

ADMINISTRATIVE JUSTICE IN EUROPE

Questionnaire on the inventory and typology of review by the courts of administrative authorities in the 25 Member States of the European Union.

The aim of this questionnaire is to know as precisely as possible which are the modes, bodies, and ways of controlling administrative acts and action in the 25 Member States of the European Union.

In view of the diversity of the legal systems of these Member States, these questions try to encompass the various situations, but also to obtain detailed answers to particular cases.

For certain questions, additional explanations are provided in italics below it. These explanations incorporate elements from Recommendation R (2004) 20 of the Committee of Ministers of the Council of Europe (see in annex).

When it is possible, answers to these questions should systematically stress the difference between the highest appeal courts /supreme courts and lower courts or tribunals.

Preliminary Questions

1. Could you give the main dates in the evolution of the review of decisions and acts of Administrative authorities ? [20 lines max.]
2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words to the rule of law ? Alternatively, is it only a review of the good functioning of the administration ? [one page max.]
3. What is the definition of an administrative authority in your country ? Does this definition include all public legal entities and private legal entities exercising public authority ? [10 lines max.]
4. Is there a classification of administrative acts in your country ? [5 lines max.]

The usual classification identifies individual acts and general normative acts. It separates unilateral acts and contracts awarded by administrative authorities.

I – WHO REVIEWS ADMINISTRATIVE ACTS?

The expression “administrative acts” may be understood in accordance with Recommendation R (2004) 20 of the Committee of Ministers to Member States on judicial review of administrative acts, that is to say : « legal acts – both individual and normative – and physical acts of the administration taken in the exercise of public authority which may affect the rights or interests of natural or legal persons ; situations of refusal to act or an omission to do so in cases where the administrative authority is under an obligation to implement a procedure following a request ». It is also possible to refer to Resolution R (77) 31 on the protection of the individual in relation to the acts of administrative authorities.

A – COMPETENT BODIES

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts ? [In the affirmative, please refer to questions 22 and 62] [5 lines max.]
6. Could you describe the organization of the court system in your country, indicating which courts or tribunals are competent to hear disputes concerning acts of the administration ? If possible, try to respect the pattern hereafter. [15-20 lines max. + chart]

If all the courts are competent to review administrative acts, specify whether such review is reserved to specialized courts or tribunals for administrative disputes. If this review assumed by several kinds of courts, present a basic chart of tribunals in charge of this control.

*If judicial review of administrative acts and action is assumed by **all courts**, specify if it is reserved to highest courts or if it can be exerted by lower courts ? In each situation, is the review assigned to specialized chambers for administrative affairs ?*

If review by the courts of administrative acts and action is assumed by administrative tribunals, describe the jurisdictional organization, indicating if this control is the exclusive competence of general administrative tribunals or whether it is assigned in part to specialized administrative tribunals competent to hear specific types of dispute (concerning, for example, pensions, taxes, immigration and nationality matters, employment).

If there is a constitutional court in your country, specify whether it is competent to review administrative acts and action.

B – RULES GOVERNING COMPETENT BODIES

7. If the review of administrative acts and action lies within the competence of the ordinary courts, is that competence delimited by texts (such as a Constitution, or parliamentary legislation) or by case-law ? [10 lines max.]
8. If the review of administrative acts is carried out by administrative courts or tribunals, are the existence, competence and duties of those courts or tribunals governed by specific rules ? Are such rules set out in texts or in the case-law ? [10 lines max.]

C – INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES

9. If judicial review is assumed by **ordinary courts**, describe their internal organization and specify if they comprise specialized chambers, and how these are composed. [10-15 lines]
10. If judicial review is assumed by **administrative courts**, present their internal organization. Distinguish between the highest and the lower courts. Could you provide a chart or a diagram ? [15 lines max. + chart and diagram]

D – JUDGES

11. Do the judges who review administrative acts belong to a specific category ? Specify whether different categories of judges exist according to the various kinds of control of administrative authorities. [10 lines max.]

12. How are judges in charge of judicial review of administrative authorities recruited ? [10 lines max.]
Specify if this recruitment is made by regular or exceptional competitive examination, or by vocational selection ? Distinguish, if need be, between courts.
13. What is the professional training of judges in general ? [5 lines]
14. How is their career structure organized ? [5 lines]
Briefly describe the modes of promotion for length of service or merit.
15. How is their professional mobility organized ? [5 lines]
Do judges move from court to court ? Is it possible for a member of the judiciary to take up a position in the public administration ?

E – ROLE OF COMPETENT BODIES

16. What are the different kinds of recourse against administrative acts and action in your country ? [20 lines]
Specify if the judge can overrule the act, modify it, cancel a contract awarded by an administrative authority and a private person. Indicate if he can also award damages to a claimant who has suffered harm as a consequence of an act of the administration (a fault committed by the body).
You may wish to use the following classifications.
This classification is usually based on the distinction between review of the lawfulness of an act (“contrôle de légalité”) and full review.
The review of lawfulness means the Court may annul an administrative act or simply declare what the law is, or the rights of the respective parties (this aims to determine the nature, validity and scope of an act). We can distinguish the review of the lawfulness of unilateral acts and the review of the legality of contractual acts.
Full review entails the power not only to annul the act, but also to award damages for harmful administrative acts or actions, and the reworking of an administrative decision. It is now possible to add the power to order the administrative authorities to do or not to do something).
On the question of damages, that is to say public authority liability, it is possible to distinguish between extra-contractual liability and contractual liability.
17. Do mechanisms exist for the delivery of a preliminary ruling? (apart from the procedure under Article 234 of the Treaty establishing the European Community) [5-10 lines]
In such a mechanism, many bodies (ordinary jurisdiction, financial jurisdiction, constitutional court or non jurisdictional body) determine the nature, validity and scope of an act.
18. Does a competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature ? In the affirmative, specify the various aspects of these consultative functions, and if they are exclusive to the body or the highest jurisdiction. [5-10 lines]
19. Where the body plays both a judicial and an advisory role, how are its respective duties organised ? [10-15 lines]
Specify if a body can successively deal with a case in both its consultative and judicial capacity. In this case, is it a normal practice, and do mechanisms exist to make sure members of this body cannot serve in both a judicial and an advisory capacity at the same time ?

Specify if the question of the compatibility of such double functions (consultative and judicial) with the right to a fair hearing has ever been raised before a national court or before the European Court of Human Rights.

F – ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES

20. Do the highest appeal courts have an instrument or a procedure to ensure the harmonised and uniform application and interpretation of law ? [10 lines]

Specify whether it is possible for the highest appeal courts to resolve divergences in the case-law as between the various lower courts. Indicate the appropriate proceedings. Are there any proceedings analogous to the French “avis contentieux” ? (a reference to the Conseil d’Etat may, in certain circumstances, be made by an administrative tribunal (first instance) or an administrative court of appeal) for an opinion.

II – HOW ARE ADMINISTRATIVE ACTS AND ACTIONS REVIEWED BY THE COURTS ?

A. ACCESS TO JUSTICE

21. How significant are the pre-conditions for access to the courts in your system of control of administrative authorities ? [This question supplements questions 5 and 61] [10-15 lines]

Specify if the obtaining of a prior administrative act or/and the introduction of a prior recourse to administrative authorities constitute preconditions for review by the courts. Indicate if these preconditions are required in every kind of litigation or only in certain types of dispute.

This possibility is provided for by the Recommendation R (2004) 20, which indicates that natural and legal persons may be required to exhaust remedies provided by national law before having recourse to judicial review. The length of the procedure for seeking such remedies should not be excessive (art. B. 2. b).

22. Who may bring a case before the court ? (natural persons, legal entities such as associations, companies, etc., local authorities or other administrative bodies or authorities). [10 lines]

State whether it is possible in your country for there to be proceedings for judicial review in which both the applicant and the defendant are “collectivités infra-étatiques.”

23. For every situation, specify the conditions that must be satisfied in order for an application for judicial review to be admissible? [10-15 lines]

Do persons or bodies that want to challenge an administrative act or operation have to demonstrate an interest in the annulment of this act, that they have a particular interest in this annulment ? Do they have to prove that one of their rights has been infringed ?

It is possible to refer to the Recommendation R (2004) 20, article B, 2°) : « Judicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests. Member states are encouraged to examine whether access to judicial review should not also be available to associations or other persons and bodies empowered to protect collective or community interests ».

24. Is recourse to the courts subject to time-limits ? [10 lines]

Specify whether it is obligatory for claimants to be informed of these time-limits, and whether the court may grant an extension of the time-limits. Specify the various rules and technical points regarding time-limits for bringing proceedings: general time-limits (explicit,

implicit), specific time-limits (according to the nature of the proceedings, or to the distances involved) and the method for calculating time-limits.

The period of time allowed for the initiation of judicial review proceedings must be reasonable (Recommendation R (2004) 20, art. B. 2. c). Try to specify how this period of time is calculated : from the date of the administrative act, the date of its notification... ?

25. Are there certain administrative acts or actions that are not open to review by the courts ? [10 lines]

Specify whether certain acts or actions are not open to review by the courts because they are regarded as too unimportant, or, on the contrary, because they are regarded as being too "sensitive" [links with high administration or politics].

26. Are applications for review by the courts subject to screening procedures ? Distinguish between first instance, appeal, and highest jurisdiction. [10-15 lines]

If the answer is in the affirmative, specify the nature of that procedure (whether it is an admission procedure or an accelerated processing procedure), the steps in that procedure (in particular, whether or not a hearing is involved), the form of that procedure (in particular, whether it is in the hands of a single judge or whether several judges are involved), whether it is necessary to state the full grounds for the application or merely a brief statement of the reasons, the average length of time within which the application must either be refused or allowed to proceed, and whether the question of the compatibility of that procedure with European and international conventions has been examined by the national courts or by the European Court of Human Rights.

27. How must the application be presented ? Are there specific forms or is the applicant free to choose the format ? [5-10 lines]

28. Has the possibility of bringing proceedings via the Internet been envisaged in your country or is it already possible ? Are there reflections or plans for the introduction of tele-procedures or e-procedures (e-registry office) ? [5-10 lines]

29. Is there a pecuniary charge for lodging an application for judicial review (in the form of stamp duty, tax, or registry fees) ? [5 lines]

30. Is recourse to a solicitor / lawyer or counsel compulsory ? [5-10 lines]

Specify whether the assistance of a solicitor/lawyer or a barrister/advocate is compulsory or facultative ? Is there any difference between the position in practice and the legal position, strictly speaking ? Is the situation different according to the seniority of the court (highest court or lower ones) ?

31. As regards the costs of the proceedings, can they be paid through legal aid ? [10 lines]

Specify conditions for access to legal aid, in particular, whether access depends on the applicant's financial resources. Is this aid granted by the court or by an independent body ? Can a refusal to grant legal aid be challenged before the courts ?

32. Is there a fine for abusive or unjustified applications ? [5 lines]

B. MAIN TRIAL

33. Which fundamental principles govern the main trial hearing ? The right to *inter partes* proceedings, the rights of the defence/the right to a fair hearing, the balance of

written and oral elements in the proceedings. Do these principles derive from national law (legislation or/and case-law) or European law (Convention for the Protection of Human Rights and Fundamental Freedoms for example) or both ? [15 lines max.]

The Recommendation of 2004 indicates that the proceedings should be adversarial in nature, public other than in exceptional circumstances, that the judgment should be pronounced in public, and give the grounds on which it is based. The equality of arms between the parties of the proceedings should be also respected.

34. How is the judicial impartiality ensured in your country ? [10-15 lines]

Many recommendations of the Council of Europe exist on this subject, in addition to the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the Court of Human Rights (for example Recommendation R (94) 12. The principle is that judicial review should be exercised by a court established by law, the independence and impartiality of which are guaranteed (Recommendation R (2004) 20). Specify causes, reasons, conditions and procedures to prevent a judge from hearing a case where his impartiality is contested.

35. After the application has been lodged, can the applicant rely on legal arguments raised for the first time in the course of the proceedings ? [5 lines]

Distinguish, if need be, between the levels of jurisdictions (first instance, appeal, highest jurisdiction).

36. Which other persons can intervene during the main hearing ? [5 lines]

37. Is there a representative of the State (“ministère public”) who may submit pleadings in cases concerning administrative law ? [10 lines]

38. Is there, in your legal system, an institution or a person who plays a role analogous to that of role played by the French “commissaire du gouvernement” before the Conseil d’Etat, that is to say, who is completely independent and impartial and who delivers an opinion in open court, analysing the legal arguments and suggesting how the case ought properly to be disposed of in a case ? [10 lines]

39. How can proceedings come to an end before a decision is reached by the Court? [5 lines]

Specify the reasons why the proceedings could come to an end prematurely, such as the death of the applicant or withdrawal of the application ?

40. Does the court registry itself forward the various written applications and pleadings to the parties ? [5 lines]

41. Who is responsible for providing the evidence ? The parties or the court ? [5-10 lines]

42. How is the hearing conducted ? Is it public ? Can it take place *in camera* and in which circumstances ? Who can take part in the hearing and how (in writing, orally) ?

The principle of the publicity of judicial proceedings is widely established at the European level ; however, hearings may take place in camera (with no spectators or witnesses) in many cases. Specify the situation in your country.

43. When and how is judicial deliberation conducted? Who can take part in it ? [10-15 lines]

Specify which members take part in the deliberation, in particular if a member who delivered an opinion in all independence and in public, can take part, actively or passively. Specify if rules governing deliberation are set by text or precedent, and if they have been recently modified, for example because of the case-law of the European Court of Human Rights.

C. JUDGEMENT

44. How are the grounds of the decision given? In details or more briefly ? [5-10 lines]

The Recommendation of 2004 indicates that courts should indicate with sufficient clarity the grounds on which they base their decisions. Although it is not necessary for a tribunal to deal with every point raised in argument, a submission that would, if accepted, be decisive for the outcome of the case requires a specific and express response. Is a detailed statement of reasons required, to enable applicants to understand the meaning and the scope of the decision ? Is such a consideration taken into account ?

45. What are the reference norms [international norms, European norms (Convention for the Protection of Human Rights, Community law), constitution, law, jurisprudence, personal conviction] ? [10 lines]

Specify which reference norms are the most used, in particular whether the lawfulness of administrative acts is normally evaluated by reference to Community law or the Convention for the Protection of Human Rights.

46. Which criteria and methods of review are used by the court ? [15-20 lines max.]

Specify whether the court only carries out a global control on the administrative authorities' appreciation of situations, or if it tries to find, for example, if other decisions, more respectful of citizens' rights, were possible. Specify if he can compare advantages and drawbacks of the decision. Indicate in which context this review can be done. Specify if a specific review is reserved for the acts translating the exercise of discretionary powers by administrative authorities, understood in the sense of the Recommendation R (80) 2 concerning the exercise of discretionary powers by administrative authorities (that is to say the power giving administrative authorities a certain liberty to appreciate which decision to take, and allowing them to choose the most appropriate amongst several legally grounded solutions).

Specify if the review by lower courts is different from the review by the highest courts.

47. How are legal costs apportioned ? [5 lines]

Specify if the court can exempt a party from paying costs

48. Is it more usual for the case to be decided by a single judge or by a number of judges ? [5 lines]

Specify if there is a difference between lower and higher jurisdictions.

49. Where the case is heard by several judges, is the expression of individual judicial opinions allowed (dissenting opinions?) ? [5 lines]

Specify if there is a difference between lower and higher jurisdictions.

50. Is the decision delivered in writing, or orally ? [5 lines]

Specify if it is pronounced in public, and notified to the parties, indicating the time-limit for notification.

D – EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT

51. What is the authority of the decision? Res judicata, stare decisis ? [5 lines]

Specify if this authority is influenced by the nature of the challenged act, and if the judicial decision only produces effects for the parties, or erga omnes. Indicate if the solution given is limited to the present case or if it can be used in other cases, where similar legal issues arise.

52. Can the court limit the effects of the judgment in time ? [5 lines]

If so, indicate the extent of such a limitation : as regards the future, and as regards the past. Specify whether this possibility derives from national law, or from the case-law of the Court of Justice of the European Communities or the European Court of Human Rights.

53. Is the right to the execution of judicial decision guaranteed in your country ? Specify if it is unformally guaranteed, or through a specific judicial procedure. Indicate if there is a distinction between implementation of the judgment by administrative authorities and implementation of the judgment by private persons. Specify if the court has the power of injunction, possibly completed by coercive fine, in order to secure compliance with the judicial decision. [10 lines max.]

The recommendation of the Council of Europe distinguishes the execution of judicial decisions by private persons and administrative authorities. As regards private persons, Recommendation R (2003) 16 on the execution of judicial and administrative decisions in the field of administrative law, indicates that it is possible where necessary to have recourse to measures to enforce the decision, provided that a certain number of rights are guaranteed and specific conditions are respected. For the implementation of decision by administrative authorities, member states should ensure that administrative authorities implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions, they should take all necessary measures in accordance with the law. Thus, in cases of non-implementation by an administrative authority of a judicial decision, an appropriate procedure should be provided to seek execution of that decision, in particular through an injunction or a coercive fine. Administrative authorities should be held liable where they refuse or neglect to implement court decisions. Public officials in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them. Specify if these various hypothesis exist in your country.

54. Is there a policy in your country to reduce the length of time needed for the proper disposal of cases before the courts ? If so, how is that policy implemented ? [10 lines]

In all cases, specify if recent case law or legislative reforms have been made or are envisaged that cases are dealt with within a reasonable time. Indicate if these reforms permit compensation to be awarded for loss caused by excessive delays in handing down judgements, and/or to end the unreasonable time of a trial.

E – REMEDIES

55. How are various functions or/and competencies shared out between the lower courts and the supreme courts ? [15-20 lines]

Specify if the first instance and appeal courts have the same functions, or if functions change with the level , in particular if many functions are allotted to lower jurisdictions, and others reserved to highest jurisdictions (for example, control of the respect of law, judicial

review of decisions taken by the head of State, the head of government, ministries, and the disputes relating to elections).

56. Are there remedies to challenge a judgment before a higher court ? Describe these remedies and their functioning. [10 lines, a chart is possible]

This issue concerns the existence of a system of appeal. The Recommendation of 2004 considers it by indicating « the decision of the tribunal that reviews an administrative act should, at least in important cases, be subject to appeal to a higher tribunal, unless the case is directly referred to a higher tribunal in accordance with the national legislation ».

In this case, specify if the higher court can hear the whole litigation, and review the findings of fact and of law, or if it can only review points of law?

F. EMERGENCY PROCEEDINGS AND SUMMARY JURISDICTION / APPLICATIONS FOR INTERIM RELIEF

57. Are there emergency and summary jurisdiction proceedings? [10 lines max.]

Such a procedure could enable the court to pronounce a decision quickly, to preserve claimant from a particular unpleasant situation and loss which may be difficult to compensate but without settling the litigation on the merits. Specify if the judge hearing an application for interim relief is the same as the judge hearing the main proceedings?, if a single judge or a restricted collegiate formation is competent. Indicate if there is a difference between lower and highest courts.

58. What types of requests can be made to the emergency and summary jurisdictions ? Ascertainment of a situation ? The obligation for administrative authorities to communicate a document ? The suspension of the execution of an administrative act ? The payment of a provision ? [10 lines]

Specify if the judge's intervention is only conservatory, for example to safeguard evidences or a particular situation, or if he can also protect a threatened freedom, or decide on an element of the claim which is not seriously contested ?

59. Are there different kinds of summary jurisdiction ? General or specific to certain litigants ? [5-10 lines]

Specify if all summary jurisdiction proceedings are identical or if they are different depending on whether they concern litigation between a private person and administrative authorities, between central and local authorities, or according to the field of public action (such as defence, environment, liberties, asylum, foreigners, for example) ?

III – CAN ADMINISTRATIVE DISPUTES BE SETTLED BY NON-JUDICIAL BODIES ?

60. Can disputes be settled by administrative authorities themselves ? How ? [5-10 lines max.]

This question completes questions 5 and 22.

61. Can administrative disputes be settled by independent bodies (offices, agencies, ombudsman, mediators, regulation authorities) ? [5-10 lines]

Recommendation R (2001) 9 considers alternatives means of dispute resolution between administrative authorities and private persons. Recommendation R (81) 7 on measures facilitating access to justice calls in its appendix for measures to encourage the use of conciliation and mediation ; Recommendation R (86) 12 concerning measures to

prevent and reduce the excessive workload of the courts, calls for encouraging, in appropriate cases, the settlement of disputes, either outside the judicial system altogether, or before or during legal proceedings. These recommendations lay down a certain number of principles, in particular that these alternatives must not preclude recourse to the courts, and that the body in charge of hearing the dispute must provide guarantees of independence, impartiality and competence. Indicate procedures corresponding to these objectives in your country.

62. Can administrative disputes be resolved by means other than recourse to the courts ?
[10 lines]

Specify if access to these alternatives (arbitration, for example) is subject or not to conditions in administrative affairs. Specify the various kinds of alternatives to litigations (negotiated settlement, conciliation, mediation, etc.).

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

Concerning statistic data, could you provide general trends by decades, for the last thirty years ?

If that is not possible, could you take 2003 and 2004 as reference years ?

A presentation in charts, distinguishing between first instance and the different levels of appeal, is desirable.

A. Financial resources made available for the review of administrative acts ?

63. On average, what proportion of the State budget is allocated to the administration of justice ? Specify for administrative justice when it exists and is distinguished from ordinary justice. [5 lines max.]

Take an overall approach stating where possible, average costs in terms of staff, operation and equipment. Reference years : 2003-2004.

64. Specify the total number of magistrates and judges working within the legal system concerned. [5 lines max.]

65. What percentage of judges is assigned to the review of administrative authorities ? [5 lines max.]

66. Apart from registry staff, are judges helped by assistants in their research and decisions ? Specify the number of assistants (overall and per judge) and their professional training (university, the Bar, etc.). [5-10 lines]

67. Do you have a library, and what kind of works and documentary resources can be found there ? [5-10 lines]

68. Do you have access to information technology ? In which proportion ? And for which kind of task (file management, data bases, computer assistance for writing decisions ?) [10 lines]

69. Do competent bodies and courts have a website to publicise themselves and to communicate with the public ? [5-10 lines max.]

B. Other statistics and figures

Could you take 2003 and 2004 as reference years ?

Distinguish between lower and highest courts, and between emergency proceedings and normal proceedings.

A presentation in charts is desirable.

70. How many new applications are registered every year with the court registry or the authority in charge of registering them ? [5 lines]
71. How many cases are heard every year by the court or other competent bodies ? [5 lines]
72. Could you provide figures concerning cases currently lodged with courts or competent bodies which have not yet been disposed of ? [5 lines]
73. What is the average time taken between the lodging of a claim and judgement ?
Specify for each level of court, and indicate if it is a theoretical or real time, and the way it is calculated.

To answer these four questions, you can use the following chart.

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2003				
2004				

74. Indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts. [5 lines]
75. Could you indicate the volume of litigation per field (asylum, foreigners, tax, urban planning, etc.) ? [5-10 lines max.]

C. The economics of administrative justice

76. Do studies by researchers or work produced by practitioners demonstrate particular concerns by the courts , for example about orders for damages ; do they deal with the influence of heavy awards against administrative authorities on public budgets ? Do they consider the implications of their decisions in terms of costs for public finances ?