ADMINISTRATIVE JUSTICE IN EUROPE

– Report for Luxembourg –

Marc Feyereisen, Counsellor at the Administrative Court, Luxembourg

Questionnaire relative to the inventory and typology of control of the administration in the 25 Member States of the European Union

1) The creation of a complete administrative jurisdictional order, as characterized today in substantive law, was done by stages.
In 1839, under the influence of the shift in the prevailing doctrine in Belgium, the autonomy of the administrative dispute relative to the legal dispute was not recognized.
The idea of instituting an autonomous administrative dispute, reserved for a specialised body, was developed by the second Luxembourg Constitution of November 27, 1856, (article 78) and was implemented, inspired by the Dutch example, by the grand-ducal royal decree of June 28, 1857 (which was replaced by the January 16, 1866, law pertaining to organization of the Council of State), which gave this "council" the name of "Council of State."
The "Litigation Committee" of the Council of State was thus given the prerogative to exercise full court of law in administrative matters. The rules of procedure were introduced by the grand-ducal royal decree of April 24, 1858, which was replaced by the grand-ducal royal order of August 21, 1866.
Between 1856 and 1939, the Council of State functioned according to the theory known as “restrained justice,” i.e., it was not vested with its own decision-making capacity, in that it could only draw up draft decisions, which were definitively pronounced by the Head of State. This practice remained in place until the law of July 20, 1939, came into effect, which conferred on the Council of State the capacity for "delegated justice," i.e., the capacity to pronounce its own decisions.
As of January 1, 1997, the Council of State only maintains its advisory function (reform law of July 12, 1996) with respect to legislative bills, and November 7, 1996, law pertaining to organisation of the administrative courts of law (Memorial A 1996, page 2261) instituted an administrative tribunal and an administrative Court which became functional on January 1, 1997, ensuring exhaustive legal protection on the act of authority of the State.

2. The administration is linked to the law and the legislation. The role of the administrative courts is not general-purpose control of the administration but the protection of private individuals’ rights towards the public authority.
The administrative law courts see two types of contentious appeals: proceedings for annulment and reversals.
As such, appeals for annulment and reversal characteristically present themselves above all as a "*trial in action*".
The contentious appeal is indeed an objective appeal, whose central issue is to decide whether the contested act is legal. Whatever the outcome of the appeal, it will have been preceded by verification of the legality of the act in question. In the event the appeal is rejected, the legality of the act will have been confirmed. On the contrary, if the judge declares the appeal brought before him/her as well-founded, he/she will restore the legality misjudged by the administrative entity and perpetrator of the contested act.

It is in the manner of rectifying the legality of the contested act that the fundamental distinction resides between annulment proceedings and reversals on appeal.
In the context of proceedings for annulment, the judge will be limited to declaring the act as being illegal, and it is up to the administration, to which the matter is referred if necessary for a new demand from the constituent, (to which the matter is referred in turn, by transfer, by the administrative court of law) to enact a new act, by learning the lessons from the court order returned, to make the aforementioned act legal. The judge has no other function than that of judge.
In the context of reversal on appeal, the judge not only will declare the act illegal, but as well will place him/herself in lieu of the administration to rectify the initial defects of the act. He/she will act at both as judge and administrative authority.
The position of the constituent is thus more favourable in the context of reversal on appeal, since, in the event of the success of his/her claims; the administrative judge will play a more extensive role.
However, in the logic of a separation of judiciary and administrative capacities, it is logical that reversal on appeal be limited to cases expressly envisaged by the law.
3. It is a fact that the law of November 7, 1996, on organisation of the administrative courts of law does not include any definition of the concept of "administrative act" nor of “administration.” any more than the earlier legislation.
First and foremost, the criterion implemented is based on the theory of the organ.
The State of the Grand Duchy of Luxembourg, as well as the communes, are considered to be administrative entities by nature, on the condition, however, that, for the State of the Grand Duchy of Luxembourg, the capacities exercised concern executive power, and not legislative power (texts voted by the House of Commons, whose dispute is allocated to the constitutional Court) or judicial power.
Decisions returned by publicly-owned establishments or people exercising prerogatives of judiciary power are also likely grounds for appeal before the administrative courts of law.
4. The actions of the administration are distinguished as follows:
There is a type of act which, although covering all the criteria of an administrative act, is not likely to be a submission for legal settlement: they are the acts of government. In addition, it is advisable to distinguish between individual decisions and acts of statutory character.

I. Who controls the acts and actions of the administration?

A. The competent representatives
5. Control of the administration is ensured by the independent administrative courts of law, distinct at the organisation and administrative staff levels.
These courts of law nevertheless are within the framework of the ministry for Justice and are connected from a budgetary point of view, appointment of judges being carried out by the Grand-Duke.
The concept "of other administrative courts of law" contained in the basic law of 1996 which created the new administrative courts of law does not currently have a practical use.
6. There is an autonomous court of law (the administrative tribunal) equipped with a grounds for appeal (administrative Court) for administrative law.

In theory, the legal administrative courts of law are qualified for civil and penal litigations; the labour courts are qualified for litigations relating to labour law. In addition, there is a social court of law for all litigations respecting social security.
Tax disputes are shared between the administrative courts of law and the civil courts of law; administrative courts of law being, in theory, qualified for litigations in the field of direct State taxes, except for taxes whose establishment and collection are entrusted to the

Administration for Registration and for Domains and to the Administration for Customs and Indirect Tax, and in the field of communal taxes and income taxes, except for remunerative taxes.
The constitutional Court is a body made up of 7 magistrates emanating from the Higher Court of Justice and 2 magistrates emanating from administrative courts of law.
This Court is qualified for questions submitted by all courts of law relating to the constitutionality of laws.

B. The status of competent bodies

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8. The administrative courts of law are, just like legal courts of law and courts of law for labour disputes, allowed for in the Constitution. Their organisation, function and competences are regulated by their law of creation (law of November 7, 1996) and by a special procedural law (law of June 21, 1999).
In addition, the New Civil Procedure Code is applicable to administrative procedure since the "lex specialis" which is the regulation for procedure from June 21, 1999, does not derogate expressly from the "lex generalis", which is the New Civil Procedure Code.

C. The internal organisation and the composition of competent bodies

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10. The administrative court of law is divided into two authorities; the administrative tribunal as first authority and administrative Court as second authority.
There is neither a third authority for the administrative court of law, nor a final Court of Appeal. The social court of law is divided into two authorities (council of National Insurance with the possibility of appeal before the Higher Council of National Insurance), with a possibility of appealing to the final Court of Appeal.
The tax court of law is, as aforementioned, assigned partly to the administrative tribunals or the civil tribunals.

D. The judges

11. The administrative judges belong to a jurisdictional order different from that to which the other magistrates belong.
Training, the conditions of nomination as a judge, and the legal statute of the judges are almost identical in all the courts of law (except for the first nomination at the time of creation of the new administrative courts of law)
The magistrates are permanent and independent from the administration.
The magistrates of the civil courts of law can be named deputy judges to the administrative courts of law, while the opposite is not possible.

12. The functions of judge can only be exercised by persons having completed law studies at a university and holding the diploma of doctorate in law delivered by a Luxembourg board of examiners, or holding a foreign grade of higher education in law approved and transcribed in accordance with the law of June 18, 1969, on higher education and homologation of titles and

foreign grades of higher education, and who satisfy the legal regulations of the judicial training course.
The judges are chosen by the competent ministry and are named by the Grand-Duke. For the nomination, with respect to the promotion of a certain number of positions, the administrative Court submits an opinion, which nevertheless does not bind the Grand-Duke in his choice.
13. The training of judges does not differ from that of other jurists. It is carried out in two stages. University studies in law lasting four years are sanctioned by a diploma abroad which is generally called "Masters in Law." Thereafter, a complementary course of approximately 6 months' duration is organised by the Ministry for Justice at the School of Law at the University of Luxembourg.
There then follows a two-year legal training course which focuses on practical training in courts, administrations, and law firms, and which is sanctioned by a final diploma.
It should be specified that there is specific training for legal judges in cooperation with the National School of Public Prosecutors which is not offered to administrative judges.
14. The administrative Court gives an opinion on promotion of judges of a certain grade.
It is the Grand-Duke, following a proposal from the Minister for Justice and the Council of Government, who decides on promotion of a judge.
15. The transfer of judges to other courts of law and temporary delegation to the administration does not appear possible, apart from, obviously, the possibility granted to a magistrate to cross from the administrative tribunal to the administrative Court or vice versa.

E. The functions of competent bodies

16. According to procedural law, the administrative law courts can wholly or partially annul an **individual** administrative decision and refer the case to the administration which must, by a substantive decision, conform to the final decision.
This appeal can be exercised against all administrative decisions regarding which no other appeal is permitted according to laws and regulations. In this context, the administrative judge verifies competence, excess and misuse of power, violation of law or of conventions intended to protect private interests.
This same remedy can be applied against regulatory action take by the administration. By special law the administrative judge is qualified to adjudicate regarding questions of administrative review. When it is appealed thereby, his/her decision overrides the administrative action.
The administrative judge is not qualified for litigations rising from contracts of public law, including damages claims, claims to obtain compensation in kind or compensation for prejudicial continuation of an illegal administrative act, as well as for the rights to compensation resulting from disturbances concerning property law, including deciding on compensation in the event of expropriation; all these incidents fall within the competence of a civil judge.

17. Administrative courts of law, just like courts of other jurisdictional orders, are authorised to examine and decide foreign prejudicial questions through proper legal procedures, although it should be specified that these incidents are extremely rare. If the object of the prejudicial question is engaged in the judicial courts, the administrative tribunal can suspend the procedure.
If the validity of a law is a prejudicial question necessary to be able to rule, and if the court expresses doubts on its constitutionality, it must suspend the procedure and then solicit the constitutional Court on this subject.

If the prejudicial question relates to the interpretation or validity of European Community legislation, then the administrative Court is entitled (and the administrative Court has the duty) to request a preliminary hearing from the Court of Justice for the European Community.
18. The judge does not have the right to simultaneously exercise functions concerning the administration or the legislation (constitutional principle of the separation of capacities). He/She does not have the right to exercise the function of legal consultant either, whether it is in the field of administration or legislation. Any person having taken part in the preceding administrative procedure or having taken part in the drafting of a law or a regulation is excluded from the exercise of legal functions in this cause. This incompatibility is decreed by the law.

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F. The distribution of functions and the relationship between the competent authorities

20. This question is only seldom posed, the Grand Duchy having only one administrative court (which nevertheless has two divisions).
It is always the case that one division of the administrative tribunal may still diverge from the decision made by another division on a decisive point of law and even from a prior decision of the Administrative Court.
The guarantee of unity of law falls to the administrative Court which, in theory, ratifies but nevertheless is not bound by its former rulings.

II. How are the acts and action of the administration controlled by the tribunals?

A. Access to the judge

21. In the context of an administrative act in an individual matter, the person responsible always has the possibility (but not the obligation) to make an application for an ex gratia settlement before the introduction of an appeal before the administrative judge, which is addressed to the administration which put forward the first decision.
The introduction of this appeal is thus not a condition of admissibility of the appeal and the administration is free to answer it, to confirm its earlier decision or to put forward a new decision.
The introduction of this appeal suspends the initial delay of appeal as a first stage, the details regarding this suspensive delay and its implications go beyond the scope of this questionnaire.
In rather rare cases, the Luxembourg system also envisages the possibility of hierarchical appeal which must obligatorily be introduced before filing of the contentious appeal.
With regard to tax law (direct State taxes), a taxpayer is nevertheless under obligation to submit disputes to the director of Tax Authorities beforehand.

22. Any natural person or legal entity of private or public law, as well as the communes and other communities equipped with administrative autonomy and a legal figure, can lodge an appeal before the administrative court. With regard to legal entities, certain limitations exist concerning their interest to act or a possible system of approval (envisaged by article 7 of the law of 1996).
23. The condition for admissibility of appeal, whether it is appeal for annulment or reversal, is that the applicant emphasises that his/her rights are infringed upon by an individual administrative act, or by the lawful administrative act in question, or by the refusal or the abstention to enact it. "To assert one’s rights" means that the possibility of violation of subjective right exists at the time of presentation of the appeal. The court of law speaks about

an interest to act which must be personal, distinct from the general interest, direct, innate, and current. In addition, this interest must be legitimate.

24. Action for annulment must in theory be brought about within a three-month delay as from notification of the decision.
In the context of appeal for reversal, the law fixes a specific time which is often 40 days starting from notification of the individual administrative act.
The parties must be advised in writing of possibilities of appeal offered, since lack of this notification will prevent deadlines from taking effect.

The deadline runs from the day which coincides with the notification and expires at the end of the last day. If a deadline expires on a Saturday, a Sunday, or a public holiday, the last day for the deadline will then be the first business day which follows.
As the deadlines are very often expressed in calendar months, the last day to propose a deadline falls due on the same day and date as the day of the decision from which the deadline ran.
If a person did not respect the deadline through no fault of their own, the court can grant a release of debarment.

25. A general principle of law guarantees that all litigations of public law are subject to control by judges.
A jurisprudence of the Council of State was able to accept that for appeal to be declared admissible, it was not sufficient that it undertake a decision for grievance, but it must not constitute an "act of government" all the same (the "Mangin" decree of January 20, 1876, Pasicrisie volume I, page 113), or, in more current terms, "does not overlook jurisdictional control from the Council of State" (the "Wittgreen" decrees n° 8374 and 8446 of February 19, 1991, by the Council of State).
Incorporation in Luxembourg law of the original French theory of the act of government ("Laffitte" decree of May 1, 1822, by the French Council of State) was not only carried out with much more reserve than in France, but even more so, saw its field of application restricted over the course of time.
In that way it was believed that the only type of act which could finally be part of this category of the acts of government were the relations of Grand-Duke with a foreign State (solution drawn from the "Weber" decree of April 26, 1933, published in the Pasicrisie, volume XIII, page 108).
Setting up a new administrative court of law order did not in any way modify the issue, since the administrative Court also refers to the theory of *act of government*.

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

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

28. The petitions must be left with the clerk of the administrative court of law. Sending forms by e-mail is not possible.

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

30. In order for a petition before the administrative tribunal or an act of appeal to be brought before the administrative Court, representation by an lawyer is an obligation under penalty of inadmissibility.
One of the rare exceptions exists in the tax field where, upon the first hearing (but not on appeal) the introductory request for a hearing can be signed by the claimant or his/her proxy (another exception can be found regarding elections).
31. The Grand-ducal ruling of September 18, 1995, concerning legal aid provides that persons considered as having insufficient income as well as persons who live communally with such a beneficiary are those benefiting from a guaranteed minimum income. They are regarded as people whose resources are insufficient, and whose income and means were taken into account to determine the guaranteed minimum income.
Those persons who, without benefiting from the guaranteed minimum income, but however finding themselves in a situation of income and means such as they would have the right to attribution of the guaranteed minimum income, are also regarded as persons whose resources are insufficient.
Legal aid includes the cost of lawyer’s fees and all court expenses and is granted by decision of the President of the Bar for the Council of the Order of lawyers.

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

B. The trial

33. The fundamental principles which govern the trial and the course of the legal procedure are fixed by the law of June 21, 1999, and, in addition by the New Civil Procedure Code, which is applicable in administrative procedures once the "lex specialis", which is the ruling for proceedings of June 21, 1999, does not expressly derogate from the "lex generalis", which is the New Civil Procedure Code.
The trial before the administrative court of law can be regarded as governed by the principle for an inquisitorial type of procedure, and the collaboration of parties (the concept “inquisitorial" must nevertheless be approached in a "mild" sense). The claimant is requested to indicate the material elements and evidence which may help motivate the procedure.
The defendant and the other parties may discuss the conclusions of the claimant and, for their part, present offers of evidence.
The administrative court of law can urge the parties to establish the facts on the basis of their claims (obligation to participate). If in spite of the participation of the parties, questions that are necessary to making a ruling remain unanswered, the administrative court of law can clarify these facts even without offers of evidence by ordering a visit of the premises, for example (principle of official action).
The introduction of and the motivation for appeal, as well as the response of the parties, are exercised by means of statements of case (in theory two for each party, the introduction of appeal on this subject being equivalent to the first report) and presentation of the conclusive administrative files which are the subject of oral debates.
It should nevertheless be specified that the procedure is primarily written and that new methods are not allowed during debates, except for the official method invoked by the administrative court of law.

34. The members of the administrative courts of law cannot, directly or indirectly, have individual discussions with the parties or their lawyers or defenders about the disputes which are subject to their decision.
No member can sit on cases connected with the application of legal or lawful provisions, the subject of which he/she has taken part either in its drawing up in whatever capacity, or in the deliberations of the Council of State.
The members of the administrative courts of law cannot deliberate, sit, or decide on any case in which they themselves, or their immediate family or close relatives up to and including the fourth degree, have a personal interest.
They cannot sit, decide, or take part in deliberations on cases which they have already known in a quality other than that as a member of the Court or tribunal.
The members of the administrative courts of law can moreover be challenged for causes according to methods indicated in related provisions for the code of civil procedure.
Furthermore, members of administrative courts of law cannot exercise a whole series of functions.

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

36. When the administrative court of law concludes it is necessary to order an intervention, it regulates the form and deadlines from which to proceed.
Furthermore, people showing an interest in the outcome of the litigation can voluntarily intervene by request, and the other parties are notified.
An intervention is no longer admissible once the recording judge has begun his/her report in a public hearing.

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

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

39. Without a court order, the administrative trial ends by a withdrawal or a request for annulment during the hearing. Withdrawal can be made by an act signed by the plaintiff or his/her proxy, and communicated to the opposing party, and third party concerned.
It automatically entails forfeiture of appeal and an obligation to pay the expenses of the hearing.

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

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

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

42. The oral debates are public. During oral debates, the parties either expose and justify their petitions, or limit themselves to referring to their notes.
The hearing can take place in camera (in the council chambers) in rare cases such as investigation or at the time of a request tending to obtain a statement of an incurred forfeiture.
The oral debates begin with a call for the case and the appearance of the parties by their proxies. The recorder exposes the state of litigation. Only the proxies of parties having left written reports within the legal deadline are granted the possibility of expressing their point of view.
An additional report can be required by the administrative court of law should it consider not to have been enlightened on the law sufficiently.
The administrative court of law cannot rule on an officially-raised means without having invited the parties to present their observations beforehand.
Party to the procedure are the claimant, the defendant, and failing this, a third concerned party.
The chairman closes the oral debates.

43. After closure of the oral debates, the judges withdraw to deliberate. Deliberation begins with an assessment of facts and of the legal situation and ends in a vote.
Aside from judges named to rule on the case, no person has the right to participate at the deliberation.
Only a legally fixed number of qualified judges according to the distribution of their functions are nominated to rule and deliberate. The deliberation and vote are a matter of secrecy.

C. The Decision

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

45. The criteria for appreciation and the framework for reference on the decision are the laws and rulings, the national constitution, Community legislation and the European convention of Human Rights, as well as, if necessary, other international legal instruments as from the moment their provisions are regarded as being directly applicable.
If there is not any doubt concerning the compatibility of laws with rights in priority, there is no room for discussion in the context of a decision. The basis for justifying the decision rests on the interpretation of applied legislation as well as on the assessment of facts and the evidence in support of the corresponding regulation. Justification also takes into account legal decisions, in particular, those of the administrative Court.

46. The consequences of control depend mainly on the corresponding material law and the nature of appeal.
In the context of proceedings for annulment, the administrative judge analyses whether the decision was taken within "legality" (incompetence, excess and misuse of power, violation of the law or the forms intended to protect private interests).
In these cases, it is not up to the tribunal to control the opportune character of the administrative decision or to replace the assessment proposed by the administration with a clear assessment, even if other decisions seem to it to be more opportune or if other decisions are more favourable to the claimant.
In the context of appeal on reversal, the administrative judge replaces the administrative authority.
The law does not make distinctions between the various hearings concerning legal control.

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

48. At the level of the administrative court, the litigations are subjected to a division made up of three judges (except for the administrative summary proceedings).
The administrative Court always rules in a division of three members.

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

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

D. The effects and the carrying out of the sentence

51. The judgement binds only the parties and their beneficiaries, regarding the object of litigation.
If the state of the facts and legal situation are unchanged, the administrative authority which succumbed is not authorised to decree a new administrative act towards the person concerned without taking into account the reasons for disapproval of the administrative court of law towards this act.
This decision does not concern all, but is limited to the hearing in progress and cannot be extended to other hearings in which similar legal difficulties arise.

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

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

When in the event of annulment or of reversal of an administrative decision which is not reserved by the Constitution for a determined body, and following by dint of a judged thing, the court of law having annulled or having reversed the decision has returned the case before the competent authority, which omits taking a decision while conforming to the judgement or the decree, the interested party can, before the expiry of a three-month deadline from the pronounced decree or judgement, complain to the court of law which returned the case in view of charging a special commissioner with taking a decision in lieu and place of the proper authority and at their own expense. The court of law fixes a deadline within which the special commissioner must complete the task.
The special commissioner nomination denies the competent authority of court of law.
The administrative judge does not have power of injunction as regards execution of his/her decision.
The case of execution of a decision by a private individual is not posed in a Luxembourg administrative legal dispute, since the administrative courts of law are only qualified to analyse the legality or validity of administrative decisions, so as to control action of the administration only.

54. One can affirm that trials before the administrative tribunal, as well as those before the administrative Court, are dealt with, on average, within 6 months to a year.
A policy fighting against excessive delays for decisions in Luxembourg has, therefore, no raison d'être and, furthermore, is inexistent.

E. Grounds for appeal

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

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

F. Emergency procedures and summary procedures

57-58 a) In Luxembourg administrative law, appeal does not have a suspensive effect, except for certain types of decisions rendered regarding right of asylum, restrictively listed by the law, if it is not otherwise ordered by the chairman of the tribunal or replacing judge. This stay of execution can be decreed only on the double condition that, on the one hand, execution of the contested decision risks causing the claimant serious and definitive harm, and, on the other hand, the means invoked with the support of the appeal directed against the decision appear serious. The deferment is rejected if the case is ready to be pleaded and decided in the short term.
The demand for a stay of execution is to be presented by distinct request addressed to the chairman of the tribunal and must meet the conditions planned for any appeal before the administrative courts of law.
The defendant and interested third party are convened by the clerk's office.
The procedure is oral. The case is pled at the hearing to which the parties were convened. The chairman ensures that the defendant and interested third party received the convocation. On justified request of the parties, it can grant a remission.
The chairman’s ordinance is enforceable as of its notification. It is not susceptible to any grounds for appeal. Its effects cease once the tribunal has decided the main point or a portion of the main point.
The judge adjudicating in a request with suspensive effect of appeal can no longer decide in the matter.
b) When a request for annulment or reversal is referred to the administrative tribunal, the chairman or replacing magistrate can provisionally order all necessary measures so as to safeguard the interests of the parties or people who have an interest in solving the case, other than measures having civil laws as subject matter.
The request is set up as a preliminary enquiry and judged according to the procedure described in item a).

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

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

III - Regulation of administrative litigations through non-jurisdictional hearings

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

61. Appointed by a law of August 22, 2003, the first mediator of the Grand Duchy of Luxembourg, attached to the House of Commons, took up duty on January 1, 2004.
He/she is qualified to receive complaints regarding State functions and communes, as well as publicly-owned establishments relevant to the Grand Duchy State and communes.
Any person or legal private entity may complain to the mediator when suitable steps at the administrative level concerned have been taken beforehand.
Claims addressed to the mediator do not interrupt deadlines for contentious appeal.
The mediator cannot intervene in a procedure initiated before a court of law, or call into question the validity of a court order.
The action of the mediator rests on his/her capacity for persuasion and the possibility of proceeding with publication of decisions made.
If the administrative authority remains reticent, the mediator will no longer be able to undertake anything at all.

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

IV - Administration of justice and statistical data

A. Means placed at the disposal of justice in the control of administration

63. Requirements for personnel and localities are established with the State budget
The needs are established separately for the respective judicial order court of law and administrative court of law.

64. On 31.12.2002 (reference date), and as is currently the case, the administrative court was comprised of 9 magistrates and the administrative Court of 5 magistrates.

65. The percentage of magistrates assigned to a general administrative court of law compared to the total number of magistrates was about 9% at reference date.

66. The judges and counsellors are not backed up by assistants.

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

68. The administrative jurisdictions are equipped with modern data processing means.
Magistrates, the tribunal clerk's office and the secretarial service have personal computers

with word processing, administration and communication programmes (e-mail, Internet) as well as printers.
Moreover, the magistrate’s personal computers are readily equipped with Internet access and, in addition, are inter-connected.

69. The administrative jurisdiction has its own Internet site where citizens can be informed on functions and competences, legal and personnel organisation as well as access to addresses. Moreover, decisions which remain anonymous are published on the site.

B. Other statistics and indications for figures

It appears appropriate to give reports relating to functioning of the administrative Court and administrative tribunal over the judicial years 2002-2003 and 2003-2004 under the present heading.
Other figures or details are unfortunately not available.

Annual report of the administrative Court 2002-2003

During the financial year 2002-2003, the administrative Court was seized by 501 cases newly brought to the cause list. The table below shows their distribution according to subjects and permits in comparison with figures of previous years:

Seperate valuation by subject :	1997	1998	1999	2000	2001	2002	
		1998	1999	2000	2001	2002	2003
Taxation		15	17	16	17	12	20
Town planning	51	28	56	38	29	24	23
Potentially dangerous industrial premises							
Foreigners	26	42	22	63	262	444	379
Refugee status					(248)	(434)	(298)
Permits (sojourn/work)				(l 1)	(10)	(63)	
Distance/installation					(3)	(0)	(15)
Others							(3)
Civil service		19	39	26	22	30	20
Disciplinary cases therein							(6)
Other matters					60	50	35

The heading "other matters" includes amongst others, cases relating to prohibited weapons, to driving licences, to public markets, to statements of preclusion, to national monuments, to accreditation of foreign diplomas and procedures for carrying out decrees by designation of a special commissioner. The figures for each of these categories are too irrelevant to justify a separate mention in the table, which would risk becoming more difficult to read.

It is to be noted that the heading "Potentially dangerous industrial premises" and the sub-heading “disciplinary cases" were recently introduced into the table because of the relatively significant number of files presented on these subjects during the financial year which is the subject of this report. The figures in question thus do not refer to preceding financial years where the data in question was based under the heading "other matters"
The examination of statistical data, especially in the following table representing annual statistics of cases recently recorded before the administrative Court as of 1January 1997, show

fortunately that the tendency to spectacular increase in the number of cases recorded before the Court has finally been reversed.

Judicial year	Number of cases recently recorded	Increase (by percentage)
1997	118	
1997-1998	137	(No reference for 1997)
1998-1999	164	20%
1999-2000	178	8,5%
2000-2001	390	119%
2001-2002	548	71 %
2002-2003	501	-8,5%

The Court has been impatiently awaiting inversion of this tendency which, besides, it would have liked to see as clearly more substantial. It is worth drawing attention to the fact that the figure of 501 new entries is still 180 % higher than the figure relating to year 2000-2001; this being a year one could consider as a base year, since it took place before the exceptional influx of cases generated by litigations regarding right of asylum.

The decrees enounced and delays:

Decrees enounced by the administrative Court

Judicial year:	Decrees1 enounced	Increase
1997-1998	103	(No useful base)
1998-1999	126	22%
1999-2000	149	18%
2000-2001	312	109%
2001-2002	574	84%
2002-2003	507	-12%

As for delays in clearing cases, the Court is always in a position to fix dates varying between about eight days and one month. This favourable situation is made possible by effective rules for procedure (law of June 21, 1999) and a creditable co-operation of litigants who show great discipline and a total comprehension with regard to rigour practised by the Court as regards making arrangements.

Report relating to administrative tribunal functioning from September 16, 2002 to September 15, 2003

After years of considerable progression on the number of decisions rendered by the administrative tribunal, these figures seem now in the process of stabilisation. Thus during the judicial year 2002-2003, the number of decisions rendered (excepting elimination decisions) was identical to the preceding legal year, but for one or two items.

On the whole, between September 16, 2002 and September 15, 2003, the two tribunal chambers gave 1.059 decisions, including 159 eliminations. This figure comprises 54 decisions given on tax matters.

The number of the ordinances rendered on matters of reprieve enforced or institution of safeguard measures was 40, a figure slightly lower than the previous year.

Report relating to administrative Court work during the judicial year 2003-2004

During 2003-2004, the administrative Court was seized for 428 cases on the cause list (compared to 501 cases during the last judicial year).

Seperate valuation by subject:	**2002 2003**	**2003 2004**
Taxation matters:	20	14
Town planning:	23	35
Potentially dangerous industrial premises:	24	6
Foreigners:	379	303
Refugee status:	*298*	*263*
Permits (sojourn/work:	*63*	*33*
Detention of illegal immigrants:	*15*	*3*
Other:	**3**	**4**
Civil Service:	20	17
Disciplinary cases:	*6*	*1*
Other matters:	35	37
Transport:		4
Work:		12

The heading "other matters" includes, amongst others, cases relating to prohibited weapons, driving licences, public markets, debarment statements, national monuments, foreign diploma accreditation and procedures for executing decrees by designation of a special commissioner. The number of each of these isolated categories is too irrelevant to justify a separate mention in the table.
The number of cases for which the Court was seized during 2003-2004 is thus slightly lower compared to last year.

The Court is always in a position to arrange cases in a short time, unless the parties request postponement, and to enounce decrees within a short time lapse.

It seems to me interesting to reveal that by September 15 2004; administrative jurisdictions had recorded 8880 cases since their creation (7.200 up to September 15, 2003).

Report relating to administrative tribunal functioning from 16 September 2003 to 15 September 2004

After years of strong progression on the number of decisions rendered by the administrative tribunal, these figures seem now in the process of stabilisation, although the judicial year 2003-2004 progressed slightly, at around 3 % for decisions by various administrative tribunal formations.
Compared to the first 2 years of tribunal functioning, the number of decisions rendered was multiplied by almost 2, 5 (the number of judges passed from seven to nine)

In all, between September 16, 2003 and September 15, 2004, the two tribunal chambers made 1.090 decisions, including 159 elimination decisions. This figure comprises 567 decisions regarding police matters for foreigners, and 55 decisions on tax matters.

The number of ordinances rendered regarding reprieve of execution or institution of safeguard measures was 49, being a progression of some 20 % compared to the previous year.

With respect to this, the following point should be made however. During the past judicial year, 1.207 new cases were recorded, testifying that in the near future, the number of cases to be dealt with will probably increase even more, requiring tribunal members to make increasingly more thorough efforts so as to achieve goals of rapid but high quality justice.

C. The economy of administrative justice

76. There are no scientific studies showing the influence of administration sentencing on public budgets or illustrating magistrate’s remarks on consequences of their decisions in terms of cost for public funds.

(Marc Feyereisen)