ADMINISTRATIVE JUSTICE IN EUROPE

– Report for Germany–

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Questionnaire related the administration control list and typology in the 25 Member States of the European Union

Preliminary

1. Administration control by specific administrative courts has been instituted in the German *Länder* since 1863. The administrative courts were separate from the civil jurisdiction, responsible for certain disputes in the field of public law and provided for use by independent judges. An independent administrative justice was established, excluding civil jurisdiction, instead of the internal administrative control in existence since the early 19th century. The administrative legal protection was vastly suppressed during the National Socialism period. Following administrative justice reconstruction in the German Federal Republic after 1945, a general principle of law for all public law disputes extended its competence. Thus, there is a comprehensive legal protection on the State government act.

2. The administration is related to law and legislation. The role of the administrative court is not an administration control with a general goal, but the protection of the individual rights before the public authorities. The constitution guarantees an individual a subjective right against violation of his/her rights by administrative action. Illegality of action may consist in an intervention against his/her rights or in a refusal of his/her legal right by the administration. The control of administrative jurisdiction, the legality acts and administrative action must always serve protection of the individual subjective right. The interlocutory nature of administrative jurisdiction decisions and their motives has de facto consequences on administration action. In this measure, the administrative jurisdiction control contributes to respect of objective law by the administration.

3. The administration concept is of a public law nature. It includes any administrative authority that, in the field of public law, safeguards duties and competence materially speaking, and meant to directly produce effects outside the administration. Thereby, both public corporations and private corporations acting according to public law are part of the administration. The administration concept does not extend to the competence safeguard of the bodies of a constitutional nature in the constitutional law field.

4. The administration actions appear as follows: administrative act (settlement of a concrete case), management act (factual measures not of a regulation nature with intervention effects), and contracts by mutual assent (public law contracts), as well as administrative law standards (settlement, status, measures of internal order).

I. Who controls the administration acts and actions?

A. Competent bodies

5. The administration control is ensured by independent administrative courts, separate as regards organisation and administrative staff.

6. As well as Constitutional Courts in the Federal Republic and the *Länder*, there are five autonomous jurisdictions empowered with a right of review respectively. In principle, the judiciary jurisdictions are competent for civil and penal disputes; the Labour Courts are competent for disputes related to labour law. The public Law jurisdictions are divided into administrative jurisdiction (general), social jurisdiction and tax jurisdiction. Administrative courts (general) are competent for disputes related to public law insofar as a social or tax jurisdiction competence does not exist. The social courts are competent for disputes in the fields of social security, legislation related to state-funded doctors and benefits for war victims. Contentious tax courts are competent for disputes in the field of taxes and contributions according to federal legislation as well as for disputes in the field of tax consultants. Constitutional Courts exist outside the five jurisdictions and their rights of review. They are competent for disputes between constitutional bodies, for disputes related to federal laws and the *Länder* law constitutional validity, as well as for, alternatively, violations of fundamental rights by public authorities.

B. Status of competent bodies

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8. The three public law jurisdictions are guaranteed by the constitution, just like German judiciary jurisdiction and labour contentious jurisdiction; their organization, function and competencies are ruled by specific procedural laws. The Law on administrative jurisdiction applies to general administrative courts; law related to jurisdiction organization of social matters applies to social contentious courts and tax contentious jurisdiction organization applies to tax contentious courts. Attempts in view of bringing laws of public law jurisdiction proceedings together in an administrative law adjective are still unsuccessful to this day.

C. Internal organization and composition of competent bodies

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10. The general administrative jurisdiction is divided into three authorities. Administrative courts as first authority and superior administrative courts as second authority are at *Länder* level. Each *Land* comprises several administrative courts and generally one superior administrative court; the superior administrative court for Berlin and Brandebourg is competent for both *Länder*. The third and supreme authority of the general administrative jurisdiction is the Federal Administrative Court in Leipzig. Similarly, the social jurisdiction is divided into three authorities (social contentious courts, social contentious superior court, and social contentious federal court). The tax jurisdiction is divided into two authorities only: for each *Land*, one tax contentious court and the finance Federal Court as supreme federal court. In public Law jurisdictions, the beginning authority is generally the most inferior court. The first and second authorities (but only the tax contentious court in tax jurisdiction) are authorities respectively judging on merits, the Supreme Federal Courts as authorities adjudicating in cassation only decide in the context of law matters. Right of review for access

to the second authority and the cassation authority implies accreditation settled precisely by procedural law. There are exceptions in the field of general administrative jurisdiction, superior administrative courts as first authority are competent for disputes related to large technical projects and the Federal Administrative Court as first and last authority is competent for certain legal matters, particularly for disputes related to federal roads and public airports in the new *Länder* (after reunification in 1990) and Berlin's *Land*.

D. The judges

11. Educational background, conditions of appointment as a judge and the legal status of judges are identical in all jurisdictions. A judge appointed for life in an administrative court can not be subject to mutation to another jurisdictional court against his/her will.

12. Only persons having completed law studies with the first State Examination in a university and who completed the preparatory course for the second State Examination may carry out the duties of a judge. Judges are selected by the relevant ministry and appointed by the Minister. In certain *Länder*, judges are appointed by a magistrate appointing commission made up of judges and members of Parliament, and superior court presiding judges are elected on proposal by the Justice Minister for *Land* Parliament. A commission made up of competent ministers from the Länder and an identical number of Bundestag deputies elect federal judges, and the Justice Minister appoints them. Qualification, competence and professional performance are legally required criteria to be appointed as judge. Examination marks are also of great significance. Up to a certain age limit, each German national having the required competence for duty as a judge (jurist with two State Examinations) may be appointed.

13. Training for judges does not differ from that of other jurists and takes place in two stages. Three-and-a-half-year-university law studies are completed on passing the first State Examination. A two-year-preparatory course aimed at practical training in courts, administrations, and law offices follows and is validated by the second State Examination.

14. Qualifications, competence and professional performance are essential for promotion. At regular intervals, the court presiding judge assesses judges. The competent minister decides on promotion of a judge, with assistance from a judge appointing commission.

15. Transfer of judges to other jurisdictions and temporary delegation to administration is possible. Judges who are appointed for life– generally after three-years-employment as a judge – must give their assent regarding transfer to another court or delegation within the administration. In practice, administrative judge delegation within the administration is usual, providing they have not been appointed for life. Administrative judge transfers to other jurisdictions are rare.

B. Functions of competent bodies

16. According to procedural code, administrative courts may partially or entirely cancel an administrative decision, recognize its illegality or compel the administration to enact an individual administrative act following refusal or abstention. The existence or non-existence of a legal report or the nullity of an individual administrative act can also be observed. Furthermore, administrative courts are competent for disputes resulting from public law contracts, including claims for damages, claims for damages, and compensation for prejudicial consequences of an illegal administrative act as well as rights to compensation

resulting from violation of property rights, excepting expropriation. Last of all, administrative courts are competent for all disputes related to Civil Service Law, including claims for damages due to civil service pecuniary detriment. Civil courts are competent for all other claims for compensation due to violation of an obligation from administration and regarding compensation amounts for expropriation. This legal process fragmentation can only be explained by historical reasons.

17. Administrative courts, just like courts of other jurisdictions, are authorized to examine prejudicial matters not involving legal means and to decide incidentally thereof. If the judicial matter objective is taken up in a court of another jurisdiction, the administrative court may suspend proceedings. Decisions made on prejudicial matters are not by dint of, a part of the judging. Decisions of other courts bind administrative courts in the context of the decision efficiency. If validity of such a law is a prejudicial matter required to be able to adjudicate and if the court considers this law as unconstitutional, it is then necessary to suspend the proceedings and to obtain a constitutional court decision, and when the prejudicial matter is related to interpretation or validity of European Community Law, the court is empowered (and a court with final authority has this duty), to obtain a prejudicial decision from the European Community Court of Justice.

18. According to jurisprudence, the judge is not entitled to simultaneously carry out duties related to administration or legislation (constitutional principle of the separation of the three powers of government), nor is he entitled to carry out a duty as a legal consultant, whether in the administration or legislation field. Any person taking part in the previous administrative proceeding is excluded from carrying out his/her legal duties in this cause. The law enacts this conflict of interests.

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F. Function and relationship distribution between competent bodies

20. At federal level, the instrument enabling supreme jurisdictions to ensure harmonization and equalization of the application and interpretation among lesser jurisdictions is the right of review that admits the Federal Court decision following an appeal to the Supreme Court declared receivable or admissibility of the appeal to the Supreme Court. At *Land* level, the Superior Administrative Court ends variances among lesser jurisdictions. A contentious view does not exist in German law. As for the internal variances among chambers of the Federal Administrative Court, a plenary chamber respectively composed of judges from each chamber defines when a chamber considers deviating from another chamber’s decision on a decisive question of law or when a matter of principle was returned to the plenary chamber. The unit of Law guaranteed within different jurisdictions lies with the common chamber of the Federal Supreme Courts, made up of judges from all Supreme Courts. This chamber defines when a Federal Supreme Court considers deviating from another Federal Supreme Court decision.

II. How do courts control the administration’s acts and action?

A. Access to the judge

21. Before filing action to quash a complaint against an administrative act or against refusal of an administrative act conferring a benefit, the individual administrative act legality and opportunity must be controlled in the context of prior recourse by a competent administrative authority regarding an appeal for reconsideration. Result of this control is expressed by a

decision on contestation. Recourse admissibility is subject to prior requisite administrative recourse. Prior administrative recourse is not required if the individual administrative act was enacted by a federal supreme authority or by a *Land* supreme authority. Excepting for regulation provided in the procedural code, the federal legislator and *Land* legislator are empowered to order that prior recourse is not requisite. The federal legislator and the *Länder* legislators used the possibility to exclude prior recourse for certain legal fields, for example, law related to asylum application procedures.

22. Any private or public legal entity as well as communes and other communities having administrative autonomy may form recourse before the administrative court.

23. The condition for recourse admissibility, whether it is an action to quash or an action tending to an administrative act issue, is that the petitioner assert that he/she is aggrieved in his/her rights by the relevant individual administrative act or by refusal or abstention to enact it. “Putting in a claim” means the possibility of violation of a subjective right exists after recourse is tendered. The condition to an action for a declaration is a legitimate right to obtain recognition.

24. The action to quash and the action aiming to issue an individual administrative act must be filed within one month from notification of the decision on contestation or, if a prior administrative recourse is not required, from notification of the individual administrative act. The parties must be informed in writing about recourse, the location where it must be filed and the delay. The delay runs from the notification date and expires at the end of the last day. If a delay expires on a Saturday, a Sunday or a Public Holiday, then the last day of the delay is the first following working day. If a person did not respect the delay through no fault of their own, the court is bound to grant them foreclosure relief.

25. The general principle of administrative jurisdiction Law (see No. 1) guarantees that all disputes of unconstitutional public law are subject to control by judges. Disputes of a constitutional nature are subject to Constitutional Court control. Materially speaking, they are decisively marked and defined by constitutional Law and in this particular case when these are rights or duties exclusively set by the Constitution and when both parties in dispute are public law institutions. The disputes between citizens and the State are always of an unconstitutional nature.

26. Appeal against administrative court judgments is open to parties, if declared receivable by the administrative court or by the superior administrative court. The administrative court adjudicates the appeal admissibility in its judgment. The superior administrative court is bound by the authorization. If the appeal is not receivable by judgment, it must be requested within one month from judgment notification. The motion must be addressed to the administrative court and motivations must be explained within two months from judgment notification. The superior administrative court adjudicates in the form of a judgment without oral debates about the motion’s admissibility. The admissibility motivations are settled by law. The appeal must be declared receivable (1) if there are serious doubts about the judgment’s fairness, (2) if there are particular difficulties of law or fact in the case, (3) if the case has scope for principle, (4) if the judgment deviates from a decision of the superior court, the Federal Administrative Court, the Common Chamber of the Supreme Federal Courts or the Federal Constitutional Court (variance) or (5) if there is an irregularity in the form of proceedings. The appeal declared receivable must be justified within one month after judgment of admissibility was notified.

Appeal to the Supreme Court before the Federal Administrative Court is opened to parties against the administrative court judgment if the petitioner and the counsel for the defence give their approval “piggyback” for appeal to the Supreme Court and if it has been declared receivable by the administrative court in a judgment or by judgment on motion. The motion must be filed in writing within one month from the integral judgment notification. Admissibility motivations are settled by law. The « piggyback » appeal to the Supreme Court must be declared receivable only if the case has a scope for principle or is due to variance.

Appeal to the Supreme Court before the Federal Administrative Court is opened to parties against the Superior Administrative Court’s judgments if the superior administrative court or the Federal Administrative Court declared it receivable. The superior administrative court adjudicates the admissibility of the appeal to the Supreme Court in its judgment. The Federal Administrative Court is bound by the admissibility declaration. The admissibility motivations are settled by law. Appeal to the Supreme Court must be declared receivable if the case has a scope of principle, if there is a causal variance or if the judgment might be based on an irregularity in the form of proceedings. In the absence of declaration of admissibility for appeal to the Supreme Court in a superior administrative court judgment, the default may be sued by recourse before the Federal Administrative Court. Recourse must be formed within one month from judgment notification and its grounds must be given within two months from the judgment notification. The Federal Administrative Court adjudicates by way of judgment.

Audition blame is granted against decisions having legal authority based on a violation of the hearing right by the judge. It must be formed within two weeks after violation of the hearing right was known.

27. The declaration motion of the appeal admissibility and recourse against a refusal of admissibility declaration for appeal to the Supreme Court must be formulated in writing and their grounds must be given. The arguments exposed must include an element that gives grounds for appeal or recourse admissibility.

28. The motions may be filed before the court by e-mail. This process is provided by legislation. The Federal Republic and the Länder decide upon the moment from which the motions filed by e-mail are receivable in their respective field of responsibility. The motions introduced by e-mail are already carried out at the level of the Federal Administrative Court and in certain courts of the *Länder*.

29. The introduction of the motion and other recourse is not subject to a down payment. Legal fees are certainly outstanding with filing of the request, but proceedings do not depend on their settlement.

30. For a motion before the administrative court, legal representation is not compulsory but it is possible. Each party filing a motion must be represented by a lawyer before the Superior Administrative Court and the Federal Administrative Court. Public companies and administrative authorities may also be represented by an agent entitled to carry out the duties of a judge (jurist with two State Examinations). The obligation to be represented before the superior administrative court and before the Administrative Federal Court is provided by law and indication contents of right of review.

31. Legal assistance is granted when success probability of the legal action course is sufficient and when assuming of legal fees may not be demanded from one party due to his/her social

status. Eligibility to receive legal aid is decided upon by the respective court for the hearing. In the context of eligibility to receive legal assistance, the assistance of a lawyer may be granted on request. The court determines the success of legal proceedings by prognostication. The Law sets the amount that may be requested from a party in accordance to his/her income and properties. In the event the administrative court refuses legal assistance, possibility of appeal before the superior administrative court is open to the parties.

32. The losing party bears the costs of the procedure. No tax is withdrawn in case of knowingly delaying tactics or abuse of right to review.

B. The legal proceedings

33. The fundamental principles controlling legal proceedings and the legal procedural course are set by the procedure code. Legal proceedings before the administrative court are controlled by the principle of the proceeding presided over by an interrogating judge and collaboration of the parties to court action. The petitioner is bound to indicate the material elements and means of proof that might help with the proceedings motivation. The defendant and other parties have the possibility to take a position on the petitioner's conclusions and to introduce offers of proof on their side. The court must suggest that parties collaborate in seeking facts (obligation of support). If, despite support of the parties some matters requested to be able to adjudicate remain unanswered, the court is bound to clarify these facts even without offers of proof (principle of compulsory action). The limit of legal duty to clarify the facts is determined by substantive law. Substantive law also determines who assumes legal consequences of a clarification that is no longer possible (burden of proof). Recourse introduction and motivation as well as the response of the parties are carried out by way of notification and the filing of relevant administrative documents subject to the oral debates.

34. A judge is excluded from his/her duties according to law in cases where he/she, his/her spouse or a close relative is a party, where he/she is a party's agent or legal representative, where he/she was heard as a witness or where he/she took part in a decision in a preliminary hearing. Moreover, each party may prevent a judge from sitting due to a reasonable suspicion from each party that a fair trial will not be given. An act of impeachment is adjudicated by the court by way of judgment without any collaboration from the impeached judge. The impeachment is grounded by law if there is a legitimate motive justifying suspicion of the judge's impartiality.

35. The petitioner may regularly claim new facts as new means of action and defence during the hearing before the administrative court and the superior administrative court until the end of the oral debates.

36. If third parties are involved in the contentious law report to such a degree where a uniform decision appears necessary, they must be called into question. If the decision is related to a third party's legal interests, he/she might be involved by the court. A person involved may vindicate his/her own means of action and defence in the context of the dispute objective and file motions. The judgment has legal authority as regards the person involved.

37. A representative of federal interests appointed by the government may bring an action in each case before the Federal Administrative Court. As per the *Land* legislation, a representative of general interest appointed for that purpose may bring an action before the administrative court and the superior administrative court in the context of proceedings and carry out right of review.

38. The representative of federal interests may independently and impartially adjudicate in the context of proceedings before the Federal Administrative Court, through his/her legal status just like the Chief Prosecutor would proceed before the Counsel of State in France.

39. In the event of no legal decision, the administrative proceedings finish with a withdrawal during a hearing, a transaction before the court or declaration of dispute resolution in agreement with the petitioner and the defendant.

40. The court registry service hands over notification of the parties to other affected parties by writ. Recourse notification is prescribed by the Head of Chamber.

41. Searching of fact elements forming the dispute material lies both with the parties and the court in the context of its investigation obligation. The parties may present offers of proof. In its search for proof, the court is not bound to offers of proof from the parties.

42. Oral debates are public. During oral debates, the parties expose and motivate their motions, the court debates facts and the legal situation with the parties and proof is collected. The hearing may take place in camera under certain legal conditions, such as privacy protection of a party or a witness, in case of danger for national security or in respect for trade secrets and professional secrecy. Oral debates start with the case appeal and establishing the parties' appearance. The reporter exposes the dispute status. Parties are granted the possibility of expressing their point of view and filing their motions. Expression of view point is oral. An additional note may be addressed. The petitioner, the defendant, the person involved and, in case he/she used his/her power to bring about a case, the representative of public interest or the representative of federal interest for the federal administrative court are parties to the proceedings. The presiding judge concludes oral debates.

43. Once oral debates are concluded, the judges leave to deliberate. The in-camera sitting starts with the facts and the legal situation appreciation and ends with a vote. Excepting for judges appointed to adjudicate on the case, only persons employed in the same court for the purpose of legal training are entitled to attend the in-camera sitting, insofar as the presiding judge agrees. Only a legally set number of competent judges according to the distribution of their duties are appointed to adjudicate and deliberate. The in-camera sitting and vote are subject to secrecy on deliberations. The Law sets participation for in-camera sitting, developments of the in-camera sitting and the vote as well as the requested majority.

B. The judgment

44. The judgment must be motivated in writing. The judgment must indicate motives that were determining factors for belief on behalf of judges. Motives must describe facts stated and their importance, expose what the parties said and the contents of documents that were consulted and taken into account for decision, as well as plausibly enunciate the legal grounds of the decision and its scope for the parties and for recourse proceedings.

45. Discretion criteria and the reference context for the decision are the laws and regulation, the national constitution as well as common law and the European Human Rights Convention. If there is no doubt about law compatibility with right to priority, there is no need for discussion in the context of judgment. Grounds for decision motivation lie on the interpretation of legislation in force as well as on appreciation of facts and proof supporting

the relevant rules. Motivation also takes into account legal decisions, including those of the supreme proceedings.

46. The scope for control depends mainly on relevant substantial law. Verification regarding substance of the decision right according to full powers to act is limited to a matter of knowing whether a full competence to act was legally granted to the administrative authority (grant of full powers to act), whether this competence was actually carried out (exercise of powers to act) and whether the considerations were carried out in the context of the legal objective (abuse of power or excess of authority). In the context of prognostication decisions legally undertaken by the administration, the administrative court only controls (1) if the prognostication took place on a basis of sufficiently reliable facts, (2) if the appreciation is appropriate to the case and (3) if the final decision is maintainable. Some similar limits to control exist in the context of planning decisions as well as administrative operations based on freedom for appreciation that prioritizes administration appreciation. In these situations, the court is not deemed to control the expedient nature of the administrative decision or to replace the appreciation put forward by the administration with one of its own, even if other decisions seem more expedient or if other decisions are more favourable to the petitioner. When the scope for control is limited, verification of proceedings gains more significance. In addition, administrative operations are related to unlimited legal control; this meaning, in the context of legal conditions, consequences of legal decisions must be taken into account. The law does not separate various proceedings concerning legal control.

47. The losing party bears the costs of the procedure. If a party partially wins its point and partially loses, the costs must be proportionally distributed. Whoever fails to introduce a means of recourse or withdraws from proceedings, from reform recourse or from any other right of review must bear the costs. The legal fees and extrajudicial proceeding fees, including the lawyer’s fees and disbursement are considered as costs. Costs cannot be charged to a person involved unless he/she filed motions or introduced reform recourse. The extrajudicial proceedings fees incurred by the person involved are not payable unless the motion he/she presented was successful.

48. The chamber must generally hand over a dispute to one of its members, adjudicating as a sole judge, at the level of the administrative courts for first hearing, when the case is not showing any particular difficulties and has no scope for principle. In asylum application procedures, a sole judge adjudicates in 90 % of cases. For other Law fields, no statistical data is available; the volume of decisions delivered by a sole judge should be on average inferior to 50 % of the *Länder*.

49. In all proceedings by the administrative jurisdiction, the in-camera sitting publication of deliberations by individual judges and of varying opinions is not authorized.

50. The judgment is pronounced orally to the public. Following this, the judgment decision must be presented in written form. Notification of the integral judgment must be made in writing to the parties. Judgment notification in writing is also receivable in lieu of the verdict. The court may waive oral debates with agreement of the parties. In this case, written notification of the integral judgment replaces the verdict.

D. Judgment effects and execution

51. Insofar as the object of dispute has been adjudicated, the judgment only binds the parties and their assigns. If the state of facts and legal situation remain unchanged, the losing

administrative authority is not entitled to enact a new administrative act towards the relevant person regardless of reasons for court disapproval of this act. This effect of final judgment authority is justified by its purpose, which is to serve public peace and to preserve trust in law stability. The final judgment authority must be separate from the judgment compulsory force as force of law at the level of the administrative operation with respect to other interested persons. It follows that unequal treatment by the administrative authority may only be receivable on grounds complying with the facts.

52. The judge may not temporally limit effects of a judgment he/she brought.

53. The execution of administrative court decisions is regulated in the procedure code. In the context of the sentence, judgments conferring rights are directly efficient and therefore, they do not need an act of execution. Judgments declaring rights are not enforceable. Other decisions having force of final judgment and judgments for tentatively enforceable order to pay costs may be executed. General conditions differ according to whether the execution is an act by the administration or private individuals. The administration can proceed with carrying out money claims and may compel proceeding with action, to bear or abstain from it. Private individuals may proceed to carrying out money claims against a public law entity. In the event the administrative authority involved does not defer to the obligation to go back on an administrative act already executed or to undertake an administrative act, the court may, on request, impose and execute a constraint. It cannot carry out seizure itself.

54. In Germany, the fact that the excessive delay of a judicial procedure may turn out to be unconstitutional is recognized. The problem does not necessarily lie in the fact that a court explicitly or conclusively refuses the process of a case, but rather on a delay due to a work overload. The matter of deciding how to proceed in case of an unjustified delay of the administrative court decision is still not dealt with. The possibility of engaging recourse in case of non-action from the administration before a superior hearing is considered. Whether or not this measure may catalyze the procedure is still to be proven. The legislator will have to bridge this gap in legal protection. Concrete law projects do not exist to date.

E. Rights of review

55. Generally, the authority for introduction in an administrative contentious proceeding is the administrative court. In some cases, the superior administrative court is competent as1st authority for disputes related to large technical projects (building and exploitation of nuclear and thermal power plants, incineration of waste centres, public airports, construction of high tension open-wires, railway lines, federal roads, federal waterways) as well as recourse against association prohibitions at *Länder* level. The Federal Administrative Court adjudicates as 1st and last authority on non constitutional disputes between the Federation and the *Länder* or between various *Länder*; the association prohibitions at federal level, disputes of the public service law in the sectors of the information federal services, actions to quash and actions for failure to act against the Federal Office of insurance supervision, as well as on certain road projects in the Berlin area, and in the new *Länder* included in 1990 according to a limited regulation to date.

56. The right of review in the administrative jurisdiction is theoretically performed at three levels. The superior administrative court controls the administrative court decisions in fact and in law. The Federal Administrative Court acting as the authority on cassation only adjudicates on law matters.

F. Urgent proceedings and summary judgments

57. The procedure code provides for consent on urgent proceedings and the summary order. The competent court for the summary proceedings is that with the competent background. All authorities are subject to the same regulation in the context of summary proceedings. If the case is transferred to a sole judge before the administrative court, he/she also adjudicates on urgent proceedings. In other cases, the chamber adjudicates.

58. There are two types of summary proceedings. Contentious recourse of an administrative act limiting a right generally has a suspensive effect. Insofar as the suspensive effect of recourse is excluded from immediate execution according to law or the administrative order, the administrative court with the competent background may, on request, order that there is a suspensive effect or retrospectively re-establish it. Such a decision presumes that right of review will probably be successful or, if the result of recourse is uncertain, that the petitioner's interest prevails upon adjournment of the administrative act execution. In cases where a motion tends to obtain an individual administrative act or an omission in the substance of the case, the court may take a summary order to settle a temporary situation concerning a contentious law report. Summary orders presume the petitioner proves the legitimateness of his/her right and urgency of the case.

59. The summary regulation is identical both for individual disputes and public law institution disputes.

III – Regulation of administrative disputes by non adjudicative proceedings

60. In as much as prior recourse is necessary, the administration considers legality and appropriateness of the administrative act. This control seeks an administrative authority or a competent commission to adjudicate on the contestation.

61. Administrative disputes may be settled by independent and impartial organisations if the parties assent thereto. In this event, the case may be committed to a judicial or extra-judicial mediator. In the case where mediation is unsuccessful, the case lies with the administrative court authority.

62. According to legal regulation, recourse before the administrative court may be excluded by attributing the case to arbitration courts that meet constitutional conditions required by a court. Competence of an arbitration court may also be stipulated by contract. The arbitration treaty excludes authority of the administration courts if this might in turn hinder action.

IV – Justice administration and statistical data

A. Means available to justice in administration control

63. Needs for staff and buildings are established by the Federation and the *Länder* pursuant to the trend in business according to set respective standards and are funded by State budgetary funds. Needs are established separately for the judicial order jurisdiction and administrative jurisdiction respectively. For certain material assets (library, office supplies, furniture) and other costs (complementary training program, auxiliary clerks), and in certain *Länder*, administrative courts receive their own budget. The amount depends on the extent of the court constituency and amounts to, on average about 250,000 € per court and per year. The Ministry of Justice and the superior court presiding judge agree upon the budget for the *Land*'s

administrative jurisdiction, and the superior administrative court presiding judge and various administrative courts, on the budget for administrative courts. Local budgeting turned out to be highly advantageous.

64. On 21.12.2002 (reference date), there were 20,901 magistrates in Germany throughout the jurisdictions.

65. The rate of magistrates placed in a general administrative jurisdiction in comparison to the total number of magistrates was around 11.1 % on the reference date. The rate of magistrates placed in the general administrative jurisdiction, social jurisdiction and tax jurisdiction was around 20.3 % in comparison to the total number of magistrates.

66. Within all courts of first and second authority, those granted tenure to the first State Examination are trained for a total of 12 months. They assist magistrates to a certain extent. The total number of these active graduate trainees is estimated at 10,000 per year. The percentage of magistrates in charge of training these graduate trainees in the *Länder* is estimated at about 20 %. At the level of federal courts (except for the Federal Constitutional Court), the judges of lesser jurisdictions are employed as scientific collaborators for a renewable two-year-period. On average there is one scientific collaborator for five federal judges. There are between 50 to 60 scientific collaborators in total per year within the federal courts.

67. Each court has a more or less large library according to its number of magistrates with mainly legal works (official publications of laws and statutes, law reports, law commentaries, manuals, monographic publications as well as specialised legal periodicals and other periodicals).

68. Almost all German courts have modern computer means. The magistrates, the court registry and the editorial department have individual computers with word processing, department administration and communication programmes (e-mail, Internet) as well as printers. Moreover, magistrate's individual computers have special calculation and data base programmes. In most courts, computer techniques are inter-connected.

69. Most administrative courts have their own Internet site where citizens can obtain information about functions and competences, the judiciary and personal organization as well as access to court addresses, etc. In addition, the courts themselves publish press releases and more partially, decisions. It will be possible to file rights of review and reports by computer in the near future. This is the case for certain courts, e.g. the Federal Administrative Court.

B. Others statistics and indications in figures

70. New motions in 2003, with the distinction of various authorities as well as proceedings defining background of disputes and summary proceedings:

Administrative courts of first authority:	
Proceedings on background of disputes	210,673
Summary proceedings	73,271 (without n.-c.)
Numerus-clausus proceedings (n.-c.)	32,040
Superior administrative courts:	
Proceedings on the substance of dispute for first authority	1,128

Appeals 23,727
Summary proceedings 11,567

Federal Administrative Court:
Proceedings of first authority 140
Appeals to the Supreme Court and appeal recourses 2,079

71. Files processed in 2003, with distinctive various courts of various authorities as well as proceedings defining dispute backgrounds and summary proceedings:

Administrative courts:
Proceedings on dispute background 201,603
Summary proceedings 72,865 (without n.-c.)
Numerus-clausus proceedings 23.165

Superior administrative courts:
Proceedings on dispute background in first authorities 1,467
Appeals 24.324
Summary proceedings 11,537

Federal Administrative Court:
Proceedings in first authorities 107
Final court of Appeal and appeal recourse 2,265

72. Pending proceedings in 2003, with a distinction from various courts for various authorities as well as proceedings defining dispute background and summary proceedings:

Administrative courts:
Proceedings on dispute background 242,164
Summary proceedings 12,068 (without n.-c.)
Numerus-clausus proceedings 14.643

Superior administrative courts:
Proceedings on dispute background for first authority 2,291
Appeals 14.442
Summary proceedings 3,115

Federal Administrative Court:
Proceedings of first authority 88
Final court of Appeals and appeal recourses 659

73. Average delay of proceedings in 2003, with a distinction from various courts for various authorities as well as proceedings defining dispute background and summary proceedings (in months):

Administrative courts:
Proceedings on dispute background 15.3
Summary proceedings 1.9 (without n.-c.)

Superior administrative courts:
Proceedings on dispute background in first authority 19.7

Appeals 8.6
Summary proceedings 2.8

Federal Administrative Court:
Proceedings in first authority 6.0
Appeal recourse 3.7
Final court of Appeals 8.7

74. Results of proceedings adjudicated in 2003 before the administrative courts in first authority:

Proceedings on dispute background:
Administrative authority wins the case 83.5 %
Administrative authority partially wins the case 5.9 %
Administrative authority loses the case 10, 6 %

Summary proceedings (without numerus-clausus):
Administrative authority wins the case 85.9 %
Administrative authority partially wins the case 3.4 %
Administrative authority loses the case 10.6 %

75. As for the volume of proceedings on dispute background before the administrative courts of first authority by field, we only have statistical data about the rate of general disputes and asylum application procedures. Volume of items in 2003 in %:

General disputes 71.2 %
Asylum application procedures 28.8 %

C. Economics of administrative justice

76. There is no scientific study demonstrating the influence of administration sentencing on public budgets or illustrating thoughts of magistrates on consequences of their decisions as regards cost to public finance.

(Herbert)