ADMINISTRATIVE JUSTICE IN EUROPE

- Greek report -

Vassilis ANDROULAKIS, Master of Requests at the Council of State[1]

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

The creation of administrative jurisdictions has been provided for in Greece since 1833. The Controller and Auditor General was the first created as an administrative body and qualified administrative jurisdiction on certain administrative litigations it was subjected to. The Council of State was planned by royal decree in 1833 as a body with the character of a King's Council rather than a real jurisdiction, in spite of some capabilities of a jurisdictional nature which were attributed to it.

The Constitution of 1844 abolished the Council of State and established the system of "sole jurisdiction", according to which jurisdictional control of the administration's action in Greece belonged to civil jurisdictions, aside from exceptions especially introduced by law. In 1911, the Constitution of 1864 was revised, and the State Council, having the nature and capabilities of an administrative cancellation jurisdiction, was created. However it only began operating, finally, in 1929. The State Council's competence for cancellation did not have any effect on the competence of the civil jurisdictions concerning the administrative disputes in full litigation.

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

---

[1] With the assistance of the Masters of the Requests C. Sitara, M. Tripolitsioti, S. Ktistaki and of the Auditor N. Markopoulos

Under the empire of the Constitution of 1952, competent administrative tax courts were created.

The current Constitution - dating from 1975, but revised in 1986, 2001 and 2008 - provides a comprehensive system of administrative justice, within which administrative disputes of all kinds shall without exception fall within the jurisdiction of the administrative legal bodies. This system was created by law 1406/1983, the first paragraph of which lays down the general rule that 'ordinary administrative tribunals' hold jurisdiction for administrative disputes recognized by the law as 'full jurisdiction' disputes (cf. question 55 B below). The Council of State, as the ultimate judge of claims alleging 'ultra vires' action, and of procedural appeals, also has jurisdiction to rule on appeals against the rulings issued by administrative courts on the merits of claims alleging 'ultra vires' action.

2. Purpose of the review of administrative acts

The primacy of the rule of legality governing the action of the administration in Greece is based on the Greek Constitution. Specifically, articles 26 par. 2, 43 and 50 of the Constitution in force establish the rule of legality that is the action of the administration must be subordinated to the rules of law set by acts of the legislative body. This submission of the administration to the rules of law is ensured by the jurisdictional control exerted over acts of the administration. Therefore the rule of legality aims to indirectly subject the administration to the electorate, bearer of popular sovereignty.

The Greek legal order that actually rests on the principle of popular sovereignty presupposes the jurisdictional control over the harmonization of the Administration's activity with the rules of law. The need for jurisdictional control over the legality of the administrative action in Greece then enters into the logic of the rule of law, which is constitutionally guaranteed. Under this aspect, the control over the legality of the administration's action aims to protect the citizen; however, the interests and the rights of the citizen are guaranteed by the provisions of the Constitution relating to public freedom and are provided by the legislation, but can be affected by the administration's action.

The jurisdictional control over this action notably aims to prevent the administrative bodies from prejudicing the citizen's protective interests or subjective rights. Among the main means of protection of the citizen, that of the jurisdictional protection against any illegal act of the administration is guaranteed by the Greek Constitution (art. 20); it might result in the cancellation or the modification of the administrative acts that prejudice the citizen's protective interests or subjective rights. Furthermore, the cancellation of the illegal act, or the recognition of its illegality, can lead to compensation for damage caused to the citizen. In conclusion, control over the administration's acts and action in Greece is not a simple control over the correct operation of the administration, but fits into the logic of the rule of law through its double objective: guarantee the respect for the rule of legality as well as protection of the citizen.

3. Definition of an administrative authority

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

4. Classification of administrative acts

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

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

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

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

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

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

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

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

8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

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

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

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

There are no specialized chambers.

10. Internal organization of the administrative courts

According to the provisions, rather comprehensive in this subject, contained in the constitutional text, the control over the administration (in the bodily meaning of the term according to a well-established jurisprudence) is carried out by the administrative jurisdictions (art 94-95): State Council (the inventory of its powers is drawn up by art. 95 par. 1), Administrative Courts of appeal and Administrative Courts of first instance.

The State Council is the archetypal judge of recourse for excess of power. The law can empower the Courts of Appeal or the Courts of first instance to have competency regarding recourse for excess of power against a specific category of cases (art. 95 par. 3). 3). In this case the State Council is the judge of appeal against their decisions. The Courts of first instance and the Courts of Appeal have competency regarding recourses of full jurisdiction, the State Council being, in this case, the judge of cassation. The State Council might have competency, in first and last resort, regarding recourse for full litigation (art. 93 par. 1 par. c. This hypothesis is rather rare; for an example, see offence question 30). The administrative courts have a general nature; there are no administrative jurisdictions specialized in specific disputes.

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

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

In Greece there is no Constitutional Court, such as for example the Constitutional Council in France. As the control over the laws constitutionality has a diffuse nature, it can be carried out by any court. The Constitution provides (art. 100 par. 1) that if the supreme courts (State Council, Court of Cassation, Controller and Auditor General) give rulings diverging on the constitutionality of a law (or a legislative

provision) a Special Supreme Court is competent (see also supra question 6 in fine) to decide on the variance created by their rulings. This court could be described as a constitutional court but it does not have competency regarding acts of the administration.

D. JUDGES

11. Status of judges who review administrative acts

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

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

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

13. Professional training of judges

In addition to basic training (cf. answer 12) the Judicial Academy provides magistrates with vocational training in all areas.

14. Promotion of judges

The Constitution guarantees the magistrates "personal" independence (art 87-91). Among the guarantees of personal independence we can mention irrevocability (that is the magistrates are named for life, until they reach the age limit, set by the Constitution), as well as the fact that for everything in relation to transfers, promotions of the judges, their disciplinary liability and generally everything in relation to the course of their career, the Higher Councils of the Magistrate (three exist: one for the administrative justice – made up of state councillors – one for the civil and penal justice and one in particular for the Controller and Auditor General) who decide. This is a merit system. However, the promotion to the grade of president and vice president of the three supreme courts, as well as the positions of Attorney General and assistant prosecutors of the Court of Cassation is carried out by the Council of Ministers.

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

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

15. Professional mobility of judges

See answer 14.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

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

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

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

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

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

A system resembling that of the 'preliminary approach to a question' and designed to accelerate the provision of administrative justice is the procedure commonly referred to as the 'pilot or test case', introduced by art. 1 of law 3900/2010.

With this procedure, a commission comprising the President and two Vice Presidents of the Council of State may, if requested by one of the parties, decide that a claim (of full jurisdiction or 'ultra vires' action) made before a lower legal body is to be judged directly by the Council of State, provided the case raises a question of particular interest, with consequences for a considerable number of people. Likewise, if an administrative legal body (whether a Court or a Tribunal) hears a case that raises a question that has the above characteristics, it may issue a preliminary ruling requesting that the Council of State resolves the question. The decision reached by the commission is pronounced, resulting in the suspension of all cases being dealt with in administrative legal bodies in which the same question arises. The Council of State may either merely issue a ruling on the question deemed to be important that is raised by the case (in which case the case shall then be referred back to the lower legal body for a definitive judgment), or issue a judgment itself on the merits of the case, which it will do in the event that no factual issues are to be dealt with. As for the scope of the ruling of the Council of State: 1) Its ruling is binding on the parties and the lower legal body initially hearing the case that was referred to it. 2) Its ruling is not binding in legal terms on the other lower legal bodies, which have suspended cases in which the same question arises. It is however clear that if an administrative legal body issues a judgment that runs contrary to that of the Council of State in the ' pilot' case, said judgment shall be open to appeal or judicial review.

18. Advisory functions of the competent bodies

According to Article 95 par. 1 d of the Constitution, the State Council gives an opinion on the legality of the draft regulatory decrees. The opinion is given at the end of the decree development process. This opinion (which is not legally mandatory for the minister) is given by the 5th section of the Council, either in a three-member- or a five-member-panel. The section may refer the case to Parliament if this is a project

dealing with an important case; it is bound to send it when a difficulty of unconstitutionality of the legislative capacity arises whereby the decree is taken (art. 100 par. 5 of the Constitution).

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

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

See answer 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 harmonization and the standardization of the application and the interpretation of the law are made by the State Council (Supreme Administrative Court) through the rights of review (Appeal or recourse to the Supreme Court, according to the case), that the parties in the legal proceeding may institute. Moreover, the legislation provides for appeal to the Supreme Court in the interests of law which can be exerted by the Minister of justice, the minister exerting the supervision over the relevant public concerned and the State's general commissioner within the administrative courts. Recourse in the interests of law is exerted without delay restriction and the ruling given has no incidence on the parties' interests.

Cf. also answer 17 on the 'pilot ruling' procedure, with regard to interpretation of a legal principle without passing through all levels of jurisdiction.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

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

22. Right to bring a case before the court

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

23. Admissibility conditions

In order to refer to the judge concerning excess of power, the petitioner must prove that the disputed administrative act causes a material or moral injury to his/her interests; this has to be a personal, direct, current (that is the prejudice inflicted must exist when the act is enacted, when recourse is exerted and when recourse is discussed)

and protected interest. As for entities, they should exert recourse for excess of power upon condition that the disputed act prejudices the interests of all their members and not the interests of only some.

For recourse of full jurisdiction, the concept of interest is narrower: The interest is recognized if the disputed act a) prejudiced a specific subjective right, recognized by the administrative law, in which content is a service from the administration or b) imposed a specific obligation. If this is a litigation of a tax nature, the person who is bound to settle the imposed sums should exert recourse.

24. Time limits to apply to the courts

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

25. Administrative acts excluded from judicial review

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

26. Screening procedures

1. The law relating to the Council of State (presidential decree 18/1989 with several amendments) provides for the filtering of judicial appeals by a panel of three judges from the relevant section. If the appeal is clearly inadmissible or unfounded, if it has been lodged without the payment of a legal deposit, or if another administrative legal body holds jurisdiction to deal with it, it is presented to this panel which may, without a hearing and with a ruling arrived at in chamber, reject it or if applicable refer it to the appropriate body. The law does not stipulate whether or not the ruling must be accompanied by a short explanation. In practice, the ruling of referral or rejection is like any other ruling accompanied by an explanation (even if the aim is to produce a slightly shorter explanation), as the provision of an explanation for judicial decisions is a constitutional requirement. Notification of the ruling must be issued to the party that lodged to the appeal via the registry. This party shall then have 60 days (and at any event no more than 3 years after publication of the ruling), in which to request that the case be discussed in the hearing. In such an event, the interested party must pay a special legal deposit, amounting to three times the anticipated legal deposit.

2. The conditions for admissibility of the application for judicial review or appeal before the Council of State have been rendered truly draconian (art. 12 of law 3900/2010, amending article 53 of decree 18/1989): the application for an appeal or judicial review is inadmissible unless the applicant demonstrates, through specific assertions contained in the document commencing legal proceedings, either that the case raises a legal question for which there is no Council of State case law, or that the ruling under challenge is contrary to the case law of the Council of State or of another Supreme Court or to a definitive decision by an administrative legal body. What is more, the application for judicial review is inadmissible unless the amount at stake in the case exceeds 40,000 euros. In the case of a dispute relating to government contracts, the relevant amount is 200,000 euros. Council of State case law has intepreted in a rigorous manner the abovementioned provisions, making it fairly difficult to apply for a judicial review or lodge an appeal. It requires the party lodging an appeal or applying for a judicial review to declare and demonstrate, in his or her document commencing legal proceedings, that for each of the grounds put forward there arises a legal question that is decisive for resolution of the dispute, and futher that either the answer provided by the administrative legal body was contrary to the settled case law of the Council of

State or of another supreme legal body, or that there was no case law. The Council has also accepted that these provisions comply with the constitutional articles guaranteeing the right to legal protection and the Council's jurisdiction to judge procedural or other appeals ; finally it ruled that these provisions were compliant with those of article 6 of the European Court of Human Rights. The ECHR for its part, in its ruling dated 2nd June 2016 on the case Papaioannou v Greece (Application no 18880/15), concluded that the provisions of art. 12 of law 3900/2010 were not contrary to the Convention.

27. Form of application

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

28. Possibility of bringing proceedings via information technologies

In principle, the original of the procedural document must be lodged at the secretariat of the appropriate court (in the case of claims alleging 'ultra vires' action, it may be lodged with any public authority, while applications for judicial review must be lodged at the registry of the legal body that issued the ruling against which the application is being made).

However, since 2013 a legal framework (created by means of a presidential decree) has been in place, enabling applications to the Council of State and administrative legal bodies hearing cases to be lodged by electronic means, although this option has not been exercised to any great degree by lawyers.

29. Court fees

The procedural document must bear the appropriate stamps, and must in order to be admissible be accompanied by the legal deposit, the amount of which depends on the nature of the application (for example, at present in the case of proceedings before

the Council of State : a) for an claim alleging ‘ultra vires’ action or an application for judicial review of a case relating to an issue of social security, the deposit amounts to 150 euros, b) for an appeal, it amounts to 200 euros and c) for an application for judicial review, it amounts to 350 euros). The deposit is designed to prevent the lodging of judicial claims that are inadmissible or unfounded. The applicant may submit a request to the legal body for exemption from the requirement for a legal deposit on the grounds of destitution. In any event, if the claim is accepted the deposit is refunded to the application.

30. Compulsory representation

Applications must always be signed by a lawyer, with the exception of claims lodged before administrative tribunals in which the amounts at stake are modest (1,500 euros or under) or cases relating to issues of social security (such as retirement pensions).

At the hearing the applicant must always be represented by a lawyer, except in the case of claims that may be signed by the applicant him- or herself.

31. Legal aid

The petitioner may file a request for exemption from legal fees because of indigence. If the request is approved by the Court, the petitioner is exempted from any expense relating to the legal proceeding (see also supra question 29), as well as his/her lawyer’s fees. The request’s approval is granted either by the President of the judgment panel, or by the judge judging the case, if this is a single judge panel.

32. Fine for abusive or unjustified applications

The code of civil procedure stipulates that the court may impose a fine on a person who lodges an improper or unjustified claim. Although this provision also applies to claims made before the Council of State, the latter only avails itself of this penalty in exceptional cases.

B. MAIN TRIAL

33. Fundamental principles of the main trial

The administrative litigation procedure is governed by several principles, including the principle of equal rights of the parties and that of the audit in the presence of the parties. According to these principles essential to any litigation procedure, the parties are equal before the court, they have the same rights and have the same obligations; they must be offered the same arguments to defend their position. The parties must receive an appearance notice in due course for the debates; the Court must give them the possibility to take cognisance of the briefing exhibits and arguments of the opposing party.

The procedure is essentially written, notably at the inquiry level. During the debates, witnesses may be heard before the administrative courts of first instance, when they judge recourse of full jurisdiction; the judge in charge of the legal inquiry (if this is recourse for excess of power) pronounces his/her report and in the same way lawyers for the parties pronounce their plea. The rules of the procedure can be found in the texts of domestic law (law related to the State Council, Code of administrative litigation procedure) and notably in the Constitution, which establishes the right to legal protection by the courts for everybody, as well as the possibility to expose their point of view before them (art. 20 par. 1). 1).

34. Judicial impartiality

According to the Constitution “No person shall be denied the right to his/her lawful judge without consent” (art. 8). Consequently the court judging a case will have to be appointed in advance, and not for a legal proceeding, according to abstract and general criteria. In the same way the judges who form the court must be appointed according to objective criteria and not for a specific case. All the legislative texts relating to the litigation procedure (law on the State Council, Code of administrative litigation procedure, Code of civil procedure, Code of penal procedure), on one hand attribute to the person liable to trial, the right to request objection to a judge and on the

other hand impose magistrates to require their exclusion if there are reasons likely to question their impartiality (for example, if they have family relationships with the parties in the legal proceeding, or if they were heard as witnesses in the context of the same case etc.).

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

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

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

36. Persons allowed to intervene during the main hearing

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

Regarding recourses of full jurisdiction, a distinction must be made: If this is a legal proceeding lodged by recourse, any third party may exert an incidental intervention in order to support the party to whom the successful legal proceeding result is favourable to the third party (the intervention can be done both in first resort and in appeal); if this is an action for compensation, the third party can intervene both incidentally and principally. The action is considered principal if the third party claims

to be the beneficiary itself of the claim and that it submits the request to be judged; in this case the intervention can be exerted, for the first time, only in first resort. In cassation the intervention is not provided.

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

There is no public prosecutor or government commissioner. Certain procedures (notably claims alleging 'ultra vires' action) involve the designation of a reporting judge (who is a member of the panel of judges). In his or her report (which according to the law is published three days before judgment of the case), this reporting judge merely sets out the elements of the dispute and the legal questions raised by the case, without expressing an opinion.

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

See answer 37.

39. Termination of court proceedings before the final judgment

The legal proceeding may end (before the judgment): a) In the event of the death of the petitioner or the dissolution of the entity who requested appeal. In this case, the proceeding is temporarily suspended (on request or ex officio) so the possible petitioner's successor can ask for the procedure to resume; if such is not the case there is termination of the instance. b) If the disputed act is withdrawn by the administration or cancelled by a jurisdictional decision. c) If the disputed act ceases to be in force for any reason. However in this case the petitioner may claim a particular interest so that the legal proceeding continues. d) In the event of withdrawal.

40. Role of the court registry in serving procedural documents

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

41. Duty to provide evidence

The plaintiff must establish proof of the facts supporting his/her interest to act. The parties have the burden of proof for their allegations during the inquiry. Nevertheless the litigation procedure is governed by the inquisitorial system; this is how the reporter ensures collecting any element useful to the case inquiry; he/she may ask the parties to produce any document or useful element.

According to the bodily law of the State Council, the neglect by the administration to communicate elements required to solve litigation even constitutes a disciplinary fault. The court may order the administration, by a non-final ruling, to provide any complementary proof and to force any public authority to provide the documents related to the case in instance. The State Council assessed that the non-communication of a file, in spite of a ruling ordering the administration to submit or complete it, constitutes a presumption of admission of the petitioner’s allegations of fact.

42. Form of the hearing

Regarding recourse for excess of power, the debate starts with the reading of the report of the judge in charge of the legal inquiry. Then the petitioner's lawyer, the administration representative and the intervener's lawyer can speak. The section President or members may ask questions about the case. At the end of the pleadings the parties may request a delay in order to file a complementary memorandum. Regarding the debates related to recourses of full jurisdiction, the hearing proceeds in the same way, except that the reporter does not read his/her report, and that the witnesses, upon strict conditions, can be heard. The hearing in the administrative litigation procedure is always public, as the law does not provide any hearing in camera. If the notifications were made in compliance with the law, the hearing takes place even in the absence of the parties.

43. Judicial deliberation

The case deliberation is, of course, confidential and strictly reserved for magistrates who are part of the judgment panel. No other person attends it, not even the court clerk: It is a procedural rule established by the Code of Civil procedure, and also applies in an administrative litigation procedure. Regarding the procedure of recourse for excess of power, as the judge in charge of the legal inquiry is part of the judgment panel, he/she also takes part in deliberations (on the reporter's role, see supra questions 37-38).

The recent jurisprudence of the European Court (Kress versus France) did not change anything in this respect. The vote for the decision starts with the newer participants and ends with the President's vote. For the procedure in the State Council it should be noted that the councillors are entitled to speak and vote, while the Masters of the Requests have an advisory vote, even when they are reporters; consequently only the opinion of councillors is taken into account. Finally, the violation of deliberation secrecy is criminally punished.

C. JUDGMENT

44. Grounds for the judgment

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

45. Applicable national and international legal norms

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

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

46. Criteria and methods of judicial review

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

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

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

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

47. Distribution of legal costs

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

the losing party from all or part of the costs. The costs include, essentially, the lawyer's fees (writing the main request or the motion to intervene, and appearance at the debates of each hearing).

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

In principle, the panels of judges are formed on a collective basis. However in recent years, in the interests of accelerating trials single-judge panels have become more and more common, in particular in administrative legal bodies hearing cases. As regards the Council of State, in addition to the provisional suspension order (cf. question 57 below), single-judge panels are provided for under law 4055/2012, which also provides for the awarding of compensation if a judgment is not issued within a reasonable time.

49. Dissenting opinions

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

50. Public pronouncement and notification of the judgment

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

D. EFFECTS AND EXECUTION OF JUDGMENT

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

The final rulings are vested with the authority of the judgment. The authority of the final judgment is imposed on the parties; it presumes an identity of object and is restricted to the questions (on the merits or of procedure) of an administrative nature focused on by the judgment, upon condition that these questions constitute the necessary support of the purview. Nevertheless, the cancellation of an administrative

act has an erga omnes effect (cancelling effect). Of course, the administration violating the authority of the final judgment mars the issued act with illegality.

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

Cancellation of an administrative provision is in principle retroactive in effect, and is applicable back to the pronouncement of the cancelled provision. Law 4274/2014 has altered the powers of judges ruling on claims of ultra vires action. In the first place, it stipulates that the judge ruling on a claim of ultra vires action cannot cancel the provision being challenged, whether individual or arising from regulations, if there is irregularity in it that can be rectified a posteriori, without harming the rights of the applicant ; in order to do this, the judge can allow a period of several months for the government body concerned to bring its situation into line. In the second place, the law stipulates that the judge, taking account of the ciscumstances of the case, of the legitimate interests of third parties, and of the public interest, may modulate the effects of cancellation over time, declaring that these effects are not applicable as from pronouncement of the provision (i.e. ex tunc, which is the normal rule) but rather as from another date that predates publication of his or her ruling and is defined by him- or herself. Finally it is stipulated that a judge ruling on a claim of ultra vires action may, for the purposes of safeguarding the principle of legal certainty and to ensure protection of the citizen's legitimate expectations, refrain from cancelling the specific administrative provision under challenge, even if the regulatory structure upon which said provision is based is considered, within the context of the general examination, illegal.

Up until this law was adopted, the only situation in which a Greek judge could could set the date from which his or her judgement would be effective was when the Special High Court acknowledged that a law was unconstitutional (cf. question 10 above) : in such an event it could decide that the law was invalid as from a date of its choosing (art. 100 par. 4 of the Constitution).

53. Right to the execution of judgment

The Constitution provides (art. 95 par. 5) that the administration is deemed to comply with the court decisions. In this regard, the law (law 3068/2002) organizes the following procedure: A three-judge-panel within the court in which the decision is not applied, referred to by the interested person, establishes, firstly, the failure of the justice decision and grants the administration a delay to apply it; following that, secondly, if after establishing the failure, the administration still does not apply the decision, the same panel imposes on the administration a fine for failing to carry out the justice decision. This sentence does not exclude the petitioner's possibility to exert an action for compensation against the administration, if he/she can prove that the failure of the justice decision caused him/her a specific prejudice. In case this amount is not paid, a compulsory execution may take place on the private domain of the State or the relevant entity.

54. Recent efforts to reduce the length of court proceedings

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

E. REMEDIES

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

(See also supra questions10 and 16 about this).

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

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

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

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

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

56. Recourse against judgments

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

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

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

The jurisdiction of appeal (State Council or Administrative Court of Appeal), within the limit of the means for appeal, may control the facts again; this is not the case in relation to cassation where the judge pronounces on the legality of the ruling disputed before him/her: If the recourse is admitted and the jurisdictional decision is cancelled, the case is referred to the judges on its merits.

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

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

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

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

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

59. Kinds of summary proceedings

There are general summary proceedings in the Council of State that are intended to obtain suspension of the implementation of an administrative provision, while such proceedings in administrative tribunals are intended to obtain suspension of the implementation of an administrative provision, the provisional settlement of a situation

or provisional adjudication of part of a debt. These summary proceedings are governed, in the case of the Council of State, by article 52 of decree 18/ 1989, and in the case of the administrative tribunals, by articles 200-215 of the code of administrative litigation procedure. What is more, the Council of State and the Administrative Appeal Courts (with jurisdiction depending on the value of the transaction concerned) may also deal with special summary proceedings for disputes relating to actions taking place prior to the signing of government contracts for carrying out projects, for procurement and for the provision of services, in accordance with the provisions of directive 89/665 issued by the Council.

Finally, in judgments issued by the Council of State with regard to appeals, it may - subject to the strict conditions laid down by statutory and case law - suspend execution of the administrative provision under challenge before the lower court.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

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

Firstly, disputes may be settled by the administration itself. There are appeals for reconsideration before the body that issued the act provoking grievances as well as appeals before a higher body or bodies different to the body that issued the disputed act. Naturally the acts emanating from the bodies that examine the above-mentioned appeals can always be appealed against before the administrative courts and/or the State Council.

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

Administrative disputes may be settled by independent bodies. There has been in Greece since 1997 a mediator who may examine, on a request by an individual or ex officio, a question related to public services and, notably, administrative acts or neglects prejudicing the rights or interests of physical persons or entities. At the end of the case

examination, the mediator intervenes with the administration to solve an individual's problem. He/she also may write a memorandum that he/she sends to the competent minister and the services involved.

62. Alternative dispute resolution

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

IV – 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

The percentage of national public expenditure allocated to the budget for the justice system amounted to 0.5% (cf. the CEPE report 'European Judicial Systems - efficacy and quality of justice', 2016 edition).

64. Total number of magistrates and judges

According to data produced by the Justice Ministry, in 2015 the total number of judges - on administrative, civil and criminal matters - was 2231.

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

168 at the Council of State and 932 at the Administrative Courts and Tribunals (figures as at 31-12- 2015).

66. Number of assistants of judges

Such a possibility does not exist. The role of the State Council auditors is to assist the State Councillors for case preparation and inquiry.

67. Documentary resources

The Council of State and the legal bodies hearing cases in the country's largest cities (Athens, Thessalonica, Patras etc) have libraries containing legal publications (legal reviews, manuals, works annotating laws etc). Furthermore, an electronic data base has been operational for several years, enabling magistrates in the administrative sector to access the full extent of administrative case law.

Cf. also following answer.

68. Access to information technologies

The judges at the Council of State and the legal bodies hearing cases have laptops provided for their use by the State.

The introduction of an electronic justice resource (OSDY – DD) has been underway for the past few years, and covers the entire administrative justice system (Council of State, administrative Courts and Tribunals). This resource, whose installation is nearing completion, will take the place of the IT systems put in place at the Council of State and a number of administrative legal bodies.

This project already provides administrative judges with immediate access to the full extent of administrative case law (from the Council of State and legal bodies hearing cases), which clearly makes it considerably easier for them to carry out their duties. For several years, the judges were only able to access case law from the Council,

via its own data base ; now however they are guaranteed access to the full extent of case law. What is more, the immediate electronic registration of claims and applications lodged at the registries of legal bodies facilitates the monitoring of progress made in a case by all the parties involved (judges, registry officials, parties to the case). The parties may for example consult the cause list, without the need to visit the relevant legal bodies, in order to check that the case has not for any reason been postposed to a later date or indeed to establish that the public body has submitted its documentation. Obviously the parties are only able to check on progress in their own case and not in cases in which they are not involved.

In addition, the interested parties (lawyers, individuals, public bodies) may use the administrative justice portal (www.adjustice.gr) to access a large proportion of the case law (although not its full extent, which is available to the judges), which has already ben anonymized. The anonymization process is carried out in collaboration with the Athens Bar Association.

69. Websites of courts and other competent bodies

Cf. answer 68.

B. OTHER STATISTICS

70. Number of new applications registered every year

Case registered at the Council of State

I. Year 2015

1. Claims alleging ‘ultra vires’ action: 1026
2. Applications for judicial review: 1620
3. Appeals: 324
4. Urgent procedures (suspending execution and pre-contractual action): 326
5. Action by civil servants: 63

II. Year 2016

1. Claims alleging ‘ultra vires’ action: 2421
2. Applications for judicial review: 1863
3. Appeals: 228
4. Urgent procedures (suspending execution): 402
5. Action by civil servants: 51

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

Cases dealt with by the Council of State

2015 : 6506
2016 : 6010

72. Number of pending cases

Cases pending at the Council of State

On 31-12-2015 : 16308
Au 31-12-2016 : 14888

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

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

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

In 2015 the Council of State pronounced 855 rulings rejecting claims alleging 'ultra vires' action (i.e. 80% of such claims) and 251 rulings accepting them (20%)
In 2016 it pronounced 648 rulings rejecting claims alleging 'ultra vires' action (83%) and 160 rulings accepting them (17%).

75. The volume of litigation per field

We do not have any statistical data.

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

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

There are no scientific studies.