

# **ADMINISTRATIVE JUSTICE IN EUROPE**

## **– Report for Luxembourg –**

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

The creation of a complete administrative jurisdictional order, as characterized today in substantive law, was done by stages.

In 1839, under the influence of the shift in the prevailing doctrine in Belgium, the autonomy of the administrative dispute relative to the legal dispute was not recognized.

The idea of instituting an autonomous administrative dispute, reserved for a specialised body, was developed by the second Luxembourg Constitution of November 27, 1856, (article 78) and was implemented, inspired by the Dutch example, by the grand-ducal royal decree of June 28, 1857 (which was replaced by the January 16, 1866, law pertaining to organization of the Council of State), which gave this "council" the name of "Council of State."

The "Litigation Committee" of the Council of State was thus given the prerogative to exercise full court of law in administrative matters. The rules of procedure were introduced by the grand-ducal royal decree of April 24, 1858, which was replaced by the grand-ducal royal order of August 21, 1866.

Between 1856 and 1939, the Council of State functioned according to the theory known as "restrained justice," i.e., it was not vested with its own decision-making capacity, in that it could only draw up draft decisions, which were definitively pronounced by the Head of State. This practice remained in place until the law of July 20, 1939, came into effect, which conferred on the Council of State the capacity for "delegated justice," i.e., the capacity to pronounce its own decisions.

As of January 1, 1997, the Council of State only maintains its advisory function (reform law of July 12, 1996) with respect to legislative bills, and November 7, 1996, law pertaining to organisation of the administrative courts of law (Memorial A 1996, page 2261) instituted an administrative tribunal and an administrative Court which became functional on January 1, 1997, ensuring exhaustive legal protection on the act of authority of the State.

## **2. Purpose of the review of administrative acts**

The administration is linked to the law and the legislation. The role of the administrative courts is not general-purpose control of the administration but the protection of private individuals' rights towards the public authority.

The administrative law courts see two types of contentious appeals: proceedings for annulment and reversals.

As such, appeals for annulment and reversal characteristically present themselves above all as a "*trial in action*".

The contentious appeal is indeed an objective appeal, whose central issue is to decide whether the contested act is legal. Whatever the outcome of the appeal, it will have been preceded by verification of the legality of the act in question. In the event the appeal is rejected, the legality of the act will have been confirmed. On the contrary, if the judge declares the appeal brought before him/her as well-founded, he/she will restore the legality misjudged by the administrative entity and perpetrator of the contested act.

It is in the manner of rectifying the legality of the contested act that the fundamental distinction resides between annulment proceedings and reversals on appeal.

In the context of proceedings for annulment, the judge will be limited to declaring the act as being illegal, and it is up to the administration, to which the matter is referred if necessary for a new demand from the constituent, (to which the matter is referred in turn, by transfer, by the administrative court of law) to enact a new act, by learning the lessons from the court order returned, to make the aforementioned act legal. The judge has no other function than that of judge.

In the context of reversal on appeal, the judge not only will declare the act illegal, but as well will place him/herself in lieu of the administration to rectify the initial defects of the act. He/she will act at both as judge and administrative authority.

The position of the constituent is thus more favourable in the context of reversal on appeal, since, in the event of the success of his/her claims; the administrative judge will play a more extensive role.

However, in the logic of a separation of judiciary and administrative capacities, it is logical that reversal on appeal be limited to cases expressly envisaged by the law.

### **3. Definition of an administrative authority**

It is a fact that the law of November 7, 1996, on organisation of the administrative courts of law does not include any definition of the concept of "administrative act" nor of "administration." any more than the earlier legislation.

First and foremost, the criterion implemented is based on the theory of the organ.

The State of the Grand Duchy of Luxembourg, as well as the communes, are considered to be administrative entities by nature, on the condition, however, that, for the State of the Grand Duchy of Luxembourg, the capacities exercised concern executive power, and not legislative power (texts voted by the House of Commons, whose dispute is allocated to the constitutional Court) or judicial power.

Decisions returned by publicly-owned establishments or people exercising prerogatives of judiciary power are also likely grounds for appeal before the administrative courts of law.

#### **4. Classification of administrative acts**

The actions of the administration are distinguished as follows:

There is a type of act which, although covering all the criteria of an administrative act, is not likely to be a submission for legal settlement: they are the acts of government. In addition, it is advisable to distinguish between individual decisions and acts of statutory character.

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

### **A. COMPETENT BODIES**

#### **5. Non-judicial bodies competent to review administrative acts**

Control of the administration is ensured by the independent administrative courts of law, distinct at the organisation and administrative staff levels.

These courts of law nevertheless are within the framework of the ministry for Justice and are connected from a budgetary point of view, appointment of judges being carried out by the Grand-Duke.

The concept "of other administrative courts of law" contained in the basic law of 1996 which created the new administrative courts of law does not currently have a practical use.

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

There is an autonomous court of law (the administrative tribunal) equipped with a grounds for appeal (administrative Court) for administrative law.

In theory, the legal administrative courts of law are qualified for civil and penal litigations; the labour courts are qualified for litigations relating to labour law. In addition, there is a social court of law for all litigations respecting social security.

Tax disputes are shared between the administrative courts of law and the civil courts of law; administrative courts of law being, in theory, qualified for litigations in the field of direct State taxes, except for taxes whose establishment and collection are entrusted to the Administration for Registration and for Domains and to the Administration for Customs and Indirect Tax, and in the field of communal taxes and income taxes, except for remunerative taxes.

The constitutional Court is a body made up of 7 magistrates emanating from the Higher Court of Justice and 2 magistrates emanating from administrative courts of law.

This Court is qualified for questions submitted by all courts of law relating to the constitutionality of laws.

## **B. RULES GOVERNING THE COMPETENT BODIES**

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

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

The administrative courts of law are, just like legal courts of law and courts of law for labour disputes, allowed for in the Constitution. Their organisation, function and competences are regulated by their law of creation (law of November 7, 1996) and by a special procedural law (law of June 21, 1999).

In addition, the New Civil Procedure Code is applicable to administrative procedure since the "lex specialis" which is the regulation for procedure from June 21, 1999, does not derogate expressly from the "lex generalis", which is the New Civil Procedure Code.

## **C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES**

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

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### **10. Internal organization of the administrative courts**

The administrative court of law is divided into two authorities; the administrative tribunal as first authority and administrative Court as second authority.

There is neither a third authority for the administrative court of law, nor a final Court of Appeal. The social court of law is divided into two authorities (council of National Insurance with the possibility of appeal before the Higher Council of National Insurance), with a possibility of appealing to the final Court of Appeal.

The tax court of law is, as aforementioned, assigned partly to the administrative tribunals or the civil tribunals.

## **D. JUDGES**

### **11. Status of judges who review administrative acts**

Since the law of 7 June 2012, if the administrative judges still belong to a different legal order from that of the other magistrates, the judicial and administrative courts have a common pool of justice attachés and the future magistrates are recruited from among them.

The training, the conditions for appointment as a judge and the legal status of the judges are identical for all courts.

The magistrates cannot be removed and are independent of the administration.

The magistrates of the ordinary courts can be appointed as deputy judges for the administrative courts while the opposite is not possible.

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

The justice attachés are recruited through an examination for the two hierarchies of court, hence also for the administrative branch.

For a candidate to be eligible for the examination, he/she must have a graduation degree from Luxembourg in law corresponding to the recognised Master's Degree or a foreign university degree in law corresponding to the Master's Degree acknowledged and officially recognised by the Minister of Higher

Education in accordance with the amended law of 18 June 1969 on higher education and the recognition of foreign degrees and diplomas in higher education.

The candidate must have sufficient knowledge of the three administrative and judicial languages (French, German and Luxembourgish), he/she must have a certificate of having completed his/her legal training and he/she should satisfy the conditions of mental and physical competence.

If the post is vacant, the justice attachés are appointed to serve as judges in the district courts, acting judges or judges of the administrative tribunal.

They are appointed by the Grand Duke.

As regards promotions within the administrative branch, the administrative court issues a recommendation which nevertheless does not bind the Grand Duke to his choice.

### **13. Professional training of judges**

The temporary appointment of a justice attaché is considered as acceptance to temporary service for a period of 12 months. This service can be extended by 12 months.

The first part of the professional training lasts for a minimum period of 4 months.

This training phase involves different modules and also comprises various study tours to various judicial services.

There are written and oral examinations to evaluate the knowledge of the justice attachés.

The second part of the professional training involves practical work at a public prosecutor's office or a court.

At the end of the temporary service, a commission determines, based on the final scores, the classification of the justice attachés who satisfy the conditions for appointment following the written and oral examinations.

### **14. Promotion of judges**

The administrative Court gives an opinion on promotion of judges of a certain grade.

It is the Grand-Duke, following a proposal from the Minister for Justice and the Council of Government, who decides on promotion of a judge.

### **15. Professional mobility of judges**

The enlisted magistrates who have exercised a function from the seat of a legal order can be appointed to a post at a public prosecutor's office and vice versa, as well as to a post that comes under the other legal order.

Of course, in the context of a promotion, a magistrate of the administrative branch can go from the administrative tribunal to the Administrative court and vice-versa.

## **E. ROLE OF THE COMPETENT BODIES**

### **16. Available kinds of recourse against administrative acts**

According to procedural law, the administrative law courts can wholly or partially annul an **individual** administrative decision and refer the case to the administration which must, by a substantive decision, conform to the final decision.

This appeal can be exercised against all administrative decisions regarding which no other appeal is permitted according to laws and regulations. In this context, the administrative judge verifies competence, excess and misuse of power, violation of law or of conventions intended to protect private interests.

This same remedy can be applied against regulatory action take by the administration. By special law the administrative judge is qualified to adjudicate regarding questions of administrative review. When it is appealed thereby, his/her decision overrides the administrative action.

The administrative judge is not qualified for litigations rising from contracts of public law, including damages claims, claims to obtain compensation in kind or compensation for prejudicial continuation of an illegal administrative act, as well as for the rights to compensation resulting from disturbances concerning property law, including deciding on compensation in the event of expropriation; all these incidents fall within the competence of a civil judge.

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

Administrative courts of law, just like courts of other jurisdictional orders, are authorised to examine and decide foreign prejudicial questions through proper legal procedures, although it should be specified that these incidents are extremely rare. If the object of the prejudicial question is engaged in the judicial courts, the administrative tribunal can suspend the procedure.

If the validity of a law is a prejudicial question necessary to be able to rule, and if the court expresses doubts on its constitutionality, it must suspend the procedure and then solicit the constitutional Court on this subject.

If the prejudicial question relates to the interpretation or validity of European Community legislation, then the administrative Court is entitled (and the administrative Court has the duty) to request a preliminary hearing from the Court of Justice for the European Community.

### **18. Advisory functions of the competent bodies**

The judge does not have the right to simultaneously exercise functions concerning the administration or the legislation (constitutional principle of the separation of capacities). He/She does not have the right to exercise the function of legal consultant either, whether it is in the field of administration or legislation. Any person having taken part in the preceding administrative procedure or having taken part in the drafting of a law or a regulation is excluded from the exercise of legal functions in this cause. This incompatibility is decreed by the law.

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

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## **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**

This question is only seldom posed, the Grand Duchy having only one administrative court (which nevertheless has three divisions).

It is always the case that one division of the administrative tribunal may still diverge from the decision made by another division on a decisive point of law and even from a prior decision of the Administrative Court.

The guarantee of unity of law falls to the administrative Court which, in theory, ratifies but nevertheless is not bound by its former rulings.

## **II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS**

### **A. ACCESS TO JUSTICE**

#### **21. Preconditions of access to the courts**

In the context of an administrative act in an individual matter, the person responsible always has the possibility (but not the obligation) to make an application for an ex gratia settlement before the introduction of an appeal before the administrative judge, which is addressed to the administration which put forward the first decision.

The introduction of this appeal is thus not a condition of admissibility of the appeal and the administration is free to answer it, to confirm its earlier decision or to put forward a new decision.

The introduction of this appeal suspends the initial delay of appeal as a first stage, the details regarding this suspensive delay and its implications go beyond the scope of this questionnaire. In rather rare cases, the Luxembourg system also envisages the possibility of hierarchical appeal which must obligatorily be introduced before filing of the contentious appeal.

With regard to tax law (direct State taxes), a taxpayer is nevertheless under obligation to submit disputes to the director of Tax Authorities beforehand.

## **22. Right to bring a case before the court**

Any natural person or legal entity of private or public law, as well as the communes and other communities equipped with administrative autonomy and a legal figure, can lodge an appeal before the administrative court. With regard to legal entities, certain limitations exist concerning their interest to act or a possible system of approval (envisaged by article 7 of the law of 1996).

## **23. Admissibility conditions**

The condition for admissibility of appeal, whether it is appeal for annulment or reversal, is that the applicant emphasises that his/her rights are infringed upon by an individual administrative act, or by the lawful administrative act in question, or by the refusal or the abstention to enact it. "To assert one's rights" means that the possibility of violation of subjective right exists at the time of presentation of the appeal. The court of law speaks about an interest to act which must be personal, distinct from the general interest, direct, innate, and current. In addition, this interest must be legitimate.

## **24. Time limits to apply to the courts**

Action for annulment must in theory be brought about within a three-month delay as from notification of the decision.

In the context of appeal for reversal, the law fixes a specific time which is often 40 days starting from notification of the individual administrative act.

The parties must be advised in writing of possibilities of appeal offered, since lack of this notification will prevent deadlines from taking effect.

The deadline runs from the day which coincides with the notification and expires at the end of the last day. If a deadline expires on a Saturday, a Sunday, or a public holiday, the last day for the deadline will then be the first business day which follows.

As the deadlines are very often expressed in calendar months, the last day to propose a deadline falls due on the same day and date as the day of the decision from which the deadline ran.

If a person did not respect the deadline through no fault of their own, the court can grant a release of debarment.

## **25. Administrative acts excluded from judicial review**

A general principle of law guarantees that all litigations of public law are subject to control by judges.

A jurisprudence of the Council of State was able to accept that for appeal to be declared admissible, it was not sufficient that it undertake a decision for grievance, but it must not constitute an "act of government" all the same (the "Mangin" decree of January 20, 1876, Pasicrisie volume I, page 113), or, in more current terms, "does not overlook jurisdictional control from the Council of State" (the "Wittgreen" decrees n° 8374 and 8446 of February 19, 1991, by the Council of State).

Incorporation in Luxembourg law of the original French theory of the act of government ("Laffitte" decree of May 1, 1822, by the French Council of State) was not only carried out with much more reserve than in France, but even more so, saw its field of application restricted over the course of time.

In that way it was believed that the only type of act which could finally be part of this category of the acts of government were the relations of Grand-Duke with a foreign State (solution drawn from the "Weber" decree of April 26, 1933, published in the Pasicrisie, volume XIII, page 108).

Setting up a new administrative court of law order did not in any way modify the issue, since the administrative Court also refers to the theory of *act of government*.

## **26. Screening procedures**

No procedure for appeal filtering exists, either on first hearing or on appeal; all of this obviously being subject to the admissibility of the appeal.

## **27. Form of application**

The introductory request for a first hearing must be in writing, containing a summary of the facts and means invoked, and include the subject of the request. No specific formality is required.

## **28. Possibility of bringing proceedings via information technologies**

It is mandatory that the appeals be submitted at the office of the clerk of the administrative courts in hard copy format. It is not possible to submit the appeals electronically at present.

However, there are plans for a bill to authorise the electronic submission of subsequent statements of case and documents. This bill is yet to be passed.

## **29. Court fees**

A deposit is not required on presentation of the request and other appeals. The administrative judge will only make a pronouncement about court expenses in his/her final decision.

## **30. Compulsory representation**

In order for a petition before the administrative tribunal or an act of appeal to be brought before the administrative Court, representation by an lawyer is an obligation under penalty of inadmissibility.

One of the rare exceptions exists in the tax field where, upon the first hearing (but not on appeal) the introductory request for a hearing can be signed by the claimant or his/her proxy (another exception can be found regarding elections).

## **31. Legal aid**

The Grand-ducal ruling of September 18, 1995, concerning legal aid provides that persons considered as having insufficient income as well as persons who live communally with such a beneficiary are those benefiting from a guaranteed minimum income. They are regarded as people whose resources are insufficient, and whose income and means were taken into account to determine the guaranteed minimum income.

Those persons who, without benefiting from the guaranteed minimum income, but however finding themselves in a situation of income and means such as they would have the right to attribution of the guaranteed minimum income, are also regarded as persons whose resources are insufficient.

Legal aid includes the cost of lawyer's fees and all court expenses and is granted by decision of the President of the Bar for the Council of the Order of lawyers.

### **32. Fine for abusive or unjustified applications**

Abusive and unjustified appeal is not sanctioned by a fine given that the administrative court of law can always grant a compensation for proceedings to a party before the court.

## **B. MAIN TRIAL**

### **33. Fundamental principles of the main trial**

The fundamental principles which govern the trial and the course of the legal procedure are fixed by the law of June 21, 1999, and, in addition by the New Civil Procedure Code, which is applicable in administrative procedures once the "lex specialis", which is the ruling for proceedings of June 21, 1999, does not expressly derogate from the "lex generalis", which is the New Civil Procedure Code.

The trial before the administrative court of law can be regarded as governed by the principle for an inquisitorial type of procedure, and the collaboration of parties (the concept "inquisitorial" must nevertheless be approached in a "mild" sense). The claimant is requested to indicate the material elements and evidence which may help motivate the procedure.

The defendant and the other parties may discuss the conclusions of the claimant and, for their part, present offers of evidence.

The administrative court of law can urge the parties to establish the facts on the basis of their claims (obligation to participate). If in spite of the participation of the parties, questions that are necessary to making a ruling remain unanswered, the administrative court of law can clarify these facts even without offers of evidence by ordering a visit of the premises, for example (principle of official action).

The introduction of and the motivation for appeal, as well as the response of the parties, are exercised by means of statements of case (in theory two for each party, the introduction of appeal on this subject being equivalent to the first report) and presentation of the conclusive administrative files which are the subject of oral debates.

It should nevertheless be specified that the procedure is primarily written and that new methods are not allowed during debates, except for the official method invoked by the administrative court of law.

### **34. Judicial impartiality**

The members of the administrative courts of law cannot, directly or indirectly, have individual discussions with the parties or their lawyers or defenders about the disputes which are subject to their decision.

No member can sit on cases connected with the application of legal or lawful provisions, the subject of which he/she has taken part either in its drawing up in whatever capacity, or in the deliberations of the Council of State.

The members of the administrative courts of law cannot deliberate, sit, or decide on any case in which they themselves, or their immediate family or close relatives up to and including the fourth degree, have a personal interest.

They cannot sit, decide, or take part in deliberations on cases which they have already known in a quality other than that as a member of the Court or tribunal.

The members of the administrative courts of law can moreover be challenged for causes according to methods indicated in related provisions for the code of civil procedure.

Furthermore, members of administrative courts of law cannot exercise a whole series of functions.

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

During the hearing before the administrative tribunal and the administrative Court, the claimant can invoke new facts as new means of action and defence during the written phase (statement of case).

### **36. Persons allowed to intervene during the main hearing**

When the administrative court of law concludes it is necessary to order an intervention, it regulates the form and deadlines from which to proceed.

Furthermore, people showing an interest in the outcome of the litigation can voluntarily intervene by request, and the other parties are notified.

An intervention is no longer admissible once the recording judge has begun his/her report in a public hearing.

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

The intervention of a public ministry is not allowed by the texts in force.

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

If the Government representative had quite often played the role of "Government commissioner" within the Council of State before the intervention of the law of 1996, this is no longer the case since the introduction of the new administrative courts of law in 1997.

### **39. Termination of court proceedings before the final judgment**

Without a court order, the administrative trial ends by a withdrawal or a request for annulment during the hearing. Withdrawal can be made by an act signed by the plaintiff or his/her proxy, and communicated to the opposing party, and third party concerned.

It automatically entails forfeiture of appeal and an obligation to pay the expenses of the hearing.

### **40. Role of the court registry in serving procedural documents**

The clerk's office service for the administrative courts of law transmits the reports from one party to the other party concerned in so far as the State is implicated in a case.

For the other files, the implicated party must carry out the notification of the introductory request for a hearing through a bailiff and the subsequent reports according to rules specified in the New Civil Procedure Code (thus by a bailiff or transmission from lawyer to lawyer).

### **41. Duty to provide evidence**

The search for factual elements forming the basis for litigation is incumbent on the parties, who can introduce proposals for evidence given the understanding that the administrative judge is free to order such investigation or measures for an enquiry which he/she considers useful.

### **42. Form of the hearing**

The oral debates are public. During oral debates, the parties either expose and justify their petitions, or limit themselves to referring to their notes.

The hearing can take place in camera (in the council chambers) in rare cases such as investigation or at the time of a request tending to obtain a statement of an incurred forfeiture.

The oral debates begin with a call for the case and the appearance of the parties by their proxies. The recorder exposes the state of litigation. Only the proxies of parties having left

written reports within the legal deadline are granted the possibility of expressing their point of view.

An additional report can be required by the administrative court of law should it consider not to have been enlightened on the law sufficiently.

The administrative court of law cannot rule on an officially-raised means without having invited the parties to present their observations beforehand.

Party to the procedure are the claimant, the defendant, and failing this, a third concerned party.

The chairman closes the oral debates.

### **43. Judicial deliberation**

After closure of the oral debates, the judges withdraw to deliberate. Deliberation begins with an assessment of facts and of the legal situation and ends in a vote.

Aside from judges named to rule on the case, no person has the right to participate at the deliberation.

Only a legally fixed number of qualified judges according to the distribution of their functions are nominated to rule and deliberate. The deliberation and vote are a matter of secrecy.

## **C. JUDGMENT**

### **44. Grounds for the judgment**

The written decision must contain the names of the judges, the government representative, as well as proxies, first names, surnames, and residences of the parties, their claims, a summary exposure of facts and law, the reasons and the sentence.

### **45. Applicable national and international legal norms**

The criteria for appreciation and the framework for reference on the decision are the laws and rulings, the national constitution, Community legislation and the European convention of Human Rights, as well as, if necessary, other international legal instruments as from the moment their provisions are regarded as being directly applicable.

If there is not any doubt concerning the compatibility of laws with rights in priority, there is no room for discussion in the context of a decision. The basis for justifying the decision rests on the interpretation of applied legislation as well as on the assessment of facts and the evidence in support of the corresponding regulation. Justification also takes into account legal decisions, in particular, those of the administrative Court.

#### **46. Criteria and methods of judicial review**

The consequences of control depend mainly on the corresponding material law and the nature of appeal.

In the context of proceedings for annulment, the administrative judge analyses whether the decision was taken within "legality" (incompetence, excess and misuse of power, violation of the law or the forms intended to protect private interests).

In these cases, it is not up to the tribunal to control the opportune character of the administrative decision or to replace the assessment proposed by the administration with a clear assessment, even if other decisions seem to it to be more opportune or if other decisions are more favourable to the claimant.

In the context of appeal on reversal, the administrative judge replaces the administrative authority.

The law does not make distinctions between the various hearings concerning legal control.

#### **47. Distribution of legal costs**

The succumbing party assumes, in theory, the legal costs. If a party partially wins and partially succumbs, the costs can be shared proportionally. Whoever introduces grounds for appeal without success or withdraws from a hearing, whether for reversal or any other means of appeal, must assume the costs. The court expenses and the extra-judicial costs of proceedings, not including the lawyer's fees, are regarded as costs.

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

At the level of the administrative court, the litigations are subjected to a division made up of three judges (except for the administrative summary proceedings).

The administrative Court always rules in a division of three members.

#### **49. Dissenting opinions**

In all hearings of the administrative court of law, publication of the deliberation by individual judges and divergent opinions is not authorised.

#### **50. Public pronouncement and notification of the judgment**

The judgement or the decree is given orally in a public hearing.  
Parties must be notified of the written judgement or decree in its entirety.

### **D. EFFECTS AND EXECUTION OF JUDGMENT**

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

The judgement binds only the parties and their beneficiaries, regarding the object of litigation. If the state of the facts and legal situation are unchanged, the administrative authority which succumbed is not authorised to decree a new administrative act towards the person concerned without taking into account the reasons for disapproval of the administrative court of law towards this act.

This decision does not concern all, but is limited to the hearing in progress and cannot be extended to other hearings in which similar legal difficulties arise.

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

The judge cannot place a time limit on the effects of a judgement he/she has made.

#### **53. Right to the execution of judgment**

The carrying out of decisions by administrative courts of law is regulated by article 84 of the law of November 7, 1996, which is composed as follows:

When in the event of annulment or of reversal of an administrative decision which is not reserved by the Constitution for a determined body, and following by dint of a judged thing, the court of law having annulled or having reversed the decision has returned the case before the competent authority, which omits taking a decision while conforming to the judgement or the decree, the interested party can, before the expiry of a three-month deadline from the pronounced decree or judgement, complain to the court of law which returned the case in view of charging a special commissioner with taking a decision in lieu and place of the proper

authority and at their own expense. The court of law fixes a deadline within which the special commissioner must complete the task.

The special commissioner nomination denies the competent authority of court of law.

The administrative judge does not have power of injunction as regards execution of his/her decision.

The case of execution of a decision by a private individual is not posed in a Luxembourg administrative legal dispute, since the administrative courts of law are only qualified to analyse the legality or validity of administrative decisions, so as to control action of the administration only.

#### **54. Recent efforts to reduce the length of court proceedings**

The amended law of 21 June 1999 on the procedure of the administrative courts contains provisions that aim to avoid undue delays.

Thus, following the submission of the application initiating proceedings, the defendant and the third-party concerned should respond by submitting the statement of case within a period of 3 months. Later, the applicant can respond by submitting a statement of case within one month, after the submission of the response, and the defendant and the third-party concerned again have a period of one month to submit a rejoinder.

Then, the case is pleaded at a hearing of the administrative tribunal, approx. 2 months after the rejoinder has been submitted, and the administrative tribunal gives its ruling approx. a month after the oral arguments.

On appeal, following the submission of the petition for appeal, the respondent must respond by submitting his/her/its statement of case within one month. Later, the appellant can respond by submitting a statement of case within one month, after the submission of the response, and the respondent again has a period of one month to submit a rejoinder. Then, the case is pleaded at a hearing of the Administrative court, approx. one month after the rejoinder has been submitted, and the ruling is given approx. a month after the oral arguments.

Consequently, the first proceedings before the administrative tribunal last approx. 8 months and the second proceedings before the administrative court last approx. 5 months.

In order to avoid the cases being deliberated upon for too long, there being no date indicated for the delivery of the decision when the matter is taken under advisement, a bill, which should be passed shortly, states that the decision should be delivered in a period of 2 months after the matter has been taken under advisement, unless there are exceptional circumstances which should be justified by the reporting magistrate of the case.

## **E. REMEDIES**

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

Admission of a hearing in an administrative contentious procedure is always through the administrative tribunal (except for an extremely rare incident which affects disputes between the Government and the Chamber of Accounts and which falls only to the administrative Court). The administrative Court rules pending an appeal for all the decisions rendered by the administrative tribunal, except for the administrative summary procedure existing at the level of the first hearing, against which no grounds for appeal is envisaged.

### **56. Recourse against judgments**

An appeal before the administrative court of law is carried out in two degrees. The decisions of the administrative tribunal are monitored, in the event of introduction of an act of appeal by one of the parties having succumbed in the first hearing, by the administrative Court, by act and law. There is no annulment hearing.

## **F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF**

### **57. Existence of emergency and/or summary proceedings**

a) In Luxembourg administrative law, appeal does not have a suspensive effect, except for certain types of decisions rendered regarding right of asylum, restrictively listed by the law, if it is not otherwise ordered by the chairman of the tribunal or replacing judge.

This stay of execution can be decreed only on the double condition that, on the one hand, execution of the contested decision risks causing the claimant serious and definitive harm, and, on the other hand, the means invoked with the support of the appeal directed against the decision appear serious. The deferment is rejected if the case is ready to be pleaded and decided in the short term.

The demand for a stay of execution is to be presented by distinct request addressed to the chairman of the tribunal and must meet the conditions planned for any appeal before the administrative courts of law.

The defendant and interested third party are convened by the clerk's office.

The procedure is oral. The case is pled at the hearing to which the parties were convened.

The chairman ensures that the defendant and interested third party received the convocation. On justified request of the parties, it can grant a remission.

The chairman's ordinance is enforceable as of its notification. It is not susceptible to any grounds for appeal. Its effects cease once the tribunal has decided the main point or a portion of the main point.

The judge adjudicating in a request with suspensive effect of appeal can no longer decide in the matter.

b) When a request for annulment or reversal is referred to the administrative tribunal, the chairman or replacing magistrate can provisionally order all necessary measures so as to safeguard the interests of the parties or people who have an interest in solving the case, other than measures having civil laws as subject matter.

The request is set up as a preliminary enquiry and judged according to the procedure described in item a).

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

see answer 57.

#### **59. Kinds of summary proceedings**

There are no differing types of summary procedure, with the exception of the distinction raised under items 57, 58a) and 58b) above.

The legislation for summary procedures is identical for litigations of private individuals and for litigations of communities for public law.

### **III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES**

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

In the context of an application for an ex-gratia settlement, the administration can always re-examine the legality and appropriateness of an administrative act. In addition, it can always take a new decision during proceedings.

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

Appointed by a law of August 22, 2003, the first mediator of the Grand Duchy of Luxembourg, attached to the House of Commons, took up duty on January 1, 2004.

He/she is qualified to receive complaints regarding State functions and communes, as well as publicly-owned establishments relevant to the Grand Duchy State and communes.

Any person or legal private entity may complain to the mediator when suitable steps at the administrative level concerned have been taken beforehand.

Claims addressed to the mediator do not interrupt deadlines for contentious appeal.

The mediator cannot intervene in a procedure initiated before a court of law, or call into question the validity of a court order.

The action of the mediator rests on his/her capacity for persuasion and the possibility of proceeding with publication of decisions made.

If the administrative authority remains reticent, the mediator will no longer be able to undertake anything at all.

## **62. Alternative dispute resolution**

In Luxembourg administrative law there is no legally permitted arbitration procedure.

# **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**

Requirements for personnel and localities are established with the State budget.

The needs are established separately for the respective judicial order court of law and administrative court of law.

#### **64. Total number of magistrates and judges**

On 1<sup>st</sup> January 2016, the administrative tribunal comprised 13 magistrates and the administrative court comprised 5 magistrates.

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

The percentage of magistrates allocated to the administrative courts is 7.7 %, i.e. 18 magistrates from a total of 234 for the Grand Duchy of Luxembourg.

#### **66. Number of assistants of judges**

The judges and counsellors are not backed up by assistants.

#### **67. Documentary resources**

The tribunal and administrative Court are located in the same buildings and have a rather large library with mainly legal works (law bulletins, jurisprudence collections, law commentaries, manuals, and monographs as well as specialised legal periodicals and other periodicals).

#### **68. Access to information technologies**

The administrative jurisdictions are equipped with modern data processing means. Magistrates, the tribunal clerk's office and the secretarial service have personal computers with word processing, administration and communication programmes (e-mail, Internet) as well as printers.

Moreover, the magistrate's personal computers are readily equipped with Internet access and, in addition, are inter-connected.

For more details, see the questionnaire completed by Luxembourg for the seminar on Administrative Justice and e-Justice held in Athens on 15 May 2009.

## **69. Websites of courts and other competent bodies**

The administrative jurisdiction has its own Internet site ([www.jurad.etat.lu](http://www.jurad.etat.lu)) where citizens can be informed on functions and competences, legal and personnel organisation as well as access to addresses. Moreover, decisions which remain anonymous are published on the site.

The website of the administrative courts was set up in such a way that an index of judgements handed down by the administrative tribunal as well as judgments to reopen or uphold proceedings on other grounds handed down by the administrative court could be added as of 1 January 2008. The index contains the judgements (full text) passed by the administrative tribunal as of 1 January 2002. To consult the alphabetical index of judgements prior to 2008 or the full text of judgements prior to 2002, please refer to the Bulletin de jurisprudence administrative (Administrative Case Law Bulletin) published annually by the Pasicrisie law reports digest.

## **B. OTHER STATISTICS**

### **70. Number of new applications registered every year**

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

### **72. Number of pending cases**

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

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

### **75. The volume of litigation per field**

Under this heading, it is recommended to refer to the latest reports relating to the functioning of the Administrative court and the functioning of the administrative tribunal relating to the judicial year 2014-2015 (16 September 2014 – 15 September 2015).

The average time taken to give a ruling in the first proceedings is normally 8 months and on further appeal it is 5 months.

There are no statistics about the rate of annulment of administrative acts before the administrative tribunal and the rate of review of the appealable judgments before the administrative court.

### **Report relating to the functioning of the Administrative court**

### **during the judicial year 2014-2015**

During the year 2014-2015, the Administrative court received 300 cases newly added to the cause list (as compared to 348 cases during the previous judicial year).

Breakdown by subjects:	2013-2014	2014-2015
	Fiscal matters	30
Exchange of information:	14	13
Town-planning:	15	22
Classified establishments	1	6
Permanent residence permit	6	3
Foreign nationals	206 int. protection: 175 adm. detention: 8 residence permit: 19 other: 4	120 int. protection: 76 adm. detention: 16 residence permit: 21 other: 7
Public service	21	34
Work	5	5
Public contracts	-	4
Higher education – financial aid	-	7
Environment and Nature Conservation	9	3
Other subjects	29	24

The “other subjects” heading includes cases relating to telecommunications, housing aids, agricultural aids and various other subjects.

The decided cases for the judicial year 2014/2015 come to 288 cases, (350 rulings in 2013/2014), of which 4 were deleted and 5 cases were declared inadmissible, while the pending cases come to 116 units, with 38 cases in the general list.

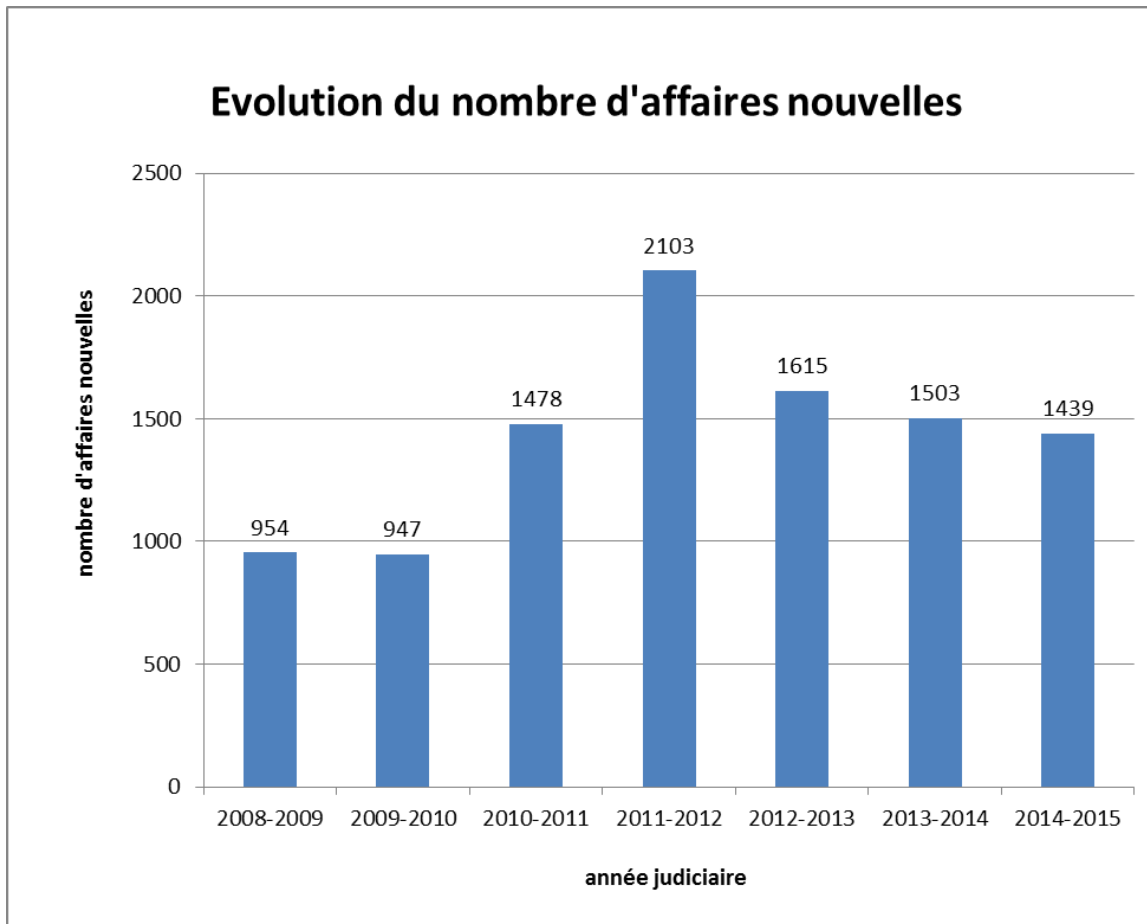
## **Report**

**relating to the functioning of the administrative tribunal**

**of the Grand Duchy of Luxembourg from 16 September 2014 to 15 September 2015**

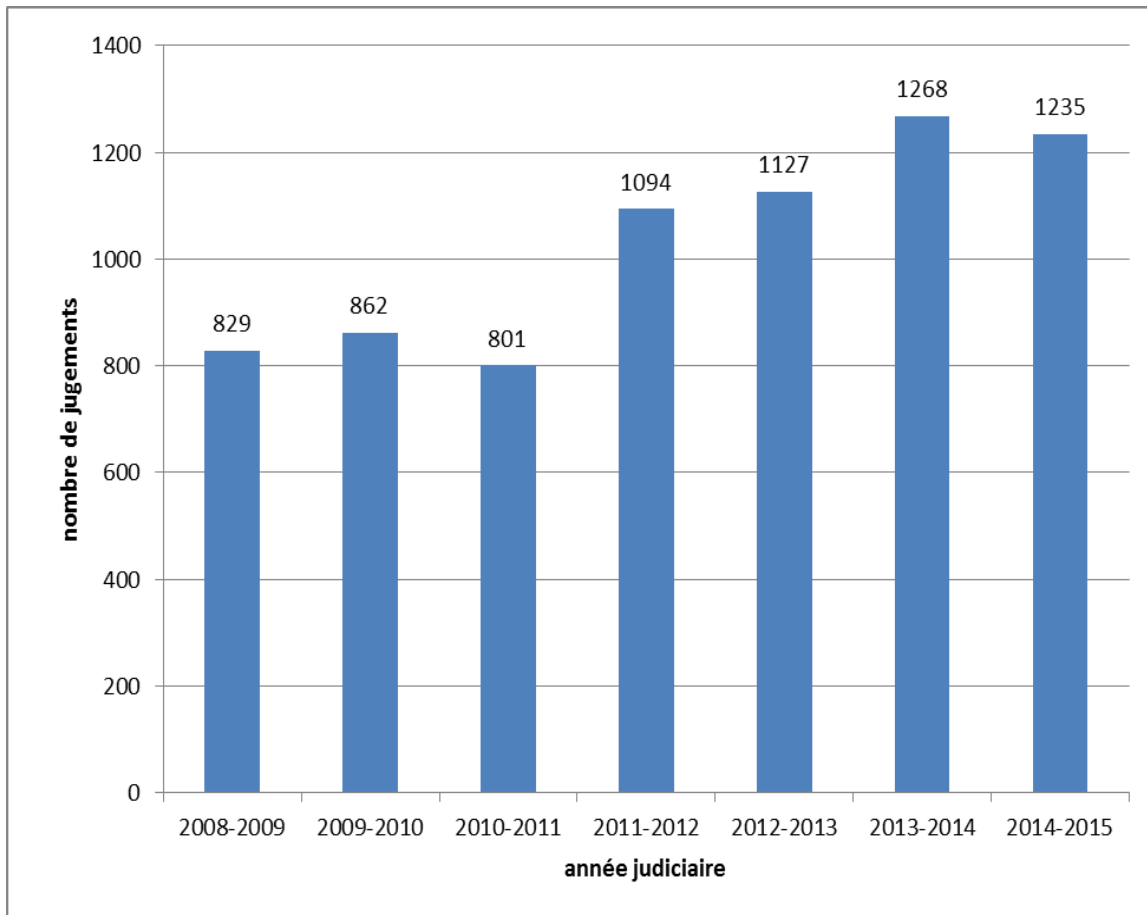
During the period between 16 September 2014 and 15 September 2015, the administrative tribunal received 1439 new cases (judicial year 2013-2014: 1503 cases; 2012-2013: 1615 cases; 2011-2012: 2103 cases; year 2010-2011: 1478 cases; year 2009-2010: 947 cases; year 2008-2009: 954 cases). The first graph illustrates the trends of these figures over recent years.

**Graph 1.** Trends of the number of new cases

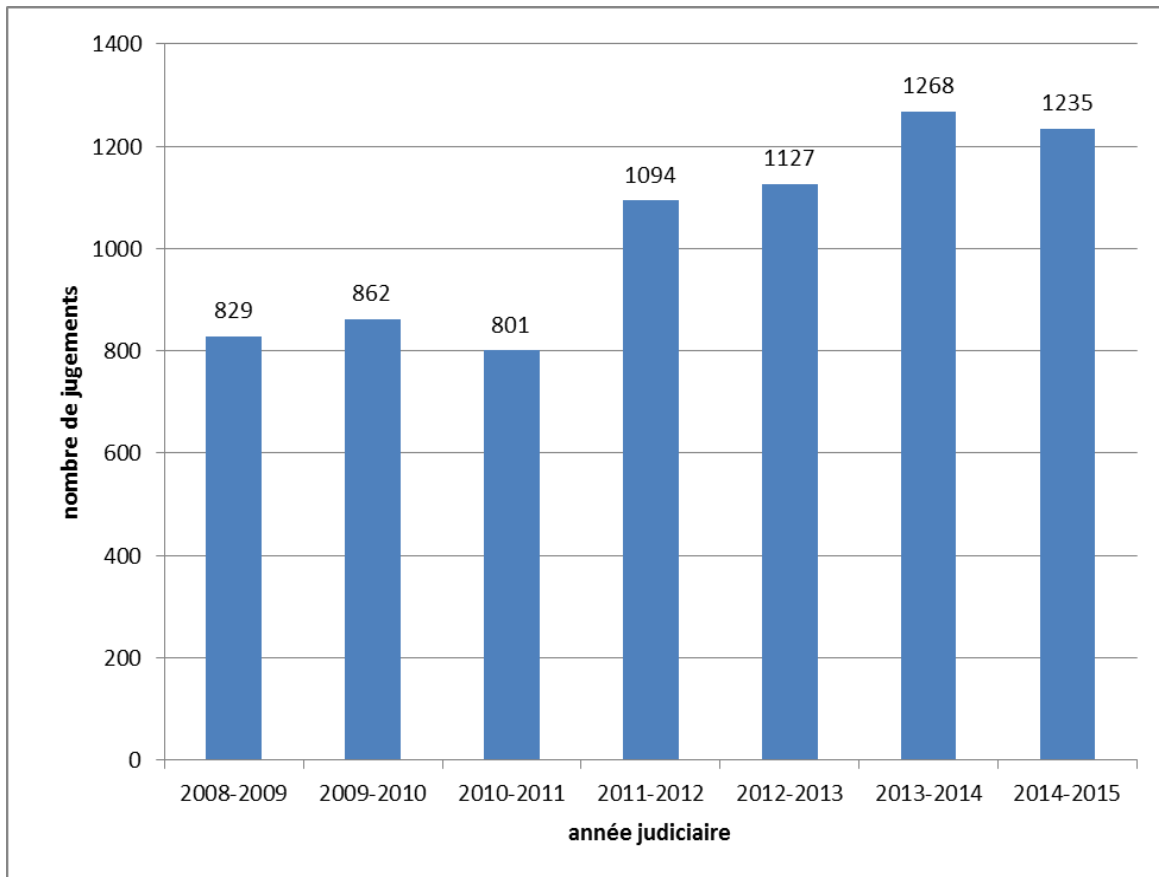


During this period, the different chambers of the tribunal delivered a total of 1235 judgments (year 2013-2014: 1268 judgments, 2012-2013: 1127; 2011-2012: 1,094; 2010-2011: 801; 2009-2010: 862; 2008-2009: 829), of which 184 were struck out (year 2013-2014: 232; 2012-2013: 197; 2011-2012: 257; 2010-2011: 155; 2009-2010: 165; 2008-2009: 169).

**Graph 2.** Trends of the number of judgments pronounced (including those struck out)



**Graph 3.** Trends of the number of judgments pronounced (apart from those struck out)

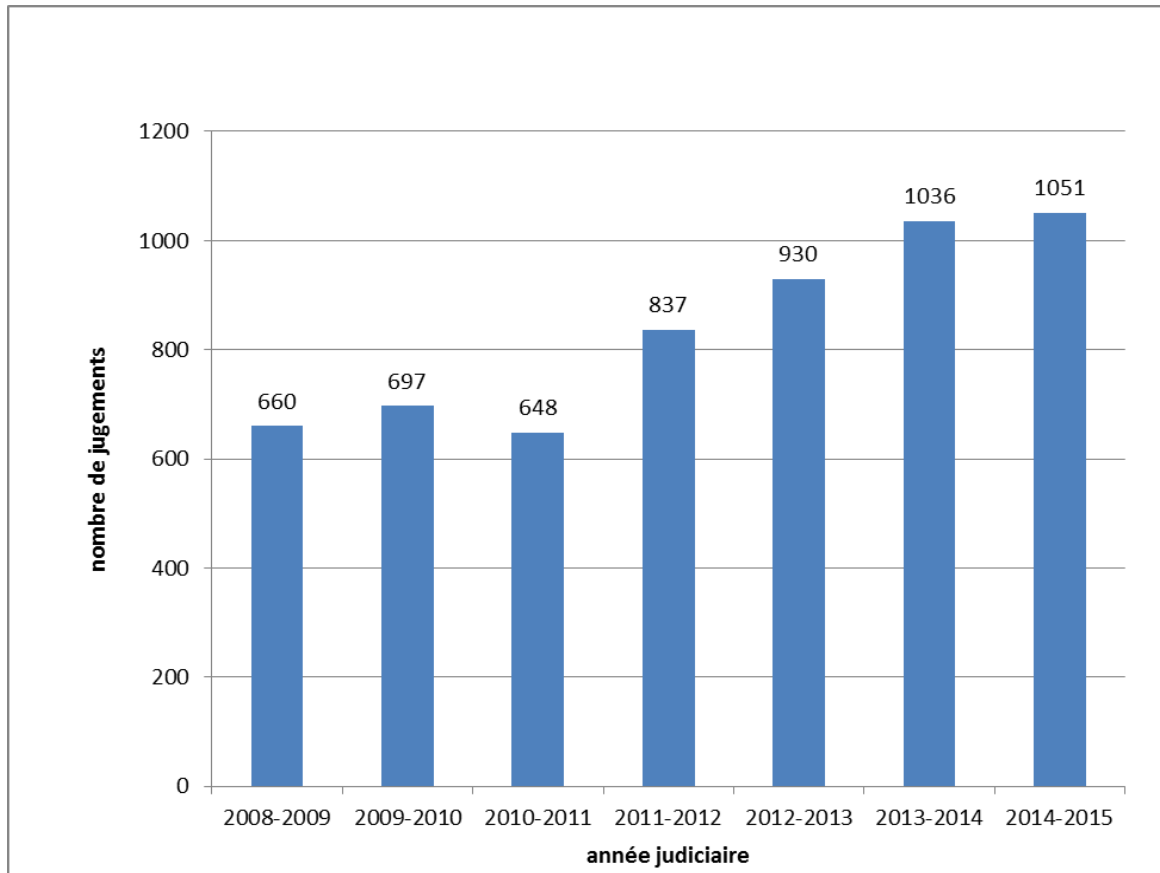


In the total figure of the judgments delivered during the judicial year 2014-2015, there are 663 decisions regarding the aliens department in the broader sense (year 2013-2014: 696; 2012-2013: 781; 2011-2012: 638; 2010-2011: 290; 2009-2010: 360; 2008-2009: 334), of which 346 decisions that had to be cleared in accordance with the “accelerated” procedure (184 cases related to procedures based on articles 15, 16, 20 and 23 of the amended law of 5 May 2006 and 162 cases relating to administrative detention).

The court continues its efforts to ensure that the cases are cleared quickly. It can be stated that the current average duration to clear appeals relating to asylum, i.e. the time between lodging the appeal and the delivery of judgment) is 6 to 8 weeks, regarding appeals that involve ministerial decisions taken in the context of article 20 of the law of 5 May 2006 (decisions taken in “accelerated procedure”), and 10 months as regards the appeals involving ministerial decisions taken in the context of article 19 of the law of 2006 (decisions taken in “normal procedure”).

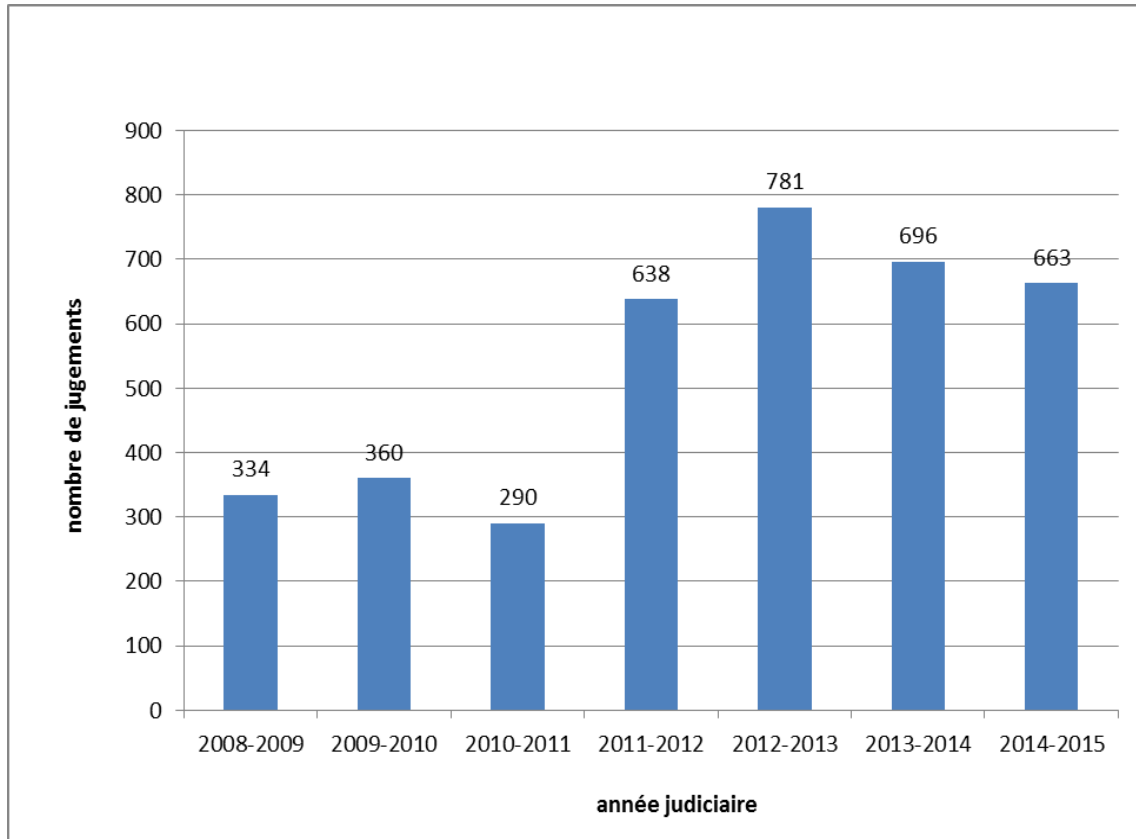
In this context, it is important to note that the migratory wave that Europe, in general, and Luxembourg, in particular, are likely to experience, risks leading to a certain increase in the number of cases to be settled relating to international protection and the aliens department. The government seems to be aware about the problems that this state of affairs can create with respect to the functioning of the administrative courts. One must hope that its steps taken to adapt the applicable laws to mainly enable the administrative tribunal to successfully face the same will ensure quick clearance of this type of litigation, which is quite urgent in nature, without necessarily delaying the clearance of the other types of administrative litigation, where the parties involved also seek quick responses. Apart from that, an increase in the workforce of the administrative tribunal, at least on a temporary basis, by a substantial allocation of justice attachés is likely to become essential.

**Graph 4.** Trends in the number of decisions relating to the aliens department (including those struck out)



The number of administrative proceedings for “interim measures” (essentially appeals for a stay of execution and institution of safeguard measures) remains at the high level it had reached last year. Thus, 130 cases have been processed during the year 2014-2015 (of which 115 ended with a reasoned order and 15 were struck off). Graph 5. illustrates the trends of the figures during the last six years.

**Graph 5.** Trends of the number of administrative “interim” orders (apart from those struck out)



## **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 showing the influence of administration sentencing on public budgets or illustrating magistrate’s remarks on consequences of their decisions in terms of cost for public funds.