

ADMINISTRATIVE JUSTICE IN EUROPE

- Report for Portugal -

INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

Major stages of the administrative justice:

- 1845-1933, system of the administrator, which consists in assigning the power to solve litigious questions to a body of the activate administration on consultation of another body, it being collegial;

- 1933 – System of administrative courts – the litigation control is ensured by actual courts that have the last word. However, the appointment of these court magistrates does not take place in the same manner as that of the judicial courts judges, since they are appointed by the government. This is why some say that these courts were still bodies of the active administration.

- 1984 – Status of the Administrative and Tax Courts [(ETAF) *Estatuto dos Tribunais Administrativos e Fiscais*], approved by the decree-law 129/84, of April 27, 1984 – system of administrative courts totally separate to the administration, having from then on the same characteristics as the judicial courts.

The procedure is centred on the legal appeal in rescission (legality litigation).

- 2004 – Status of the Administrative and Tax Courts [(ETAF) *Estatuto dos Tribunais Administrativos e Fiscais*], approved by the decree-law 13/2002, of February 19, 2002, amended by the Law 107-D/2003 of December 31, 2003 – the system of administrative courts is maintained, now with power of full jurisdiction.

2. Purpose of the review of administrative acts

According to the Code of Administrative Litigation [(CPTA) *Código de Processo nos Tribunais Administrativos*], approved by the Law 15/2002, of February 22, 2002, and amended by the Law 4-A/2003, of February 19, 2003, “*the administrative courts statute on the administration’s respect for the legal standards and principles that bind it and not on its action suitability or appropriateness*” (article 3).

Therefore it means assessing the respect for the right and law (legality control) and not the respect for the rules of good governance (substance control).

3. Definition of an administrative authority

According to article 2, § 2, of the Code of the Administrative Procedure [(CPA) *Código do Procedimento Administrativo*], approved by the decree-law 442/91, of November 15, 1991 and amended by the decree-law 6/96, of January 31, 1995,

“2- For the purpose of this Code, the public administration’s bodies are:

a) The bodies of the State and the autonomous Regions carrying out administrative duties;

b) The bodies of public institutions and public associations;

c) *The bodies of local communities and their associations and federations; Nevertheless, it is important to underline the fact that the provisions of the CPA apply generally, “to all the bodies of the administration which, in carrying out the administrative activity of public management, establish relationships with the individuals, as well as the acts of administrative nature carried out by the bodies of the State which, even if they are not integrated in the administration, carry out materially administrative duties”* (article 2, § 1) and to the *“acts used by concessionary entities in carrying out authority powers”* (article 2, § 3).

4. Classification of administrative acts

According to the Code of Administrative Procedure (Código do Procedimento Administrativo, CPA), "administrative activities" may be carried out by regulation (Articles 114 to 119), by administrative act or by administrative contract. No description is given of "regulation" but a definition is included of "administrative act" in Article 120 and of "administrative contract" in Article 1(6) of Legislative Decree no. 18 of 29 January 2008.

I –ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

Courts, totally separate and independent from the administration, ensure the jurisdictional control of the administration's acts and action legality.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

Article 110 of the Constitution of the Portuguese Republic (CPR) of 2 April 1976 (amended most recently by Constitutional Act no.1 of 12 August 2005) stipulates: "The constitutional public authorities are the President of the Republic, the Assembly of the Republic, the government and the courts.'

The courts are independent and sentences are prescribed by law (Article 203, CPR).

In addition to the Constitutional Court, the following categories of courts exist:

- a) the Supreme Court of Justice and the judicial courts of first and second instance;
- b) the Supreme Administrative Court and other administrative and fiscal courts;
- c) the Court of Auditors (Article 209, CPR).

The Supreme Administrative Court is the highest administrative and fiscal court in cases in respect of which the Constitutional Court has no jurisdiction.

The administrative and fiscal courts hear cases for the settlement of disputes arising from administrative and fiscal relations (Article 212, CPR).

The constitutional forecast (briefly indicated) is enshrined in infra-constitutional laws, such as the Code of Administrative Litigation (Código de Processo nos Tribunais Administrativos, CPTA) and the Code of Judicial Procedure (Código de Procedimento e Processo Tributário, CPPT).

The administrative courts operate in parallel – and are similar in structure – to the judicial courts, i.e. the ordinary civil and criminal law courts.

The ETAF, in conjunction with the CPTA, enable to assert that the power and duties of the administrative courts, in the frame of the disputes they are entrusted to, are of the same type as the power and duties of the civil and penal jurisdiction courts. This means that they state the legal position, by pronouncing – simple assessment, sentence or constitutive – or executive declaratory judgments.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

See 7.

10. Internal organization of the administrative courts

Under the terms of the Statute of the Administrative and Fiscal Courts (Estatuto dos Tribunais Administrativos e Fiscais, ETAF) (Article 8), the administrative and tax courts are the Supreme Administrative Court (Supremo Tribunal Administrativo, STA), two administrative courts of appeal (Tribunais Centrais Administrativos, TCA) of the second instance, and the administrative and fiscal courts (of the first instance).

The legality of administrative decisions is examined by the administrative and fiscal courts of first instance, with an action before the administrative courts of appeal (TCA).

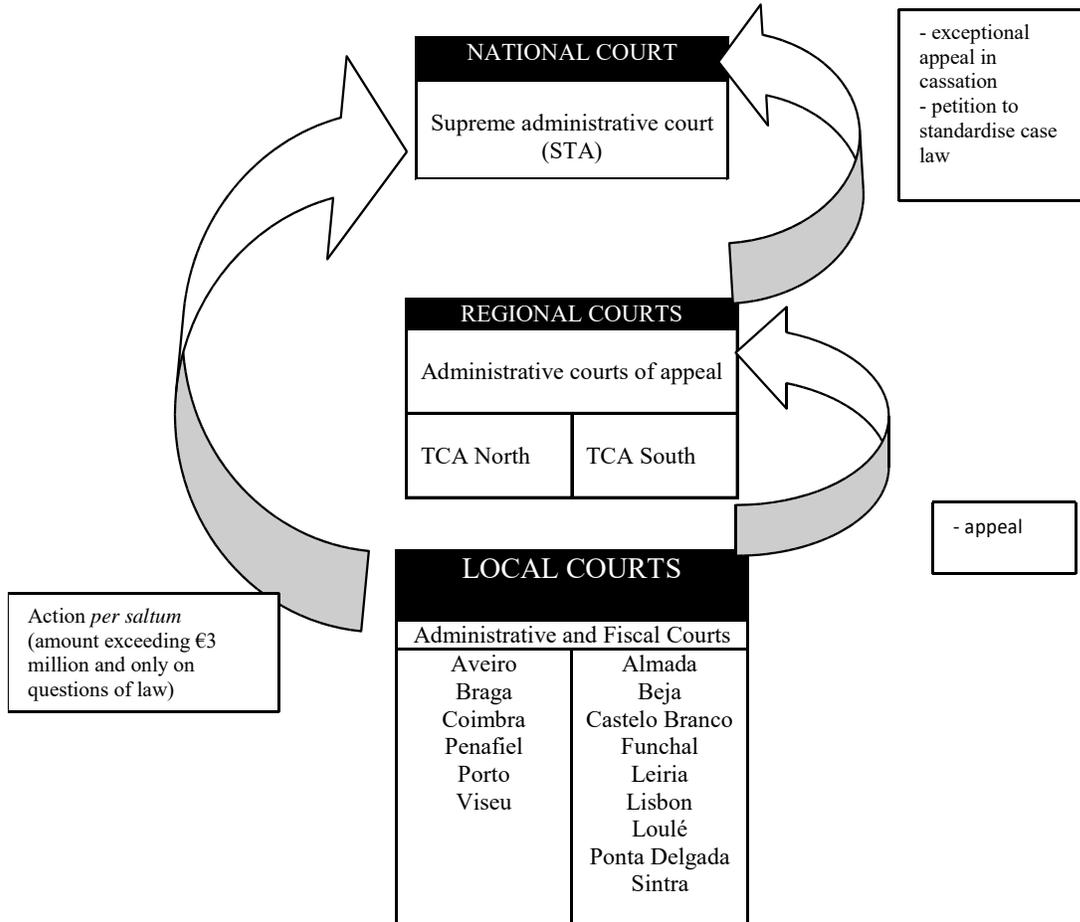
An exceptional judicial review is opened before the administrative supreme court against decisions handed down by the administrative courts of appeal in cases of "fundamental importance" from a legal or social point of view, or when such a review is required for "a better application of the law" (Article 150, CPTA).

Exceptional proceedings may be brought before the plenary session of the Supreme Administrative Court concerning the "standardisation of case law," when a contrary decision has been handed down on the same question of law either by the Administrative Court of Appeal or by a subsection of the Supreme Administrative Court (Article 152, CPTA).

There are other situations, such as of an amount exceeding €3 million in civil liability cases, when the matter may be referred for a judicial review, *per saltum*, if the parties raise only questions of law (Article 151(1) CPTA).

Certain cases, because of the nature of the authorities who took the administrative decisions (for instance, the President of the Republic, the Council of Ministers and the Prime Minister), are examined from the outset by the Supreme Administrative Court,

ruling in a subsection, with the possibility of appeal before the plenary (administrative or fiscal) session – Articles 24 and 26 ETAF.



D. JUDGES

11. Status of judges who review administrative acts

Administrative judges have a special status which corresponds to that of judicial judges. They may be posted judicial judges or judges recruited directly by the Superior Council of Administrative and Fiscal Courts (Conselho Superior dos Tribunais Administrativos and Fiscais, CSTAF), which is the management and disciplinary body for such judges.

This council is presided over by the president of the Supreme Administrative Court and is composed of 10 members: two appointed by the President of the Republic, four elected by the Assembly of the Republic, and four elected by their peers (Article 75, ETAF).

12. Recruitment of judges in charge of review of administrative acts

Judges for the administrative courts of first instance are normally recruited via a competition open to citizens holding a degree in law (Article 60, ETAF). Judges for superior courts are also recruited through a competition and in accordance with their qualifications.

13. Professional training of judges

As in the case of the judicial courts, those wishing to become administrative and fiscal judges must go through a competition. The candidates accepted must then undergo training at the Centre for Judicial Studies (Centro de Estudos Judiciários, CEJ) (Article 72, ETAF). Initial specialised training may also be required, followed, where available, by various additional courses.

14. Promotion of judges

The ETAF provides for the promotion in the career of the administrative and tax jurisdiction judges which do not lie with the court where they carry out their duties (article 58). However, no text was published to regulate this standard.

Currently, the promotion in the career directly lies with the salary level.

The judges become judges of second degree (judge in appeal) or of the Supreme Court (adviser-judge) on a test or a professional selection, organized in case there are vacant positions to be filled.

The seniority in the career is one of the criteria taken in account, as well as the marking.

The appointment, assignment, marking and promotion lie with the Supreme Council of the Administrative and Tax Courts (article 74 of the ETAF).

The Supreme Council of the Administrative and Tax Courts is presided by the President of the Supreme Administrative Court (elected among the judges of the Supreme Court) and includes two members appointed by the President of the Republic, four elected by the Assembly of the Republic and four judges elected by their peers (article 75 of the ETAF).

15. Professional mobility of judges

The judges of the civil and penal jurisdiction may carry out duties in the administrative jurisdiction, by way of assignment, but the contrary is not possible. All the magistrates may carry out duties in the active administration, by way of assignment, by means of an authorization from the relevant magistrate's advisors, but the number of magistrates in this case is very limited.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

Article 2 of the CPTA stipulates:

"Article 2

Effective legal protection

1 – The principle of effective legal protection includes the right to a court decision, delivered within a reasonable period of time, with force of res judicata, on each of the petitions lodged with the court, as well as to have said decision enforced and to obtain summary, interim or precautionary measures so as to ensure the effectiveness of said decision.

2 – The administrative courts shall provide adequate protection of rights or interests protected by law, in particular in order to:

a) recognise subjective legal situations arising directly out of legal administrative standards or acts practiced by virtue of administrative law provisions;

b) recognise ownership of qualities or compliance with terms and conditions;

- c) recognise the right to refrain from behaviour, and particularly, not to issue administrative documents, when there is a threat of future prejudice;
- d) cancel or declare administrative documents void or non-existent;
- e) order the administration to pay sums, to hand over items or to "take action";
- f) order the administration to repair damages and pay compensation;
- g) settle disputes relating to the interpretation, validity or performance of contracts, the assessment of which falls under the purview of the administrative courts;
- h) declare standards adopted by virtue of administrative law provisions illegal;
- i) order the administration to carry out the administrative acts legally required;
- j) order the administration to take the steps and measures required to restore subjective legal situations;
- l) serve notice to the administration to provide information, allow the consultation of documents or issue copies;
- m) adopt appropriate summary measures to ensure that the decision is effective."

According to Article 4, ETAF, the examination of the non-contractual civil liability of the State and of legal persons under public law, as well as liability for the exercising of political or legislative office (Article 15 of Act no. 67 of 31 December 2007), falls under the purview of the administrative courts, unless a judicial error has been committed by other courts.

It is therefore an administrative law action.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

Article 15 of the CPTA stipulates:

“Article 15

Competence extended to the decision over the prejudicial questions

1 – When the competency regarding the action’s object depends, totally or partly, on a decision over one or several questions lying with the competence of a court of another jurisdiction, the judge may stay adjudicating until the competent court pronounces.

2 – The reprieve is lifted if the court of the other competent jurisdiction is not referred to within two months or if the proceeding does not take place within the same delay, on account of the parties negligence.

3 – *In the case provided in the previous paragraph, the administration litigation proceeding must be continued and the prejudicial question is only determined with the effects related to it”.*

Within the administrative jurisdiction, the Code provides a prejudicial reference mechanism similar to that of article 234 of the EEC Treaty.

Indeed, article 93 of the CPTA stipulates:

“1 – When an administrative court is referred to with a new question of law presenting a serious difficulty and likely to arise in other disputes, its chairman may (...) proceed with the prejudicial reference before the Supreme Administrative Court for this latter to pronounce, by a contentious opinion, on the question, within three months.

2 – (...)

3 – The preliminary rulings provided in § 1 do not apply to proceedings of a summary court (...). The question’s examination may immediately be dismissed, permanently, when a panel made up of three judges, selected among those having the highest seniority in the administrative litigation section of the Supreme Administrative Court, considers that the conditions required for the reference are not spliced or that the question’s importance is not of a nature to justify the issue of such an opinion.

4 – The opinion issued by the Supreme Administrative Court in the frame of the preliminary rulings does not bind it in regards to the new decisions it will have to make on the same question, as a reference or recourse”.

18. Advisory functions of the competent bodies

The administrative and tax courts only carry out jurisdictional duties.

19. Organization of the judicial and advisory functions of the competent bodies

See 18.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

The CPTA provides three legal means by which to standardise the interpretation of the law:

- the "reference for a preliminary ruling" detailed in Article 93, CPTA (CF 17);

- the "expanded judgement" (judgement that can also be handed down by the courts of first instance), detailed in Article 148:

« 1 – The president of the Supreme Administrative Court or the Administrative Court of Appeal may order all the judges within the section to take part in the judgement of an action as and when necessary or useful to ensure the standardisation of case law, according to a two-thirds quorum.

2 – The judgement handed down under the conditions set out in the preceding paragraph may also be requested by the parties and must be broached by the rapporteur or his or her assistants, in particular in the event of a possible victory for a legal solution that runs contrary to previously established case law in the same area of legislation and about the same fundamental question of law.

3 – (...)

4 – The decision is published in the first or second series of the Official Gazette (Diário da República), depending on whether it is handed down by the Supreme Administrative Court or by the Administrative Court of Appeal".

- the "action to standardise case law, detailed in Article 152:

"1 – The parties and the public prosecution office may initiate proceedings before the Supreme Administrative Court, within 30 days once the contested decision has become final, to standardise case law where there is a contradiction on one and the same fundamental question of law:

a) between a decision of the administrative court of appeal and a decision handed down previously by the same court or by the Supreme Administrative Court;

b) between two decisions by the Supreme Administrative Court.

2 – (...)

3 – The action is inadmissible if the direction pursued in the contested decision is compliant with the most recent consolidated case law of the Supreme Administrative Court.

4 – The action is heard by the plenary panel of the section, and the decision is published in the first series of the Official Gazette (Diário da República).

5 – The favourable decision handed down by the higher court does not affect judgements previous to the one contested nor legal situations created by virtue of said judgements.

6 – (...) ».

As can be seen, the reference for a preliminary hearing falls under the purview of only those courts that share the possibility of an expanded judgement with the parties: the parties and the public prosecution office are the only ones empowered to take action to standardise case law.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

Article 268(4) of the Constitution stipulates that: "The rights and interests of citizens protected by the law shall be enforced by the courts of justice. The latter shall guarantee in particular that said rights and interests are recognised along with the right to take action against any administrative act that is prejudicial thereto, irrespective of its form, and shall ensure that the administrative acts required by law are duly carried out and that appropriate provisional measures are taken."

The CPTA allocates the resources required to that end: Article 51(1) starts by stating: "Even if they are the subject of administrative proceedings, administrative acts that have external repercussions may be contested, in particular those whose contents may prejudice rights and interests protected by law."

The Constitution therefore requires that administrative conduct be harmful before legal action can be taken. Nevertheless, in certain cases legislation requires that prior administrative action have been taken before a private individual may take legal action.

22. Right to bring a case before the court

The competence to act is widely conferred. The CPTA addresses it, in a general manner, in its article 9, then in each type of proceeding.

“Article 9

Competence to act

1 – Subject to the provisions of the following paragraph, of provisions of article 40 of this Code [quality to act in the actions related to contracts] and of those related to the special administrative action established, the plaintiff is competent to act when he/she alleges to be a party in the disputed material relationship.

2 – Apart from the personal interest in the proceeding, any person, as well as the associations and foundations defending the interests involved, the local communities and the Public Department are competent to engage (and intervene), according to the legal provisions, in the main and summary proceedings aiming to defend values and properties

protected by the Constitution, such as public health, environment, urbanism, land use planning, quality of life, cultural heritage and properties of the State, autonomous Regions and local communities”.

As concerns the action to cancel administrative acts, article 55 stipulates:

“1 – The following have the competence to dispute an administrative act:

- a) Whoever alleges to hold a direct or personal interest, notably because the act prejudices his/her legally protected rights or interests;
- b) The public department;
- c) The public and private corporations, concerning the rights and interests they are bound to defend;
- d) The administrative bodies, related to acts used by other bodies of the same corporation;
- e) The Chairman of the collegial bodies, with regard to the acts used by their respective body, as well as all the other authorities, in defence of the administrative legality, in the cases provided by law;
- f) *The persons and entities referred to in § 2 of article 9”*

23. Admissibility conditions

In addition to competence and legitimacy, Article 89, CPTA, lays down other conditions and lists the different reasons that may prevent the case from being pursued.

24. Time limits to apply to the courts

Essentially, a distinction must be made:

- between what the CPTA means by "common administrative action" – which includes all the proceedings aiming to recognize subjective situations, of qualities, the conviction or the abstention from behaviour of the administration, the civil liability, the interpretation, the validity and the execution of contracts;

- What the CPTA means by "special administrative action " – includes the actions aimed at the main cancellation of an administrative act, or the declaration of legal nullity or non-existence of such an act; the sentence to use a administrative act legally due; the declaration of illegality of standards; as well as the actions in which substance is related to the cancellation of administrative acts.

The common administrative action may be introduced at any time, subject to the provisions of the substantive law (prescription, expiry). However, recourses to cancel contracts must be lodged within six months from the contract's signature or, with regard to third parties, from the date when they took cognizance of them (article 41).

As for the special administrative actions, tending more often to cancel or declare the nullity of administrative acts, article 58 stipulates:

“1 – Recourse against void or non-existing acts is not subject to any delay.

2 – Except otherwise provided, recourse against rescindable acts must be lodged within the following delays:

- a) One year, if it is filed by the Public Department;
- b) Three months, in the other cases.

3 – The calculation of the delays referred to in the previous paragraph respects the system applicable to the delays provided in the Code of Civil Procedure to file the actions.

4 – If the one-year-delay has expired, recourse will be admissible, beyond the three-month-delay set in paragraph b) of § 2, if it is proven that, according to the rules of the audit in the presence of the parties, in this particular case, the filing of the action within the set delay could not have been required from a normally diligent citizen, on grounds of:

- a) The administration's behaviour which led the interested person astray;
- b) the delay must be considered justifiable, with regard to the ambiguity of the applicable normative context or the difficulties caused, in this particular case, by identifying the disputed act or by its qualification as an administrative act or as a standard;
- c) *a situation of justified impeachment occurred”.*

And then, there are various delays, according to the request or the scope (for example in the pre-contractual litigation, in the injunctions).

25. Administrative acts excluded from judicial review

The administrative acts are disputable, without restrictions, according to article 51, 1, of the above-mentioned CPTA (see answer 21.). Also disputable are the materially administrative decisions reached by the administrative authorities or by private entities acting in accordance with standards of administrative law (article 51. 2). In this way, a constitutional imposition is therefore respected (article 268, § 4).

Article 4, § 2, of the ETAF excludes from the field of the administrative and tax jurisdiction the disputes related to “the acts used in carrying out political and legislative duty”.

However, this does not mean that these acts cannot be disputed in other jurisdictions. For example, the Constitution of the Portuguese Republic entrusts the Constitutional Court with the judgment of “recourses related to the loss of power and to the elections performed at the Assembly of the Republic and in the regional legislative assemblies”, as well as the “actions questioning elections and deliberations of bodies of political parties, for which the law provides a possibility of recourse” (article 223).

26. Screening procedures

There is a screening process before the Supreme Administrative Court in the following three areas:

- Reference for a preliminary ruling detailed in Article 93, CPTA (see Answer 20):

The court refuses to examine the matter definitively from the outset, when a panel composed of three members among the oldest judges of the administrative legal section of the Supreme Administrative Court considers that the required conditions for such a reference are not met or that the question is not of such importance as to justify a ruling.

- Exceptional application for judicial review detailed in Article 150

« Article 150

Application for judicial review

1 – Under exceptional circumstances, an application for a judicial review of decisions handed down in second instance by the Administrative Court of Appeal may be lodged with the Supreme Administrative Court where a legally or socially pertinent issue is of fundamental importance or where the action must be clearly admitted so that the law can be applied better.

(...)

5 – The decision as to whether the conditions of paragraph 1 are met is up to the Supreme Administrative Court and must be subjected to a preliminary summary review by a panel composed of three judges from among the oldest in the administrative legal section."

- Petition to standardise case law detailed in Article 152 (see Answer 20.)

« Article 152

(...)

3 – The petition is inadmissible if the guidelines pursued in the contested decision are compliant with the case law most recently consolidated by the Supreme Administrative Court, as is verified by the court (plenary assembly) which is actually aware of the final outcome.

27. Form of application

There is not special form for the originating processes or for jurisdictional recourses.

However, in the case of the originating processes, the plaintiff must indicate a series of elements related to the identification of the court referred to, the defendants, the facts and arguments the claim rests upon and the claim.

Jurisdictional recourse is lodged by a request containing the conclusions and where the defaults imputed in the judgment are enounced.

28. Possibility of bringing proceedings via information technologies

The administrative and fiscal courts manage cases electronically (those received as of 1 January 2004).

The exhibits and documents are presented electronically, by e-mail or by electronic data transmission. Submitting data electronically requires the signatory's advanced electronic signature.

Where documents are submitted on paper, the registry of the court – in first and second instance – digitises them. This system is currently being introduced in the Supreme Administrative Court.

29. Court fees

The judicial procedures imply the payment of justice costs and fees. File the actions and recourses imply rights to pay (initial justice tax).

30. Compulsory representation

In the frame of each legal proceeding lying within the administrative jurisdiction, the petitioner must be compulsorily assisted by a lawyer.

No specialization is required from the lawyers.

31. Legal aid

Any person without property may access free legal proceedings.

The eligibility to legal aid is decided by the social security services manager of the petitioner's place of residence or head office. In case of a refusal, the person liable may refer to the courts.

32. Fine for abusive or unjustified applications

Article 8 of the CPTA and Articles 266 and 266-A of the Code of Civil Procedure (Código de Processo Civil, CPC) lay down a set of principles (of cooperation and good faith) which the parties to the proceedings are required to observe.

If these principles are violated, the judicial body can order the party that refuses to cooperate or is acting in bad faith to pay a fine (Article 456, CPC).

Article 126(1), CPTA stipulates that, in the case of summary proceedings, "the plaintiff shall be held accountable for damages caused intentionally or through gross negligence to the defendant and the parties concerned."

B. MAIN TRIAL

33. Fundamental principles of the main trial

The CRP allots the right of all for a cause concerning them to be subject to a decision pronounced in the frame of a fair hearing. The CPTA stipulates that the "*court ensures a status of effective equality for the parties in the legal proceeding, both with regard to the exercise of options and use of arguments for defence and to the application of injunctions or penalties*" (article 6). The law provides for exceptional cases where measures may be pronounced against a person when he/she was not heard.

The CPTA expressly imposes the duty of cooperation and good faith among all the participants in the legal proceedings.

In the particular case of recourses in cancellation, the CPTA, after having established that the court must pronounce on all the causes of invalidity that were claimed against the disputed act, unless he/she cannot have the indispensable elements thereto, stipulates that

the court “*must identify the existence of invalidity causes other than those that were claimed*” (article 95).

34. Judicial impartiality

Under the terms of the Constitution and by law, the courts are independent and are subject only to the law, and judges may not be removed nor held liable for their decisions, except in cases defined by law. Judges in office may not hold any other position, apart from in teaching or scientific research. Furthermore, the appointment, assignment, transfer and promotion of judges fall under the purview of the Superior Council of Administrative and Fiscal Courts (Conselho Superior dos Tribunais Administrativos and Fiscais, CSTAF).

The impartiality of proceedings is guaranteed by the provisions concerning cases of impediment – no judge may rule on a case to which s/he or a member of his or her family is party, or in which s/he has taken part in another capacity – and in cases of suspicion, for instance serious enmity or close connection between the judge and one of the parties.

35. Possibility to rely on the new legal arguments in the course of proceedings

The general rule is that the parties must invoke, in their petition or response, the legal means they intend to cite. The court of appeal cannot address issues not examined by the lower court.

There are also particular situations for an objective change of court, for instance: "When there is no decision, as a precautionary measure, which suspends the proceedings (administrative case) for the contested action, and said action continues its course during the proceedings, the scope of the action may be extended to cancelling new acts enforced under said proceedings, as well as to the formulation of new claims that could be combined (Article 63(1) CPTA). Such proceedings are also known as "flexible proceedings."

36. Persons allowed to intervene during the main hearing

In the common administrative actions, the general rules of the civil procedure apply.

In the special administrative actions, in particular those aiming to cancel administrative acts, in addition to the intervention of the administrative authority, the relevant third parties may intervene, that is those who might be prejudiced if the action succeeds.

37. Existence and role of the representative of the State (“ministère public”) in administrative cases

The Public Department’s intervention is more limited than in the past. It may present its conclusions in defence of the citizen’s fundamental rights, of particularly important public interests, or concerning public health, environment, urbanism, land use planning, quality of life, cultural heritage and properties of the State, autonomous Regions and local communities. This intervention takes place ten days after the notification of the administrative procedure’s junction or the presentation of the defendant’s conclusions and it is notified to the parties.

38. Existence of an institution or a person with a role analogous to the French «Commissaire du gouvernement »

There is no institution in Portugal comparable to the Government Commission in France. The public prosecution office may intervene in proceedings as a party to defend interests of major importance (Article 9(2) CPTA) and may always lodge an appeal against decisions it considers to be illegal (see 37).

39. Termination of court proceedings before the final judgment

The legal proceedings may end without a judicial decision, for various reasons, such as desertion, withdrawal, impossibility or non-suit to statute. But the following may also prevent the hearing from continuing: for example, initial request stained with a default, plaintiff’s default of judicial personality or capacity, indisputable nature of the disputed act, plaintiff or defendant default of quality to act, coalition’s illegality, non-identification of third parties concerned, illegality of the claims accumulation, foreclosure, lis pendens and final judgment.

40. Role of the court registry in serving procedural documents

Except for particular cases (urgent proceedings, for example), the registry proceeds, ex officio, with the subpoena of the defendant public authority and the third parties concerned, as well as the recourse’s notification.

41. Duty to provide evidence

The parties must indicate the facts and the arguments of law that they base their conclusions upon, as well as tender the proof of these facts.

In the frame of his/her inquiry's powers, the judge may order proof search that he/she considers as necessary to the manifestation of the truth (for ex. article 90 CPTA).

The burden of proof is distributed according to the substantive law.

42. Form of the hearing

The hearing may be opened to the public by the judge or at the request of the parties – Article 91 CPTA.

43. Judicial deliberation

Once the hearing has been completed, the judges deliberate on the case. Where deliberation is on a fact, the judges issue a ruling as soon as the public hearing concerned is closed.

The sessions of superior courts (Supreme Administrative Court and administrative courts of appeal) are presided over by their presidents or vice-presidents and may be attended by the other judges within the section.

C. JUDGMENT

44. Grounds for the judgment

The sentence or the ruling starts with the identification of the parties and the object of the case, as well as the questions that the court must determine. Then the motives and the final decision follow. The motives may be drawn up in the form of reasons adduced, with details about the facts established. The judgment must also indicate, interpret and apply the applicable legal standards.

When the judge or the reporter considers that the question of law to be determined is simple, notably because it was already assessed by a court, in a uniform or iterated manner, or that the request is obviously unfounded, the request's ground may be succinct, and may simply consist in a reference to the previous decision, with an attached copy.

The judgment must indicate the grounds of fact and law that were decisive for the decision, under pain of nullity. It may also be nullified if it does not pronounce on all the questions that should have been assessed.

The jurisprudence establishes a systematic distinction between the questions and the arguments. The court must assess the questions, but it is not bound to pronounce on the parties arguments.

45. Applicable national and international legal norms

The disputed acts legality is essentially assessed in relation to (constitutional, legal or regulatory) national law and to the jurisprudence of the national courts. But there are also many cases of claim of the community law instruments (for example, with regard to public contracting) or international law instruments, as well as the jurisprudence of various proceedings, especially the CJCE and the CEDH (for example, in a disciplinary matter).

46. Criteria and methods of judicial review

As mentioned in (2.), “*the administrative courts statute on the respect by the administration for the legal standards and principles that bind it and not on its action’s suitability or appropriateness*” (article 3).

In regards to legality control, the assessment by the court does not include any limitation other than that of its own inquiry means.

The distinction between the acts used in carrying out linked powers and the acts used in carrying out full powers to act tends to subside, in relation to the fault verification. In fact, certain aspects that were considered in the past as lying with the act’s usefulness are from now on considered as lying with the legality block. This is for example the case for the rule of justice, the rule of proportionality.

In certain cases, the fault’s assessment in the parameters retained may be confused with the control of the very margin of the administration’s free assessment or prerogative of evaluation, for example, in the case of the marking assigned to a civil servant. The jurisprudence tends to assert that in these situations, the court cannot control the administrative authority’s assessment unless there is an obvious or gross fault.

The court must pronounce on all the causes of invalidity that were claimed, as well as identify itself the existence of causes of invalidity other than those that were claimed (article 95, CPTA).

47. Distribution of legal costs

Except otherwise planned, the parties in the proceeding must pay the expenses. These expenses include the "justice tax" and the legal fees. The justice tax is calculated according to the amount for the case. The legal fees are all the costs engaged by the party who won its point. The amount of the sentence as for the representation expenses (lawyer's fees) is set by the court between one tenth and one fourth of the justice tax to be paid.

Generally the losing party bears the costs of the procedure. If a party partially wins its point and partially loses, the costs must be proportionally distributed.

The law sets the subjective and objective exemptions.

48. Composition of the court (single judge or a panel)

At the Supreme Administrative Court and in the Appeal Administrative Courts, the case is judged by a panel; in the administrative courts, it is judged by a sole judge or a panel, according to the type of case and its amount.

49. Dissenting opinions

In all the proceedings of the administrative jurisdiction, separate opinions are authorized.

50. Public pronouncement and notification of the judgment

The sentences or rulings are given in writing, and then notified to the parties. In certain cases, the sentence may be dictated to the clerk of court at the end of the judgment public hearing related to the facts, if there were also oral debates related to the legal aspect of the cause (for ex., articles 659, 4, do CPC, 103 do CPTA).

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata, stare decisis*

The decisions of the courts are binding on all public and private entities.

However, there are a number of exceptional cases. For example:

- a case where the court is asked to order payment of compensation for civil liability, where the judgement is not open to appeal it is generally binding; no other proceedings may be lodged in any other court;
- in an annulment action, the judgement pertaining to the annulment of an administrative act for a specific flaw does not prevent the administration from promulgating a similar act provided that the flaw in question is not repeated.

Furthermore, Article 161, CPTA, provides that the effects of a final judgement that has annulled an unfavourable administrative act or recognised a favourable legal situation for one or more persons, may be extended to third parties in the same legal situation, whether or not they have gone to court, as long as no final decision has been handed down concerning the latter. This also applies to identical cases, particularly as regards the civil service and competitions, and only where five final decisions have been handed down along the same lines, or, in the case of mass trials, where three decisions have been handed down along the same lines.

See 22, on petitions to standardise case law.

52. Powers of the court in limiting the effects of judgment in time

In actions against rules enacted by virtue of administrative law provisions, the court may decide that, for reasons of legal certainty and fairness or public interest of exceptional importance, its declaration of generally binding illegality shall only come into effect when the time limit for an appeal has expired (Article 76(2) CPTA).

Case law also allows, in certain borderline cases, that the annulment must come into effect as of the pronouncement of the sentence, and not *ex tunc*, i.e. it applies the same limitation as the law imposes for the revocation of acts – Articles 127(1), 128 and 145 of the Code of Administrative Procedure (Código do Procedimento Administrativo, CPA).

53. Right to the execution of judgment

The enforcement of decisions taken by administrative courts against the administrative authorities is set out in detail in the CPTA (Articles 157 to 179).

The enforcement of decisions taken by the administrative courts against private individuals follows the rules of civil procedure, but also falls under the purview of the administrative courts.

Judgements that order the administration to "take action" or to hand over items must be enforced directly by the administration itself within three months at most, except in the case of legitimate grounds for non-enforcement (Article 162).

In the absence of direct enforcement, the court may impose a fine for delay of enforcement, and spell out the very content of the action to be taken. Decisions that order the administration to pay specific sums must be enforced by the administration itself within 30 days.

In the absence of direct enforcement, the court may refer the matter to the Superior Council of Administrative and Fiscal Courts (Conselho Superior dos Tribunais Administrativos and Fiscais, CSTAF), which decides on an allocation entered in the State Budget (Article 170(2)(b) CPTA).

The annulment of an administrative act means that the administration has to restore the situation that would have existed if the annulled act had not been enforced, and has three months to do so. If the administration fails to do this, the court may specify the contents of the action to be taken.

In any event, the unlawful non-enforcement of decisions means that the administration is held liable, and that the persons who head the defaulting administrative body are likewise held liable and subject to disciplinary action.

54. Recent efforts to reduce the length of court proceedings

One of the stated goals of the "Reform of administrative proceedings" mentioned in the introduction is to speed up proceedings. The number of administrative courts has consequently been increased. At the same time, however, the competence of these courts has been broadened and the means of procedure available have been enhanced.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

In nearly all the cases, the parties go to the administrative courts of first instance (Tribunais Administrativos de Circulo, TAC) (Article 44 ETAF). The administrative

courts of appeal (TCA) and the Supreme Administrative Court (STA) function essentially as courts of appeal.

The administrative courts of appeal may issue a ruling in the first instance in certain rare cases – for example, actions in response based on the civil liability of judges and magistrates of the public prosecution office before the administrative courts (TAC).

The Supreme Administrative Court may issue a ruling in the first instance, essentially in proceedings relating to actions or omissions on administrative matters by the following authorities (Article 24(1)(a) ETAF):

President of the Republic; Assembly of the Republic and its President; Council of Ministers; Prime Minister; Constitutional Court and its president; President of the Supreme Administrative Court; Court of Auditors and its President; President of the Supreme Military Court; Superior Council of National Defence; Superior Council of Administrative and Fiscal Courts and its President; Chief Public Prosecutor of the Republic; Superior Council of the Public Prosecution Office.

This competence applies also to actions in response based on the civil liability of judges and magistrates of the public prosecution office before the Supreme Administrative Court and the administrative courts of appeal (Article 24(1)(f) ETAF).

The administrative courts of appeal function in general as appellate courts and the Supreme Administrative Court as a court of cassation (Article 24(2) ETAF).

56. Recourse against judgments

To each case an amount is assigned, which represents the request's economical utility.

Recourse against decisions having been judged on merits, at the first degree of jurisdiction, may be formed in the cases of an amount superior than that of the court's resort where the judgment is disputed.

The competence rate of the administrative courts is currently 3,740.98 €; that of the TCAs are 14,963.34 €.

-Where the jurisdictions of appeal and cassation statute in first resort, their competence rate is that of the administrative courts of first degree.

The cases related to intangible assets and standards issued in carrying out the administrative duty are considered of an undeterminable amount. In these cases, recourse is always admissible.

It is also possible to lodge recourse, for example, against the decisions regarding penalty or ending the proceeding without pronouncing on the merits.

The courts of second degree (Administrative Courts of Appeal – TCA), adjudicating on the appeals lodged against the decisions of the administrative courts, judge facts and law (article 149 CPTA).

The Supreme Administrative Court (STA), which statutes on the appeals lodged against the TCA decisions or the TCA decisions adjudicating in first resort (appeal before the plenary panel), judge on law only (article 12 of the ETAF).

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

The CPTA establishes a distinction between proceedings of a summary court and summary proceedings. They are both more accelerated than the normal proceedings. The competent court for the summary proceedings is the one competent on the merits. All the instances are subject to the same regulation in the frame of the summary proceedings.

58. Requests eligible for the emergency and/or summary proceedings

The proceedings in a summary court provided are as follows: recourse against administrative acts in electoral matters; recourse against administrative acts related to works contracting, public works concession, service delivery and good supply; injunctions for information communication, consultation of files and delivery of copies and injunction for the protection of rights, liberties and guarantees, and in the cases of recourses, the request in cancellation or in declaration of nullity. As for the injunctions, the request varies according to the object of dispute. In the cases of injunctions aiming to protect a right and vesting a particular emergency, the court may statute within 48 hours.

Generally, the actions, recourses and injunctions provided in the CPTA have no suspensive effect. But the CPTA provides that the interested person may ask the adoption of summary measures, measures of anticipation or conservation, of a nature to ensure the utility of the sentence to be given. Among these measures are: the reprieve from execution of an administrative act or a standard; the provisional admission to tests and exams; the provisional assignment of a property's benefit; the provisional authorization to start or continue an activity or to adopt a conduct; the provisional settlement of a legal

situation, notably by imposing the administration to pay a down payment on benefits alleged to be due or as provisional reparation; injunction to adopt a conduct or abstain from it addressed to the administration or an individual, notably a licensee, for violation or founded worry of violation of the administrative law standards.

Usually, the petitioner must prove the existence of damages difficult to repair; the measure is ordered if it is likely to result as damaging for the public interest or private interests higher than the petitioner's damages (article 120).

59. Kinds of summary proceedings

The summary regulation is the same for the disputes opposing individuals and the administration and for the disputes related to the various public law communities.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

An administrative action can in general be considered as optional. However, there are provisions that require a preliminary administrative action (in the case of certain disciplinary penalties according to the Disciplinary Statute concerned, of exclusion from or approval for the list of final rankings of personnel recruitment competitions in accordance with Legislative Decree 204/98).

Whether the preliminary administrative action is required or optional, the administration can deliver a favourable decision to the petitioner and settle the dispute.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

The bodies in question are the ombudsman of the Republic and the courts of arbitration (see 62).

62. Alternative dispute resolution

The CPTA (Article 180) provides for the possibility of holding a court of arbitration to decide on the following matters: a) questions pertaining to contracts, including the examination of administrative acts relating to their performance; b) questions of non-contractual civil liability, including the exercise of the right of response; c) questions relating to administrative acts that can be revoked for reasons other than being invalid under the terms of substantive law; d) disputes arising from legal relations in public employment, when not based on unavailable rights and not resulting from an occupational accident or disease.

In any event, if there are third parties involved, they must accept the arbitration treaty too. There are other dispute-settlement bodies in various fields (the press, the media, the stock market, insurance), but their administrative decisions may, in any event, be taken to court.

The provedor de justiça (ombudsman) examines complaints lodged by citizens and makes recommendations, but has no power to issue rulings.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

Total annual public budget approved and allocated for the entire justice system:

| Year | Budget |
|------|----------------|
| 2012 | €1,744,093,667 |
| 2010 | €1,693,952,793 |
| 2008 | €1,388,550,485 |

Part of the annual public expenditure at the national level allocated for the entire justice system:

| Year | Percentage |
|------|------------|
| 2012 | 2.2% |
| 2010 | 1.9% |
| 2008 | 1.8% |

Source:

CEPEJ - Report on the “European judicial systems”.

www.coe.int/t/dghl/cooperation/cepej/evaluation/archives_fr.asp

64. Total number of magistrates and judges

The fiscal and administrative branch comprised:

| Year | Judges | Counsellor judges | Appeal court judges | Trial judges |
|------|--------|-------------------|---------------------|--------------|
|------|--------|-------------------|---------------------|--------------|

| | | | | |
|-------|------------|-----------|-----------|------------|
| Total | 209 | 15 | 33 | 161 |
|-------|------------|-----------|-----------|------------|

| | | | | | |
|------|-----------------------------|---|----|----|----|
| 2013 | Administrative jurisdiction | 8 | 20 | 62 | 20 |
| | Fiscal jurisdiction | 7 | 13 | 79 | |

| | | | | |
|-------|------------|-----------|-----------|------------|
| Total | 184 | 22 | 39 | 123 |
|-------|------------|-----------|-----------|------------|

| | | | | | |
|------|-----------------------------|----|----|----|----|
| 2012 | Administrative jurisdiction | 12 | 23 | 50 | 12 |
| | Fiscal jurisdiction | 10 | 16 | 61 | |

| | | | | |
|-------|------------|-----------|-----------|------------|
| Total | 164 | 22 | 41 | 101 |
|-------|------------|-----------|-----------|------------|

| | | | | | |
|------|-----------------------------|----|----|----|---|
| 2011 | Administrative jurisdiction | 13 | 25 | 50 | 3 |
| | Fiscal jurisdiction | 9 | 16 | 48 | |

Source:

High Council of Administrative and Fiscal Courts - www.cstaf.pt

Directorate-General for Justice Policy - www.siej.dgpj.mj.pt

65. Percentage of judges assigned to the review of administrative acts

As compared to the total number of magistrates, all jurisdictions taken together, the percentage of magistrates allocated for control of administration (fiscal and administrative branch) was:

| | 2013 | 2012 | 2011 |
|---|-------|------|------|
| Percentage of magistrates allocated for control of administration | 10.3% | 9.2% | 8.5% |

Source:

Directorate-General for Justice Policy

http://www.siej.dgpj.mj.pt/SIEJ/PDFs/tribunais/Tribunais_Pessoal%20ao%20serviço_1991_2013.pdf

66. Number of assistants of judges

The Supreme Administrative Court has 12 law clerks that help the judges in their documentary and technical research.

They have a university education and are recruited through examinations reserved for jurists.

This information does not include the administrative assistants for documentation and archives.

67. Documentary resources

The library of the Supreme Administrative Court has a vast collection of works, mainly in Portuguese, as well as numerous collections of legal periodicals.

The Administrative courts of appeal and the fiscal and administrative courts of first instance also have documentation libraries.

The documentation research is available on www.dgsi.pt.

68. Access to information technologies

All the magistrates have computer technology, PC and laptops.

Moreover, in addition to Internet access, all the magistrates and law clerks have free access to different databases pertaining to laws, case-law and legal theory.

The Supreme Administrative Court has an access site to all the delivered rulings – www.stadministrativo.pt. Everyone can access the www.dgsi.pt website to refer to the case-law of the Supreme Administrative Court, by following the online instructions on the home page.

In terms of procedure, the Supreme Administrative Court has a case management software and an application that also allows this Court to manage all the cases exclusively in digital format.

For the courts of 1st instance, there is an information system with the appointment of SITAF, integrating the fiscal and administrative courts and allowing to fully process cases in electronic form, accessible through the <http://www.taf.mj.pt> page.

The system enables the automation of procedures, with the use of workflow engines, and the adoption of a read-only and secure format (PDF).

69. Websites of courts and other competent bodies

Supreme Administrative Court – www.stadministrativo.pt

South administrative court of appeal - www.tca.mj.pt

North administrative court of appeal - www.tcan.pt

Fiscal and administrative courts of first instance - www.taf.mj.pt

High Council of Administrative and Fiscal Courts – www.cstaf.pt

Procedural information system - SITAF - www.taf.mj.pt

The Supreme Administrative Court and the Administrative courts of appeal disseminate all their decisions, which are available on www.dgsi.pt.

The documentation research is available on www.dgsi.pt.

B. OTHER STATISTICS

70. Number of new applications registered every year

71. Number of cases heard every year by the courts or other competent bodies

72. Number of pending cases

Data concerning the registered, processed and pending cases for the reference years 2013, 2012 and 2011:

Supreme Administrative Court

| Reference year | Stock (cases not processed) | Input (registered cases) | Output (processed cases) |
|----------------|-----------------------------|--------------------------|--------------------------|
| 2013 | 987 | 2,261 | 1,939 |
| 2012 | 665 | 1,752 | 1,585 |
| 2011 | 498 | 1,352 | 1,283 |

Administrative court of appeal

| Reference year | Stock (cases not processed) | Input (registered cases) | Output (processed cases) |
|----------------|-----------------------------|--------------------------|--------------------------|
| 2013 | 5,901 | 3,994 | 4,047 |
| 2012 | 5,954 | 3,936 | 3,510 |

| | | | |
|------|-------|-------|-------|
| 2011 | 5,535 | 3,396 | 2,529 |
| | | | |

Courts of First Instance (Administrative)

| Reference year | Stock (cases not processed) | Input (registered cases) | Output (processed cases) |
|----------------|-----------------------------|--------------------------|--------------------------|
| 2013 | 19,935 | 12,098 | 11,284 |
| 2012 | 18,602 | 11,486 | 10,042 |
| 2011 | 16,963 | 11,900 | 10,280 |

Courts of First Instance (Fiscal)

| Reference year | Stock (cases not processed) | Input (registered cases) | Output (processed cases) |
|----------------|-----------------------------|--------------------------|--------------------------|
| 2013 | 43388 | 14353 | 13927 |
| 2012 | 42976 | 16430 | 15639 |
| 2011 | 42794 | 13762 | 15422 |

Source (with additional statistical information):

Directorate-General for Justice Policy - www.siej.dgpj.mj.pt

High Council of Administrative and Fiscal Courts – www.cstaf.pt

Supreme Administrative Court – www.stadministrativo.pt

Administrative court of appeal - www.cstaf.pt

73. Average time taken between the lodging of a claim and a judgment

As regards the average duration of the cases, by proceedings:

Average duration (months)

| Year | 2012 | 2011 | 2010 | 2009 | 2008 |
|--------------------------------------|------|------|------|------|------|
| Supreme Administrative Court | 5 | 5 | 6 | 5 | 7 |
| North Administrative court of appeal | 12 | 10 | 8 | 8 | 9 |
| South Administrative court of appeal | 17 | 14 | 11 | 13 | 15 |

Source:

Directorate-General for Justice Policy

www.siej.dgpj.mj.pt

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

Information not available.

75. The volume of litigation per field

As regards the information concerning the database of the case-law of the Supreme administrative court, the corresponding topics to the decisions delivered in 2013, in administrative matters, can be summarised as follows:

Public Administration - 66

Statutory – 37

Competition - 7

Disciplinary - 14

Other - 8

Indirect Administration - 30

Public contracts - 21

Civil liability – 19

Town-planning/Environment - 16

Enforcement of a judgment – 4

Expropriation/Nationalisation - 3

Procedural Matters - 110

Community law - 2

Summary procedure – 97

Exceptional remedy in cassation

– prior summary examination (article 150) - 449

Appeal for case-law standardisation (article 152) - 9

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

No information available.