The Constitution of Finland (s. 21), everyone has the right to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. The Administrative Judicial Procedure Act of 1996 (AJPA) contains our general provisions on due process rights and procedure in administrative judicial proceedings. Under AJPA (s. 5), any measure by which a case has been resolved or dismissed may be challenged by an appeal. This right to challenge an administrative decision has been restricted only as regards internal administrative orders concerning the performance of a duty or another measure; these are not open to appeal (i.e., not reviewable). Accordingly, material decisions can generally be reviewed, while preparatory measures, such as statements and opinions, cannot.

This broad right of appeal, which admittedly has its roots in earlier principles, was laid down in the law already in 1950. At that time, also the decisions of the Government and the Ministries were rendered reviewable. In other words, measures were taken then to establish due process principles which have later been used as a source of human rights obligations. The legal principles and requirements enshrined in the provisions referred to above have been in existence for decades, with little material change. This has allowed for the formulation of voluminous case-law by the Supreme Administrative Court on the topic of which administrative decisions can be reviewed and which cannot. The interpretations have turned on two main issues. Firstly, is the decision put into effect by administrative legal measures, or is it instead one that is more properly characterised as a private law measure or an instance of subordinated legislation. Secondly, if the decision is by nature and by effects one that does not pertain to the rights or obligations of anyone, and there therefore is no legal subject with standing to challenge it, the decision is not reviewable also in objective terms. That said, the second issue of interpretation is not relevant in areas where a decision’s reviewability has been extended by specific legislation other than AJPA, for instance where appeals against the decisions of municipal authorities are concerned. There is no specific legislation to this point as regards decisions of the Government, however.
As noted, there is extensive Supreme Administrative Court case-law on the reviewability of decisions. Some examples:

There is no review of a proposal or an application by one authority to another in order to have the latter authority make a decision in a matter within its jurisdiction. Review is allowed only against the decision of the competent authority, as issued on the basis of the proposal or application.

The measures taken by an authority in preparation of a decision in a matter are not separately reviewable. Such preparatory measures include e.g. the making of admissibility rulings, the selection of parties to be heard and the procurement of expert opinions and other evidence. Procedural heads of appeal are admitted only when the substantive decision in the matter is being reviewed.

Resolutions, action plans and programmes usually involve setting of objectives, allocation of tasks and scheduling in respect of Government activity. In most cases, these types of decision do not involve such concrete effects that would render them reviewable.

Authorities are charged with various monitoring and inspection duties, which often involve the issue of notices and exhortations for the discontinuation of rules violations. Such notices and exhortations are not reviewable, unless accompanied with legal sanction or conditional sanction.

Administrative regulations are not reviewable in so far as they fall within the legislative sphere, that is, they have been issued by an authority by virtue of legislative competence delegated to it. Such delegated competence is always strictly circumscribed, with a basis in an Act of the Parliament. In contrast, if an authority issues a decision purely by virtue of its administrative competence, and the decision applies to an indefinite number of cases meeting certain general criteria, the reviewability of the decision must be assessed on a case-by-case basis. If the decision in itself has effects that are relevant to the rights or obligations of the persons concerned, the decision is reviewable. The effects of the decision are to be assessed from the factual and practical points of view, rather than from the point of view of legal categorisation.

1.2.

Finland has a two-tier system of administrative courts. The (nine) regional Administrative Courts form the first instance. These courts have general jurisdiction over administrative matters, with competence to hear appeals against the decisions of all administrative authorities, except the Government and the Ministries. The second, final instance, is the Supreme Administrative Court. In addition, there are two special courts, the Market Court and the Insurance Court. The decisions of the Market Court are open to appeal in the Supreme Administrative Court, while those of the Insurance Court are normally final, as they are reviewable only by way of extraordinary appeal and on strictly limited grounds. The Market Court hears cases relating to competition law and public procurement. The Insurance Court hears social security cases.

The Administrative Courts have territorial jurisdiction in their regional judicial districts. The Market Court and the Insurance Court hear appeals against decisions issued on the basis of certain Acts of the Parliament.
The Supreme Administrative Court is both an appellate instance as regards the decisions of the subordinate Administrative Courts and the sole instance in given types of case. The most significant such type of case is appeals against the decisions of the Government and the Ministries. No other court has jurisdiction over this type of appeal.

Where an administrative decision meets the relatively comprehensive criteria of reviewability described in section 1.1. above, it is quite exceptional for its review to be restricted by means of a specific statutory appeal prohibition. Finnish law does not contain any general review restrictions at all. This is due not only to the constitutional provision referred to in the beginning of this report, but also to the requirement of an effective remedy in the European Convention on Human Rights and to the requirement in EC law that there be effective domestic remedies for the enforcement of rights based on community law. The criterion of effective remedies is met when a decision can be appealed to a superior instance.

In the cases that the Supreme Administrative Court hears on appeal from a lower instance, the leave-to-appeal procedure is applied in about a third of the cases received. Such cases will be taken up for substantive consideration only if the Supreme Administrative Court grants leave. In effect, the Court will first inquire and determine whether the statutory grounds for granting leave to appeal exist. The right of appeal is involved also in these cases, albeit in a restricted form relating to the granting of leave. The substantive appeal is heard only in the cases where leave has been granted. In the case types where this procedure is applied, leave to appeal is granted in approximately 5 to 20 per cent of the cases, depending somewhat on the type of case.

Under AJPA (s. 7), the decisions of the Government and the Ministries are open to appeal in the Supreme Administrative Court. Appeal is possible only on grounds of illegality. In contrast, there is no appeal on the grounds of the decision being contrary to purpose.

A decision is considered illegal if it is contrary to an Act of Parliament and also if it is contrary to some other norm in the legal system, where binding on the Government or the Ministry in its decision-making. Illegality has both procedural and substantive aspects. Hence, appeal on grounds of illegality is possible both as regards the material content of the decision and as regards the procedure followed when the decision was made.

The line between illegality and contrariness to purpose has traditionally been described by reference to the difference between bound exercise of discretion and free exercise of discretion. In this dichotomy, free exercise of discretion is free of legal restrictions or legal guidance as characteristic to the many areas of governmental decision-making in the political sense. It corresponds also to the sector of governmental and ministerial operations where parliamentarism, that is, parliamentary oversight, is emphasised.

The difference between illegality and contrariness to purpose as a factor defining the jurisdiction of the Supreme Administrative Court is illustrated also in the Act on the Supreme Administrative Court (s. 2). According to that provision, an issue which turns mainly on whether a decision or measure is fit for purpose must be referred to the Government for resolution. The provision applies specifically to cases where the administrative decision has been made elsewhere than the Government or a Ministry, that is, in the administrative machinery subordinate to the Government.
In sum, it is often quite difficult to draw the line between considerations of legality and of fitness for purpose. It is not possible to analyse the points of divergence or they cannot be placed properly to a scale. The legislation contains both precise provisions and provisions that confer a margin of discretion. Appeals can be lodged also in cases where the administrative authority, often the Government, has discretion to decide the case in several alternative ways. In such cases, the issues to be resolved are whether the decision is within the bounds of the law and whether it is based on adequate inquiry and a correct factual basis, as well as whether the procedure for reaching the decision has been appropriate. Also the application of provisions with a margin of discretion is subject to considerations of legality, at least as concerns whether the authority making the decision has not overstepped its margin of discretion and as concerns whether the legal principles governing the exercise of discretion, such as equal treatment, objectivity, fitness for purpose and proportionality, have been observed.

Almost without exception, the application of so-called flexible legal norms has been considered subject to legality assessment and, hence, subject to the jurisdiction of the Supreme Administrative Court. This legality assessment has covered e.g. such legal issues as the appropriateness, necessity and reasonableness of given activity, the skill and capability of a person applying for a given permit, and the scale of the harm arising from given activity subject to permit. In addition, such issues as whether there are special reasons for granting a permit or whether it is in the general interest not to grant a permit have traditionally been considered subject to legality assessment.

In contrast, the scope of fitness-for-purpose assessment has been considered to cover e.g. such permit matters where the applicable legislation confers an authority the power to grant the permit, but the legal criteria for granting the permit are stated in very general terms or are not stated at all.

Notwithstanding the problems inherent in the differentiation of legality and fitness for purpose as assessment criteria, there has in fact never been a conflict of jurisdiction between the Government and the Supreme Administrative Court. That said, certain Finnish legal scholars have described this division of jurisdiction to be a paradox, as it involves the Supreme Administrative Court exercising legality assessment in order to determine what in fact constitutes fitness-for-purpose assessment.

1.3.

The Supreme Administrative Court receives just over 4,000 appeals every year. On average, some 100 of these appeals are directed against the decisions of the Government or the Ministries. In 2008, for instance, the number of such appeals was 111.

The year 1998 saw an exceptionally high number of appeals. In that year, the Government made a decision on the Finnish national proposal to the European Commission concerning the areas to be included in ‘Natura 2000’, the Europe-wide network for the preservation of natural heritage. There was a specific provision in the Nature Conservation Act conferring standing to appeal to landowners whose land or water holdings were affected by the decision, to municipalities in whose territories contained proposed Natura sites, and to nature conservation NGOs. A total of 1,240 appeals were lodged against the decision of the Government. The Supreme
Administrative Court handed down its decisions on these appeals in 2000. The total page count of the decisions surpassed 40,000. About 7 per cent of the appeals were upheld either in full or in part. In these cases, the Supreme Administrative Court held either that no legal grounds for the inclusion of a site in the Natura network existed at all, or that a given site not included in the Government’s decision had not been adequately investigated as regarded its possible status as a preservable natural heritage site.

In 2008, to great attention, the Supreme Administrative Court handed down a decision concerning the transfer of a largish territory from a neighbouring municipality to the capital city of Helsinki, in the face of determined protest by the neighbouring municipality and an overwhelming majority of its population. The relevant administrative decision on this matter had been made by the Government, applying the Act on Municipal Division, which provided the legal criteria for a change in the municipal division and required also that an involuntary transfer such as that in the case at hand could only be effected if there were extremely persuasive reasons for the same. In a closely reasoned decision, the Supreme Administrative Court rejected the 30-odd appeals against the decision of the Government.

2. Procedure

2.1.

As already noted above, the procedural rules in administrative adjudication are contained in AJPA. E.g. the following procedural rules appear in the Act

- Right of appeal and right to be heard
- Appeal period and the form and content of an appeal
- Disqualification of a judge
- Effect of appeal on the enforceability of the decision
- Procurement of procedural materials by the court and by the parties (inquiry)
- Hearing the parties
- Rules of procedure in oral hearings and inspections
- Resolution of the matter and statement of reasons for the decision
- Liability for legal costs
- Voting and dissent
- Service of notice of the decision

The court takes an active role in case management. Under AJPA (s. 33), the court is responsible for reviewing the matter and, where necessary, for informing the party or the administrative authority that made the decision of the additional evidence that needs to be presented. The court must on its own initiative obtain evidence in so far as the impartiality and fairness of the procedure and the nature of the case so require.

The parties have the right of initiative, in that they may provide the court with material that they consider relevant. The parties have also the right to make procedural requests, such as a request for an oral hearing. That said, the final decision
on these matters lies with the court. At the same time, the court is always ultimately responsible for the procurement of adequate and reliable case material so that the case can be decided in accordance with the law.

Public prosecutors have no role in administrative judicial procedure. The oversight of the public interest has not been regulated in AJPA or in other general legislation (with the exception of taxation) so that it would confer on any authority party status and the right to be heard in proceedings. In contrast, AJPA contains a provision (s. 6) to the effect that an authority (including the authority that made the decision under appeal) may appeal only pursuant to an express provision in an Act. There is such an express provision in the tax legislation, conferring the Tax Administration party status in tax cases.

The said provision in AJPA (s. 6) allows for the court to admit an authority as a party in the proceedings also if it is essential in order to protect a public interest supervised by the authority. The provision has been interpreted quite narrowly, so that standing has been granted only in cases involving e.g. a threat against public health or of environmental pollution.

By and large, administrative judicial procedure in Finland is written procedure. The court will order an oral hearing only where this is necessary for a proper inquiry into the matter. The parties have always the right to request oral hearings. The court will decide such requests by reference to the relevant provision in AJPA (s. 38) and to the case-law pertaining to Article 6 (fair trial) of the European Convention on Human Rights.

When the Supreme Administrative Court was considering the appeals on the Government’s ‘Natura 2000’ decision, as described above, it held a number of inspections of sites covered by the decision. Oral hearings of the parties were held in the same context. Major public attention was directed also at a 1997 oral hearing in the Supreme Administrative Court, concerning the dismissal by the Government of a well-known high-ranking public official for reason of unbecoming conduct.

Also the cases where oral hearings are held, such hearings are preceded by detailed written proceedings. In effect, the purpose of an oral hearing is precisely to obtain relevant evidence on such matters where documentary evidence cannot be obtained.

The decisions of the Supreme Administrative Court are made by panels of no less than three Justices. Single Justices have competence to issue certain interim orders relating to procedure. The regular composition of the Supreme Administrative Court, in use in most cases, is five Justices.

2.2

Under AJPA (s. 6), any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision may appeal against the decision. This provision must be interpreted in the assessment of what kind of interest in the matter will in a given case give rise to standing to appeal. Relevant case-law has been accruing for decades, becoming ever more established and precise, with the result that issues of standing to appeal only rarely give rise to problems. In general terms, the interpretation of standing to appeal has been rather more broad than narrow. That said, it has always been a requirement that the decision must have a
noticeable or comprehensible tangible effect on the sphere of the protected interests of the appellant for standing to arise in respect of that appellant.

Some examples of Supreme Administrative Court case-law on this issue:

The Government had made one decision, where it ruled on the applications of several applicants for subsidies payable from a budgetary appropriation which was not large enough to cover the sum of all of the applications. Each of the applicants had standing to appeal only to the extent that the decision pertained to just that applicant’s application.

A decision of the Ministry of Transport and Communications on the division of the country into transport districts was one where the businesses providing contract transport services in a given district had standing to appeal, as the decision of the Ministry had an effect on the rights of these businesses based on the transport permits granted to them.

During an appointment process, the Government had granted a special dispensation to a candidate who lacked a given qualification for the public office in question. A competing candidate had no standing to appeal against the dispensation decision of the Government.

2.3

The appellant has always the right to have the appeal dealt with by a court. If a case before the Supreme Administrative Court requires leave to appeal, it is the Court itself that considers and decides the issue of leave.

2.4.

Appeals and other procedural briefs may be delivered to the administrative courts also by a variety of electronic means. Telefax was in widespread use in earlier times. At present, e-mail is the most common means for delivering documents to the court by technical means. It should be noted here also that the docket of the Supreme Administrative Court (list of pending cases and the procedural stage where each case is at) is in the public domain and accessible over the Internet.

2.5.

Under the Legal Aid Act, legal aid is given at the expense of the state to a person who needs expert assistance in a legal matter and who for lack of means cannot self pay the expenses of having the matter dealt with. Legal aid covers, among other things, the costs of representation before the court and the waiver of court fees.

In general, legal aid before the courts is provided by attorneys serving as public officials in the State legal aid offices. In many cases, it is also possible to appoint lawyers in private practice as providers of legal aid, where they consent to the same.

2.6.
Under AJPA (s. 31), a decision that is open to appeal shall not be enforced until it has become *res judicata*. In other words, an appeal suspends the enforcement of the decision. In the main, this is always the case.

That said, the provision referred to above states also that the decision may be enforced before it has become *res judicata* if there is a provision to this effect in an Act or a Decree, if the decision is of a nature requiring immediate enforcement, or if its enforcement cannot be delayed for reason of public interest. There are relatively few provisions allowing, exceptionally, for the enforcement of a decision without delay. One of these, that allowing for the immediate enforcement of taxation decisions, has of course quite an extensive effect. In addition, the grounds for the discretionary enforcement of a decision have been interpreted quite strictly.

2.7

When seised of a case, a court has the right to obtain documents from other authorities and to request statements in their areas of competence. The material thus obtained is accessible to all parties to the case; all parties have also the right to make their comments on the significance of the material before the case is decided. Exceptions to this rule are only possible under the special conditions provided in the Act on the Openness of Government Activities (s. 11). The condition most often applied in the courts is that access to a document would be contrary to a very important public interest, the interest of a minor or some other very important private interest. On these grounds, the Supreme Administrative Court has restricted the access of parties to documents especially in cases relating to treatment of mental disorders and to child protection measures.

2.8

If a decision under appeal may be enforced even before it has become *res judicata*, that is, in derogation to the main rule referred to above in section 2.6, the appellate court seised of the appeal has the competence to stay the enforcement, to interrupt enforcement measures already commenced, and to issue other orders relating to enforcement. There are no statutory provisions governing the discretion of the court in this respect. In the exercise of its discretion, the court will pay special attention to the issue of how enforcement affects the realisation of the due process rights of the parties in view of the eventual decision in the case.

In administrative judicial procedure, partial decisions are not possible; thus, an administrative court cannot decide one aspect of a case and reserve the rest of the case for decision to be made later. In like manner, a case cannot be materially decided on an interim basis, so that the interim decision would be in effect until the case has been finally decided in the same court.

3. The powers of the administrative judge

3.1.
The hierarchy of Finnish national legislation is as follows: The Constitution, an Act of the Parliament, subordinate legislation in the form of Decrees of the President of the Republic, Decrees of the Government and decisions of Ministries and other high-level administrative authorities.

As Finland is a Member State of the European Union, EU law of course plays a central role in the Finnish legal system. EU legal norms have precedence over national norms in conflict with them, regardless of whether the EU norm is contained in a Treaty, an instance of secondary legislation, or a judgment of the European Court of Justice.

In Finland, international treaties with a legislative dimension are adopted by Act of Parliament in order to confer on them national binding effect. As a result, treaties have the status of parliamentary legislation in the Finnish hierarchy.

According to Finland’s dualist practice of adoption of international treaties, our national provisions are harmonised to the contents of the treaty. This is the case also as regards the implementation of such EU legislation that requires specific implementation measures.

For this reason it is a rare event indeed that the hierarchical positions of national and international legal norms and their order of precedence have any practical significance in judicial decision-making. Finland has been in the European Union since 1995, and so far the Supreme Administrative Court has handed down thousands of decisions where EU norms have been applied. Only once has it been held that a national provision is in conflict with an EU norm, so that the national provision must be set aside.

It should be noted, again, that within the domestic legal system the Constitution has precedence, as provided in the Constitution itself (s. 106): If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution. Also this precedence provision has been only rarely applied in practice.

In contrast, it is much more commonplace to set aside subordinate legislation in conflict with Acts of Parliament. The precedence of parliamentary legislation is also provided in the Constitution (s. 107).

3.2 Where an authority expresses an opinion on the interpretation of a given provision in a context other than the resolution of a matter by administrative decision, such interpretative statements, even in documented form, cannot be reviewed. Official instructions and memoranda, e.g. for the provision of interpretative advice to lower-level authorities, are in no way binding on the courts. If, however, an authority has issued interpretation instructions by a decision within the sphere of subordinate legislation, the courts are to apply also such instructions in so far as they are not in conflict with parliamentary legislation.

It should be separately noted that a tax subject may apply to certain tax authorities for an advance ruling on the interpretation of the tax legislation before undertaking action which has tax consequences. The interpretation issued by way of advance ruling is binding on the tax authorities, if the action is undertaken as it was described in the application for the ruling. The advance ruling procedure is based on specific
provisions in the tax legislation, with the ruling issued by the tax authorities being reviewable by the administrative courts.

3.3
A contract may be taken up for consideration by way of administrative judicial procedure only if the contract is by nature a public-law instrument. Normally the scope of and criteria for such contracts are specifically covered in the law. Conflicts relating to such contracts are handled in accordance with the relevant provisions in AJPA (ss. 69–70). Such matters of “administrative litigation” are always heard by the Administrative Courts in the first instance. Thereafter, the judgment of the Administrative Court can be appealed to the Supreme Administrative Court.

The authorities have no competence to issue interpretation instructions regarding contracts that would be binding on the courts.

3.4
As has been noted under section 1.2, the Supreme Administrative Court has can review the decisions of the Government or a Ministry on appeal only in respect of their legality; in other cases, where the outcome turns mainly on whether the decision or measure is fit for purpose, the Supreme Administrative Court must refer the case to the Government for resolution in this respect.

Thus, the Supreme Administrative Court has no competence to decide a case by reference to fitness-for-purpose. In any case, the court must, however, determine whether the authority which made the decision under appeal was in fact competent to make it, and whether the authority has stayed within its margin of discretion. Moreover, the authority must not have breached the legal principles governing the exercise of discretion, that is, equal treatment, objectivity, fitness for purpose and proportionality. Decision-making in the sphere of fitness for purpose must also be based on correct facts and reasons must be supplied so that it can later be verified that the authority has in fact exercised its discretion within the appropriate legal framework.

3.5
With only a few exception, an administrative court has reformatory competence. In other words, the court has competence not only to quash a decision on appeal, but also to alter it in part or in full and to issue a new decision that the court considers to be legally justified.

In practice, the courts exercise their reformatory competence with some restraint. When an appeal is upheld, the decision is normally quashed and the case remanded to the lower court or the relevant administrative authority for fresh consideration. The reasons for the judgment point out the faults in the underlying decision and indicate that these faults are removed in the fresh consideration of the matter. Thus, for instance, the Supreme Administrative Court does not exercise its reformatory competence so that, when it quashes a decision denying an administrative permit (such as a building permit or a business permit) as illegal, it would at the same time
grant the permit as sought. Instead, the case is remanded to the appropriate permit authority.

It is a regular feature of Supreme Administrative Court procedure that when an appeal is rejected and, therefore, when the decision is upheld on appeal, the Supreme Administrative Court still supplements the reasons of the decision or alters them in some way. Indeed, it is possible that the reasons are almost completely rewritten. The point is to indicate to the appellant and to the possible other parties how the law should be applied in future, like cases.

The Administrative Courts have cassatory competence in cases where the administrative authority whose decision is being appealed has an autonomous status external to the State administration; this applies e.g. to municipal authorities. In such cases, when the court upholds an appeal, it can but quash the decision on appeal.

3.6

As has been described above in section 2.6, the effect of an appeal is to suspend the enforcement of an administrative decision. For this reasons, real legal consequences arise only once the decision has become *res judicata*, that is, for a judgment of the Supreme Administrative Court, once it has been served on the parties. Hence, the issue of retroactivity of the decision never arises, and there is no need for the court to take the issue into consideration when making a decision.

If it has been possible to enforce an administrative decision regardless of appeal, the enforcement will continue without interruption if the decision is upheld. If, in contrast, the court overturns the decision, its enforcement must be discontinued forthwith, as there no longer is a decision that would serve as a basis for enforcement.

It is not normally necessary for a court to set a deadline for the enforcement of its judgment. In some cases, such as those pertaining to the temporary withdrawal of a business permit, it has nonetheless been deemed necessary to set a deadline.

3.7

The administrative courts have no competence to oversee the enforcement of their judgments or to set conditions or issue instructions for the authorities in charge of enforcement.