over the laws constitutionality has a diffuse nature, it can be carried out by any court. The Constitution provides (art. 100 par. 1) that if the supreme courts (State Council, Court of Cassation, Controller and Auditor General) give rulings diverging on the constitutionality of a law (or a legislative provision) a Special Supreme Court is competent (see also supra question 6 in fine) to decide on the variance created by their rulings. This court could be described as a constitutional court but it does not have competency regarding acts of the administration.

D. – The judges.

11. The magistrates who are part of the administrative justice belong to the category of the administrative magistrates, category distinct from the magistrates who are part of the judicial justice. Among the administrative judges are the bodies of the State Council's magistrates and that of the administrative courts empowered to rule on the merit of the case. However, from the constitutional review of 2001 the administrative judges may be promoted to the grade of State Councillor, for one fifth of the positions of councillors.

12.-13. Until the creation of the National School of Magistrature (by law 2236/1994) the magistrates were recruited by a competitive exam. There were distinct competitive exams to recruit the judges of the State Council (the last competitive exam took place at the end of 1994), of the administrative courts, and civil and penal courts and of the Justices of the Peace. The School of Magistrate comprises two sections: An administrative section (the Controller and Auditor General are considered to be an administrative court) and a civil and penal section. To be appointed to a vacant position it is necessary to be a graduate of the School of Magistrate.

14-15. The Constitution guarantees the magistrates "personal" independence (art 87-91). Among the guarantees of personal independence we can mention irrevocability (that is the magistrates are named for life, until they reach the age limit, set

by the Constitution), as well as the fact that for everything in relation to transfers, promotions of the judges, their disciplinary liability and generally everything in relation to the course of their career, the Higher Councils of the Magistrate (three exist: one for the administrative justice – made up of state councillors – one for the civil and penal justice and one in particular for the Controller and Auditor General) who decide. This is a merit system. However, the promotion to the grade of president and vice president of the three supreme courts, as well as the positions of Attorney General and assistant prosecutors of the Court of Cassation is carried out by the Council of Ministers.

The Constitution (art 88 par. 6) does not allow the change of jurisdiction that is a judge cannot pass from one order of jurisdiction to another (for example from the civil and penal jurisdiction to the administrative jurisdiction). Only two exceptions are accepted: a) the judges of the administrative courts empowered to rule on the merit of the case who can access the grade of State Councillor (see supra question 11) and b) the associate judges of the courts of first instance who can access the rank of assessors to the public prosecutor's department and vice versa.

The magistrates are strictly forbidden to hold office in active administration (art. 89 par. 3 of the Constitution). Exceptionally, a judge may take part to a disciplinary council, or a commission exerting powers of control or of a disciplinary nature, as well as to law preparation committees (art. 89 par. 2 of the Constitution).

E. – The functions of the competent bodies

16. Recourses against an administrative act (or neglect to enact an act) appear in recourses to quash (recourse for excess of power) and full jurisdiction recourses.

There is a recourse to quash when the adjudicator judge can, after having controlled the act's legality, cancel it, which is, put an end to it. There is recourse of full jurisdiction when the judge can not only cancel the disputed act, but, also, reform it or (if necessary) sentence the administration (State or public corporation) to compensate the plaintiff, by settling a sum, either once, or (less often) in the form of an annuity. Recourses against regulatory acts are always recourses to quash, while recourses against an individual act are either recourses to quash, or recourses of full jurisdiction. Recourses against an individual act are, in principle, recourses to quash, except if the law provides that recourse against a specific category of cases has the nature of recourse of full jurisdiction (see offence question 55).

The State Council is, in principle, the judge of excess of power, except if the law renders the Administrative Courts of Appeal or the Administrative Courts of first instance competent to judge recourses for excess of power against a specific category of cases. The Administrative Courts are competent, in principle, to judge recourses of full jurisdiction.

No jurisdiction has the power of injunction against the administration. Regarding administrative contracts, a distinction should be made depending on whether it takes place before or after contract finalising. The individual administrative acts issued for the contract finalising (acts that are not related to the contract) are disputed by way of recourse for excess of power, while the disputes caused by the administrative acts in relation to the contract interpretation, execution or cancellation are disputes of full jurisdiction.

17. No such mechanism is provided.

18. / 19. According to Article 95 par. 1 d of the Constitution, the State Council gives an opinion on the legality of the draft regulatory decrees. The opinion is given at the end of the decree development process. This opinion (which is not legally mandatory for the minister) is given by the 5th section of the Council, either in a three-member- or a five-member-panel. The section may refer the case to Parliament if this is a project dealing with an important case; it is bound to send it when a difficulty of unconstitutionality of the legislative capacity arises whereby the decree is taken (art. 100 par. 5 of the Constitution).

Until now the question of the compatibility for this function of the State Council with the European Convention on Human Rights did not arise. In practice, the Council's members who belonged to the panel giving the opinion do not take part, insofar as possible, in the judgment panel where the question of the decree's legality might arise.

F.- Distribution of the functions and relationships between the competent bodies.

20. The harmonization and the standardization of the application and the interpretation of the law are made by the State Council (Supreme Administrative Court) through the rights of review (Appeal or recourse to the Supreme Court, according to the case), that the parties in the legal proceeding may institute. Moreover, the legislation provides for appeal to the Supreme Court in the interests of law which can be exerted by the Minister of justice, the minister exerting the supervision over the relevant public concerned and the State's general commissioner within the administrative courts.

Recourse in the interests of law is exerted without delay restriction and the ruling given has no incidence on the parties' interests.

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

A. Access to the judge.

21. The exercise of an administrative appeal (to a higher body or for reconsideration) is not a condition of admissibility for jurisdictional recourse, except if this is a "quasi jurisdictional" administrative appeal. If the administration does not inform the citizen about his/her obligation to exert a "quasi jurisdictional" appeal and so that he/she is not deprived of access to the judge, omission of the appeal no longer constitutes a condition of admissibility. This type of appeal must be provided by law and relates to certain types of cases (for example such an appeal is provided against the acts in relation to services of a social security organisation). For an administrative recourse to be so characterized: a) it must be provided by a special disposition, determining the authority before which it is to be exerted and the delay for carrying it out, and b) re-examination of the case on merits must be possible.

22. The judge may be referred to by any physical or person or entity (of private law or public law) as well as by groups of persons that, while not being entities, are recognized as subjects with rights and obligations. As for the public organisations (for example local governments, administrative institutions, etc.) it should be noted that an administrative body cannot exert recourse for excess of power against an act issued by another administrative body belonging to the same entity, except if this is provided by law.

23. In order to refer to the judge concerning excess of power, the petitioner must prove that the disputed administrative act causes a material or moral injury to his/her interests; this has to be a personal, direct, current (that is the prejudice inflicted must exist when the act is enacted, when recourse is exerted and when recourse is discussed) and protected interest. As for entities, they should exert recourse for excess of power upon condition that the disputed act prejudices the interests of all their members and not the interests of only some.

For recourse of full jurisdiction, the concept of interest is narrower: The interest is recognized if the disputed act a) prejudiced a specific subjective right, recognized by the administrative law, in which content is a service from the administration or b)

imposed a specific obligation. If this is a litigation of a tax nature, the person who is bound to settle the imposed sums should exert recourse.

24. The recourse delay is generally sixty days. It is extended by thirty days if the petitioner lives abroad. Special provisions may set longer or shorter delays. If the recourse is directed against a regulatory act, it starts from the Gazette's publication. If it is directed against an individual act, the delay starts from the notification to the relevant person. However, independently of the notification, the delays may run from the moment when the citizen had an "acquired cognisance" of the act, in which case the notification posterior to this "acquired cognisance" does not have any influence on the delay. If this is a publishable individual act, the delay starts from the publication for the third parties; for the relevant person it starts from the notification (or the "acquired cognisance"). The administration is not obliged to inform citizens about the litigation delays.

25. Litigation recourses are exerted against enforceable administrative acts. Consequently the acts that are not enforceable, although an administrative body issues them, are not subjected to the control of the judge. The acts of the administrative bodies issued in the context of a private law relationship (see supra question 10) are not subject to the adjudicator's control (but to that of the ordinary judge). Finally, government acts (declaration of war, dissolution of the Assembly etc.) cannot be appealed against.

26. The law relating to the State Council provides a screening of litigation recourses which is carried out by a five-judge-panel for the competent section: If recourse is obviously inadmissible or unfounded, if it was exerted without the judicial deposit being settled, or if another administrative jurisdiction is competent for its judgment, it is filed before this panel which can, without audience, by a ruling reached in council, reject it or, if necessary, refer it to the competent court. The law does not specify whether the judgement must be summarily justified or not. In practice, the ruling of reference or dismissal is, also, justified as any ruling (even if there is an effort to write a slightly more summary motivation), the motivation of the jurisdictional decisions being a constitutional requirement. The ruling must be notified through the registry to the person who exerted recourse. The person may, within thirty days, request the case be discussed at a hearing. In this case the interested party must settle a special legal deposit, which is three times the amount of the planned legal deposit.

Regarding the appeal to the Supreme Court, it is declared inadmissible if the amount for the case does not exceed the sum of 5,870 Euros. However, the party

lodging recourse may claim that the dispute solution will have significant financial or economic incidences. If its claims are considered to be valid, the case is judged independently of the amount. The State Council assessed that these provisions relating to the appeal to the Supreme Court were neither contrary to the Constitution, more specifically to the provisions regarding the separation of powers and the right to legal protection, nor to the European Convention on Human Rights. Moreover, the European Court on Human Rights assessed that these provisions, insofar as they related to pending appeals to the Supreme Court were not contrary to art. 6 of the Convention (ruling *Velli-Makri versus Greece*, of 9-4-2003) during publication of the law.

27. Jurisdictional recourses are not subject to specific forms or wording. They just need to be drawn up in writing (they can even be handwritten) and to contain a minimum of elements, such as the petitioner's name and address, the mention of the administrative act or the disputed jurisdictional decision, the arguments of fact and law supporting the request.

28. The original pleading must be filed at the competent court secretariat (regarding recourse for excess of power, it can be filed with any public authority). The lodging of the request cannot be done by mail, or Internet, or by fax. Currently, a project is under development which will lead (in theory, at the end of 2006) to completely computerising the operation of the State Council; in the context of this project recourse filing by e-mail is planned for.

29. The pleading must bear the stamps required for this purpose, and be accompanied, under penalty of inadmissibility, with the legal deposit, the amount depending on the type of request (for example currently the amount is 15 Euros for recourse against excess of power filed at the State Council). The deposit aims to prevent inadmissible or unfounded jurisdictional recourses. The petitioner may address a request to the court for exemption from the legal deposit because of poverty.

30. The requests must, in principle, be signed by a lawyer. However, recourse for excess of power and "civil servant recourse" (see *infra* question 55 B) may be signed by the petitioner him/herself. In practice the great majority of requests are signed by a lawyer, who represents the petitioner at the debates.

31. The petitioner may file a request for exemption from legal fees because of indigence. If the request is approved by the Court, the petitioner is exempted from any expense relating to the legal proceeding (see also *supra* question 29), as well as his/her

lawyer's fees. The request's approval is granted either by the President of the judgment panel, or by the judge judging the case, if this is a single judge panel.

32. No.

B. The legal proceedings.

33. The administrative litigation procedure is governed by several principles, including the principle of equal rights of the parties and that of the audit in the presence of the parties. According to these principles essential to any litigation procedure, the parties are equal before the court, they have the same rights and have the same obligations; they must be offered the same arguments to defend their position. The parties must receive an appearance notice in due course for the debates; the Court must give them the possibility to take cognisance of the briefing exhibits and arguments of the opposing party. The procedure is essentially written, notably at the inquiry level. During the debates, witnesses may be heard before the administrative courts of first instance, when they judge recourse of full jurisdiction; the judge in charge of the legal inquiry (if this is recourse for excess of power) pronounces his/her report and in the same way lawyers for the parties pronounce their plea. The rules of the procedure can be found in the texts of domestic law (law related to the State Council, Code of administrative litigation procedure) and notably in the Constitution, which establishes the right to legal protection by the courts for everybody, as well as the possibility to expose their point of view before them (art. 20 par. 1). 1).

34. According to the Constitution "No person shall be denied the right to his/her lawful judge without consent" (art. 8). Consequently the court judging a case will have to be appointed in advance, and not for a legal proceeding, according to abstract and general criteria. In the same way the judges who form the court must be appointed according to objective criteria and not for a specific case. All the legislative texts relating to the litigation procedure (law on the State Council, Code of administrative litigation procedure, Code of civil procedure, Code of penal procedure), on one hand attribute to the person liable to trial, the right to request objection to a judge and on the other hand impose magistrates to require their exclusion if there are reasons likely to question their impartiality (for example, if they have family relationships with the parties in the legal proceeding, or if they were heard as witnesses in the context of the same case etc.).

The judges have a personal (see *supra* questions 14-15) and functional (art. 87 of the Constitution) independence. The functional independence means, especially, that jurisdictions are not bound to apply laws in which the content is contrary to the Constitution; in addition the magistrates, while carrying out their duties, are not subjected to any authority's hierarchical control (administrative or jurisdictional).

35. Regarding the procedure at the State Council, the petitioner may file a pleading called "additional arguments", in order to claim new arguments for cancellation or cassation (according to the case), and the same applies before the Administrative Courts of Appeal and the Administrative Courts of first instance. Let us note that, for the judgment of an appeal, in the context of a dispute of full litigation, the petitioner cannot, in principle, claim new arguments against the act disputed in first instance.

36. Any third person interested in maintaining the disputed act can intervene by way of recourse for excess of power. The intervention may be exerted for the first time, even in appeal.

Regarding recourses of full jurisdiction, a distinction must be made: If this is a legal proceeding lodged by recourse, any third party may exert an incidental intervention in order to support the party to whom the successful legal proceeding result is favourable to the third party (the intervention can be done both in first resort and in appeal); if this is an action for compensation, the third party can intervene both incidentally and principally. The action is considered principal if the third party claims to be the beneficiary itself of the claim and that it submits the request to be judged; in this case the intervention can be exerted, for the first time, only in first resort. In cassation the intervention is not provided.

37/38 There is no public department or Government Commissioner. Regarding the judgment procedure of recourse for excess of power, the reporter (who is part of the judgment panel) acts in the same manner as the French Commissioner, in the sense where in his/her report (made public three days before the case's judgment according to law) not only does he/she expose the elements of the litigation, but also expresses his/her opinion, both on the admissibility of the appeal and on merit for the latter.

39. The legal proceeding may end (before the judgment): a) In the event of the death of the petitioner or the dissolution of the entity who requested appeal. In this case, the proceeding is temporarily suspended (on request or *ex officio*) so the possible petitioner's successor can ask for the procedure to resume; if such is not the case there is termination of the instance. b) If the disputed act is withdrawn by the administration or

cancelled by a jurisdictional decision. c) If the disputed act ceases to be in force for any reason. However in this case the petitioner may claim a particular interest so that the legal proceeding continues. d) In the event of withdrawal.

40. In the event of recourse for excess of power or to appeal, the secretariat-registry (at the State Council) sends the opposing party a copy of the request mentioning its filing date, as well as a copy of the act of the section President appointing the reporter and the date of the hearing; the same documents are sent to any person entitled to intervene. If this is an appeal to the Supreme Court, the secretariat sends the petitioner (or his/her lawyer) a copy of the appeal, as well as the act of the section President; the petitioner must, in turn, send the defendant in cassation a copy of the above-mentioned documents before the hearing. The intervention (supra question 36) and the request containing new arguments (supra question 35) are sent to the parties. The memorandums are not sent; the parties may request a copy from the reporter. If this is a reprieve from execution of the administrative decision (infra questions 57-59) the responsibility of the notifications falls to the plaintiff.

41. The plaintiff must establish proof of the facts supporting his/her interest to act. The parties have the burden of proof for their allegations during the inquiry. Nevertheless the litigation procedure is governed by the inquisitorial system; this is how the reporter ensures collecting any element useful to the case inquiry; he/she may ask the parties to produce any document or useful element. According to the bodily law of the State Council, the neglect by the administration to communicate elements required to solve litigation even constitutes a disciplinary fault. The court may order the administration, by a non-final ruling, to provide any complementary proof and to force any public authority to provide the documents related to the case in instance. The State Council assessed that the non-communication of a file, in spite of a ruling ordering the administration to submit or complete it, constitutes a presumption of admission of the petitioner's allegations of fact.

42. Regarding recourse for excess of power, the debate starts with the reading of the report of the judge in charge of the legal inquiry. Then the petitioner's lawyer, the administration representative and the intervener's lawyer can speak. The section President or members may ask questions about the case. At the end of the pleadings the parties may request a delay in order to file a complementary memorandum. Regarding the debates related to recourses of full jurisdiction, the hearing proceeds in the same way, except that the reporter does not read his/her report, and that the witnesses, upon strict

conditions, can be heard. The hearing in the administrative litigation procedure is always public, as the law does not provide any hearing in camera. If the notifications were made in compliance with the law, the hearing takes place even in the absence of the parties.

43. The case deliberation is, of course, confidential and strictly reserved for magistrates who are part of the judgment panel. No other person attends it, not even the court clerk: It is a procedural rule established by the Code of Civil procedure, and also applies in an administrative litigation procedure. Regarding the procedure of recourse for excess of power, as the judge in charge of the legal inquiry is part of the judgment panel, he/she also takes part in deliberations (on the reporter's role, see *supra* questions 37-38). The recent jurisprudence of the European Court (*Kress versus France*) did not change anything in this respect. The vote for the decision starts with the newer participants and ends with the President's vote. For the procedure in the State Council it should be noted that the councillors are entitled to speak and vote, while the Masters of the Requests have an advisory vote, even when they are reporters; consequently only the opinion of councillors is taken into account. Finally, the violation of deliberation secrecy is criminally punished.

C. The judgment.

44. The rulings motivation constitutes a constitutional requirement (art. 93 par. 3). Generally the motivation is rather detailed: The first preambles are consecrated to recourse admissibility when a problem of admissibility arises; if not the ruling is restricted to note that recourse is admissible. Following this, the legislative or regulatory texts governing the case are quoted (it is not usual to mention only the number of the article of applicable law); if necessary, the ruling proceeds with their interpretation. Then the case facts such as they appear from all of the case file are exposed. Finally, the arguments claimed by the parties or raised *ex officio* are examined. The ruling is completed by the purview ("for these reasons...") where the Court either rejects recourse, or admits it and cancels the disputed act.

45. The courts assess the administrative acts legality, firstly in relation to domestic law standards (Constitution, laws, general rules and regulations). If the act does not raise any problem in view of these standards, the judge examines their legality in the view of rules of community law. The reference to community law is more and more frequent in fields such as economic law or environmental protection. As for the

European Convention, from when it was ratified, it is legally part of the domestic law (art. 28 par. 1 de la Constitution) and is found at a supra-legislative and infra-constitutional level. The petitioners have more and more recourse to it and the jurisdictions, including the State Council, do fairly often assess the administrative acts legality with regard to the Convention, especially in art. 6, as well as in the first additional protocol.

46. Control over an administrative act depends on several parameters: the judge cannot control the appropriateness of a decision any more than the administration assessments of a technical nature (for example, the toxicity of a chemical). Finally, he/she cannot replace his/her assessment with that of the competent administrative authority.

If this is a regulatory act, the judge will settle for verifying whether legislative capacity, whereby such an act was issued, is in compliance with the Constitution, as well as if this act respects this capacity.

If this is a discretionary individual act, the judge controls whether or not the administration applied the relevant rule of law, if the act is marred by a factual or legal qualification error. In particular, he/she controls whether or not there is a “misuse of the full powers to act”, that is whether the administration carried out the full powers to act as it was attributed, by maintaining itself within the limits thereof. The extreme limits of full powers to act, in which excess mars the act with illegality, are, notably, set: i. by reasonable content, according to common sense and experience, of the concept in which definition is left to the administration, ii. by the rule of equal rights of the citizens while carrying out the full powers to act, and iii. by the rule of proportionality. The judge also checks if the disputed act is legally justified and can censure the absence of motivation or the existence of an illegal or insufficient motivation.

As for an act of linked competence, the judge is in a position to exert an advanced control over the act, being able to examine closely the totality of the legality elements.

47. If recourse is admitted, if the petitioner withdrew or if the legal proceeding is closed for any other reason, the deposit (see supra question 29) is returned. If recourse is rejected, its amount accrues to public funds. The losing party is condemned to pay the costs of the winning party. The court may, considering the circumstances, exonerate the losing party from all or part of the costs. The costs include, essentially, the lawyer’s fees

(writing the main request or the motion to intervene, and appearance at the debates of each hearing).

48. The State Council and the Administrative Courts of Appeal always statute as a panel (however see *infra* question 57 regarding the interim suspension order). The Courts of first instance either statute as a panel, or with a single judge, according to the procedural law provisions.

49. The Constitution requires that the opinion of the minority be mentioned in the ruling (art. 93 par. 3). In addition, the law provides that any ruling mentions the names of the judges who have a dissident opinion.

50. The ruling *purview* is pronounced orally in a public session (art. 93 par. 3 of the Constitution). The parties are notified of the rulings through the court clerk.

D. – Decision effects and execution.

51. The final rulings are vested with the authority of the judgment. The authority of the final judgment is imposed on the parties; it presumes an identity of object and is restricted to the questions (on the merits or of procedure) of an administrative nature focused on by the judgment, upon condition that these questions constitute the necessary support of the *purview*. Nevertheless, the cancellation of an administrative act has an *erga omnes* effect (cancelling effect). Of course, the administration violating the authority of the final judgment mars the issued act with illegality.

52. Cancelling an administrative act always has a retrospective effect; it goes back to the time when the cancelled act was issued. The only case where, in Greece, the judge may differentiate in time the judgment's effect is that when the Special Superior Court recognizes a law's unconstitutionality (see *supra* question 10): it may then decide that the law lapses at the date it sets (art. 100 par. 4 of the Constitution).

53. The Constitution provides (art. 95 par. 5) that the administration is deemed to comply with the court decisions. In this regard, the law (law 3068/2002) organizes the following procedure: A three-judge-panel within the court in which the decision is not applied, referred to by the interested person, establishes, firstly, the failure of the justice decision and grants the administration a delay to apply it; following that, secondly, if after establishing the failure, the administration still does not apply the decision, the same panel imposes on the administration a fine for failing to carry out the justice decision. This sentence does not exclude the petitioner's possibility to exert an

action for compensation against the administration, if he/she can prove that the failure of the justice decision caused him/her a specific prejudice. In case this amount is not paid, a compulsory execution may take place on the private domain of the State or the relevant entity.

54. The efforts undertaken these last years, notably at the level of the State Council, concern: a) the introduction of screening procedures (see supra question 26). b) an increase in the number of judges (at the three grades of councillor, master of the requests and auditor) c) the introduction of computerisation (see infra question 67-68) so as to facilitate the judge's task and therefore shorten the time required to pronounce judgments and d) the transfer of State Council's powers to the administrative courts. It is true that despite an improvement in the situation (concerning the Higher Jurisdiction) the results expected have not yet been reached. Other measures are not being considered for the moment.

E – The rights of review.

55. (See also supra questions 10 and 16 about this).

A. - Recourses for excess of power: The State Council always has competency regarding recourses for excess of power against regulatory acts, independently from the authority issuing them. As for the individual acts, the State Council is the judge of recourse to quash common law. In first instance, the Administrative Courts of Appeal have competency regarding disputes to quash caused by a series of administrative acts. Notably a) those regarding the appointment and more generally the situation of civil servants of the State, the local governments and entities, b) those related to the application of the legislation on education regarding pupils, secondary school pupils, students and scholars, c) those regarding the qualification of constructions or buildings as being illegal and their exception from demolition, d) repair of lands, re-plotting and calculation of accruing indemnities, etc... The Administrative Courts of first instance have competency in first resort regarding disputes to quash related to administrative acts issued on the basis of foreigners legislation (for example, visa refusal, refusal of entry into the territory, administrative expulsion, registration on the list of unwanted foreigners, etc...), except for the individual acts regarding i) recognition of refugee status, ii) the administrative acts, taken in application of the community law related to the entry of foreigners into the country, iii) acts regarding the acquisition of the Greek citizenship. In these last hypotheses, competence lies with the State Council.

B. - *Recourses of full jurisdiction*: In principle, the administrative courts of first instance have competency regarding (specific) administrative disputes that the legislation describes as disputes of full litigation. Thus, among others, a) disputes of a tax nature, b) disputes related to benefits from a social security agency, c) disputes related to the protection of disabled persons, war victims and disabled persons, veterans, earthquake victims and disaster victims, d) disputes related to the application of legislation regarding brands, etc. are disputes of full jurisdiction as well. Also of a nature of full jurisdiction is the litigation for damages (action for compensation against the State and public entities).

According to the Constitution, the State Council has competency regarding the disputes of full jurisdiction that are submitted to it; the most flagrant illustration of this case is «recourse of civil servant»: this is recourse of full jurisdiction, provided by the Constitution (art. 103 par. 4 of the Constitution) in favour of civil servants against acts of dismissal and demotion.

Finally, in contractual matters, the disputes caused by administrative acts related to the interpretation, execution or cancellation of the contract are disputes of full jurisdiction and are deferred (in first resort) before the Administrative Courts of Appeal.

C. - *Election litigation*: This type of litigation is one of full jurisdiction. The administrative courts of first instance are competent in relation to the control over the election of the local government bodies. The national and European elections lie with the Special Superior Court's competence

56. A.- *Recourses for excess of power*: No recourse is provided against the State Council's decisions. Against the decisions of the Courts of Appeal and the Courts of first instance, the losing party may launch an appeal at the State Council, except if the law expressly excludes it (this is possible if the dispute is of low significance).

B.- *Recourses of full jurisdiction*: Against the decisions of the Courts of first instance, an appeal before the Courts of Appeal is provided; against the decisions of the Courts of Appeal an appeal before the Supreme Court may be exerted.

C. - *Elections litigation*: The decisions of the Courts of first instance can be appealed against at the State Council. No recourse is possible against the decisions of the Special Superior Court.

The jurisdiction of appeal (State Council or Administrative Court of Appeal), within the limit of the means for appeal, may control the facts again; this is not the case in relation to cassation where the judge pronounces on the legality of the ruling disputed

before him/her: If the recourse is admitted and the jurisdictional decision is cancelled, the case is referred to the judges on its merits.

Apart from the above-mentioned means for recourse, the procedural law also recognizes the third party's opposition, as well as requests to rectify and interpret a ruling.

F. Urgent proceedings and summary proceedings.

57. There are urgent and summary proceedings. The judge in summary proceeding may be the same as the judge on merits, and the judge in summary proceeding statutes as part of a panel at the State Council. However, the President of the State Council or of the competent Section may issue alone an interim order to suspend the execution of an administrative act, which remains in force until the issue of the panel's decision. Before the administrative courts, the judge in summary proceeding statutes as part of a panel or alone (in the cases where he/she is competent to statute alone on the case's substance).

58. At the State Council, in principle, the judge in summary proceeding is requested to suspend the execution of an administrative act. Before the administrative courts, in addition to the suspension of the execution of an administrative act, constituting the form of archetypal provisional protection, the petitioner may also ask the provisional settlement of a situation or the provisional adjudication of part of the claim.

59. There is a summary proceeding of a general type that, at the State Council, aims to suspend the execution of an administrative act and, before the administrative courts, to suspend the execution of an administrative act, to tentatively settle a situation or tentatively adjudicate part of the claim. This summary proceeding is governed, at the State Council, by article 52 of the decree 18/ 1989 and, for the administrative courts, by articles 200-215 of the Code of administrative litigation procedure. Moreover, there is at the State Council a summary proceeding particular to disputes related to the stage preceding the conclusion of works, supplies, and public contracting services, in compliance with directive 89/665 of the Council (law 2522/1997).

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

60. Firstly, disputes may be settled by the administration itself. There are appeals for reconsideration before the body that issued the act provoking grievances as well as appeals before a higher body or bodies different to the body that issued the disputed act.

Naturally the acts emanating from the bodies that examine the above-mentioned appeals can always be appealed against before the administrative courts and/or the State Council.

61. Administrative disputes may be settled by independent bodies. There has been in Greece since 1997 a mediator who may examine, on a request by an individual or ex officio, a question related to public services and, notably, administrative acts or neglects prejudicing the rights or interests of physical persons or entities. At the end of the case examination, the mediator intervenes with the administration to solve an individual's problem. He/she also may write a memorandum that he/she sends to the competent minister and the services involved.

62. Administrative disputes cannot, in principle, be settled through alternative methods to settle disputes. Nevertheless, in some cases, tax law recognises a transaction procedure between the administration and the citizen. Sometimes also, in contractual matters, the dispute settlement is referred to arbitration; for this, such a procedure must be expressly provided for in one of the contract's clauses.

IV. - Justice Administration and statistical data.

A. The means available to justice in administration control

63. Part of the expenses of the department of justice is entered an annual credit accorded to expenses to set up and operate the State Council, the administrative courts and the ordinary courts. In 2003 and 2004, the budgets accorded to justice were around 0.3% in comparison to the State's budget.

64. On December 31, 2004, the number of magistrates in Greece, all jurisdictions taken in account, was of 3,661 persons.

65. The rate of magistrates affected to a general administrative jurisdiction in comparison to the total number of magistrates was around 25% (150 judges at the State Council and 750 adjudicators).

66. No, such a possibility does not exist. The role of the State Council auditors is to assist the State Councillors for case preparation and inquiry.

67. Each court has a library with legal works (legal reviews, official publications of law and statutes, law commentaries, manuals, etc.). Moreover, the State Council has a very elaborate e-base with jurisprudential data.

68. The court clerks at the State Council and most Greek courts have computer means (personal computers for the staff, printers) to management of files. It is possible

for the judges (of the State Council at least) to access, on the Internet, legal data bases (giving access to other jurisdictions legislation and jurisprudence). The State Council members have personal computers available to make the most of an exemplary system of computerized documentation through Intranet.

69. No. At the moment, an Internet site is being prepared within the State Council, aiming, among other things, to make the Higher Jurisdiction e-base with jurisprudential data available to the public. In the near future, it will be possible to file requests and memorandums to the court clerk of the State Council electronically.

B. - Others statistics and calculations.

70. Recorded cases

I. Year 2003

a. State Council

1. Recourse to quash	3,288
2. Appeals to the Supreme Court	3,386
3. Appeals	713
4. Urgent procedures (reprieve from execution)	1,474

b. Administrative courts of first instance 103,172

c. Administrative Courts of Appeal 17,755

II. Year 2004

a. State Council

1. Recourse to quash	3,548
2. Appeals to the Supreme Court	2,918
3. Appeals	1,042
4. Urgent procedures (reprieve from execution)	1,532

b. Administrative courts of first instance 120,172

c. Administrative Courts of Appeal 17,943

71. Cases judged

2003

a. State Council

1. Recourse to quash	1,240
2. Appeals to the Supreme Court	2,050
3. Appeals	274

4. Urgent procedures	1,062
b. Administrative courts of first instance	73,002
c. Administrative Courts of Appeal	20,500
2004	
a. State Council	
1. Recourse to quash	1,333
2. Appeals to the Supreme Court	1,978
3. Appeals	351
4. Urgent procedures	1,019
b. Administrative courts of first instance	79,871
c. Administrative Courts of Appeal	17,976
72. Cases not judged (total number)	
I. Year 2003	
a. State Council	20,757
b. Administrative courts of first instance	190,400
c. Administrative Courts of Appeal	35,825
II. Year 2004	
a. State Council	23,137
b. Administrative courts of first instance	230,591
c. Administrative Courts of Appeal	35,690

73. There is no statistical data on this matter. However, as concerns the State Council, there is an average two-and-a-half-year-delay for the judgment of recourse for excess of power and a three-year-delay for the judgement of an appeal to the Supreme Court.

74. We only have statistical data on the rate of administrative act cancellations before the State Council

I. Year 2003	25%
II. Year 2004	28%

75. We do not have any statistical data.

C. - Economics of the administrative justice.

76. There are no scientific studies

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