



**Seminar organized by the Council of State of France and  
ACA-Europe**

**“The Judicial review of Regulatory Authorities”**

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**Answers to questionnaire: Finland**



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## ACA-Europe symposium

### Disputes concerning acts by regulatory authorities

Regulatory authorities have gradually emerged as one of the new forms of State intervention. In addition to the Regal State or the State as a supplier of goods and services, the regulatory authorities, in the broad sense, cover a wide range of administrative activities: they may be authorities responsible, in a given sector or across the board, for correcting market imbalances in a context of opening up markets to competition, or for ensuring that free competition is reconciled with other general interest objectives; in the broadest sense, regulatory activities may refer to any administrative activity that seeks to reconcile interests that may be contradictory or to organise access to scarce resources in a manner consistent with general interest objectives. In this broadest sense, this notion can refer as much to the transversal authorities responsible for enforcing competition law (e.g. the French Competition Authority) as to sectoral authorities (electronic communications, transport, energy, etc.), including national data protection authorities or authorities responsible for the marketing or evaluation of health products.

The symposium planned for December 2021 should be an opportunity to examine the specific issues that disputes concerning acts taken by these regulatory authorities may raise in the administrative courts. These questions arise from certain characteristics of the acts of these authorities, characteristics over which they do not have a monopoly compared with other forms of administration, but which combine or take on a particular role. These characteristics are at least three in number: firstly, the use of a wide range of acts or intervention tools, from flexible laws and codes of conduct to more traditional regulatory acts or sanctions, via a variety of communication media (press releases, public statements, FAQs, etc.); secondly, the degree of expertise and technicality of the decisions taken in a given activity sector (energy, health, electronic communications, etc.) and/or a certain technological context (personal data protection, cyberspace, etc.); finally, integration into complex economic and social ecosystems, often with a significant European or even international dimension, and likely to have a high media profile.

In this context, from the particular object of study that is disputes concerning the acts of these regulatory authorities, the symposium planned for December 2021 will make it possible to address the important challenges that these appeals raise for the effectiveness and credibility of the court's intervention.

### Courts with competence to hear disputes concerning regulatory authorities

1. Does your supreme administrative court have competence to hear appeals against acts by regulatory authorities? Yes/no **Yes**

If yes:

Without being exhaustive, could you present the main regulatory authorities in your country whose acts are brought before your supreme administrative court, specifying if these appeals are subject to several levels of jurisdiction? Please distinguish, if necessary, according to the nature of the acts concerned (in the event, for example, that individual acts taken by these authorities are subject to separate jurisdictions from their general acts, notably regulations).



There are a number of regulatory authorities, all of whose decisions can as a rule be appealed. Such authorities in the broadest sense (the list being in no way exhaustive) include the Financial Supervisory Authority, the Finnish Competition and Consumer Authority, the Finnish Patent and Registration Office, the Regional Centres for Economic Development, Transport and the Environment, the Finnish Medicines Agency Fimea, the National Supervisory Authority for Welfare and Health Valvira, the Finnish Transport and Communications Agency Traficom, the Finnish Transport Infrastructure Agency, the Finnish Energy Authority, the Regional State Administrative Agencies.

Decisions by regulatory authorities are (with some exceptions) appealed to the administrative court, and further to the Supreme Administrative Court, subject to leave to appeal.

2. In particular, can any of these authorities themselves impose sanctions (including fines)? Yes/no

If yes: Yes, regulatory authorities can impose fines. The decisions can be challenged before the administrative court and leave to appeal to the Supreme Administrative Court can be sought. Decisions by the Competition and Consumer Authority are appealed to the Market Court and appeals to the Supreme Administrative Court can be sought.

is it possible to challenge them before your supreme administrative court?

3. Are any of these regulatory authorities subject to judicial review by civil courts, for some or all of their acts? Yes/no

If yes: Yes, e.g. some of the decisions by the Finnish Patent and Registration Office and the Competition and Consumer Authority are appealed to the Market Court and some to the administrative court, with decisions by the Market Court in turn falling either under the jurisdiction of the Supreme Administrative Court or the Supreme Court.

Please give examples.

4. Are the courts with competence to hear the acts of regulatory authorities:

- specifically identified by the texts in force, by way of derogation from the normal rules of territorial or material competence? Yes/no Yes.

- or do they result from the application of the general rules on the distribution of competences? Yes/no

Is there any specific distinction in relation to the rules of competence applicable to equivalent acts of other administrative authorities in your country? Yes/no No.

If yes:

Please explain.

5. Are the remedies available against the acts of these authorities of the same nature as those available against the equivalent or similar acts of other administrative authorities? Yes/no Yes.

If no:

Please explain.

### Admissibility of appeals against regulatory acts

6. In your view, do disputes concerning “hard law” acts (regulatory acts, sanctions, individual authorisation decisions, etc.) of these authorities raise particular issues of admissibility? Yes/no **No**.

If yes:

Please explain.

7. Are “soft law” acts (opinions, recommendations, warnings, position papers) of these authorities and, more broadly, their various positions on the behaviour to be adopted by the actors in their field of intervention (whatever form they take: code of conduct, guidelines, etc.) liable to be the subject of a direct action for annulment? Yes/no **No**.

If yes: under what conditions? Make any distinction you think useful according to the degree of normativeness of the acts.

8. Can positions taken by these authorities, possibly with little or no formality (press release, website section, FAQ, etc.) be challenged in court? Yes/no . **Not as such**.

9. Who can challenge the acts of regulatory authorities? Specify the criteria for assessing the interest in bringing proceedings, making any useful distinction according to the type of act (soft law act; individual decisions of a non-repressive nature; sanction; etc.). **The right to appeal is with those to whom the decision is addressed or whose right, obligation or interest is directly affected by the decision and whose right of appeal is specifically provided by law.**

10. Please indicate any other particularities that you consider relevant to the admissibility of appeals against the acts of these authorities (interest in bringing proceedings, time limits for appeal, specific means of appeal open to State authorities, etc.). **Appeals against decisions of regulatory authorities are subject to the same rules of procedure as other administrative matters.**

11. Can the general acts of a regulatory authority, whether “hard law” or “soft law”, be challenged by way of exception in an appeal against an individual decision (sanction, follow-up to a complaint, etc.) taken by that same authority and applying that general act (for example, if a sanction imposed on an economic operator refers to previously issued guidelines or recommendations to set out the applicable legal rules and the authority’s interpretation of the texts in force)? Yes/no **Yes**.

If yes, to what extent? Will the plea of illegality against this general act, if upheld, lead to the (retroactive) annulment of this act? **Not automatically, but the authority would presumably amend its guidelines or recommendations in accordance with the findings of the court.**

12. Where the actions of these authorities have harmful consequences, should liability claims be brought:

- against these authorities? Yes/no **Only in theory, not in practice.**

- or against the State on whose behalf they may have acted? Yes/no **Yes**

### Internal organisation of the courts and hearing of appeals

13. Are cases concerning these authorities assigned, within the courts and more particularly within the supreme administrative court, to panels specifically dedicated (to the authority concerned, or more generally to regulatory litigation), in order to allow for an increase in the level of competence or a critical mass of cases? Yes/no **Yes**.

If yes: please explain and give examples. **There are three chambers in the Supreme Administrative Court and cases are assigned according to a predetermined order as decided by the President of the Court. Staff (justices and referendaries) are assigned to chambers in such a way that the advantage of their particular expertise can be maximised. In cases under the Water Act and the Environmental Protection Act as well as in cases concerning certain intellectual property rights such as patents, the chamber is composed of the judges and two part-time expert members having competence in the relevant field.**

- Or is it a distributed dispute with no particular allocation rule? Yes/no

Please indicate, in a more general way, any notable particularities in the internal organisation of your courts that may be relevant.

14. What investigative or examination techniques can you use in particular in the examination of particularly technical cases:

- oral inquiry hearing in the presence of the parties, **Yes.**

- expert's report, **Yes.**

- amicus curiae, **No.**

- solicitation of a reference expert administration, **No.**

- other?

Please explain, where applicable by giving some examples from your experience.

Do you feel that these regulatory cases require a particular method? Yes/no **No.**

If yes:

Please explain.

15. What is the role of the traditional administrations (especially when the act of an independent administrative authority, distinct from the ministry concerned, is at issue) in the examination of appeals against regulatory authorities:

- are they invited to comment? Yes/no **Yes, if they are a party to the case, which may not be often.**

- or do they remain outside the case? Yes/no

16. More generally, when examining appeals against acts with a high socio-economic impact issued by these authorities, in particular those in charge of a field of economic regulation, does the court collect (on the initiative of the court or the interested organisations) observations from other stakeholders? Yes/no **No.**

If yes:

Please explain.

17. What role does orality play, even before the hearing, in the investigation of complex cases, in particular those involving regulatory acts? **Oral hearings can be conducted but are in general quite rare. However, in e.g. large cartel cases the Supreme Administrative Court has typically held oral hearings.**

18. Do you have, in one form or another (specialisation of magistrates, continuing education, expert decision support unit to assist magistrates, etc.) internal resources in your courts enabling you, if necessary, to familiarise yourself with or master sectoral but also transversal expert subjects (technologies protecting privacy, communication technologies in the case of audiovisual or electronic communications regulators, role and architecture of social networks, etc.)? Yes/no

If yes: **The Court has expert members included in the deciding composition in certain types of matters, e.g. environmental cases and patent law cases. In the recruiting of justices and referendaries, special knowledge in certain fields of law and practice is considered as an important merit.**

Please explain and give examples.

### **The extent of the judge's control, the court decision**

19. What are the main categories of grounds that can be invoked and relied upon against the acts of regulatory authorities? Based on your experience and the case law of your country, do you find that appeals against acts of independent authorities raise particular problems (real independence in decision-making, impartiality, etc.) compared with disputes concerning acts taken by other administrative authorities? Please share any relevant analysis you may have. **Cases before the Supreme Administrative Court are generally subject to the requirement of leave to appeal. Leave to appeal can be granted if it is important for the application of the law in other similar cases or for reasons of uniformity of case-law to refer the matter to the Supreme Administrative Court, if there is a particular need to refer the matter to the Supreme Administrative Court due to a manifest error in the decision appealed or there is another compelling reason for granting leave to appeal. We see no big difference between appeals acts of independent authorities and other authorities. The Court will always only control the legality (in a wide sense, though) of the act that has been appealed against.**

20. Does your court consider itself bound by the technical or economic assessments made by the regulator? Or does it feel entitled to control them? In the latter case, is this control complete or only limited to the manifest error of assessment? **The Supreme Administrative Court can review the case in its entirety. However, the viewpoint is always the legality of the authority's decision. It is not the Court's role to use discretionary power.**

21. If you receive an application against an act of a regulatory authority or against a sanction imposed by it, is your court only competent to annul the act or sanction or can it also modify the sanction imposed? **Yes, both.**

22. Have you been confronted with the problem of an independent authority in your country taking into account a foreign element such as an opinion given by an authority in another country or a decision by a European authority (for example, in the context of the mechanisms set up by the GDPR between the European data protection authorities, which lead these authorities to submit some of their decisions to the European Data Protection Committee for approval)? Yes/no **No.**

If yes: what kind of legal treatment? Please explain and give examples.

23. Are these cases a particular field of preliminary questions to the Court of Justice of the European Union? Yes/no **No.**

If yes:



Please explain and give examples.

24. Does the drafting of court decisions raise particular issues related to the technical nature or media exposure of some of these cases? Yes/no **No**.

If yes:

Please explain and give examples.

### The judge in the regulatory ecosystem

25. Are judgments on such appeals subject to any particular publicity or accompanying measures (press release)? Yes/no **Decisions of particular relevance are published, and a press release can be issued in connection with the publishing of the decision.**

If yes:

Please specify.

26. Are regulatory authorities entitled to challenge acts or decisions taken by other public persons on the grounds that they impinge on their competence? **No. Environmental authorities may have standing in e.g. environmental permit cases.**

27. Independently of a particular case, do your court or its members regularly participate in general exchanges bringing together professionals (regulatory authorities, operators, doctrine, ministries, etc.) from the regulatory sectors concerned? Yes/no **Yes**.

If yes:

Please specify. **Common training courses or sessions etc.**

28. Are the judges in your courts, or more generally the staff of your investigating and registry departments, sometimes led in their careers to take up activities in regulatory authorities, and are such careers encouraged where appropriate? Yes/no **There is no particular activity of the Supreme Administrative Court in this regard.**

If yes:

Please explain.

### Quantitative data

29. What is the number of cases concerning regulatory authorities registered before your supreme administrative court in 2020? **We do not compile statistics in a way that would make it possible for us to quantify cases concerning regulatory authorities. Also, the vague (and broad) definition of regulatory authority makes it extremely difficult to even try to give any estimates.**

30. What is the number of cases concerning regulatory authorities settled by your supreme administrative court in 2020? **See above.**

31. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases registered before your supreme administrative court in 2020? -



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32. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases settled by your supreme administrative court in 2020?

33. What percentage of applications against the acts of regulatory authorities were annulled, in whole or in part, by your supreme administrative court in 2020?



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