ADMINISTRATIVE JUSTICE IN EUROPE

Questionnaire related to internal assessment and various types of administrative oversight in the 25 Member States of the European Union

Opening remarks

1. In Italy, appeals of administrative decisions are brought before the administrative judge whose competence differs from that of the common law judge.

Originally, there was only one level of instance before the litigation sections of the State Council, which also includes advisory sections (the fourth section, which was the first litigation section, was created in 1889).

In 1971, the regional administrative tribunals (TARs) were created and the State Council was vested with the power of appeal.

According to the Constitution (article 103), the administrative judge has jurisdiction over legally protected interests in matters regarding the administration, and individual rights in the specific areas specified in the law (areas of exclusive jurisdiction). Legally protected interests may be defined as the advantages granted to an individual through property subject to the administration's power. Legally protected interests involve attributing to this legal individual the possibility of influencing the proper exercise of administrative power.

Moreover, since the reforms introduced between 1998 and 2000, the administrative judge may also order the administration to compensate for damages suffered by an individual due to illegal administrative activity.

The main exclusive jurisdictions of the administrative judge are cessions of property or public services, urban planning and construction, public proceedings for awarding contracts for public works, supplies and services.

2. The competence of the administrative judge currently protects individual rights and is not limited to simple oversight of the administration's proper functioning.

An appeal of an administrative decision is examined by the judge within the limits of the individual petitioner's interest. The judge examines whether the exercise of public power was legal, not so as to verify the administration's proper functioning but to determine whether the possible abuse of power infringed on the petitioner's rights and thus whether or not his/her request may be received.

3. Traditionally, the concept of the administration refers to state or regional administrations and public institutions.

The influences of European law led to the concept of the administration being extended to include the performance of public duties by other individuals, even those technically within the realm of private law.

This is how the nature of public-law corporations was recognised by public-share companies and the rules of European law concerning the public-law agencies (an important concept regarding public contracts) were applied.

4. There are several classes of administrative decisions: authorizations (exercise of power) and similar decisions (e.g. in relation to contracts); decisions of a general scope (assignees undetermined) and particular decisions targeting one or several assignees; decisions based on the administration's full powers to act and its related power; administrative decisions (measures), advisory decisions (opinions) and oversight decisions.

I - Who oversees administrative decisions and actions?

A - Competent bodies

5. No.

6. The administrative judge has competency regarding appeals of an administrative decision. As for the distribution of competence between the common law judge and the administrative judge, see answer 1.

The common law judge does not have the power to annul an administrative decision. He/she may examine such decisions only in an incidental way, within the framework of disputes lying within his/her competence (these disputes include those relating to public service employment).

The administrative judge, who may annul an illegal administrative decision, has jurisdiction over legally protected interests in matters regarding the administration, and over individual rights in the specific areas specified in the law (areas of exclusive jurisdiction). See answer 1.

The constitutional court is empowered to settle not only disputes concerning a law's constitutionality, but also concurrence of jurisdiction between the various state powers, between the State and the regions, and between the regions. In this area, it may pass judgement regarding administrative decisions generating conflict.

B - Status of the competent bodies

7. Appeals of administrative decisions do not lie within the jurisdiction of the common law judge, but within that of the administrative judge (article 103 of the Constitution).

8. Yes. According to article 103 of the Constitution, the administrative judge has jurisdiction over legally protected interests in matters regarding the administration, and over individual rights in the specific areas specified in the law.

C - Internal organisation and composition of the competent bodies

9.

10. In Italy, jurisdictional oversight of the administration is carried out as follows:

The State Council (judges in appeals) and the other courts of first instance of the administrative order (regional administrative courts) have jurisdiction over legally protected interests in matters involving the administration, and over individual rights in the specific fields specified in the law.

Moreover, in accordance with the Constitution, the State Council also has an advisory role in administrative law and in upholding justice within the administration (three advisory sections and one for normative decisions).

Administrative litigation lies within the following jurisdictions:

- The State Council in its central head-office, subdivided into three litigation sections, having the power to appeal the decisions reached by the TARs.
- One litigation section of the Sicilian council of administrative justice, having the power to appeal decisions reached by the TAR in this region (in addition to an advisory section with a jurisdiction limited to the regional territory).
- 21 regional administrative courts, operating in the regional capitals, and eight special assignment sections.

Moreover, there is an alternative appeal to the administrative litigation appeal. This is an exceptional appeal brought before the President of the Republic and judged based on the opinions of the State Council.

D - Judges

11. Becoming an administrative judge involves second-level competitive exams, which the persons mentioned in the following point and having sufficient judiciary seniority may take part in. Judges are not divided into different categories based on the type of litigation.

12. The competitive exam for admission as an administrative judge of first instance is a second-level test, which common law judges, lawyers and civil servants may take part in (if they have sufficient judiciary seniority for their category).

Admission to the State Council is based either on seniority in the TARs (50%), appointment by the government (25%) or a direct admission exam (25%), which is restricted to common

law judges, public finance court judges, TAR judges, state lawyers and senior officials (sufficient seniority is always required).

13. All administrative judges have legal training and previous experience as a common law judge, lawyer or member of the administration.

Administrative judges assume their duties immediately, with no initial training period. Professional training courses may be offered later on, however.

14. Promotion depends on seniority, except in cases of misconduct.

TAR judges are divided into auxiliary judges (first appointment), chief auxiliary judges, counsellors and chairing judges; the State Council includes counsellors and chairing judges.

TAR judges may advance their careers by successfully completing the competitive exam for direct admission to the State Council. They may take this exam after completing one year of TAR duties. This exam is only open to administrative judges.

Appointment to the position of TAR president or to a section of the State Council leads to an assessment, which generally depends on seniority.

15. Judges are only transferred from an administrative court to another court if they request this transfer. The State Council adjourns mainly in Rome, with a sort of special assignment section in Sicily. Transfers to this latter section are also by request only. The administrative judges may, in certain narrowly defined circumstances, assume responsibilities within administrations, on prior authorization from the council of chair judges (internal oversight body for administrative judges), which must verify recordkeeping for the responsibilities assumed.

E - Functions of the competent bodies

16. Traditionally, administrative judges could only annul illegal administrative decisions. Since 1998, they have also had the power to order the administration to pay damages.

Their oversight of administrative decisions is dictated by the law, although the methods used are currently quite involved in order to allow examination of the logic and merit of the administration’s choices.

When these judges annul an administrative decision, they do not expressly order the administration to do something or to abstain from doing something, but rather they indicate in the arguments for their decisions what the administration must do or must not do (e.g. they may assert that the administration must submit a particular document, or that it must take new action based on the criteria indicated in the decision).

The annulment of an administrative decision (adjudication of public contracting) may have an indirect effect on a contract which the administration as entered into, leading to its nullity or its ineffectiveness (subsequently obligating the administration to enter into another contract with the petitioner or restart the process).

In regards to damage reparation, a distinction can be made between the administration's extra-contractual, contractual and pre-contractual liabilities.

17. Except in cases where a preliminary issue is referred to the Court of Justice, the proceeding may be suspended and the decisions referred to the Constitutional Court if the judge has doubts about a law's constitutionality.

18. The State Council (superior jurisdiction) is the only body to have also been granted advisory duties, which do not consist in advisory activity, but in providing opinions on legal questions.

These opinions may be related to prescriptive decisions made by the state (regulations), appeals existing as alternatives to the stricto sensu litigation appeal (e.g. an exceptional appeal before the President of the Republic) and optional applications made by the administration.

19. The judges belonging to the advisory sections of the State Council do not serve at the same time in the litigation sections. In all cases, a judge having assumed an advisory duty must disclaim competence with regard to litigation related to the same case.

As to compatibility between advisory and litigation duties, it is important to mention the following decisions:

- The European Court of Justice, by a ruling dated 16 October 1997 on a group of related cases (C-69/96 to C-79/96), judged as receivable a preliminary question referred to them by the State Council, which had been asked to give an opinion on the exceptional appeal before the President of the Republic.

- The ECHR reached two decisions: the first on 28 September 1995 (Procola vs. Luxembourg) and the second on 6 May 2003 (Kleyn et al. vs. the Netherlands). In this latter decision, the Italian government intervened in the proceedings in favour of the Dutch government.

F - Distribution of functions and relations between the competent bodies

20. In the event of opposing jurisprudences, or simply in order to avoid such contradictions, a litigation section of the State Council may transmit a question to its Plenary Assembly.

Once the Plenary Assembly has adjudicated, although its decision carries no obligation, the judges generally abide by it and, in the event of disagreement, they may submit the question to the Plenary Assembly again.

The courts of first instance do not have this possibility.

II - How do the courts oversee the administration's decisions and actions?

A - Access to the judge

21. The prior filing of an appeal with the administration does not make the appeal admissible with regard to the administrative judge. The appeal concerns an administrative decision; if the administration fails to respond to the individual's request, this lack of response can in turn be appealed.

22. Generally, appeals are filed by individuals. Environmental and consumer protection organisations also fall into this category.

Litigation may also oppose two public-law entities.

23. Each petitioner must have a current and legally protected interest related to the annulment of an administrative decision; otherwise the appeal may be inadmissible. The interest is legally protected if a subjective legal situation is damaged by the disputed decision. The interest results from the advantage which would be brought about by a favourable decision.

24. The appeal before the administrative judge must be filed within sixty days of cognizance of the disputed act. It is never possible to reduce this time limit, even for certain proceedings where all time limits are cut in half (except for this time limit relating to appeals which remains set at sixty days.)

The administration must indicate in its decision the date by which appeals must be filed and the jurisdiction with which to file them; otherwise, an appeal filed more than sixty days after the decision is issued may be deemed admissible.

In all cases, including that of a late appeal, the petitioner may invoke the excuse of justifiable error before the judge.

25. All administrative decisions, including those emanating from the highest levels of the administration, may be disputed before the administrative judge. Only decisions of a political nature cannot be appealed.

26. There is no real procedure for classifying the appeals which come before an administrative judge.

All the law stipulates is that certain decisions (in the case of expiry of a time limit, withdrawal, conciliation of the parties or termination of the proceedings) be rendered by a sole judge delegated by the President, but there is no procedure for examining disputes which might have such outcomes.

27. The appeals are formalised through notification to the opposite party and filing of the request with the appropriate court.

Notification may also be made, with prior authorisation, in a simplified manner (for example via a fax machine).

28. A request may not be filed via the Internet.

An appeal may be followed through all its stages on the official website relating to Italian administrative law. A project to computerise all administrative procedures is under consideration.

29. Yes, there is a contribution in proportion with the dispute’s value.

30. A lawyer must file the request except in a limited number of cases, where it can be filed directly by the individual (related to the right to access documents).

To plead before the State Council, lawyers must be qualified to plead appeals (before the highest jurisdictions).

31. Petitioners whose revenues are below a certain threshold may be eligible for free legal assistance provided by the State. In certain cases, eligibility is granted temporarily by the Bar Council, unless prohibited by the judge. It is possible to appeal a dismissal.

32. No. Only the order to reimburse the legal costs of the opposite party.

B - Legal proceedings

33. Administrative legal proceedings respect the adversarial principle and the idea that parties should be on a level playing field.

Within the time limits of the various phases of the legal proceeding, each defendant has the right to conduct his or her defence.

Administrative legal proceedings are conducted essentially through written documents. The parties support their arguments by producing written statements; during the public hearing, only the most significant points are generally addressed verbally.

34. The independence and impartiality which judges must demonstrate reflect constitutional principles also applicable to administrative judges.

A judge must withdraw when he/she has a direct or indirect interest in the dispute, when he/she has played an advisory role in the case or has prior knowledge of the case. In any event, he/she may withdraw if the proceeding is a serious source of conflict.

If withdrawal is necessary, the parties may challenge the judge. Such a request is examined by a panel.

35. After filing his/her request, the petitioner may dispute new decisions or invoke new grounds for appeal as "additional grounds". The opposite party must be notified of these grounds. The new legal grounds in support of existing arguments may be invoked through to the public hearing.

36. During the hearing, all lawyers representing those parties involved in the proceeding may intervene.

During the proceeding, any party whose interests lie in the appeal’s acceptance or dismissal may intervene.

37. State prosecution does not exist. State lawyers intervene in the proceeding only when they are responsible for representing an administrative party in the proceeding.

38. Such an institution does not exist.

39. Should one party or its sole counsel die, the proceeding is interrupted and must be resumed by another notification process. In the event of termination of the proceeding, which does not require the opposite party’s approval, the judge settles the dispute by a decision formalising the withdrawal. Should one or the other party fail to fulfil a procedural requirement within two years, the proceeding exceeds its time limit and expires. The proceeding may also be terminated by formal conciliation between the parties or by the appeal’s inadmissibility on the grounds that the decision sought is no longer in the interests of the petitioner.
40. Appeals are filed at the registry. The same is true for statements written ten days before the main hearing. These statements may be filed on the day of the hearing, in the judge’s chambers, for requests related to interim measures (the filing is made with the clerk of the

hearing). Oral debates are rarely the subject of a formal report, except for certain declarations or requests made by the lawyers for the parties; these are transcribed in summary form by the clerk of court.

41. In an administrative proceeding, the evidence may also be obtained ex officio by the judge, in all the cases where the party in possession of the evidence is not inclined to produce it (the administration).

The admissibility of the evidence may be decided on by a panel, but it may also be delegated to a sole judge.

42. The administrative proceeding involves a public hearing (open to the parties and third parties) for matters of substance. For requests for interim measures (and for certain other proceedings), the debates take place in the judge's chambers (open to the parties' lawyers only).

All lawyers representing those parties involved in the proceeding may intervene orally in the hearing. Written statements must be filed at least ten days before the hearing (twenty days before for exhibits).

43. At the end of the public hearing, in the judge's chamber, the panel of judges decides the case. Only judges may partake in the deliberations.

C - The judgment

44. Decisions reached by the administrative judge are generally accompanied with detailed justification and take into account all the arguments invoked. Since 2000, judges may justify their decisions in a global way, by referring to one precedent, to a clear reason for inadmissibility, to an appeal's merit or absence thereof .

However, the decisions calling for interim measures are explained and justified in a global way.

For certain types of litigation, the statement of justification is filed after the publication of the sole formal statement of the proceeding's outcome.

45. The standards for examining administrative decisions are essentially internal standards, but they of course integrate the rules of European law, especially in certain fields, such as public contracting.

Jurisprudence has no binding force.

46. The oversight performed by the administrative judge is limited to a verification of legality. This means that the judge must ascertain whether the administration's decision, even if within its power, remained within the limits of the law, given the options the said

administration had at its disposal. If this is the case, the judge cannot examine the decision's substance (possibility of a different decision given the options authorized by law).

However, this does not mean that the oversight is purely formal, insofar as the legal oversight is currently quite advanced, as the judge can examine the decision's merit and proportionality.

Consequently, if the administration could have made a decision, for example, which respected public interests and only involved a minor sacrifice for the litigants, the judge might point out this failure to adhere to the law.

47. The judge makes the legal fees (lawyers' expenses, experts, but not procedural costs) the responsibility of the losing party. However, the judge may also decide that there are no fair grounds to order the payment of expenses (i.e. each party pays their own fees). The administrative judge often uses this possibility.

48. The administrative judge almost always renders his/her decisions within a panel of judges: the judgment panel of the courts of first instance is made up of three judges. The State Council panel is made up of five judges (except for the Plenary Assembly, made up of thirteen judges).

The administrative judge renders decisions as a sole judge only in exceptional cases: when he/she is delegated by the court's chairman for cases of withdrawal, conciliation between parties, expiry or termination (the panel may be requested in any case); when in cases of extreme emergency the court's chairman, or the chairman of a section of the State Council, may render a decision on a request for an order instituting interim measures. This decision stands until the panel makes its decision, which is rendered during the first effective hearing.

49. A dissenting opinion by one judge is not authorised. If the judge involved is the reporting judge, he/she may only ask to be exempted from writing the decision if he/she does not subscribe to it. Another judge on the panel will then write the decision.

50. The decision is not rendered orally but rather in writing. In certain proceedings, the decision is rendered within seven days through publication; the grounds are published thereafter. In all other cases, the decision is rendered by in extensor publication of the judgment or order.

D - The effects of the judgement and how it is carried out

51. Once it can no longer be appealed, the decision only has legal value for the parties involved in the proceeding; it is not binding in other cases, where it only has the value of a precedent.

52. The annulment of an administrative decision has a retroactive effect; in certain cases, the judge may limit the time period during which his/her decision is effective, if for example this decision acknowledges a right having a certain time limit. This takes place according to the rules of national law.

53. If decisions are not spontaneously carried out, a particular enforcement procedure may be used to ensure that decisions reached by administrative judges are carried out.

This procedure is applied to the administration or similar entities (for example public-law institutions) for various decisions, including those rendered by common law judges.

This procedure is particularly effective insofar as the judge does not merely order the administration to comply within a determined time; he/she may also appoint his/her own representative (ad acta), who acts in place of the administration and takes any measures required to enforce the decision. This representative also has substantive powers. This is one of the rare cases where the administrative judge also has substantive powers.

Consequently, the judge does not have the power to fine the administration if it does not comply; the ability to act in place of the administration is more effective.

54. In 2000, legislative reform introduced an accelerated procedure for certain disputes and the possibility to handle other proceedings in a simplified manner; this helped reduce the time required for judgment.

Law no. 89 (2001) made it possible to request fair reparation should judgment not be rendered within a reasonable length of time (Convention for the Protection of Human Rights and Fundamental Freedoms).

E – Appeal procedures

55. The courts of first instance and the State Council handle appeals in the same way. These courts perform the same type of oversight and there are no particular disputes which only the State Council may adjudicate.

56. All the judgments rendered by the courts of first instance may be appealed before the State Council. This transfers all issues of fact and law to the latter court: The State Council may both re-examine the facts and provide the proper interpretation of the law.

F - Urgent proceedings and applications

57. In all cases and at any stage of an administrative legal proceeding, the parties may request an emergency measure. This request is handled through a very rapid procedure, in the chambers of the judge, who may later examine the case in depth.

The judge makes his/her decision within a panel of judges, except when the chairperson of the court or of the State Council's section handles extremely urgent requests by enforceable order. Such an order remains in effect until the panel reaches its decision.

During the interim phase, if the judge deems that that the adversarial principle has been respected and the case can be easily decided, he/she may inform the parties that he/she intends to render a simplified decision which will end the dispute (this accelerates the process considerably).

58. Interim requests are unusual; generally they aim to suspend the disputed act, but the judge may also order the administration to re-examine a case which has already been decided or to communicate documents (order setting forth an investigative measure), among other things. The interim request may be granted if it constitutes a guarantee.

59. In addition to the interim proceeding, there are other brief proceedings which take place in the judge's chamber. They are related to appeals filed in response to the administration's failure to reply, appeals to allow access to administrative decisions, appeals of a decision's execution.

III - Can administrative disputes be settled outside administrative courts?

60. No. Any decision the administration makes in order to settle an administrative appeal may be disputed before the administrative judge.

61. A "civic defence counsellor" may act as a mediator between an individual and the administration. However civic defence counsellors have no decision-making powers except in limited cases (the right to access administrative documents) and in any event such mediation does not prohibit an appeal from passing before the judge.

The only alternative to the appeal before the administrative judge is the exceptional appeal before the President of the Republic. This appeal is adjudicated essentially on the basis of an opinion provided by the State Council acting in its advisory capacity. It follows a proceeding with guarantees similar to those of litigation. The Court of Justice of the European Communities, by a ruling dated 16 October 1997 on a group of related cases (C-69/96 to C-79/96), judged as receivable a preliminary question referred to them by the State Council, which had been asked to give an opinion regarding the exceptional appeal before the President of the Republic, thus recognising that in its advisory capacity, the State Council had the jurisdiction necessary to submit a preliminary question.

62. In disputes between an individual and the administration, an arbitrator may take the place of the administrative judge, but only in disputes concerning individual rights (where the individual's situation is similar to that of the administration) and therefore not for disputes related to abuse of power.

IV - Legal administration and statistical data

A – Resources available for administrative oversight

63. The State's expenses for financial year 2004 exceed 654,000,000,000 Euros in total.

The budget for the State Council and the regional administrative courts is 70,384,445 Euros in total. The budget for the Sicilian council of administrative justice is 91,537 Euros. In total, the budget for the administrative legal system is 170,875,982 Euros.

In 2004, expenses relating to goods and services were significantly reduced as well as those related to computing.

In general terms, 98.44 % of the available financial resources were allocated to operating expenses and 1.56 % to asset account fees.

77% of the financial resources allocated to expenses are spent on personnel-related costs (63,786,364.12 Euros for judges and 64,625,672.14 Euros for the administrative staff, including social contributions and sums related to regional taxes on the judges' profitable activities); recurrent expenditures required to update documentation and computing systems absorb 2.48% of financial resources. 10% of the total budget allocated to current expenditures is spent on rent (rent and miscellaneous expenses totalled 17,255,210.97 Euros). Finally, goods and services (rent not included) for the 32 institutional headquarters account for 6.97% of the total current expenditures included in the budget (over 3,800,000 Euros less than the previous financial year). The sum of 1,785,350.00 Euros, or 1.01% of the total resources allotted, is put into an asset account for the acquisition of furniture, non-computer equipment and books.

Expenses for computer upgrades (capital account) totalled 981,302.31 Euros, or 0.55% of the total budget. In total (expenses paid using both the current account and the asset account) 5,317,023.51 Euros were allocated to upgrade the documentation system, equivalent to 2.99% of the total budget (about 2.5 million Euros less than the previous financial year).

64. During 2004, the year used as a reference, the common law judges had a total of 10,109 listings on their rolls.

As for the honorary judges, the rolls for the justices of peace have 4,700 listings. There are 4,173 current members, including 441 without responsibilities as they are still in training.

As for the administrative judges, their rolls, including judges-at-large within the Sicilian council of administrative justice (CGARS), have a total of 508 listings.

In 2004 the staff of judges included the following: 110 State Counsellors and 335 TAR counsellors

As to public finance court judges, 515 are currently active.

The rolls for tax judges, approved by the council of chair judges for fiscal matters and updated as of 30 October 2003, have 5,922 judges.

There are 97 judges who handle matters of military justice (54 at the headquarters and 43 at the public prosecutor's department), while the institutional staff includes 103 positions.

65. All administrative judges of first instance perform litigation duties related to appeals against administrative decisions, while certain judges in the State Council perform advisory duties (including the decisions on exceptional appeals before the President of the Republic, which are parajurisdictional in nature). Others State Council judges perform litigation duties.

Consequently, out of a total of 19,700 (100+6,000+500+9,000+3,600+500), the percentage of judges transferred to administrative justice is about 2.5%.

66. The position of assistant judge does not exist. It has been proposed in the past, but legislators did not introduce it into the laws.

67. Each court includes a library, where books and journals can be consulted. The State Council has a valuable and exhaustive library.

68. Computerisation of the work of administrative judges has reached a satisfying level. Each judge has a computer workstation, where he/she can connect to the administrative justice intranet (he/she can also connect from his/her home), which he/she can use to dialogue via e-mail with the secretariat, access any information related to appeals and access all jurisprudence texts and legal databases, including those available via the Internet.

No form of assistance for writing decisions (standard model or decision title) has been instituted yet.

Complete computerisation of administrative proceedings is under consideration.

69. Administrative justice in Italy has an official site (www.giustizia-amministrativa.it) where anyone may consult all decisions published, monitor the status of an appeal and obtain the hearing date, learn whether the opposite party has filed acts or a statement, etc.; the most important information concerning administrative justice is accessible to all.

It is possible to send an e-mail from the site, but this is not intended as a means of communication between the public and our services.

B - Others statistics and figures

70. In 2004, regional administrative courts - courts of first instance - registered about 80,000 appeals (more or less equal to 2003 figures), while the State Council and the Sicilian council of administrative justice – appeal courts - registered more than 12,000 appeals (including more than 11,500 in appeals courts and nearly 500 in first instance).

Mostly, the figures remained the same as those in 2003 for these courts.

71. In 2004, the TARs adjudicated about 120,000 appeals, the State Council and the Sicilian council of administrative justice rendered about 9,000 decisions that terminated proceedings.

In 2004, the TARs issued over 47,000 orders, over 26,000 of which suspended the execution of disputed decisions. The rest of the orders (issued by panels or the chairperson) set forth investigative measures or call for the transfer to other courts.

The State Council rendered about 5,800 orders (they mostly set forth interim measures for the decisions reached by the TARs).

In 2003, the TARs adjudicated about 112,000 appeals, the State Council about 11,000 appeals. These courts issued 42,000 and 4,850 orders respectively.

72. As of late 2004, about 790,000 appeals are apparently pending before the TARs, while the cases pending before the litigation sections of the State Council exceed 28,000.

In late 2003, there were about 850,000 pending appeals in first instance, with 27,000 in appeals courts.

73. It is important to note that law no. 205 (2000) reduced delay compared with common law (summary judgments) for appeals related to the administration’s failure to respond and also cut procedural delays in half for appeals related to matters formally specified in article 21, part two, of law no. 1034 (1971) (for example, adjudication proceedings for contracts for public projects and services, land use and expropriation, steps taken by independent authorities, proceedings to privatise companies and public property, appointments made by the council of ministers, dissolution of local public institutions and their training establishments). In these areas, proceedings last less than one year, both in first instance and in appeal, except where investigative measures prove necessary.

In other areas, the time required for judgment is still far from being acceptable, although more than 15% of appeals heard by the TARs are decided in the year following filing. This is a sign of improvement.

74. In regard to the percentage of administrative decisions annulled and the percentage of judgements against the administration in lower courts, of the substantive decisions (over 35,000, about 30% of the total), the number which granted individuals’ appeals of administrative decisions exceeds the dismissals (20,000 versus 15,000).

The percentage of first instance decisions which granted the requests is 55.74 %.

75. In relation to construction and urban planning, over 18,000 appeals were filed in 2004 (23% of the total).

In relation to maintenance, health and ecology, over 13,000 appeals were filed (about 16% of the total); next in number are the appeals filed in relation to the administration's general activity (for example, contracts, management of state property, etc.) with 12,000 appeals (about 15% of the total), while the area of civil service (excluding contracted services and thus lying within the administrative judge's competence) represents 14% of the total with 11,000 appeals.

All other sectors (such as education, agriculture, hunting and fishing, security, to name just a few) produce very few appeals.

C - Economics of administrative justice

76. There have been no studies on how decisions obligating the administration to pay damages influence public budgets. This is because decisions obligating the administration to pay damages caused by illegal administrative activity are a fairly recent phenomenon; until 1999, the common law judge (then competent for such appeals) dismissed requests for damages in all cases where an individual's situation was seen as involving a legally protected interest (see answer in section 1). It is only since a jurisprudential turnaround in 1999 and the assignment of requests for damages to the administrative judge (reform of 1998 – 2000) that the first orders obligating the administration to pay damages have been issued for abuse of power. Consequently, it is not yet possible to assess with certainty the impact of this phenomenon on public budgets.