

Seminar organised by the Hellenic Council of State and ACA-Europe

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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from _____ (Please indicate your institution)

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers



2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- Constitutional provision
- General provision of a legislative nature
- Specific legislation

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- Directly by law
- By an administrative act
- By contract
- Other

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?

Please provide specific examples from legislation and case-law.

- Preparation of the administrative act
- Issuance [adoption] of the administrative act
- Implementation of the administrative act
- Other

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

- Advisory tasks
- Decision-making tasks
- Control and verification tasks:
- Establishment of the facts
- Legal qualification of the facts
- Other

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

No

Yes (please specify)

If yes, which legal instrument provides for the corresponding prohibitions?

Constitution

Legislation

Other

Please indicate any relevant case-law.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

Participation in examinations

Selection based on criteria

Other

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

Random selection from a list/register

Selection from a list/register based on criteria

Absolute discretionary power of the Administration

Selection by the citizen [upon a declaration]

Other

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

No

If yes,

General normative act (e.g. Code of Administrative Procedure)

Specific normative acts

Codes of Conduct, good practices (soft law)

Other

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

- Incompatibilities
- Impediments
- Criminal or disciplinary liability
- Other

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

- Withdrawal of the certification
- Disbarment from the professional association
- Imposition of a fine or other penalty
- Personal liability of the private individual (civil, criminal, disciplinary)
- Revocation of the administrative act in the issuance of which the private individual collaborated
- Civil liability of the State
- Other

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

- Yes
- No

ii. If yes, at what stage are the checks carried out?

- A priori
- A posteriori
- At any time

iii. How are checks activated?

- Following a complaint/administrative appeal
- Ex officio

iv. How extensive are the checks?

- Checks based on sampling
- Mandatory checks for all actions

v. What is the nature of the checks?



- Of legality
- Of the substance, of appropriateness

vi. What is the type of checks?

- On persons
- On actions

vii. Are the conclusions of private individuals binding on the Administration?

- Yes
- No

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

- No
- Yes

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se)

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration)

ii. What types of disputes arise when challenging the actions of private individuals?

- administrative disputes
- private disputes

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

iii. What criteria does the Administration use to select external senior managers?

iv. What is the nature of the duties of external senior managers?

- Decision-making
- Advisory
- Other

v. Does error on the part of a senior manager give rise to:

- Civil liability of the State
- Personal liability of the manager (civil, criminal, disciplinary)

2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.



ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

iii. In which public services and agencies is this type of organisation used?

- The Administration stricto sensu
- Public enterprises
- Other public entities

iv. Are the policies for achieving the objectives designed:

- At national level
- At regional level
- By subject-matter
- By taking into account specific public entities
- Other

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

If yes, is their accomplishment:

- Optional
- Mandatory

Does failure to meet these objectives lead to:

- Personal consequences for the senior managers
- Legal consequences for the assessed organisation
- Financial consequences for the assessed organisation

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

- Compliance with the regulatory framework
- Effectiveness
- Efficiency
- Economy
- Achievement of strategic objectives
- Other

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

- Arbitration
- Mediation
- Other

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

** Please elaborate on your answer, citing any relevant legislation and/or case-law*

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

- Yes
- No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?



Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?



Which court has jurisdiction over disputes concerning such enforcement?

ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

- a legislative provision
- a general principle of law

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

- Yes
- No

ii.a. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Is it mandatory or optional?

If it is optional, does it require:

- The mutual agreement of the parties
- Only the intention of the Administration



Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings

At any stage of the litigation proceedings

Is there a specific piece of legislation governing the mediation process?

Yes

No

If yes, please specify:

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

How is the impartiality of the mediator ensured?

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

At the end of the mediation process,



If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

ii.b. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

Is it mandatory or optional?

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision

A general principle of law

ic. If arbitration is optional, does it require:

The mutual agreement of the parties

The sole intention of the Administration

The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

iv. How are the independence and impartiality of the arbitrator ensured?

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

vi. In arbitration concerning administrative disputes:

yes / no

Is there an obligation to make publicly available the basic information and documents relating to the proceedings?

Is the participation of third parties permitted?

Is legal representation mandatory?

If yes, is legal aid available?

Is the hearing public?

Is the arbitral tribunal obliged to give reasons for its award?

Is the arbitral award made publicly available?

vii. During the proceedings, the applicable system is:

the adversarial system

the inquisitorial system

viii. What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature

Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)

Annuls/amends an administrative act of a non-pecuniary nature

Annuls/amends an administrative act of a pecuniary nature

Addresses only recommendations to the Administration

Restricts itself to awarding compensation for damages



Does the arbitral award have effect:

Erga omnes (with regard to all)

Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

Yes

No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Is it possible to waive the right to judicial review?

Which courts have jurisdiction?

What is the scope of the judge's review according to case-law?

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, Eco Swiss China Time Ltd v Benetton International NV and C-168/05 Mostaza Claro v Centro

Móvil Milenium SL, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?