ADMINISTRATIVE JUSTICE IN EUROPE

The Council of State of Belgium[1]

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QUESTIONNAIRE ON THE INVENTORY AND TYPOLOGY OF REVIEW OF THE ADMINISTRATIVE AUTHORITIES IN THE 25 MEMBER STATES OF THE EUROPEAN UNION.

Opening.

1. Can you state the important milestones in the evolution of the review of decisions and actions of administrative authorities in your country?

Since 1831, the Belgian Constitution allows courts to not apply unlawful administrative acts. This power, established as an obligation by the Supreme Court of Appeal, is called the "plea of illegality", and is guaranteed by Article 159 of the Constitution, which states that "the courts and tribunals shall not apply the provincial and local decrees and general regulations, until they comply with the laws".

In 1946, the legislature instituted the Belgian Council of State, which was authorised to censure, in proceedings for annulment, administrative acts vitiated by excess power, i.e. unlawful acts. This refers to an ex post review by the administrative litigation section of the Council of State. The administrative high court also has the jurisdiction to issue non-binding opinions on the preliminary drafts of regulatory orders of the various federal State governments (federal, regional and community governments). This ex ante review, also carried out with regard to the preliminary drafts of legislative texts, is carried out by the legislative section of the Council of State.

In 1991, the Council of State was vested with additional powers as litigants could apply, in summary and interim proceedings, for the suspension of the execution of administrative acts, firstly in case of risk of serious irreparable harm, and since 2014, in case of emergency.

The last constitutional revision of 2014 tempered the monopoly of the judicial courts in litigation involving civil rights, with the Constitution stipulating that the Council of State has the jurisdiction to rule on the civil effects of its annulment judgments (Const. Art. 144 (2)). It can henceforth award a "restorative allowance" to any litigant who has suffered the effects of the annulled administrative act (consolidated acts on the Council of State, Article 11 *bis*). It may also indicate the measures to be taken to remedy the illegality sanctioned by its annulment

[1] In the following lines, only the powers specific to the Council of State will be examined. As regards the judicial courts, refer to: https://e-justice.europa.eu/content_ordinary_courts-18-be-fr.do?init=true&member=1".

judgments and, if the annulment implies that the authority takes a new decision, it may prescribe a time limit for doing so (consolidated acts, Art 35/1 and 36, §1st).

2. Is the review of administrative acts and actions consistent with the fact that administrative authorities are subject to the rule of law and intended for the protection of the rights of individuals? Or is it just a review of the proper functioning of the administration?

The review of the actions of administrative authorities is clearly in view of the rule of law and the fact that the public authority is subject to the rules of law. This review stops here: the separation of powers prohibits any discretionary review of the administrative action by the administrative court.

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?

There is no "official" definition of administrative authority in Belgian law.

Nor is such a definition contained in the Constitution, laws or regulations.

The legislature, nonetheless, makes frequent use of the expression "*administrative authority*".

However, rather than impose a definition, it referred to the concept as it is used, but not defined, in Article 14(1) of the consolidated acts of 12 January 1973 on the Council of State which empowers the latter to annul acts and regulations of the "*administrative authorities*" if they are tainted by misuse of power, by relying upon the interpretation given by case law.

The problem is that case law – not to mention legal doctrine – on this matter has varied greatly over time.

Put briefly, it has shifted – far from smoothly and not without controversy – from a precise but overly narrow definition (according to some) based on an organic criterion to an extensive, albeit more ambiguous, representation geared towards a combination of organic and material criteria.

According to the initial interpretation by the Council of State in a ruling by the assembly (no. 93.289 of 13 February 2001), the administrative authorities within the meaning of Article 14(1) of the consolidated acts are the bodies which, by virtue of the Constitution and the special institutional reform acts, exercise executive power[2], as well as the bodies which, by virtue of constitutional or legislative law, fall under the hierarchical[3] or supervisory[4] purview of the federal government, the community or the region.

According to the second interpretation, laid down on 6 September 2002 by the Supreme Court of Appeal (J.L.M.B., 2004, pp. 11 et seq.) in its capacity as court of jurisdictional disputes, institutions created or accredited by the federal public authorities, the Communities, the Regions, the provinces or the municipalities, constitute administrative authorities within the meaning of Article 14 of the Consolidated Acts on the Council of State, inasmuch as their operation is determined and supervised by the public authorities and they can take required

[2] Namely, with Belgian public law as it stands, the King, the ministers and secretaries of state, the members of the federal government, the members of the Community and regional governments, the members of the board and of the French-speaking Community and the Joint Community Commission.

[3] For example, the public universities coming under the jurisdiction of the Community.

[4] Bodies of the provinces, municipalities, the Brussels conurbation, most public institutions, public economic undertakings, inter-municipal associations, etc.

decisions regarding third parties, more specifically by determining unilaterally their own obligations to third parties or by ascertaining, likewise unilaterally, the obligations of third parties.

This interpretation has in particular led to the recognition that private education institutions acted as administrative authorities when they issued or refused to award degrees to their students.

There has been an "alignment" of the positions adopted on the matter by the legislative section of the Council of State (see, in particular, Lower House Session 2002-2003, Par. Doc. no. 50 0679/002, p. 14) and by the plenary session of the administrative section (as named on the date that these rulings were handed down - C.E., 4 June 2003, Zitoumi versus Institut technique Cardinal Mercier-Notre-Dame du Sacré-Coeur, no. 120.131; Van den Brande versus the non-profit association Inrichtende macht van de Vlaamse Katholieke Hogeschool voor Wetenschap en Kunst, no. 120.143).

Since the reform of 2014, the review of the Council of State is also exercised with regard to acts and regulations "of the legislative assemblies or their bodies, including the mediators instituted with these assemblies, the Court of Auditors and the Constitutional Court, the Council of State and the administrative courts as well as the bodies of the judiciary and the High Council of Justice, relating to public procurement, their staff members, as well as recruitment, appointment, assignment to a public office or disciplinary measures" (consolidated acts on the Council of State, Art. 14, § 1, paragraph 1, 2°).

4. Are acts of administrative authorities classified in your country?

Belgian law draws a distinction between individual acts and regulations (general legislative acts).

I -WHO CONTROLS THE ACTS AND ACTIONS OF THE ADMINISTRATIVE AUTHORITIES?

A -The competent bodies.

5. Is the review of the administrative authorities provided by non-judicial bodies linked to administrative authorities that could act like courts?

The principle of the separation of administrative and jurisdictional functions is generally observed in Belgian law.

The higher or supervisory authorities under the administrative authority verify whether administrative acts and regulations are legal and compliant with the public interest.

As already mentioned, in Belgian law, the legality of administrative acts and regulations is still verified by the courts and tribunals, as well as by administrative courts with special jurisdictions (Aliens Litigation Council, etc.) and by the Council of State, the only administrative court with general jurisdiction.

Belgian law draws no distinction between administrative courts and administrative courts of appeal.

6. Can you describe the jurisdictional organisation in your country by stating which courts are competent to hear disputes concerning administration acts? If possible, please maintain the following pattern.

The Council of State is the supreme administrative court. There is no first or second degree of administrative courts in Belgium. When such courts are created in specific areas on the initiative of the federal entities or the federal State (e.g. the Aliens Litigation Council), the Council of State rules as the administrative court of cassation.

It should be noted that since the last constitutional reform of 2014, the prior (non-jurisdictional) appeal to bodies legally invested with the function of mediator has been encouraged by the legislator, since a complaint filed before one of these bodies suspends the deadline for appeal to the Council of State (consolidated acts on the Council of State, Article 19 (3)).

B -The status of the competent bodies.

7. If the review of administrative acts and action lies within the jurisdiction of ordinary courts, is that jurisdiction to hear administrative disputes prescribed by texts (Constitution, law) or by case-law?

Since 1831, the Belgian Constitution has granted the judicial courts and tribunals the power, established as a duty by the Supreme Court of Appeal, to prevent the application of any administrative act contrary to standards that are superior to it in the hierarchy of standards. This system is known as the "plea of illegality" (Const., Article 159).

8. If the review of administrative acts is carried out by administrative courts, are the existence, jurisdiction and duties of those courts governed by specific rules? Are such rules set out in texts or in the case-law?

All administrative courts can be created only by a legal (or decretal) text or a constitutional provision, and never by case-law.

C - The internal organisation and the composition of the competent bodies.

9. If the review is provided by *ordinary courts*, describe their internal organisation and specify if they comprise specialised chambers and their composition.

This question does not concern the Council of State.

10. If the review is provided by *administrative courts*, present their internal organisation. Distinguish between the highest and the lower courts. Could you provide a chart or a diagram?

As indicated above, there are currently no administrative courts with general jurisdiction in Belgian law.

Nevertheless, a large number of administrative courts with specialised jurisdiction have been created by the legislature over time, pursuant to Articles 145, 146 and 161 of the consolidated Constitution.

The legislature has most often introduced a new body to do so.

In certain cases, however, it has entrusted jurisdictional competences to administrative authorities that already existed, owing to functional duplication.

In the Walloon Region, disputes concerning the validity of municipal elections are settled in the first instance by the provincial board, pursuant to Article 104, section 8, of the provincial Act of 30 April 1836, maintained in force by the Decree of 12 February 2004, Article 137. In the Flemish Region, the Dispute Resolution Board for decisions on the progress of studies was set up in 2004 in the area of Community education, and in the area of urban planning and the environment, the Collège de maintien environnemental and the Council for challenging authorisations were created in 2007 and 2009 respectively (X. DELGRANGE, "The federated administrative jurisdictions erode the linguistic parity in the Council of State", *Pyramide* , 2017, no. 29, p. 249-250).

The administrative courts rule sometimes in both the first and final instance, sometimes in the first instance and then on appeal.

Final decisions handed down by these courts fall under the jurisdiction of the Council of State for appeal (Article 14(2) of the Consolidated Acts of 12 January 1973).

D. Judges.

11. Do the magistrates who review administrative acts belong to a specific category? Specify whether there are different categories of magistrates/judges according to the type of review of the administrative authorities.

The composition of the Council of State is regulated by law, in accordance with Article 160 of the Constitution. Members of the Council of State are not part of the judiciary and form a body of magistrates *sui generis*.

12. How are judges in charge of the review of administrative authorities recruited?

Access to the position of member of the Council of State is reserved for candidates who have previously demonstrated their skills and ability to perform the function. Pursuant to Article 70(2) of the Consolidated Acts on the Council of State, prescribes:

"No person may be appointed member of the Council of State if s/he does not hold a bachelor's degree, master's degree or doctorate in law, does not have relevant professional experience of a legal nature of at least ten years, and does not meet one of the following conditions:

1° to have passed the competition for auditor and assistant auditor at the Council of State, the competition for legal secretary at the Constitutional Court and the Supreme Court of Appeal, the competition for assistant auditor at the Court of Audit or the professional aptitude test stipulated in Article 259(a) of the Code of Judicial Procedure;

2° to hold an administrative position of at least rank A4 or equivalent in a Belgian public authority or a Belgian public organisation;

3° to have submitted and defended successfully a doctoral dissertation in law or to have qualified for higher education instruction in law;

4° to carry out duties in Belgium as a magistrate in the public prosecution office or as an actual judge or be a member of the Aliens Litigation Council as referred to in Article 39/1 of the Act of 1980 on admission to national territory, residence, establishment and repatriation of foreign nationals;

5° to hold a teaching position in law at a Belgian university.

6° to have, for at least twenty years, practised law as a principal occupation or have exercised for at least 20 years a function that requires good knowledge of law, of which at least 15 years was in the capacity of a lawyer. The requirement of useful professional experience referred to in paragraph 1 shall be met by compliance with this condition."

13. What is the professional training required for judges in general?

See section 12.

14. How are these judges promoted?

Members of the Council of State can be appointed Presidents of chambers and then First president or President of the Council of State, according to a system of temporary but renewable mandates. For the First President and the President, the mandate is renewable only once.

15. How does the mobility work?

Members of the judicial courts move to the Council of State on a voluntary basis. This happens rather frequently.

The reverse also applies, albeit in very rare cases (i.e. mobility from the Council of State back to a judicial court).

Several members of the Council of State have applied for the Constitutional Court and become members thereof.

Magistrates from the Council of State have also been entrusted with assignments by the Government.

E- Role of the competent bodies.

16. What are the different kinds of recourse against administrative acts and action in your country?

In the case of acts adopted by the decentralised authorities (municipalities and provinces), an optional, internal and non-judicial remedy may be sought from the supervisory authority, that is to say the regional governments, which are competent to annul such acts if they undermine legality or public interest. This right of annulment is, however, left to the discretion of the supervisory authority, which is not obliged to exercise it.

Apart from this supervisory control, the appeal for annulment to the Council of State may be exercised by any person proving an interest provided, in particular, that any preliminary appeals organised by the texts have been exercised and that the appeal for annulment is introduced within sixty days of publication, notification or acknowledgment of the administrative act.

17. Are there any mechanisms for preliminary rulings (apart from Article 234 Treaty establishing the European Community)?

Apart from the hypothesis of a request for preliminary ruling submitted to the Court of Justice in accordance with Article 234 TFEU, the Council of State is required to refer a preliminary ruling to the Constitutional Court if a legislative provision (law, decree or ordinance) applicable in a dispute that is submitted to it, is potentially contrary to certain articles of the Constitution (mainly of its Title II: “Belgians and their rights”) or rules that divide jurisdictions between the federal State, the Communities and the Regions.

On the other hand, no preliminary ruling mechanism exists with regard to administrative acts, whether regulatory or individual.

However, it is advisable to keep in mind Belgium's ratification of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the highest courts may address the European Court of Human Rights for an advisory opinion on questions of principle relating to the interpretation or application of rights and freedoms defined by the Convention or its protocols.

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? If yes, specify the various aspects of this advisory role, and whether they are exclusive to the body or the highest court.

The Belgian Council of State has exercised both jurisdictional and advisory duties ever since it was created by the Act of 23 December 1946.

This dual remit is reflected in the way it is organised.

(a) The legislation section has no judicial function.

Its powers are essentially advisory.

Its task is to enlighten and assist the legislature, the federal government, the councils (now the parliaments), and the Community and regional governments, the members of the French-speaking Community Commission or the Assembly, the members of the Board of the French-speaking Community Commission and the Board, depending on the case, in exercising their legislative duties[5].

(b) The administrative legal section is vested with judicial functions.

Articles 8 and 9 of the Acts on the Council of State, consolidated on 12 January 1973, provide that this section, then called the administrative section, may be consulted by the federal ministers and members of the Community and regional governments, the members of the French-speaking Community Commission and the members of the Board, each for the matters that concern them, on the difficulties and disputes that the executive power has to solve or settle, provided they are of an administrative rather than a litigious nature.

Several hundreds of opinions have been issued in this way.

Articles 8 and 9 of the Consolidated Acts were repealed by Article 3 of the Act of 15 September 2006, which entered into force on 1 December 2006, since the legislator considered that issuing opinions was too time-consuming for members of the Council of State assigned to deal with legal cases (Lower House Session 2005 – 2006, Parl. Doc. No. 51 2779/001, p. 21).

19. How are the judicial and advisory functions organised?

The administrative legal section of the Council of State comprises the first president or president, the chamber presidents and members of the Council of State who have not yet been appointed to the legislative section.

The members of the Council of State assigned to the administrative legal section may be called upon by the first president to sit on the legislative section, either to replace a member who is prevented from attending, or to constitute additional chambers as and when required.

The members of the Council of State appointed to the legislative section may be called upon to sit on the administrative legal section as and when needed to form a bilingual chamber, either to replace a member of the Dutch-speaking chamber or a member of the French-speaking chamber prevented from attending, or to form additional chambers.

F - Allocation of duties and relationship between the competent bodies.

[5] Articles 2-6 of the Consolidated Acts, as amended by the Act of 4 August 1996.

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

The task of the general assembly of the administrative legal section of the Council of State is to ensure harmonisation of the latter's case law, at the initiative of the first president or on the request of the relevant chamber or the auditor general (Consolidated Acts, Art. 92).

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 review before the courts?

An action for misuse of power is admissible depending on whether administrative authority reviews, if organised in accordance with legislative or regulatory provisions, have been exhausted.

There are no other preconditions for the litigant.

It should be noted, however, that since the last reform of 2014, the prior (non-jurisdictional) appeal to bodies legally invested with the function of mediator has been encouraged by the legislator, since a complaint filed before one of these bodies suspends the deadline for appeal to the Council of State (consolidated acts on the Council of State, Article 19 (3)).

22. Who is authorised to bring a case before the court? (individuals, legal entities such as associations, companies, etc.), local authorities or other administrative bodies or authorities)

Any natural or legal person concerned, whether of private or public law, may petition the Council of State for an annulment.

The action may be introduced by private individuals as well as private associations with legal personality or by trading companies. Since the last reform of 2014, lawyers are presumed, not irrefragably, to have been mandated by the person whom they represent (consolidated acts on the Council of State, Art. 19, last paragraph).

Local authorities have also brought proceedings before the Council of State to annul decisions passed by the supervisory authority which they considered to be illegal.

Furthermore, associations or groupings without legal personality, such as most often trade unions and political parties in Belgium, may take action before the Council of State for an annulment, when they act in defence of a prerogative recognised by laws and regulations, i.e. for the defence of a functional interest.

This solution is generally explained by the objective nature of the action for misuse of power: legal personality is not required to take action to have an illegal administrative act annulled. It must simply exist in the eyes of the law.

23. For every situation, specify the conditions that must be met in order for an application for judicial review to be admissible?

The petitioner must justify his or her legal entitlement (in principle, age of majority for a natural person, legal personality for an association or grouping) and capacity to act (in particular where proceedings are being lodged in someone else's name).

The petitioner must also establish a legitimate interest.

Since the 2014 reform, the alleged irregularities in support of an action "result in an annulment only if they have been likely to influence the meaning of the decision taken, have deprived the persons concerned of a guarantee or have the effect of affecting the jurisdiction of the perpetrator" (Article 14, §1, section 2).

24. Is the recourse to the courts subject to time limits?

An action for annulment before the Council of State must be brought within sixty days, as the case may be, of the notification, publication or acknowledgment of the administrative act. The prior (non-jurisdictional) recourse to bodies legally entrusted with the role of mediator suspends this period (consolidated acts on the Council of State, Article 19, section 3).

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

Most administrative acts are subject to review by the Council of State. However, in the case of acts exercising a discretionary power of the administrative authority, its review is limited to censuring the manifest error of assessment or the manifestly unreasonable assessment and never leads to substitution of the authority's assessment for its own, because of the separation of powers.

Acts prior to an administrative decision that do not create legal effects in themselves, material acts, internal measures, confirmatory and implementing acts, are not considered as acts that may be annulled by the Council of State, as in the case of contracts entered into by the administrative authority, whose litigation falls within the jurisdiction of the judicial courts.

26. Are applications for review by the courts subject to screening procedures? Distinguish between first instance, appeal, and highest courts.

As regards the Council of State, Article 20 of the Consolidated Acts, as re-established by Article 8 of the Act of 15 September 2006, makes the action for a judicial review, as can be introduced before this court pursuant to Article 14(2), subject to a prerequisite: the petitioner must be authorised by the Council of State itself before s/he may refer the matter to it.

Under the terms of Article 20(1), the application for judicial review is broached only where it is declared admissible by virtue of Article 20(2).

Article 20(2) provides that, as soon as it is placed on the list, each application for judicial review is immediately subjected to the admission procedure on the basis of the petition and the file of the procedure.

Applications for judicial review for which the Council of State has no jurisdiction or which are irrelevant are declared inadmissible.

Only applications for judicial review that cite a violation of the law or a violation of rule of form, either in terms of substance or where required on pain of nullity, are declared admissible, provided that the argument cited by the application does not manifestly lack grounds, and said violation is actually of such nature as to lead to the judicial review of the disputed decision, and that it could have influenced the scope of the decision.

These conditions are declared cumulative.

Nevertheless, under the terms of the final section of Article 20 (2) (new), applications for judicial review in respect of which the Council of State has no jurisdiction, or which are irrelevant and manifestly inadmissible, and which have to be examined by the section to ensure the unity of case law, are likewise declared admissible.

According to Article 20(3), the first president, the president, the chamber president and the member of the Council of State with at least three years of seniority in the position, appointed by the head of the administrative legal section, decide, by ordinance, within eight days of receipt of the court file, on the admissibility of the application for a judicial review, without holding a hearing.

The proceedings must be rapid, without either a hearing or a debate, and succinct reasons must be provided for the decision not to admit or to refuse to admit the application. The legislature has availed himself of the case law of the Court of Justice of the European Communities (CJEC, 8 July 1999, Goldstein vs. the Commission, C-199/98) and of the European Court of Human Rights (ECHR, 19 February 1996, Botten versus Norway, series 1996-1).

27. How must the application be presented? Are there specific forms or is the applicant free to choose the format?

There is no formal procedure to be followed for the application. The only procedural requirements relate to the applicant's contact details, the identification of the impugned act, a statement of facts and the formulation of "pleas" that indicate the violated rule and the extent of that violation.

In the event of a request for suspension, a statement of urgency must also be included in the application.

Article 3(a) of the Regent's Decree of 23 August 1948 defining the proceedings before the administrative legal section of the Council of State and Article 5 of the Royal Decree of 30 November 2006 detail the contents and the conditions for the enrolment of the petition.

28. Has the possibility of bringing proceedings via the Internet been considered in your country or is it already possible? Are there any deliberations or plans for the introduction of tele-procedures or e-procedures (e-registry office)?

Since 2014, recourse to the Council of State can also be introduced by electronic means, according to the procedure organised by the Royal Decree of 13 January 2014 amending the Regent's Decree of 23 August 1948 determining the procedure before the administrative litigation section of the Council of State, the Royal Decree of 5 December 1991 determining the procedure in summary proceedings before the Council of State and the Royal Decree of 30 November 2006 determining the procedure in cassation before the Council of State, with a view to setting up the electronic procedure.

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

Except in certain specific disputes which are free, the introduction of an application before the Council of State is subject, in principle, to the payment of a role fee of 200 Euros (consolidated acts on the Council of State, art. 70) and a contribution to the legal aid fund of 20 euros (law of 19 March 2017 establishing a budgetary fund for second-line legal aid, Article 4, § 4).

The lodging of an application to intervene is subject, in turn, to the payment of a role fee of 150 euros.

30. Is recourse to a solicitor/lawyer or counsel mandatory?

Before the Council of State, except with regard to an application for judicial review, recourse to the services of a lawyer is not mandatory but optional, as is apparent from paragraphs 4 to 9 of Article 19 of the consolidated acts on the Council of State:

"The parties may be represented or assisted by lawyers registered with the bar association or on the list of trainees as well as, depending on the relevant provisions of the Code of Judicial Procedure, by nationals of an EU Member State who are accredited to practice law." The lawyers will always have the right to access the case file at the registry and to file a memorandum in support, under the conditions to be determined by the royal decrees set out in Article 30.
An appeal in cassation may not be lodged without the assistance of a person referred to in paragraph 4, who must sign the petition.
Unless proved otherwise, the lawyer is presumed to have been appointed by the capable person whom he claims to represent".

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

The question of "legal aid" is regulated by Articles 78 to 83 *bis* of the Regent's decree of 23 August 1948 determining the procedure before the administrative litigation section of the Council of State and by Articles 33 to 36 of the Royal Decree of 30 November 2006 determining the cassation procedure before the Council of State.

32. Is there a fine for abusive or unjustified applications?

The consolidated acts on the Council of State contain an article specifically devoted to "fines for manifestly abusive applications" (Article 37).

If "in the view of the auditor's report or additional report, the Council of State should deem that a fine may be justified for manifestly improper legal action, the ruling shall fix a hearing at an early date to that end". If, once an application for a judicial review has been declared inadmissible by virtue of Article 20, the Council of State considers that the fine referred to in section 1 is justified, a difference member of the Council of State to the one who took the decision not to admit the application, shall fix a hearing at an early date for that purpose.

The decision shall be notified to the petitioner and to the opposing party and is "in any case" deemed to have been handed down on the basis of a hearing. Fines range between €125 and €2,500. These sums may be changed by the King in accordance with the consumer price index.

Since 1 January 2016, the proceeds of the fine are paid to the general resources of the Treasury.

B. Trial.

33. Which fundamental principles govern the main trial hearing? The right to inter partes proceedings, the rights of defence, the balance of written and oral elements in the proceedings. Are these principles derived 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?

Before the Council of State, the proceedings are written. Each party is given the opportunity to respond in writing to the arguments of the other party (the authority whose act is challenged submits a response, to which the applicant responds with a reply memorandum), including after filing of the auditor's report (by a last memorandum). This procedure is mitigated in the event of summary proceedings or urgent summary proceedings, taking into account the expeditiousness inherent in this type of proceeding.

34. How is judicial impartiality ensured in your country?

The principles governing the disqualification of judges and judicial advisers and the denial of justice, are applicable to the members of the administrative litigation section of the Council of State and the auditor's office (coordinated laws on the Council of State 29), like the guarantees provided by Article 6 of the European Convention on Human Rights.

Note that according to the Supreme Court of Appeal, the publication of a scientific contribution on a legal subject cannot be considered in writing, by the judge, on a dispute within the meaning of Article 828, 9°, of the Judicial Code (Cass., October 15, 2010, RG C10.0580, *R.W.* 2010-11, liv. 18, 745).

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?

The applicant must formulate his arguments in the petition itself, under penalty of inadmissibility thereof except if they relate to public order or if he was able to formulate them only with the help of documents filed in support of the administrative record that were previously unknown to him.

36. Which other persons can intervene during the main hearing?

Any interested party may ask to intervene during the proceedings for suspension and annulment, provided, however, that the intervener can only raise those arguments that are invoked in the application instituting proceedings.

37. Is there a representative of the State who may submit pleadings in cases concerning administrative law?

No.

38. Is there, in your legal system, an institution that plays a role analogous to that played by the French "commissaire du gouvernement" before the Council of State, i.e. which is completely independent and impartial in a case?

This function can be similar, with the necessary reservations, to the auditor's office of the Council of State which, in litigation, actively participates in the appeal proceedings and, as per the principle of double examination, gives its opinion at the hearing.

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

The petitioner may renounce his/her petition. The chamber to which the case has been referred must comment on the withdrawal.

Should either party die before the debates are closed, the proceedings should be resumed.

Apart from in an emergency, proceedings are suspended during the time granted to the heirs to draw up an inventory and to deliberate.

The rightful claimants of a deceased resume the proceedings via a petition lodged with the registry of the court, drawn up in accordance with Article 1 of the general procedural regulation.

The court registrar sends a copy of this petition to the parties.

Once the time limits for the inventory and deliberation have expired, the proceedings are duly resumed against the rightful claimants of the deceased by petition.

If the deceased petitioner's rightful claimants do not resume the proceedings by the expiry of the time limits, the case is removed from the case list.

Finally, it should be noted that if the administrative authority whose act is challenged before the Council of State withdraws it, the proceedings can be abbreviated and continue in "short debates", the case being immediately scheduled for hearing on the auditor's report (Article 93 of the general procedural regulation).

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

All the procedural documents must be sent to the registry of the Council of State, which is responsible for forwarding them to the parties. According to the ethical practice of lawyers, however, a copy of their procedural documents must be sent to the opposing party at the same time as they are filed with the court registry.

41. Who is responsible for providing the evidence? The parties or the court?

Proceedings are inquisitorial: when examining an application for annulment, the judge is vested with precise responsibilities regarding the examination of the case.

As underscored in the Report to the Regent preceding the Decree of 23 August 1948 laying down the procedure before the administrative section of the Council of State (now the administrative legal section): "It is because the very idea of administrative litigation is inseparable from the concept of general interest that the proceedings must be conducted through the judge, and not by the parties or their counsels. To decide otherwise would be to enable the parties – which are naturally tempted to put their personal conveniences and interest before the general interest – to delay the settlement of disputes; it would moreover enable an administrative authority to use all the means at its disposal to prolong the effects of the illegal act it committed, to the detriment of the law. That is why in France, as in the Netherlands, the Council of State itself conducts the proceedings (…)"[6].

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

The hearings of the Council of State are public, unless to hear those in public would undermine public order or decency.

[6] Belgian Official Gazette, August 23-24, 1948, p. 6821.

The President gives the floor first to the member reporting on the case.

The President then gives the floor to the petitioner, then to the opposing party and, where applicable, to the intervening parties.

The member of the auditor's office then gives his opinion.

The President ultimately brings the debate to a close and deliberates on the case.

43. When and how is judicial deliberation conducted? Who can take part in it?

The deliberation takes place, depending on the chamber, immediately or a few days after the oral hearing. Only the judges who have heard the case may be involved in the deliberation. It does not involve the auditor or other state councillors or any other person.

C. Judgment.

44. How are the grounds of the decision given? In detail or more briefly?

Grounds must be stated for every decision of the Council of State. They must set out the factual elements and arguments of the parties, before explaining the reasons for accepting or rejecting the appeal, whether substantive or admissibility-related.

Note that since 2017, all judgments are written in direct style, without resorting to the formulas formerly used ("Whereas (...)").

45. What are the reference standards [international standards, European standards (Convention for the Protection of Human Rights, Community law), constitution, law, case-law, personal conviction]?

The reference frameworks, or formal sources of Belgian administrative law, include directly applicable international treaty law, European law, administrative decisions and regulations, the Constitution, standards having legislative force (federal laws, Community and regional decrees and, to a certain degree, ordinances passed by the Brussels-Capital Region) and the general rules of law which, unlike the former, are unwritten rules recognised as having the force of law.

These general principles provided by the judge are of fundamental importance in Belgian administrative law, given the absence of codified administrative law and the multitude of texts that coexist not only at the federal level, but also at the level of the federated entities (Regions and Communities).

46. What are the criteria and methods of judicial review?

It is important to point out that, in view of the separation of powers, the administrative high court can never substitute its assessment for that of the administrative authority. When acting within the scope of its discretion, the Council of State may, at most, censure a manifest error of assessment or a decision that is manifestly disproportionate or manifestly unreasonable.

The legal supervision exercised by the Council of State on individual administrative acts and regulations pertains both to external legality (jurisdiction, process of preparation, force) and internal legality (object, motive and purpose).

The scrutiny of grounds more particularly pertains both to grounds in law (legal basis) and to grounds in fact (substantive accuracy, legal classification and evaluation of the facts).

The question as to whether it is up to the court hearing a case of misuse of power to balance the interests is controversial. However, since the last reform of 2014, the balance of interests is expressly provided for in the case of summary proceedings (consolidated acts on the Council of State, Art. 17, § 2, paragraph 2).

The legal supervision exercised on administrative rulings and regulations by the judicial courts pursuant to Article 159 of the Constitution likewise pertains to both internal and external legality. Like the Council of State, the judicial courts and tribunals do not check the suitability of the administrative action.

47. How are the legal costs and expenses distributed?

Before the Council of State, as regards general litigation, the costs are paid as set out in Articles 66 and 67 of the general procedural regulation:

"Art. 66. The costs include:
1° the fees referred to in Article 70;
2° the fees and disbursements of the experts;
3° the taxes of witnesses;
4° living and travelling expenses incurred by the investigation measures;
5 ° the procedural indemnity referred to in Article 67;
6° the contribution referred to in Article 4 (4) of the Law of 19 March 2017 establishing a budgetary fund for second-line legal aid."

"Art. 67. § 1. The basic amount of the procedural indemnity is EUR 700, the minimum amount is EUR 140 and the maximum amount is EUR 1,400.
By way of derogation from the preceding paragraph, the maximum amount is raised to EUR 2,800 for litigation relating to the rules on public procurement and certain works, service and supply contracts.
§ 2. The basic, minimum or maximum amount referred to in paragraph 1 shall be increased by an amount corresponding to 20% of that amount if the action for annulment is accompanied by a request for suspension or provisional measures, or if the request for suspension or provisional measures is introduced under the benefit of extreme urgency and is accompanied by an action for annulment.
The amounts of these increases shall be cumulative, without the total amount of the procedural indemnity thus increased being greater than 140% of the basic, minimum or maximum amount referred to in paragraph 1.
No increase is due, in particular, if the administrative litigation section decides that the action for annulment is not applicable and that it only calls for summary debates, or if Articles 11/2 to 11/4 of this order are applied.
§ 3. The basic, minimum and maximum amounts are linked to the consumer price index corresponding to 100.66 points (2013 base). Any change by more or less than 10 points will result in an increase or decrease of 10% of the amounts referred to in paragraph 1 of this article.
The new amounts resulting from these changes apply on the first day of the month following the month in which the threshold of 10% has been reached.
The Minister for the Interior is authorised to adjust the amounts of this Order in accordance with the formula in paragraph 1."

In principle, the party that succeeds on the merits bears all the costs of the proceedings.

As regards the costs relating to the cassation proceedings, see Articles 28 to 32 of the Royal Decree of 30 November 2006 determining the cassation proceedings before the Council of State.

48. Is it more usual for the case to be decided by a single judge or by a panel of judges?

The principle of collegiality is still applied, but in practice, significant exceptions apply.

In this regard, Article 90 of the consolidated acts on the Council of State provides as follows:

"§ 1. The chambers of the administrative litigation section have three members.
Nonetheless, they comprise a single member when hearing:
1° requests for suspension and provisional measures;
2° applications for annulment or judicial review pursuant to Article 17 §6 and 7, Article 21, section 2 or Article 26, or when the application has to be declared irrelevant, or calls for withdrawal or has to be removed from the case list, or entails only summary proceedings.
By way of derogation, the President of the chamber may automatically order the case to be referred to a chamber composed of one member where the legal complexity or interest of the case is not thereby compromised.
By way of derogation, the President of the chamber may, if the petitioner has made a reasoned request in his or her petition or automatically, order that the case be referred to a chamber composed of three members, when the legal complexity or the interest of the case or specific circumstances so require.
§ 2. When examining the admissibility of an application for judicial review as referred to in Article 20, the bench always comprises a single member."

During the 2016-2017 judicial year, of the 3,339 judgments delivered by the Council of State, approximately 52% were in simplified or abridged proceedings which (in the vast majority of cases) were heard by a single judge. Some of these cases were also cases without a hearing.

49. Where the case is heard by several judges, is the expression of dissenting opinions allowed?

No.

50. Is the decision delivered in writing, or orally?

The decisions of the Council of State are drafted, delivered and then notified by the registry. Apart from exceptional cases ("aliens" litigation in particular), the judgments are published on the website of the Council of State.

D. The effects and execution of the judgment.

51. What is the authority of the decision? Res judicata, stare decisis?

The annulment judgments have the force of res judicata *erga omnes*, while the dismissal judgments have the force of res judicata which is only valid between parties.

52. Can the court limit the effects of the judgment in time?

Since the 2014 reform, Article 14*ter* of the consolidated acts on the Council of State is worded as follows:

"At the request of an opposing party or intervener, and if the administrative litigation section deems it necessary, it shall indicate the effects of the annulled individual acts or, by general provisions, those of the annulled regulations, which must be definitive or provisionally maintained for the period it determines.
The measure referred to in paragraph 1 may be ordered only for exceptional reasons to undermine the principle of legality, by a reasoned decision and after a joint debate. This decision may take into account the interests of third parties."

53. Is the right to the execution of judicial decisions guaranteed in your country? Specify if it is uniformly guaranteed, or through a specific judicial procedure. Indicate if there is a distinction between implementation of the judgment by administrative authorities and its implementation by individuals. Specify if the court has the power of injunction, possibly complemented by coercive fine, in order to ensure compliance with the judicial decision.

Since the last reform of 2014, the Council of State may, at the request of a party, indicate in the reasons for its judgment annulling the measures to be taken to remedy the illegality that led to it, or order a decision be taken within a certain time if the annulment judgment implies that the authority take a new decision (consolidated acts on the Council of State, Art. 35/1 and 36, § 1).

The Council of State may also impose a penalty payment (consolidated acts on the Council of State, Article 17, § 8, and 36, §§ 2 to 5).

In this regard, also refer to the Royal Decree of 2 April 1991 determining the procedure before the administrative litigation section of the Council of State on injunction and penalties.

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?

Draconian measures *for litigants* have been taken since 1991 to expedite proceedings.

To cite but one example, by virtue of the Act of 4 August 1996 amending the Consolidated Acts on the Council of State, a petitioner whose request for suspension has not been accepted, is deemed to have withdrawn if s/he does not file a petition to continue the proceedings within 30 days as of the notification of the judgment.

Since these measures did not suffice to reduce the backlog, especially in litigation involving foreign nationals, the legislature decided to adopt the Act of 15 September 2006 reforming the Council of State and establishing an Aliens Litigation Council.

In a key point of the reform, the Council of State is no longer competent, in applications for suspension or annulment, to review individual decisions taken by virtue of the legislation relating to aliens. This jurisdiction was transferred to the Aliens Litigation Council on the date the latter was created. The decisions of this body may, however, be referred to the Council of State for review.

This new entity is in theory competent to hear petitions contesting decisions taken by the general commissioner for refugees and stateless persons regarding applications for asylum in the broad sense of the term, i.e. both as regards refugee status and the new subsidiary protection status; it is also competent to review, in petitions for annulment, other decisions taken by virtue of the laws concerning access to the territory, residence, establishment and repatriation of aliens; it has the power to suspend, where necessary in a procedure for extreme urgency, decisions contested before it and to order provisional measures where appropriate, in anticipation of the decision on the application for annulment.

"*Modern management techniques*" have been introduced within the Council of State itself, accompanied by statutory amendments. The aim is to apply the instruments used in courts and tribunals to the Council of State as far as possible.

The system of term of office replaces the appointment for life for the chief of staff, the chamber president, the first chief auditor of the section and the first secretary of the section. Holders of the office of first president and president are responsible for management of staff only and are not responsible for management of a chamber.

An evaluation system for office-holders was introduced by law and their workload is to be measured and recorded.

Regulations governing illness and disability of office-holders have been introduced that are similar to those applied in the courts and tribunals.

Additional magistrates, members of the Council of State and members of the auditor's office as well as court clerks have been appointed and assigned to reduce the backlog of ordinary litigation as a matter of priority.

Measures have also been taken to expedite proceedings.

The list of cases in which the dispute may be decided by a single judge has been lengthened.

A petition for judicial review must be signed by a lawyer. A screening procedure is applied. Misuse of such appeal is subject to a fine.

Measures have been taken to simplify rulings and reports.

E- Remedies.

55. How are various functions or/and jurisdictions shared between the lower courts and the supreme courts?

By way of reminder, there are no administrative courts of first instance or of appeal with general jurisdiction in Belgium. The Council of State rules in first and final instance and on appeal as regards the annulment of any unilateral act by an administrative authority, and may review final judgements handed down by administrative courts with special jurisdiction.

It is for this reason that the Belgian Council of State is also called the Administrative High Court, which, together with the Constitutional Court and the Supreme Court of Appeal, is one of the three supreme courts of the Kingdom.

56. **Are there remedies to challenge a judgment before a higher court? Describe these remedies and their functioning.**

The Council of State has jurisdiction to hear appeals and to conduct judicial reviews of decisions handed down by the administrative courts.

Litigation for misuse of power falls within the remit of the Council of State, which rules in the first and final instance.

Nevertheless, by virtue of Article 39/2(2) of the Act of 15 December 1980 on access to the territory, residence, establishment and repatriation of aliens, as introduced by Article 80 of the Act of 15 September 2006, the Aliens Litigation Council rules on annulment via rulings on individual decisions handed down pursuant to said Act, with the exception of the decisions of the general commissioner for refugees and stateless persons, which may be contested with full jurisdiction before the same council.

Rulings by the Council of State may be appealed before the Supreme Court of Appeal only if they are handed down on its own jurisdiction compared with that of the judicial courts (jurisdictional conflict).

It should be noted that in Belgium there is no institution equivalent to the jurisdiction court.

The Supreme Court of Appeal passes judgement on jurisdictional conflicts (Article 158 of the Constitution).

F. Emergency procedures and interim measures.

57. Are there emergency and summary proceedings?

Since the entry into force of the Act of 19 July 1991, which amended accordingly Articles 17 and 18 of the Consolidated Acts on the Council of State, the latter rules in summary proceedings.

The rule is that when an administrative act or regulation is likely to be annulled (jurisdictional decisions for which, unlike in French law, no petition for suspension may be filed, are therefore excluded), the Council of State has exclusive jurisdiction to order the suspension thereof, provided that the emergency is established by the petitioner.

This rule is deceptively clear.

Its application has caused many jurisdictional conflicts.

The Supreme Court of Appeal has developed an interpretation under the terms of which it does not prejudice the jurisdiction of the president of the court based on Article 584 of the Code of Judicial Procedure: s/he retains jurisdiction in cases where subjective rights are at issue.

58. What types of requests can be made for the emergency and summary proceedings? Ascertainment of a situation, the obligation for administrative authorities to forward a document, the suspension of the execution of an administrative act, the payment of a provision?

A petition for the suspension of an administrative act or regulation may be lodged with the Council of State pursuant to Article 17 of the Consolidated Acts of 12 January 1973.

When such a petition is filed with it, it may, on a provisional basis and under the conditions set out in Article 17 § 2, paragraph 1, or if it contains serious arguments and is urgent order all such measures as necessary to protect the interests of the parties or persons who have an interest in the resolution of the case, except for measures relating to civil rights.

59. Are there different types of summary proceedings? General or specific to certain litigants?

In cases where the periods for ordinary administrative summary proceedings are not likely to offer the applicant adequate protection of legality, a suspension procedure “of extreme urgency” is provided before the Council of State.

Equivalent to an emergency application in chambers before judicial courts, this suspension procedure of extreme urgency allows for a hearing to be promptly scheduled and a judgement to be delivered in a short span of time (a few days).

For matters concerning public procurement, the suspension procedure of extreme urgency is the main remedy (act of 17 June 2013 on motivation, information and remedies in the area of public procurement, certain works, supplies and services contracts and concessions, Art. 47).

60. **Can disputes be settled by administrative authorities themselves? How?**

As already indicated in the answer in point 16, under Belgian law, petitions may be filed with the administrative authorities, in the absence of relevant legislative or regulatory provisions.

1) A distinction is drawn in this respect between an application for reconsideration lodged with the perpetrator of the act at issue, a hierarchical application and a supervisory application lodged with the corresponding supervisory authority, that fall under administrative centralisation and decentralisation respectively.

An administrative authority is not required to review such an application not covered by legislative or regulatory provisions.

This is not a prerequisite to filing an application for annulment before the Council of State.

However, if the litigant decides to try his luck by filing a complaint with the supervisory authority against an act of a decentralised authority, this complaint, however optional, and insofar as it is lodged before the expiry of the period of recourse to the Council of State and the time available to the supervisory authority to exercise its powers of suspension and annulment, interrupts the period of sixty days prescribed to refer the matter to the Administrative High Court until the litigant is informed about the decision of the supervisory authority (C.E. (A.G.), 13 February 2001, Van Middel, No. 93.290).

In the Flemish Region, this case law has been transposed in Article 259 of the Communal Decree of 15 July 2005.

2) Countless standards have the force of law, as do regulations that provide for applications to administrative authorities, which were set up specially to hear such cases or which existed already.

An administrative authority with which such an application is filed is required to examine it.

It then acts to reverse it.

This is generally a prerequisite to an appeal lodged with the Council of State.

61. Can administrative disputes be settled by independent bodies (offices, agencies, ombudsman, mediators, regulation authorities)?

The matter can be submitted to various mediators established by law, decree or ordinance before the Council of State, in which case the deadline for lodging an action for annulment is suspended for a period of up to 4 months (consolidated acts on the Council of State, Article 19, paragraph 3). However, this is by no means a mandatory prerequisite.

62. Can administrative disputes be resolved by using means other than recourse to the courts?

No, subject to the use of the mediators referred to in question No. 61.

IV. ADMINISTRATION OF JUSTICE AND STATISTICAL DATA

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.

The Council of State's budget is part of the budget of the Federal Public Service, under a separate budget division. In 2017, the Council of State's budget was about 38 million Euros.

64. Specify the number of magistrates.

The Council of State, in the strict sense, comprises 44 members, i.e. a first president, a president, 14 chamber presidents and 28 members.

The auditor's office comprises 80 members, i.e. an auditor general, a deputy auditor general, 14 first section head auditors, 64 first auditors, auditors or assistant auditors.

The coordination office comprises 4 members, i.e. two section head first secretaries, two first secretaries, secretaries or assistant secretaries.

The legal basis is Article 69 of the consolidated acts on the Council of State.

65. What percentage of judges is assigned to the review of administrative authorities?

Within the Council, in the strictest sense, the administrative litigation section consists of 11 chambers: 5 chambers for French, 5 chambers for Dutch and 1 bilingual chamber, each consisting of 3 members. The bilingual chamber comprises magistrates assigned primarily to a unilingual chamber depending on their linguistic role. According to this organisation determined by Article 86 of the consolidated acts on the Council of State, 30 members having the status of chamber presidents and members are assigned to the administrative litigation section.

As regards the auditor’s office, 54 members are assigned to the administrative litigation section.

66. Apart from the 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.).

The chambers and the auditor’s office have some legal administrative attachés.

67. Do you have a library and what kind of works and documentary resources can be found there?

The Council of State has a library containing the main collections of legal periodicals and works on legal doctrine in French and Dutch.

A workstation is connected to the Council's databases and to other Belgian, European and foreign sources accessible via the Internet.

68. Do you have access to computer resources? In what proportion? And for what kind of tasks (file management, database, computer assistance for drafting decisions?)

Each member of the Council of State has a computer with access to the network.

The auditor's office and the coordination office have created databases that are particularly suitable to the work of the institution.

The opinions and rulings of the Council of State are systematically entered into the databases, which are for the most part made available to the public.

In recent years, the Council of State has computerised many work processes.

Since 1 February 2014, the administrative litigation section of the Council of State also has an electronic procedure (see Article *85a* of the Regent's Decree of 23 August 1948 determining the proceedings before the administrative litigation section of the Council of State, see also point 28 above). In concrete terms, this means that the parties may bring their action exclusively using electronic means. It is currently optional, not an obligation. This electronic procedure is a success and today around 40% of pending cases are at least partially electronic. Building on this success, the Council of State wishes to continue the process of modernisation and digitisation of its procedure.

69. Do competent bodies and courts have a website to publicise and to communicate with the litigants?

The Council of State has its own website.

External users can access this site for information on the jurisdiction and operation of the institution, on the legislation applicable thereto, and on rulings and opinions handed down by it.

It is updated continuously and has a "News" section on the home page where recent newsworthy decisions and information are posted. Since early 2013, the Council of State has professionalised its communication and appointed new press magistrates. These magistrates have received "*media training"* and are in contact with the press. When important or newsworthy rulings are given, the Council of State makes sure to proactively communicate with the public. Upon notification of these rulings to the parties concerned, the Council of State publishes a "*newsflash*" on its website, which is a summary of the ruling allowing the public to understand the scope and use of the ruling in question. This proactive communication is an essential element for the image of the Council of State.

The Council of State is also responsible for making the rules and regulations in force available to the public. To this end, the Council website provides access to a "refLex" database which is designed as a search tool for regulations applicable in Belgium. It can also be used to browse through other databases. The Council's website can also be used to access "juriDict", a database of the legal content of the Council's case law. It contains rulings as well as non-admission orders.

B. Other statistics and figures - 2008 and 2009 as reference years.

70. How many new applications are registered every year with the court registry or the authority in charge of registering them?

During the judicial year 2016-2017, 2801 new cases were enrolled.

71. Number of cases heard each year:

During the judicial year 2016-2017, 3339 judgments were delivered.

As regards the procedure of admissibility in cassation, 415 orders were issued.

72. Number of pending cases:

At the end of the judicial year 2016-2017, the number of pending cases was 4,261.

73. Average time taken to deliver a judgment:

For cases closed during the judicial year 2016-2017, the average time is estimated at 17 months.

74. Percentage and rate of annulment of administrative acts and sentencing of the administration before the lower courts:

As mentioned above in point 71, 3339 judgments were delivered during the judicial year 2016-2017. Of these, 2551 were final judgements. Of these 2551 final judgments, 585 judgments concluded (at least partially) with annulment. For this judicial year, the annulment rate is 23%.

75. Volume of cases by domain:

The distribution of the 3339 judgments delivered during the judicial year 2016-2017 is as follows:

- 3084 judgments delivered in general litigation;
- 169 judgments delivered in litigation for annulment involving foreign nationals;
- 86 judgments delivered in general litigation for annulment.

For example, of these 3339 rulings, about 25% pertained to urban planning in the broad sense, 20% to civil service and 13% to public procurement.

In addition, there are 415 orders delivered during the procedure of admissibility for annulment. These orders are distributed as follows:

- 336 orders used in litigation for annulment involving foreign nationals;
- 79 orders used in general litigation for annulment.

C. The economics of administrative justice.

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

To our knowledge, such a study does not exist.

The Council of State only takes into account legal aspects when it is responsible for dealing with an objective dispute.

That being so, there are two exceptions:

- the possibility of maintaining the effects of an annulled act (consolidated acts on the Council of State, Art. 14 *ter*);
- the possibility of creating a balance of interests (consolidated acts on the Council of State, Art. 17, § 2, paragraph 2).