

ADMINISTRATIVE JUSTICE IN EUROPE

Questionnaire on the inventory and typology of review by the courts of administrative authorities in the 27 Member States of the European Union.

The aim of this questionnaire is to know as precisely as possible which are the modes, bodies, and ways of controlling administrative acts and action in the 27 Member States of the European Union.

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

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

Preliminary Questions

1. Could you give the main dates in the evolution of the review of decisions and acts of Administrative authorities ? [20 lines max.]

During the existence of the Federal Republic of Yugoslavia in administrative disputes, courts decided on the legality of acts by which the State bodies or other organizations exercising public powers, are deciding on the rights and obligations of natural persons, legal persons or other parties in certain administrative matters. Administrative disputes in Montenegro were resolved by the Supreme Court of Montenegro.

In 2003 Montenegro adopted the Law on Administrative disputes, and in 2005 the specialized court - Administrative Court of Montenegro started working, in which responsibility is resolution of administrative disputes.

The Law on Administrative Disputes ("Off. Gazette of Montenegro", no. 60/2003) stipulates that in the administrative litigation the court decides on the legality of administrative acts and legality of other individual act as specified by the law.

Administrative Act is defined by law as an act by which a state authority, local governments body, and institutions and other legal person in the exercise of public authority, decides in administrative matters of the rights, obligations or legal interests of natural or legal persons, and other individual act as an act by which an organ or institution and legal entity decides on the rights, obligations or legal interests of natural or legal persons in other legal matters.

2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words to the rule of law ? Alternatively, is it only a review of the good functioning of the administration ? [one page max.]

Review of administrative acts aimed at controlling the executive and local authorities in the exercise of the rights and obligations of natural and legal persons and its function is the rule of law. By review of administrative acts guaranteed rights and obligations of natural and legal persons are protected from unlawful actions of the competent authority and the equality of all in the exercise of those rights and obligations is provided.

The essence of the review is that the executive and local authorities in the exercise of the rights and obligations of natural and legal persons are "forced" to operate exclusively in accordance with the law and in the exercise of those rights and obligations have equal treatment for all.

3. What is the definition of an administrative authority in your country ? Does this definition include all public legal entities and private legal entities exercising public authority ? [10 lines max.]

The definition of administrative power, in terms of judicial review, every single decision of the executive and local authorities on the rights and obligations of natural and legal persons.

Under the definition of the executive authority means the actions of other entities that do not have the character of the executive and local authorities, and they are authorized, pursuant to regulations, to decide on individual rights and obligations of natural and legal persons (bodies exercising public authorities).

4. Is there a classification of administrative acts in your country ? [5 lines max.]
The usual classification identifies individual acts and general normative acts. It separates unilateral acts and contracts awarded by administrative authorities.

There is a classification of administrative acts on the individual and the general. Revision of individual administrative acts is carried out by the Administrative, or the Supreme Court.

Assessment of the legality of general acts is within the competence of the Constitutional Court of Montenegro.

I – WHO REVIEWS ADMINISTRATIVE ACTS?

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

A – COMPETENT BODIES

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts ? [In the affirmative, please refer to questions 22 and 62] [5 lines max.]

No. The review is carried out exclusively by the judicial authorities. First, the Administrative Court and then the Supreme Court.

6. Could you describe the organization of the court system in your country, indicating which courts or tribunals are competent to hear disputes concerning acts of the administration ? If possible, try to respect the pattern hereafter. [15-20 lines max. + chart]

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

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

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

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

Review of administrative acts, since 2005, is performed by a specialized court - Administrative Court of Montenegro. The Administrative Court has jurisdiction over review of all administrative acts, or for all administrative areas. So, there is no another specialized court for each administrative area.

Decisions of the Administrative Court are subordinated to the control of the Supreme Court.

The Constitutional Court of Montenegro, does not perform review of individual administrative acts.

B – RULES GOVERNING COMPETENT BODIES

7. If the review of administrative acts and action lies within the competence of the ordinary courts, is that competence delimited by texts (such as a Constitution, or parliamentary legislation) or by case-law ? [10 lines max.]

Regular courts are not competent for review of administrative acts.

8. If the review of administrative acts is carried out by administrative courts or tribunals, are the existence, competence and duties of those courts or tribunals governed by specific rules ? Are such rules set out in texts or in the case-law ? [10 lines max.]

The existence and jurisdiction of the Administrative Court of Montenegro is prescribed by the Law on courts.

Administrative dispute shall be conducted according to the Law on Administrative dispute, and for the procedural issues that are not regulated by that law, the provisions of the Code of Civil Procedure shall be applied.

C – INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES

9. If judicial review is assumed by **ordinary courts**, describe their internal organization and specify if they comprise specialized chambers, and how these are composed. [10-15 lines]

Judicial review is not performed by regular courts ("ordinary").

10. If judicial review is assumed by **administrative courts**, present their internal organization. Distinguish between the highest and the lower courts. Could you provide a chart or a diagram ? [15 lines max. + chart and diagram]

Review of administrative acts is carried out by a specialized court - Administrative Court.

Administrative Court shall adjudicate in a panel of three judges. Panels are not specialized, i.e. the Panels shall decide on the legality of administrative acts from all administrative areas.

In the process of judicial review a single judge does not decide, except when it comes to temporary measures.

Against the decision of the Administrative Court, an extraordinary remedy - a request for extraordinary review of a decision of the Administrative Court of Montenegro may be filed with the Supreme Court of Montenegro.

D – JUDGES

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

No. Judges who conduct review of administrative acts do not belong to a specific category of judges.

The conditions for the appointment of judges who carry out review of administrative acts are the same as for judges in other courts, except for conditions relating to work experience (10 years).

12. How are judges in charge of judicial review of administrative authorities recruited ? [10 lines max.]

Specify if this recruitment is made by regular or exceptional competitive examination, or by vocational selection ?Distinguish, if need be, between courts.

Administrative Court judges are elected in the same manner as judges in other courts - on the basis of a public announcement. They are elected by the Judicial Council.

If for a judge of the Administrative Court applied a person that has not previously been a judge, we perform testing of civil substantive and procedural law, general administrative procedure, administrative dispute, the European Convention for the Protection of Human Rights and Freedoms, case law of the European Court of Human Rights.

13. What is the professional training of judges in general ? [5 lines]

According to the Law on Education in Judiciary, the education is organized as follows:

**-Initial (organized for associates in the courts) and
- Continuing for judges in order to maintain and improve their knowledges, skills and abilities for the efficient performance of judicial functions.**

14. How is their career structure organized ? [5 lines]

Upon applicable laws, the judge career advances by appointment in the higher court.

Briefly describe the modes of promotion for length of service or merit.

Criteria for the election of judges who are career advancing are among others, work experience (length of service), the results of the last three years, communication skills and personal appearance, worthiness to perform judicial functions, professional development, science titles etc.

15. How is their professional mobility organized ? [5 lines]

Do judges move from court to court ? Is it possible for a member of the judiciary to take up a position in the public administration ?

A judge of the Administrative Court, with his consent, by the decision of the Judicial Council may be transferred to a higher court (Supreme Court) for a period up to one year, if in that court there is a temporarily increased workload or when there are a large number of pending cases, which, by with the existing number of judges can not be solved. A judge who is referred must meet the requirements for election to the court in which he/she is referred to.

The Judicial Council may refer a judge, with his consent for the period up to three years, to the Ministry of Justice, the Center for Judicial Education and the Secretariat of the Judicial Council to participate in the affairs of these bodies that are related to the

improvement of the work of courts, and especially the introduction of international standards in the courts .

In the case of a reorganization of the courts, which reduces or abolishes the number of judicial positions, the Judicial Council may move forward or refer to another court a judge without his consent.

E – ROLE OF COMPETENT BODIES

16. What are the different kinds of recourse against administrative acts and action in your country ? [20 lines]

Specify if the judge can overrule the act, modify it, cancel a contract awarded by an administrative authority and a private person. Indicate if he can also award damages to a claimant who has suffered harm as a consequence of an act of the administration (a fault committed by the body).

You may wish to use the following classifications.

This classification is usually based on the distinction between review of the lawfulness of an act (“contrôle de légalité”) and full review.

The review of lawfulness means the Court may annul an administrative act or simply declare what the law is, or the rights of the respective parties (this aims to determine the nature, validity and scope of an act). We can distinguish the review of the lawfulness of unilateral acts and the review of the legality of contractual acts.

Full review entails the power not only to annul the act, but also to award damages for harmful administrative acts or actions, and the reworking of an administrative decision. It is now possible to add the power to order the administrative authorities to do or not to do something).

On the question of damages, that is to say public authority liability, it is possible to distinguish between extra-contractual liability and contractual liability.

Administrative Court annuls the unlawful administrative act and requires the adoption of a legal act.

Administrative Court may, if the nature of things it allows and if the established facts provides a reliable basis for it, resolve the dispute by a judgment - a judgment in meritum. Such judgment shall completely replace the annuled act.

Administrative Court may rule on a request of the compensation provided that the factual situation provides the basis for this. Otherwise, the court shall instruct the prosecutor to accomplish this request in a lawsuit (before a regular court).

17. Do mechanisms exist for the delivery of a preliminary ruling? (apart from the procedure under Article 234 of the Treaty establishing the European Community) [5-10 lines]

There are not.

In such a mechanism, many bodies (ordinary jurisdiction, financial jurisdiction, constitutional court or non jurisdictional body) determine the nature, validity and scope of an act.

18. Does a competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature ? In the affirmative, specify the various aspects of these consultative functions, and if they are exclusive to the body or the highest jurisdiction. [5-10 lines]

Court performs only the review of administrative acts and does not have advisory role.

19. Where the body plays both a judicial and an advisory role, how are its respective duties organised ? [10-15 lines]

Specify if a body can successively deal with a case in both its consultative and judicial capacity. In this case, is it a normal practice, and do mechanisms exist to make sure members of this body cannot serve in both a judicial and an advisory capacity at the same time ?

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

F – ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES

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

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

In Montenegro there is only one Administrative court.

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

A. ACCESS TO JUSTICE

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

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

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

An administrative dispute may be initiated against an administrative or other act which was passed in the second degree.

An administrative dispute may be instituted against the first-instance administrative or other act against which no appeal is allowed in administrative or other proceedings.

An administrative dispute may be initiated when the governing body on the request or the appeal of a party has not passed adequate administrative or other act, under the conditions prescribed by law.

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

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

An administrative dispute may be initiated by a natural or legal person, to whom an administrative act violated any law or lawful interest.

State bodies, organizations, a village, a group of persons or others who do not have a legal entity may initiate an administrative dispute if they have the rights and obligations that have been decided upon by an administrative or other proceedings.

An administrative dispute may be initiated by the public prosecutor or other competent authority if the administrative or other act violated the law in favor of a natural person, legal person or other party, or there was a violation of law to the detriment of the state, local governments, institutions and other legal entities.

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

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

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

Party in an administrative proceeding (natural or legal person on whose rights and obligations was decided in the administrative procedure) does not have to explain particular interest in the annulment of the administrative act.

Interest in the institution of administrative dispute must be proven by the person who was not a party to the administrative proceeding.

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

Specify whether it is obligatory for claimants to be informed of these time-limits, and whether the court may grant an extension of the time-limits. Specify the various rules and technical points regarding time-limits for bringing proceedings: general time-limits (explicit, implicit), specific time-limits (according to the nature of the proceedings, or to the distances involved) and the method for calculating time-limits.

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

The right to initiate the review is limited in time. The general deadline is 30 days from the delivery of the administrative act.

For individual administrative acts, the law prescribes a shorter period. These limits range from 72 hours of the delivery of administrative act until 15 days after that delivery.

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

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

Montenegrin Constitution stipulates that all final individual acts (without exception) enjoy legal protection.

However, the Law on Administrative Disputes, which was passed before the said Constitution (2003.), exempted from the review of the acts:

- Which were adopted in matters in which legal protection is provided outside of the administrative dispute, and

- Adopted in matters on which, directly on the basis of constitutional powers the Parliament of Montenegro and the President of Montenegro decides.

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

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

Administrative disputes are initiated by a lawsuit. The complaint must specify the data for the plaintiff (name, occupation, place of residence and address, or name and seat of the plaintiff), the act against which the complaint is filed, why the complaint is brought and in which direction and scope of the proposed annulment of the act. If a lawsuit seeks the

return of property or compensation, a specific claim regarding the property or the amount of damages must be made.

By random case assignment the case is assigned to a judge.

Immediately after receiving the case, a judge examines whether the claim is complete and comprehensible, and if is not, he shall call a party to order the latter. If the plaintiff fails to remedy the deficiencies in the complaint, and they are designed to prevent operation of the court, the complaint is rejected as messy.

If the claim is complete and accurate, firstly we are examining its timeliness, does the claim disputes the administrative or other act, whether the challenged act affects the rights of the claimant, whether an appeal was previously used and whether there is a final court decision rendered in an administrative or other dispute on the same matter.

If we find that any of these reasons exists, the Court dismisses the complaint.

If a complaint with the stated reasons shall not be rejected, it shall be forwarded on the response to the defendant authority and interested parties, if any, and from the defendant's body at the same time all the case files are asked for.

Once the documents are completed it is decided on the submitted claim. Administrative disputes are resolved at the oral hearing, which is obligatory if the party requests that in the complaint or in the statement of defense, or in a closed session.

The average length of the period in which the decision must be made is not prescribed, but it must be ensured that the decision is made within a reasonable time. If the decision was not made within a reasonable time the party, according to the Law of the right to a trial within a reasonable time have the right to file control request (legal means to expedite the process), and a claim for damages for violation of the right to a trial within a reasonable time.

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

The form of the request is not prescribed. However, the Law on Administrative Disputes established a mandatory content of the requirement (lawsuit). The application must include: full name, occupation, place of residence and address or the name and registered office of the prosecutor, the act against which the complaint is directed, why the action is brought, as well as the direction and scope of the proposed annulment of the act.

With the claim must be submitted the original or certified copy of the act against which the complaint is filed. If a lawsuit seeks the return of items if

compensation must include a specific requirement for the objects or the level of the damage.

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

In this moment there is no possibility of bringing proceedings via the Internet. Further development of JIS(Judicial information system) this possibility will exist.

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

There is a courts fee, for submitting the lawsuit and fee for judicial decision.

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

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

It is not compulsory to hire a soliciter. It is up to the party to engage a lawyer.

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

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

According to the Law on Free Legal Aid in order to realize the right to a fair trial to an individual, who is financially unable to exercise the right to judicial protection without damaging the necessary support of themselves and their families, a free legal aid is provided.

Free legal aid includes the provision of necessary resources to fully or partially cover the costs of legal advice, drafting of documents, representation in proceedings before a court, state prosecutors and the Constitutional Court of Montenegro, and the procedure for the amicable settlement of disputes, as well as exemption from paying the costs of the proceedings.

Free legal aid is provided by lawyers from the list of the Bar Association of Montenegro, a decision on legal aid at the request of a party is made by the president of the Basic Court or a judge who he authorizes, on whose territory the applicant resides or is domiciled.

If the request for free legal aid is rejected, a party shall be entitled to an administrative dispute.

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

Be a fine, up to 1,000 euros, the court shall punish the party or other participant in the proceedings, which in the process insults the court.

If a person who participates in a proceeding or a person who is present at the hearing insults the court or other participants in the process, interfere the work or disobey the orders of the judge to maintain order, the judge will warn him. If a warning is unsuccessful, the judge shall warn a person, remove from the courtroom, or fined up to 1,000 euros, and he can be removed and fined.

During the proceedings, the court shall impose a fine of up to 1,000 euros to a legal representative, attorney and intervenor whose civil actions hardly misused the rights recognized by process law.

The penalty for unmeritorious claims does not exist.

B. MAIN TRIAL

33. Which fundamental principles govern the main trial hearing ?The right to *inter partes* proceedings, the rights of the defence/the right to a fair hearing, the balance of written and oral elements in the proceedings. Do these principles derive from national law (legislation or/and case-law) or European law (Convention for the Protection of Human Rights and Fundamental Freedoms for example) or both ? [15 lines max.]

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

The Law on Administrative dispute and Civil Procedure Code, which applies as appropriate to the proceedings before the administrative court, determines all of the following principles prevailing at the hearing. Question of the trial within a reasonable time is stipulated by a special law, so it can be concluded that these principles are stemming from national law.

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

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

Montenegrin Constitution and the Law on Courts, establishes the principle of independence of a judge in the exercise of judicial function.

If a question the judge's impartiality in a particular case is asked, the obligation for the judge is established to exclude himself from the trial in this case and the right of a party is established to require disqualification of the judge in the case.

According to the Civil Procedure Code judge is required to request an exemption for example, if he/she is a relative of the party, the party's representative, the party to the dispute, if in the same case, he/she participated in the decision of the lower court, if he/she is the shareholder or a member of the company which is party to the dispute, if there are other circumstances that cast doubt on his/her impartiality.

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

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

Due to the incorrect application of substantive law administrative or other act can be challenged at every stage of the proceedings.

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

A position of a party to the dispute has the person to whom the invalidation of the challenged administrative or other act would be directly on the damage (interested party).

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

For the protection of the public interest State prosecutor or other competent body may enter in the administrative dispute.

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

There is no.

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

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

The prosecutor may withdraw the complaint until the court decides. In this case, the court suspends proceedings.

According to the Civil Procedure Code, which is applicable to an administrative procedure, the procedure terminates: when the party dies; when a party loses a civil capacity, and has no attorney in the litigation; when the legal representative of the party dies or ceases his authority to represent and party has an attorney in the litigation; when a party who is a legal person ceases to exist, or if the competent authority finally decides on banning of work; when a petition is filled for insolvency proceedings in cases in which the defendant is a debtor; when due to war or other causes cease the operation of the court; where determined by another law.

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

The court is obliged to forward the claim with all the documents to another party in the proceedings.

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

When decides in a closed session, the court decides on the basis of the facts established in the case file, therefore, the evidences presented in the administrative proceeding.

When deciding on a hearing, decision is based on the facts established at the hearing and on the basis of the facts established in the previous procedure, if they are not inconsistent with the facts of the hearing.

The party proposes implementation of evidences, and the evidences are implemented by the court.

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

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

An oral hearing is held in public. The parties are invited at the hearing. The discussion begins with the presentation of the Judge Rapporteur, who presents the facts of the case file. After that, the word is given to the prosecutor to explain the claim, and the defendant's counsel and interested parties to present their arguments.

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

Oral hearing is required if the party is requesting in the claim or statement of defense. At a hearing the parties are invited, their attorneys, and possibly expert.

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

In the deliberation only members of the Panel participate.

C. JUDGEMENT

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

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

The Law on Administrative dispute determines the content of the judgment. The judgment must, among other things, contain an explanation that will clearly demonstrate the regulation on the basis of which it was adopted and the reasons for such decision.

Unclear judgment or unclear explanation is a serious breach of the procedure, which has the effect of nullifying the judgment.

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

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

Legality of legal acts is estimated on the basis of the Law, and if necessary provisions of the European Convention on human rights.

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

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

According to the Law on Administrative dispute, if under the law the parties and other participants in the procedure have the obligations, measures stipulated in regulations that are favorable shall be applied to

them, if such measures achieves the goal of the law. With this kind of provision the court is required to appreciate in the administrative dispute, whether in the present case it complied with this provision.

In administrative matters where the authority is empowered by law to act in the discretion, the decision must be made within the limits of authority and in accordance with the objective of which is the authorization is given, and the court is obliged to respect in the administrative dispute whether the authority acted in such a manner.

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

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

Specify if the court can exempt a party from paying costs

In the administrative dispute, each party shall bear its own costs if the court decides in a closed session.

If the court decides at the oral hearing, the losing party is obliged to reimburse the costs of the opposing party.

The court will release the payment of the costs of the proceedings the party which, according to its general property condition is not able to bear the costs without prejudice to the necessary support of themselves and their families.

The court may release a party from paying taxes, if by paying such a tax the means for supporting the party and members of his/her family would be significantly diminished.

On exempting from costs of the proceedings, the court shall decide on the request of the party, which is required to provide a proof of financial standing.

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

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

In administrative dispute decision is passed by judicial panel (three judges). Decision may not be passed by an individual judge.

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

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

Decision in administrative dispute is passed by majority. Judge may point a legal position which is opposite to the majority.

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

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

The decision is always submitted in writing.

If an oral hearing is conducted, decision must be made within eight days from the date of the oral hearing, a decision has to be made and delivered to the party within 30 days of its adoption.

If no oral hearing is conducted, decision (written) must be delivered to the parties within 30 days of the day of deciding.

D – EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT

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

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

The decision of the administrative dispute has effect only between the parties to the dispute and only applies to that dispute.

However, the court is required that in each identical legal situation acts at the same manner, which means that the court is bounded by the stated legal position set forth in the earlier decision.

Against an administrative act, legality of which the final decision was passed, the same party can not file a lawsuit any more.

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

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

Depends on the type of the decision and material law.

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

The recommendation of the Council of Europe distinguishes the execution of judicial decisions by private persons and administrative authorities. As regards private persons, Recommendation R (2003) 16 on the execution of judicial and administrative decisions in the field of administrative law, indicates that it is possible where necessary to have recourse to measures to enforce the decision, provided that a certain number of rights are guaranteed and specific conditions are respected. For the implementation of decision by administrative authorities, member states should ensure that administrative authorities implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions,

they should take all necessary measures in accordance with the law. Thus, in cases of non-implementation by an administrative authority of a judicial decision, an appropriate procedure should be provided to seek execution of that decision, in particular through an injunction or a coercive fine. Administrative authorities should be held liable where they refuse or neglect to implement court decisions. Public officials in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them. Specify if these various hypothesis exist in your country.

The decisions made in the administrative dispute shall be executed by the body competent for enforcement of administrative or other documents.

Administrative enforcement, except for the monetary obligations, is enforced by the authority which decided in the first instance.

Decisions on monetary obligations are executed by the administrative authority in charge of public revenues.

Execution of decisions to real estates and shares in a company or other form of business organization, shall be judicially enforced by the law governing enforcement proceedings

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

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

The court shall endeavor to carry out the procedure without delay, within a reasonable time with as little cost as possible, and to prevent any abuse of the rights of parties in the proceedings, as expressly required by law.

In order to exercise the right to a hearing within a reasonable time, the Law on the Protection of the right to a trial within a reasonable time was passed. The law provides that a party's right is to sue for damages for violation of the right to trial within a reasonable time.

E – REMEDIES

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

Specify if the first instance and appeal courts have the same functions, or if functions change with the level , in particular if many functions are allotted to lower jurisdictions, and others reserved to highest jurisdictions (for example, control of the respect of law, judicial review of decisions taken by the head of State, the head of government, ministries, and the disputes relating to elections).

All administrative disputes in the first instance are decided by the Administrative Court. Supreme Court decides on extraordinary legal remedy against the decision of the Administrative Court.

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

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

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

Against the decisions of the Administrative Court right to appeal is not prescribed by law.

Against the decisions of the Administrative Court extraordinary legal remedies can be filed:

- Request for extraordinary review of court decisions
- Request for retrial.

A request for extraordinary review of a court decision can be made for:

- Violation of substantive law;

- Violation of the rules of procedure in administrative dispute that could have an impact on the resolution of the matter.

Deciding on the request for extraordinary review of a court decision the Supreme Court takes care on the existence of substantial violations of the rules of administrative procedure.

In the accuracy of factual finding, Supreme Court should be engaged only if it finds that because of the incorrect application of substantive law state of facts is incompletely established.

On the request for a extraordinary review of the decision, the Supreme Court, as a rule, decides in a closed session and in the panel of three judges.

The Supreme Court by a judgment granting a request may revoke or modify the court decision, against which the request has been submitted.

Improper request is rejected by a judgment and unauthorized or untimely request is dismissed by a decision.

On the request for a retrial, Administrative Court is deciding in a panel of five judges.

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

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

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

From the first instance court - the Administrative Court may be requested to pass the interim relief. This is decided by the presiding judge within five days from the date of application. Against this decision may be appealed to the Panel of the Administrative Court within three days, and the latter is obliged to decide on the appeal within seven days of receipt of the appeal.

Before initiating an administrative dispute a party may seek from a regular court - basic court to pass an interim relief.

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

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

The prosecutor may ask the court to pass an interim measure to monitor the situation until the court's decision, if by the execution of an administrative act before a judicial decision for the plaintiff would be caused major adverse effects or the challenged act would have caused an irreparable damage.

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

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

Procedure for passing an interim relief is not different, regarding the party.

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

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

This question completes questions 5 and 22.

Administrative disputes are decided by the court only.

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

Recommendation R (2001) 9 considers alternatives means of dispute resolution between administrative authorities and private persons. Recommendation R (81) 7 on measures facilitating access to justice calls in its appendix for measures to encourage the use of conciliation and mediation ; Recommendation R (86) 12 concerning measures to prevent and reduce the excessive workload of the courts, calls for encouraging, in appropriate cases, the settlement of disputes, either outside the judicial system altogether, or before or during legal proceedings. These recommendations lay down a certain number of principles, in particular that these alternatives must not preclude recourse to the courts, and that the body in charge of hearing the dispute must provide guarantees of independence, impartiality and competence. Indicate procedures corresponding to these objectives in your country.

Before initiating an administrative dispute when it comes to labor disputes of civil servants, the parties according to the Laws on peaceful settlement of labor disputes ("Off. Gazette of Montenegro", no. 16/2007 and 53/2011) can address in order to solve the dispute to the conciliator and arbitrator in the Agency for the peaceful settlement of disputes, as separate organizations.

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

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

The process of mediation in civil - legal disputes, including disputes in family, business, labor and other property rights of natural and legal persons, can be resolved through mediation and in accordance with the Law on Mediation.

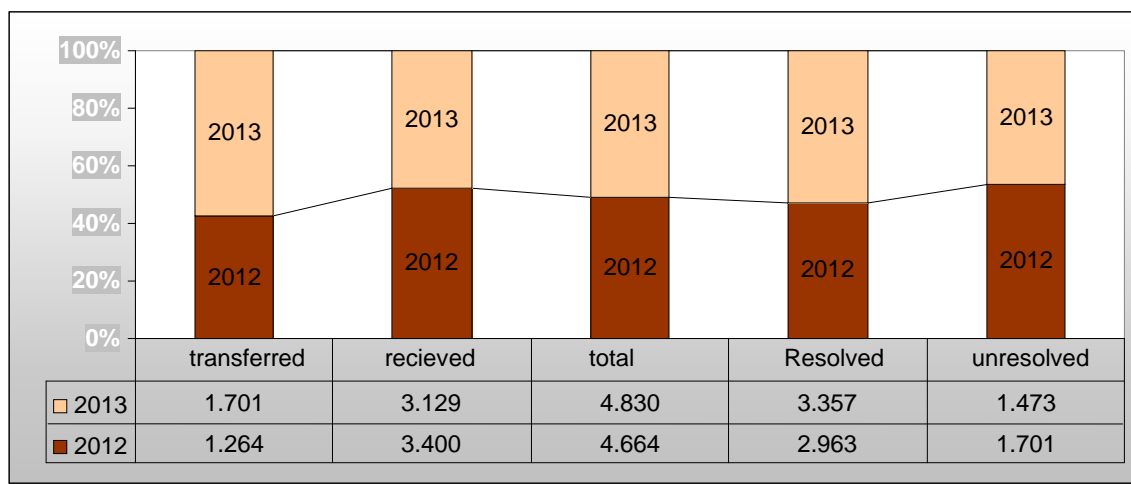
IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

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

If that is not possible, could you take 2012 and 2013 as reference years ?

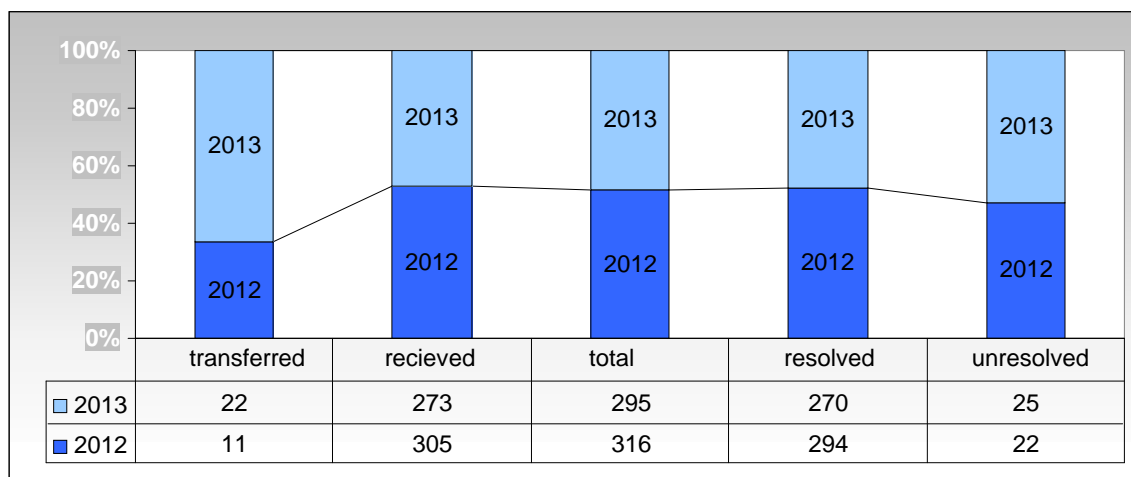
A presentation in charts, distinguishing between first instance and the different levels of appeal, is desirable.

Administrative court of MNE **Firstinstance administrative cases-"U"**



Supreme court of MNE

Administrative department- extraordinary review of courts decision-"Uvp"



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

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

Take an overall approach stating where possible, average costs in terms of staff, operation and equipment. Reference years : 2012-2013.

The approved budget for the year 2012 for consumer unit "Judiciary" is 19.252.931.22 €

- for gross earnings of courts the amount of € 14,469,947.72 is granted
-for gross earnings of the Administrative Court the amount of € 752,017.88, is granted, as compared to the total approved budget for 2012 makes 3.91%;

2. The approved budget for 2013 amounts to €20,296,979.73

- for gross earnings of the courts the amount of € 14,444,919.84 is granted

- for gross earnings of the Administrative Court the amount of € 799,707.60 is granted, as a percentage of the approved budget makes 3.94%.

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

Total number of judges in Montenegro is 260 judges.

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

In Administrative Court of Montenegro there are nine judges and the president of the court, and in the administrative department of the Supreme Court of Montenegro there are three judges. Therefore, on the review of administrative acts there is a total number of 13 judges, representing about 0.2%.

In Montenegro there are no magistrates.

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

Yes

In the Administrative Court eight advisers are working, and they assist to judges in making decisions, and they are all graduated lawyers, who have passed the bar exam.

In the Supreme Court of Montenegro in the administrative department there are two advisors, who are qualified lawyers who passed the bar exam.

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

Administrative court has a library which has necessary literature for its work.

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

All decisions and acts of the court are made in JIS (Judicial Information System), thus creating a unified database which can be accessed by all officers of the court.

In addition, we are subscribed to the on-line register of regulations (in pro) that we need in everyday work.

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

Web page of the Administrative court is available on the web page of all courts www.sudovi.me.

B. Other statistics and figures

Could you take 2012 and 2013 as reference years ?

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

A presentation in charts is desirable.

70. How many new applications are registered every year with the court registry or the authority in charge of registering them ? [5 lines]

Administrative court of MNE

Administrative court	2012	3400
Administrative court	2013	3129

Supreme court of MNE

Supreme court	2012	305
Supreme court	2013	273

71. How many cases are heard every year by the court or other competent bodies ? [5 lines]

Administrative court in average resolves per year over 3000 cases, upon years as follows:

- 2010. - 3862,
- 2011. - 3673,
- 2012. - 2975,
- 2013 - 3410 cases.

72. Could you provide figures concerning cases currently lodged with courts or competent bodies which have not yet been disposed of ? [5 lines]

On day 30. 05. 2014., the Administrative Court has 1,752 administrative cases, and the Supreme Court of Montenegro 82 cases of extraordinary review of judicial decision.

73. What is the average time taken between the lodging of a claim and judgement ?
Specify for each level of court, and indicate if it is a theoretical or real time, and the way it is calculated.

According to the Law on Administrative dispute, the court is required to submit a complaint to the defendant authority to answer, and to all interested parties, and to obtain the case file from the defendant's authority. It's common that the defendant authority in the given time limit (30 days) does not submit the case files to the court, and the court is obliged to again request the case files from such authorities. So to complete the case it may take a few months.

In some cases the special law determined even short term for decision-making (eg, register as a voter, labor disputes

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

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2012	3.413	2,975	4.677	160.85
2013	3.183	3.410	4.885	175.48

The average time is calculated in real time for the cases resolved during the reference year from the date of receipt in the court til the decision, and expressed in days.

The Supreme Court of Montenegro - Administrative Division

Reference year	Cases lodged	Cases disposed of	Cases pending	Average time to judgment
2012	318	294	329	52.15
2013	292	286	315	57.1

The average time is calculated in real time for the cases resolved during the reference year, from the date of receipt in the court til the decision, and expressed in days.

All cases from 2012. were resolved, while for cases from 2013., the obligation to be completed by the end of May this year is determined.

74. Indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts. [5 lines]

75. Could you indicate the volume of litigation per field (asylum, foreigners, tax, urban planning, etc.) ? [5-10 lines max.]

The Court does not keep records on the number of cases in certain areas. It can be concluded that the cases of all these areas are current in the work of court, but the leading cases are from the area of: spatial planning, finances (taxes, contributions, customs, public procurement), pension and disability and the like.

C. The economics of administrative justice

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

Judges are not in charge of this issue.