# INTERNATIONAL ASSOCIATION OF SUPREME ADMINISTRATIVE JURISDICTIONS

## 4th Congress - Luxembourg, 15th, 16th and 17th June 1992

# The legal and practical effects of judgments made in administrative courts

General report

by Mr. Paul BEGHIN

THE INTERNATIONAL ASSOCIATION OF ADMINISTRATIVE SUPREME COURTS

IV Conference, Luxembourg, June 15, 16 and 17, 1992

# The legal and practical effects of judgements made in administrative courts

## GENERAL REPORT

### Foreword

The subject of this fourth Conference of the International Association of Administrative Supreme Courts is "the legal and practical effects of judgments in administrative courts". This is in fact the logical continuation of the topic dealt with at the third Conference held in Helsinki in 1989, i.e. how actions are brought before and heard by administrative courts, namely the trial process.

Likewise, it provides a conclusion to the work of the Paris Conference in 1983 and the Tunis Conference in 1986.

From the information gathered during these four conferences it has been possible to compile a complete assessment of the courts currently at work in the Member States having jurisdiction in the field of administrative law, of how they work and also to see the extent of their powers and to measure their effect.

The Paris Conference established a comparative study of the similarities and differences of the various administrative supreme courts from an institutional point of view for each of the Member States. The conferences held in Tunis and Helsinki covered more practical aspects of the question in that they compared and analysed the structural and functional operational running of the courts in the states belonging to the IAASC and those of affiliated states.

This fourth conference deals with what may be described as the post-trial phase of actions brought before the administrative court. It examines the usefulness of the appropriateness of judgments after the courts have played their part.

The effects or repercussions of administrative decisions raise questions which go beyond those of the working of the court as such since these decisions affect the very powers of the courts and to what extent they do in fact constrain parties to respect judgements, and hence are

a function of the institutional system of the particular state and the conception that state has of the relationship between administrative courts and the executive.

Given that, the object of a judgment is to declare the law. The IAASC is merely an association of administrative courts, has no authority to analyse relationships of this kind. Nevertheless, given the context of the work that the association has chosen to undertake, it is impossible to overlook the fact that the powers of the judge are very closely linked to the way the individual states perceive and organise their institutions.

The governing body of the IAASC has divided this year's topic into three subsections. These have been communicated to the courts of the various participating states to serve as guidelines for the drafting of their reports. This way the individual reports from each state will have been compiled according to the same plan. Consequently these reports have greatly facilitated the drafting of the general report.

The following courts have sent in reports:

| | | |
|---|---|---|
| 1) | Algeria | - Supreme Court of Algeria |
| 2) | Belgium | - Conseil d'Etat |
| 3) | Colombia | - Consejo de Estado |
| 4) | European Community | - Court of Justice |
| 5) | Finland | - Administrative Supreme Court |
| 6) | France | - Conseil d'Etat |
| 7) | Germany | - Bundesverwaltungsgericht |
| 8) | Greece | - Conseil d'Etat |
| 9) | Israel | - Supreme Court |
| 10) | Italy | - Conseil d'Etat |
| 11) | Ivory Coast | - Supreme Court |
| 12) | Luxembourg | - Conseil d'Etat |
| 13) | The Netherlands | - Conseil d'Etat |
| 14) | Poland | - Administrative High Court |
| 15) | Portugal | - Administrative Supreme Court |
| 16) | Rumania | - Supreme Court of Justice |
| 17) | Senegal | - Supreme Court |
| 18) | Spain | - Supreme Court |
| 19) | Sweden | - Administrative Supreme Court |
| 20) | Switzerland | - Tribunal Fédéral, Tribunal fédéral des Assurances |
| 21) | Thailand | - Juridical Council |
| 22) | Turkey | - Conseil d'Etat |
| 23) | United Nations | - Administrative Court |

The team that has drawn up this general report wishes to express its thanks to all those who prepared the national reports from the twenty-three courts above. Their work has provided an invaluable tool for observation and comparison for all the members of the associated

courts, and there is no doubt that they have made a very important contribution to the furthering of understanding and cooperation between Member States.

What has emerged from these IAASC Conferences is that even though there are very wide discrepancies in the operational running of each administrative court and the role it plays in the organisation of each state, there are nevertheless over the years certain parallels which have developed. The close links that the IAASC has been able to forge between its members has no doubt had a positive role to play in this trend.

I would like to extend special thanks to the Honorary President of the Conseil d'Etat and President of the IAASC Mr Georges THORN, to the Secretary General and Référendaire of the Conseil d'Etat of Luxembourg Mr Emile FRANCK and Mr Georges SPELLER for all their help and precious collaboration.

## GENERAL PLAN

## LEGAL AND PRACTICAL EFFECTS OF JUDGMENTS MADE IN ADMINISTRATIVE COURTS.

I - THE POWERS OF THE JUDGE

A - Quash an administrative act or decision
Vary or amend an administraative act or decision
Full powers to do what he considers appropriate-unlimited jurisdiction i.e. full judicial review

B - When quashing or setting aside an administrative act or decision the judge may:

- Substitute another decision.
- Award damages
- Grant an injunction
- Impose a daily or periodic fine

C - Referral to an international court

D - Other powers

II - FORCE AND LEGAL SCOPE OF ADMINISTRATIVE COURT DECISION

a) general effect and effect on party concerned
b) ex tunc and ex nunc effect
c) effect on and effect of decisions of other courts

III - PERFORMANCE

a) attitude of the authorities
b) forced performance
c) difficulties, reasons, remedies, reactions.

## I
## THE POWERS OF THE JUDGE

A - Quash an administrative act or decision
Vary or amend an administrative act or decision
Full powers to do what he considers appropriate-
unlimited jurisdiction i.e. full judicial review

B - When quashing or setting aside an administrative act or decision the judge may:

- Substitute another decision
- Award damages
- Grant an injunction
- Impose a daily or periodic fine.

C - Referral to an international court

D - Other powers

**********

The powers of the judge, general and restricted, are often a function of whether or not the general law courts and the administrative courts are separated into two distinct bodies.

Another criterion which affects the jurisdiction of the administrative courts is the number of instances in the judicial structure of the country in question.

When the administrative courts have several levels it is usually the court at the highest instance that quashes decisions. The trial court or court of first instance and the court of appeal assume the task of judging the substance of the case.

In those countries that have a single court system, by the very nature of things there is a closer identity of the judges' powers in judicial and administrative matters. The powers of the judge in such cases are broader than those of a judge in a country with a two court system.

Examination of the reports submitted by the individual countries should furnish information that will make it possible to ascertain to what extent a single court system, or a sytem where there is a hierarchy in the courts, affects the powers of the judges and to compare the other criteria which may be involved.

## 1) ALGERIA

In Algeria the jurisdiction of the administrative courts depends not on the subject-matter of the case but on organisational criteria. The administrative judge has jurisdiction over all disputes brought before courts which hear administrative cases.

Algeria previously had a dual court system, this was abolished in 1963. The present situation is that there are administrative divisions in the general court system which hear disputes in administrative matters. The Administrative Division of the Supreme Court is the court of first and last resort for the quashing of all administrative acts or decisions. However some of this power to quash decisions was extended to the other courts in a statute of August 18, 1990.

It is the Administrative Division of the Supreme Court that has the power to set aside judgments on matters of indirect taxation brought by the administrative chambers of the general courts. That Division also serves as the appeal court for all the first resort administrative courts i.e. the administrative divisions of the general courts.

Matters that have been dealt with in the administrative courts where the judge has made full judicial review can be heard on appeal in the Administrative Division of the Supreme Court.

The judges in the administrative divisions of the general courts do have unlimited jurisdiction over certain matters that are laid down by statute, particularly fiscal disputes, expropriation cases and cases involving the responsibility of the state or of public bodies.

## 2) BELGIUM

In Belgium the Constitution requires that the judicial courts hear disputes over civil and political rights. Citizens' rights with respect to the administration are held to be included in these rights except when they are specifically withdrawn from the jurisdiction of the judicial courts by statute and placed by statute within the jurisdiction of the administrative courts.

The laws relating to the Conseil d'Etat have attributed the administrative section of the Conseil d'Etat with the powers to set aside a decision which covers all acts and regulations of the administrative authorities as long as it concerns decisions made by the administrative authorities or courts. This power is also limited by the general jurisdiction of the judicial courts. The Conseil

d'Etat may quash a decision and make full judicial review under the following conditions:

Power to quash

The Conseil d'Etat has the power to quash decisions brought before the various courts dealing with disputes with the administration that have been set up by the lawmaking body. Belgium does not however have lower administrative courts.

For these contestations the Conseil d'Etat is the court of first and last resort.

The most important case that the Conseil d'Etat can deal with is that which involves the quashing of acts and regulations of the administrative authorities. Such cases are of general interest and are brought to ensure that the law as opposed to individual rights is respected.

The Conseil d'Etat lacks competence when the applicant has the possibility of taking an action before the judicial body that hears problems involving personal rights, with the exception of disputes over certain political rights which are reserved to the administrative courts.

However, applications to quash an administrative regulation always fall within the jurisdiction of the Conseil d'Etat since such applications are of a general nature and independent of whether or not an individual right has been interfered with. The power of the Conseil d'Etat to quash decisions concerning individual rights brought by the administrative authorities is restricted by the general jurisdiction of the judicial courts.

Belgian law makes a sharp distinction between personal applications to have an administrative measure quashed and objective applications where the application is made independently of whether or not individual rights have been interfered with. The former applications are generally heard in the judicial courts and the latter in the administrative courts.

Power of full judicial review

This power is only available for a limited number of specific cases laid down by statute and essentially dealing with electoral matters. It is hence a very restricted power.

The jurisdiction of the Belgian administrative courts is quite narrow compared with that of the administrative courts of other countries, e.g. France, Luxembourg or Germany. The fact that the Conseil d'Etat has only

limited jurisdiction is in no way detrimental to the protection of the general public since the judicial courts are able to deal with all cases where an individual needs to defend his personal rights against the claims of the administration.

**********

Power to substitute

The principle of the separation of the administrative and judicial functions prevents the Conseil d'Etat from further activity than quashing a decision. Consequently, when requested to vary or substitute an administrative act that is being challenged before it the Conseil d'Etat must declare itself incompetent.

Power to impose periodic fine

The very controversial question of whether or not the Belgian Conseil d'Etat was entitled to impose a fine was answered in the statute of October 17, 1990 which granted the Conseil d'Etat the right to impose a fine on an administrative authority that had failed the act on a judgment to set aside a decision. This fine has the peculiarity that it is not mentioned in the judgment to set aside the decision, it only appears on the new request if the administration has failed to act on the judgment to quash the decision.

Power to award damages

The Conseil d'Etat does not have the authority to attach an order to pay damages to its judgment to quash. Persons subject to public law are subject to tort liability. The applicant must turn to the judicial judge to enforce performance ordered in judgments of the Conseil d'Etat.

Compensation

The Conseil d'Etat determines requests for damages brought against the State or public bodies for injury sustained as a result of measures taken by them. The Conseil only does so when no other competent court is found. This procedure is rare.

Power to award an injunction

Whenever the Conseil d'Etat quashes an administrative act it does not attach an injunction to its judgment to oblige the party concerned to perform or to refrain from performing. This is now considered to be a questionable state of affairs from the point of view of doctrine and of

jurisprudence. At the moment the judicial judge may issue injunctions for the administration in order to remedy the effects of the unlawful administrative act only as long as he does not put his assessment in the place of that of the administrative judge.

Other powers

The statute of July 19, 1991 introduced urgent reference procedure in administrative matters which enables the Conseil d'Etat to suspend the execution of administrative acts or regulations if the request for suspension is based on serious legal argument and on condition that the administrative act or regulation was likely to cause a serious injury that would be difficult to rectify.

Referral before an international court

Belgium has signed the EEC Treaty. The Conseil d'Etat is therefore obliged by virtue of Article 177 of the Treaty as a court of last resort to submit all questions raised by it that involve interpretation of Community law to the EEC Court for preliminary ruling.

In accordance with Article 6.1 of the Benelux Treaty, the Conseil d'Etat recognises the authority of the Benelux Court to judge the interpretation of the legal rules common to Belgium, Luxembourg and the Netherlands under conditions comparable to those provided by the EEC Treaty.

## 3) COLOMBIA

In Colombia where there is a two court system the judge in the administrative court has the powers to quash a decision, vary a decision to make full judicial review and to make judgments and orders. He also has powers of a general nature.

A) Power to quash a decision

Anyone has the right to apply for an administrative act to be quashed that is contrary to the Constitution, to a law, or to Government regulations and in general to the principle of the general hierarchy.

The object of quashing an administrative act is to protect legal order and not the rights and interests of individuals. It is thus very much an objective action not seeking individual remedy. It is somewhat declarative in nature.

Apart from actions of this kind which are brought for reasons of public interest, the judge in the administrative

court may also quash other administrative acts and restore parties to their original position.

B) Power to vary and to make full judicial review

For matters falling into this category the judge may replace a decision undertaken by the administration and may order the administration to compensate the victim of the administrative act that is thus quashed or replaced.

C) Other powers

The Colombian administrative court can also decide on the tort liability of the State.

This court may order the administration to pay damages to a private individual.

It can determine the contractual responsibility of the State or other public persons with respect to private individuals and decide on the amount of compensation to be awarded.

In order to establish legitimate rights the administrative court can replace the decisions that have been quashed. It can impose certain obligations on the administration to perform or refrain from doing something. The judge in the general courts is responsible for seeing that these obligations are fulfilled.

A national judge does not have the authority to refer cases to an international court.

## 4) THE EUROPEAN ECONOMIC COMMUNITY

The Court of Justice of the European Communities.

A) Application for a decision to be quashed

By virtue of Article 173 of the EEC Treaty any legal act brought by an institution of the Community may be challenged with a view to it being set aside. This power is quite extensive. It covers individual acts which are aimed at the applicant and regulatory acts which affect the application directly and individually.

In actions brought to control the lawfulness of a measure, and particularly actions requesting the quashing of this measure, the Court of Justice has the power of judicial review into the lawfulness of all legal acts taken by Community institutions, be they general or individual.

The Court of Justice may determine tort liability when referred to within the context of its powers to quash a decision.

The Court has four grounds on which it may exercise its power to quash a decision as provided by Article 173 of the EEC Treaty, i.e. lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or any rule of law related to the implementation of the Treaty or misuse of powers. The Court has a broad view of what are considered infringements of the Treaty and all rules of law that the Court infers not only from the Treaty but also from the basic concepts shared by the legal systems of the different Member States. The Court is thus able to make a thorough appraisal of the validity of the act. It does not however take a stance concerning the economic or political advisability of the act.

B) Power of full judicial review

Article 172 of the EEC Treaty only allows the Court the unlimited jurisdiction of full judicial review when considering cases involving the sanctions provided by the regulations set up by the Council.

The Court of Justice of the European Communities as an international court hears cases transferred from national courts for preliminary hearings and in so doing can use its power to assess an act or measure of a Community institution and control the conformity of national rules with the executive rules of the Community.

C) Powers to substitute, to award an injunction or to impose a fine

The Court does not have the power to impose a fine on or to award injunctions against the body that has issued the administrative act that is being challenged, either in cases where action is brought to quash the decision or in which the judge has unlimited powers.

In the exceptional hypothetical case of an action being brought for full judicial review, the Court may give its assessment, if not of the advisability of the contested measure, at least of its appropriateness.

## 5) FINLAND

In Finland the powers of the judge in the administrative court depends on the nature of the case involved.

- Power to vary decisions

When a case is brought against a State administration the administrative judge has the powers to modify or vary the administrative decision. The appeal judge has the same powers.

- Power to quash a decision

On the other hand, when a decision of a municipal administration is referred to an administrative judge, the only power available to him is that of quashing the unlawful act.

The limits of the powers of the administrative court can be seen from examination of the kind of decisions made by the Court - that lawful right to bring an action is exhausted, res judicata, enforceable nature of the act, that the act is null or inexistent.

- Power to substitute

In cases brought against the State administration the administrative judge is generally allowed to substitute himself for the administration and pronounce a decision lawful. He does not have this power when dealing with actions involving municipal administrations.

- Power to order to pay damages

The judicial courts decide matters of liability of the administration or of the civil servants. It is only in exceptional cases when a special provision exists to this effect that the administrative court has the competence to hear cases of liabililty.

- Power to award an injunction or impose a fine

Since the enforcement of judgments made in administrative courts does not generally pose any problems from the part of the administration it has not been thought necessary to use such special powers as those of awarding an injunction or imposing a fine.

- Compulsory or elective referral before an international court

Cases may be brought before the European Court of Human Rights since Finland has ratified the European Convention of Human Rights. With the setting up of the European economic area for which negotiations have just been completed, Finland will have international jurisdiction but without procedure similar to that required by Article 177 of the EEC Treaty.

## 6) FRANCE

The two main types of action brought before the French administrative courts are actions against abuse of power and actions for full judicial review. It is possible to distinguish between these two categories by considering the

kind of conclusions that the Court comes to and the extent of the powers available to the administrative judge.

- Power to quash

In actions brought involving abuse of power the judge is informed of arguments which challenge the legality of administrative acts. He may pronounce the contested decision quashed, if it turns out to be unlawful, but he has no further powers to annul.

- Power of full judicial review

In full judicial review questions involving the recognition of personal rights and which are attached to an individual legal situation are in principle referred to the judge. In such cases the judge may order the payment of money, reverse the contested decision and, in certain cases, he may even substitute himself for the administration and pass another decision. The extent of this powers actually varies with the matter subject.

There are different rules of procedure governing these two types of action.

Appeals against judgments made with full judicial review are heard by the administrative courts of appeal and only go before the Conseil d'Etat on further appeal. Cases concerning abuse of power are appealed before the Conseil d'Etat. However, a recent decree, dated from the 17th of March 1992, provides that appeals involving abuse of power lodged against individual administrative decisions are progressively assigned, over a period of three years, to the administrative courts of appeal. Therefore at due date, the Conseil d'Etat, when sitting in appeal, hears only actions involving abuse of power that are brought against administrative decisions which take the form of a rule.

Despite the differences between these two types of action they are frequently brought in the same case.

- Powers to award injunctions, to impose fines and to act in place of the administration

In both actions against abuse of power and actions for full judicial review, the administrative judge is not enabled to issue injunctions against the administration nor a fortiori may he order the administration to pay a fine.

On of the basic principles of French Public Law claims that the administrative judge is careful not to interfere with the activity of the administration and to give orders to the administration. In the name of this most strict

concept of the separation of powers, the administrative judge confines himself to reprove the administration when he quashes, modifies or varies the administrative decision. In cases under full judicial review, the administrative judge is even allowed to substitute himself, for the administration, but never will he order the administration to perform or refrain from performing.

However, the statute of July 16, 1980 enables the Conseil d'Etat to order the payment of a fine, but only in one particular case, i.e. when the administration has refused to perform in accordance with a judgment made by an administrative court. Therefore, one may not infer that the administrative judge is empowered in general to impose fines.

In addition to the above mentioned powers the judge has the power to "repress" as well as the so-called power to "interpret". In fact these cases remain marginal.

International Courts

France belongs to the EEC, hence the French administrative courts must transfer all questions involving the interpretation of Community law to the Court of Justice of the European Communities for preliminary hearing.

In matters of international law outside the scope of the Community the French administrative court is under no such obligation. Recently the judge in the administrative court has recognized competence to interpret international conventions himself; previously and for a long time it called on the Minister of Foreign Affairs in order to interpret the international conventions.

## 7) GERMANY

A) In Germany, the administrative judge has in the first place the power to quash a decision, and this he can do in two ways:

- the first, which is in practice the one that is the most often used, is intended to protect a personal right or interest by quashing the contested act. Since the object of this action is the protection of rights or interests of individual persons the judge must restrict his considerations to the part of the act that appears to be unlawful.

- the second form of action for which the administrative judge exercises his powers to quash administrative acts is the direct review of rules and regulations. This enables him to revoke certain executive rules which do not have the authority of law. This right to review may be exercised

over certain local planning regulations and the laws of the "Länder", on condition that the Land has incorporated this review procedure into its law. The judge has the powers to examine a law for constitutionality but he must defer his verdict and refer the matter to the Constitutional Court.

- the administrative judge has the power to obtain an administrative act from the administration. The German administrative judge cannot issue an administrative act in the place of the administration but he can quash any decision which refuses to grant a request and can oblige the administration to come to a new decision which takes into account the grounds of the Court's decision and may even in certain cases oblige the administration to issue the act requested by the applicant (restricted judicial powers).

- German administrative law has an additional line of procedure for actions brought for abuse of power which falls into the scope of full judicial review. It involves in fact challenging the existence of a legal relationship in a dispute, e.g. nationality, status of civil servants.

- another possibility open to the German administrative judge is to order that a measure be served or withheld. This involves full judicial review. It is reserved to certain well-defined matters and is intended to get the administration to pay out a certain sum of money. This jurisdiction usually falls to the civil courts. In this kind of action the judge is able, in certain cases, to forbid the administration from doing some specific thing.

- finally, the administrative judge has some additional powers that enable him in certain specific cases to modify the contested act or to obtain redress.

B) Although in general it is the judicial court that has jurisdiction over matters of compensation and government liability there are some specific areas over which the administrative courts have these powers.

C) Additional powers

Procedure for quashing an administrative act does not in general entitle the judge to make a decision in place of the administration. However, in certain cases he may modify the contested act when he orders a payment of money or when he wants to assess the situation or the legal link.

In the case of the quashing of an administrative act that has already been carried out, the administrative judge may decide in what manner the administrative authorities should restitute the previous situation. The judge cannot

however substitute himself for the administration to do this.

In principle the judicial courts have jurisdiction to order the payment of damages. This is the case when the State acts as a private person, in case of State liability as a result of administrative acts governed by administrative law, or in case of compensation of private persons in expropriation for public purposes, etc.

There is a bill in process to do away with this possibility of several procedures so that the court with jurisdiction to judge the legality of measure or act will also be able to decide the resulting redress or restitution.

State liability resulting from contracts entered into by the administration is determined by the administrative courts. Likewise for the State's liability towards its civil servants.

The orders or judgments and decisions of these courts may be carried out in accordance with the rules of the Code for Civil Procedure involving the State. The Court can appoint a competent authority to carry out its orders in accordance with the orders of the Court when the administration is inactive.

The provisions of the Code of Civil Procedure to force performance are applicable to the decisions of the administrative courts.

It is in fact rare that steps have to be taken to force the administration to apply or carry out an order most of the time it obeys the Court's decision or order.

Referral before an international court

The German judge will apply international conventions on condition that these conventions have been incorporated into domestic law by the lawmaking body.

This is the case for conventions dealing with refugees and stateless persons and also for the European Convention for the Protection of Human Rights.

The general rules of international law take precedence over domestic laws and directly create rights and obligations for all the inhabitants.

Article 177, paragraph 1 of the EEC Treaty requires courts of last resort (from which there is no appeal) to transfer all questions to which Community law may be

applied to the Court of Justice of the European Communities for preliminary ruling.

The administrative courts take account of the judgments of the European Court of Human Rights.

## 8) GREECE

The Greek judicial system draws a distinction between the judicial courts and the administrative jurisdiction which is covered by the Conseil d'Etat, the Court of Auditors and the administrative courts which deal with virtually all actions brought concerning the administration.

There is also a distinction to be made in the Greek system between actions brought for ultra vires actions on the part of the administration or actions brought to quash an administrative decision on the one hand and actions brought before the administrative court for full judicial review.

### Power to quash an administrative act or decision

When an administrative judge is hearing an action brought against an administrative act or decision for abuse of power, if the Court finds the act or decision to be either implicitly or explicitly unlawful the judge is empowered to quash all or part of the challenged act or decision. He is not empowered to infer even the most direct consequences of this decision to quash.

### Power to make full judicial review

The powers of the judge vary when he hears cases brought for full judicial review depending on the type of action brought, i.e. whether it is an action brought against an enforceable administrative act or decision (independently of any personal right having been interefered with - objective action) or an action brought relating to contracts entered into by the administration or an action brought to establish the tort liability of the administration (it is held that a personal right has been interfered with - subjective action).

In the first case the judge may not only quash all or part of the administrative act or decision but he may also vary and even, in some specific cases, substitute his decision for that of the administration.

In the case where a personal right has been interfered with the judge may order the administration to pay compensation in the first case and in the second he may

quash a decision made unilaterally by the administration in violation of one of the clauses in the contract.

Other powers of the judge

Whether he is dealing with an application to quash a decision or giving an application full judicial review the administrative judge is not allowed to order the administration to pay compensation nor to order the administration to act on his decision under pressure of a periodic fine. However he is not prevented from including in his judgment indications worded in such a way as to put the administration under considerable pressure to comply.

Compulsory or elective referral before an international court

Greece is a member of the EEC and hence is bound by Article 177 of the EEC Treaty to transfer cases from its court of last resort to the Court of Justice of the European Communities for preliminary ruling if the questions raised require application of Community law.

## 9) ISRAEL

The Israeli legal system is similar to the English legal system. The administrative authorities are hence subject to the same laws as private persons and are heard in the same courts.

Therefore, there are no administrative courts as such in the judicial organization, administrative law and disputes involving the administration being an integral part of the ordinary law court system.

However, by virtue of a special statute to that effect the trial courts and the police courts have been granted jurisdiction over administrative law matters.

These courts, as well as the other instances, have powers of full judicial review. The Supreme Court functions both as the court of appeal and as the court to establish the legality of administrative acts and decisions (High Court of Justice). Since this is the highest court in the land it has authority to issue orders to local authorities, the State or to State servants to oblige them to perform some act or to refrain from doing something. It may also quash, and even repeal acts or measures laid down by the main organs of State, such as the President of the Republic, the Government and even the Parliament.

## 10) ITALY

In Italy the regional administrative tribunals and, in appeal, the Conseil d'Etat are the courts of first instance for administrative justice. They have general powers as judges of the law and hence may decide on actions brought against acts or decisions of the administrative authorities brought by persons which have an individual interest when their rights are affected by abuse of power (ultra vires) or by breach of law. This kind of action is similar to actions brought to quash an administrative decision in France, Belgium or Luxembourg.

All those administrative acts and decisions which affect individual rights or which take the form of general rules may be challenged in this way. The administrative act or decision which has the form of a general rule must be seen to interfere directly with the individual claimant's rights for him to be able to bring an action otherwise he must wait until the decision in question is applied against him to be able to do so.

Actions brought against Government acts or decisions taken in the exercise of its political power are not admissible (i.e. declaration of war).

### Power to quash, to vary or to substitute

The Italian system provides the administrative courts with an additional power known as "di merito" (on the substance), as opposed to "di legittima" power (on the legitimacy), which is specially intended to give the administrative judge extended powers. Hence the judge may decide cases involving lack of competence, ultra vires actions, infringement of the law, and may assess the advisability of an administrative act or decision and exam whether the administrative authority has acted in the most useful fashion in the public interest and in the least prejudicial way for the interests of the private individual.

The administrative judge may always quash, totally or in part, any administrative act or decision that is brought before him. He is also allowed to substitute himself for the administrative authority. He may decide on how to get the administration to fulfil its obligation to obey a final decision, res judicata, where a judicial court has found that a civil or political right has been interfered with by an administrative act or decision.

Other powers

The Conseil d'Etat has the power of full judicial review over cases involving the civil service or any other special situations (i.e. public concessions).

In actions heard with full judicial review or in quashing the Conseil d'Etat is enabled to stay the implementation of an administrative act or decision or to take special measures.

Compulsory or elective referral before an international court

The administrative judge uses the same principles as those used in the criminal courts and elsewhere to implement international conventions. He may refer questions involving Community law to the international courts for preliminary hearing, as can the other courts.

As a member of the European Community Italy has undertaken to abide by the executive rules of the Community and to apply Article 177 of the Treaty of Rome.

## 11) THE IVORY COAST

When the Ivory Coast became independent it abandoned the French two court system and adopted the single court system. It did however retain substantive administrative law that is based on French administrative law.

Actions brought against the administration for full judicial review are heard before the ordinary law courts in first instance and in appeal.

Decisions brought in last resort in these courts are transferred to the administrative chamber or division of the Supreme Court.

Petitions to quash an administrative act or decision may be brought before the administrative division of the Supreme Court which sits on such cases as a court of first and last resort.

The administrative judge has powers to hear and decide actions brought to have an administrative act or decision quashed and he may also hear and decide applications for full judicial review.

### Power to quash a decision

The administrative judge only has powers to quash an administrative act or decision or to reject an application.

### Power of full judicial review

When an application for the full judicial review of a case is made the administrative judge may even order the administration to pay damages.

In practice, the powers of the administrative judge are the same as those of his French counterpart when dealing with matters concerning acts and decisions that have legislative or judicial force and acts and decisions made by the Government.

It is not possible for the administrative judge to vary an administrative act or decision. Yet again a legacy of the French administrative law this is based on the principle of separation of powers.

## 12) LUXEMBOURG

### A) Powers to quash or to vary a decision

In Luxembourg there is a distinction between those actions that are brought before the courts involving the administration to have a decision quashed and those that are brought to have a decision varied or to be given full judicial review.

According to Article 31, paragraph 1 of the statute of February, 8 1961 the Comité du Contentieux (Committee dealing with contentious matters) of the Conseil d'Etat judges actions brought for lack of competence, ultra vires action, infringement of the law or other regulations intended to protect the interests of the inidividual, against all administrative acts or decisions and all administrative court decisions where no other recours is allowed by the laws and regulations.

Actions brought to quash a decision are not directly equivalent to those brought for final appeal in judicial matters. When hearing actions to quash an administrative decision the Comité du Contentieux has the right and the obligation to examine the existence and the accuracy of the material facts on which the contested decision is based and to verify that there are sufficient legal grounds to contest the administrative decision.

The Comité du Contentieux is able to vary certain administrative acts or decisions where provided by special statute to that effect. Hence it is possible for the administrative judge to appraise a case on its merits and to substitute his decision for that of the administration.

The judicial courts hear cases brought for full judicial review which deal with the implementation of contracts entered into by the administration or with compensation claims for moral injury caused by the fault of the administrative services.

The judicial courts hear cases brought for full judicial review which deal with the implementation of contracts entered into by the administration or with compensation claims for moral injury caused by the fault of the administrative services.

### Cases that can be heard before the court

Applications for the quashing or varying of administrative acts or decisions may only be brought against those acts or decisions that are firstly

administrative and secondly involve the interference with inidividual rights.

It is possible to take action when the administration remains silent. If three months have elapsed and the administration has not produced a decision this is considered as tantamount to a refusal on behalf of that administration and hence the case can now be brought before the Comité du Contentieux.

Cases beyond the judicial scope of the Comité du Contentieux

The administrative courts may not hear cases involving administrative acts or decisions that have been issued by either legislative or judicial bodies, in accordance with the principle of the separation of powers.

Rules of the Grand Duchy and rules governing the enforcement of the law are classed with the general laws. It follows from this that the Comité du Contentieux has no powers to make rulings about the lawfulness of decress and general and local rules. Article 95 of the Constitution provides that in certain well-defined cases that the courts may forbid the implementation of any decree, local or general rule that it considers unlawful.

In principle it is not possible to apply for the quashing of Government acts or decisions. The Comité du Contentieux is entitled to ascertain whether or not the contested act or decision falls under this heading.

However, actions brought against acts and decisions involving the exercise of discretionary powers of the administration may be brought before the Comité du Contentieux.

Since it is only possible to bring an action against an administrative act or decision that directly affects the rights of private individuals, administrative acts and decisions which are both general and impersonal are beyond the jurisdiction of the Comité du Contentieux.

The Comité du Contentieux has adapted this rule by deciding that it should rather examine what the measure was intended to achieve and not just the contested legal rule.

The commune law of December 13, 1988 provides for one exception to the rule that it is only possible to bring a case if an individual right has been interfered with i.e. that it is possible to hear cases brought against certain rules and regulations of the commune.

The Comité du Contentieux when hearing actions bought for the quashing of an administrative act or decision is only empowered to quash that decision and in case of lack of competence must refer the matter to the competent body.

Other powers

There is no text of law granting the Comité du Contentieux the general right to issue injunctions against the administration. However, although the Comité du Contentieux does not have sufficient elements available to make a final ruling concerning applications to vary administrations' acts or decisions, it is able to lay down the principles that the administration must follow in its new decision.

The Comite du Contentieux does not have the power to order payment of damages - this being reserved to the courts. In some cases when certain combined conditions are met the Comité du Contentieux may order that application of the contested act be suspended.

There is no urgent reference procedure. However, a bill is being prepared to allow the President of the Comité du Contentieux summary jurisdiction during the preparatory phase for awarding public contracts.

The Comité du Contentieux is also called upon to hear disputes between the Government and the Chambre des Comptes (Audit Office).

C) Referral before an international court

The Comité du Contentieux may transfer cases for preliminary ruling before the Court of Justice of the European Communities and the Court of Justice of Benelux. Obviously the decisions of these courts, which interpret the law within their competence, are respected, whereas the object of the referral is to ensure that domestic courts apply the laws of the various treaties in a uniform fashion.

## 13) THE NETHERLANDS

In the Netherlands the Conseil d'Etat is the most important court to deal with actions involving the administration. Its jurisdiction generally extends to written decisions issued by administrative authorities and excludes oral decisions. However, should the administrative authority refuse or omit to give a decision in a given lapse of time this is considered to amount to a refusal on the part of the administration and as such this decision will now be treated as a written decision.

The power to quash

The Conseil d'Etat may only examine the legality of an administratve act or decision in the broad sense. The Conseil is thus able to decide if an administrative act or decision is ultra vires, unreasonable or if the principles of good administration have not been followed.

The Conseil d'Etat is careful not to stray from judicial considerations into the field of politics and hence does not examine the nature of any administrative act or decision.

Other powers

The administrative court is allowed by statute to order the payment of damages. This power usually falls to the courts of first instance and is rarely used.

The Dutch Conseil d'Etat has the right to award an injunction backed by a periodic fine but this can only be obtained using a special additional procedure. Alternatively this procedure may be used to order the payment of damages.

The courts of first instance are responsible for the enforcement of administrative decisions. In some cases refusal to apply a decision may in itself be considered to be an administrative decision and as such action against it may be brought before the Conseil.

Compulsory or elective referral before an international court

It may prove necessary to interpret an international law to be able to examine the legality of an administrative act. Where application of the EEC Treaty or of the BENELUX economic Union is involved questions must be transferred for preliminary ruling to the Court of Justice of the European Communities or to the BENELUX Court.

## 14) POLAND

The Administrative High Court has powers of judicial review by virtue of a general clause in the 1990 statute. This court has jurisdiction over decisions relating to interference with rights of individual persons made by public administrative bodies and also over the resolutions made by local self-governing corporate bodies involving public law, even where these acts or decisions are of general importance.

The Administrative High Court can intervene when the administrative organ has failed to act and settle conflicts over the distribution of powers between government administrative bodies and local self-governing bodies.

Powers to quash a decision

When an administrative act or decision is found to be in infringement of the law the Court has powers to three things:

- repeal the contested act or decision if it has infringed the law in a fundamental way.
- revoke the act or decision if it is not based on legal grounds.
- should there be some provision in the law that prevents a particular act or decision from being quashed e.g. after a given period of time has elapsed, the Court is only allowed to declare that the contested decision or act is not in accordance with the law. The administration is then compelled to take steps to come to a new and appropriate decision.

Concerning cases brought against decisions of corporate bodies the Court may declare the decision or act to be null and void or that it is not in accordance with the law.

Should a case be brought because the administration has failed to perform in some way, the Administrative High Court may order the administration to settle the matter within a delay set down by the Court.

Power to vary a decision

The Administrative High Court may not vary the content of a decision that has been found not to be in accordance with the law.

When an administrative act or decision which unlawfully imposes an obligation or an agreement is repealed by the administrative High Court the Court's ruling has direct legal effect.

The Administrative High Court is not able to give full judicial review of a case brought before it. Damages arising from some unlawful administrative act or decision are a matter for the other courts to decide.

Other powers

The Administrative High Court does not have the authority to issue direct orders to the administration nor may it restrain an administrative body.

The Administrative High Court may initiate indirect review of the conformity of administrative acts which take the form of rules. The President of the Court may contest any such act and any law that is incompatible with the Constitution before the Constitutional Court.

This Court also has certain rights of review or control over administrative acts that take the form of rules made by the local authorities.

## 15) PORTUGAL

The only power available to an administrative judge in Portugal when hearing a dispute over an administrative matter is that of quashing the administrative decision. When he finds that the administrative act is contrary to the law he will declare it to be legally inexistent or null and void and will order that this administrative act or decision be quashed.

At this stage of the procedure he is not able to order the administration to act in any given way.

Portuguese administrative law does allow for two exceptions to this general rule.

The judge may order the administration to allow the private individual access to documents that he may need to be able to bring his action.

He may also order that the effects of a contested act or decision be suspended.

### Full judicial review

In exceptional cases laid down by statute the Portuguese administrative judge is able to give full judicial review to disputes over electoral or planning matters.

He may also give full judicial review to cases brought involving contracts entered into by the administration or where action or compensation involves the civil responsibility of the administration.

### Compulsory or elective referral before an international court

Administrative courts in Portugal do not refer cases to foreign courts.

## 16) RUMANIA

A new structure to deal with cases brought against the administration was set up in Rumania by the statute of November 8, 1990. This statute provided for the creation of three courts: the regional courts, the Municipal Court in Bucarest and the administrative division of the Supreme Court of Justice

### The power to quash and the power to vary

This same statute gave the ordinary courts jurisdiction over disputes between natural and legal persons and the State administration in so far as part of the dispute did not fall to special courts or to the administration itself under the respective control of the judicial power and of the Supreme Court.

According to Article 11 of this statute the judge, in his capacity as judge of administrative matters, will determine the legality of the administrative act or decision and may quash the contested act or decision either totally or partially. He also has the power to vary the decision or act. He may also decide requests for compensation against an administrative authority or against an administrative official or even his head of the service.

### General

The judicial courts do have general powers. There are certain categories of administrative acts or decisions that by statute may not be disputed.

Among these are those administrative acts or decisions which are directly related to the relations between the Parliament and the President of Rumania and the Government, or which concern domestic and external State security and finally those concerning the interpretation and enforcement of international acts.

### Other Powers

The regional courts and the Municipal Court of Bucarest may suspend an administrative act or decision until the dispute is resolved.

When the administrative court has ordered the administration to respond to a request the administration may be obliged to fulfill this request within at most thirty days after the decision has been made final.

If this delay is not respected the court may then impose a periodic fine on the administrative official and award damages to the plaintiff, the ordinary courts and not

the administrative judge have the power to apply these sanctions.

The judge may oblige the administrative authority to issue an administrative act or decision. He also has the authority to decide on the legality of those administrative acts and operations which formed the basis for the petition being brought before the judge.

He decides on complaints against the administration for bad faith.

Compulsory or elective referral before an international court

The Rumanian administrative judge has neither the ability nor the obligation to refer a case to an international court.

## 17) SENEGAL

The judge in administrative courts in Senegal has the power to quash an administrative act, and the power of full review.

The power to quash an administrative act

When an action is brought claiming that the administration has acted ultra vires, the judge may only declare the act to be unlawful. He does not impose other santions.

Since a simple declaration that an act is ultra vires may not always suffice to bring the administration into line, the judge has some coercive powers at his disposal. The first of these is the procedure whereby a case is sent back to the administration "in order that justice be done". The court lays down the principle on which the decision must be based, and leaves the detail of the decision-making process to the administration. Otherwise, the court may refer the case back to the administration, inviting it to act in a certain way.

The court may also declare the administration to be legally responsible for disregarding the court judgment, provided a sufficient element of fault can be proved. It can set a time-limit for performance and if this is not respected, may award damages to the plaintiff, provided he or she asks for such an award.

Lastly, the judge may quash only part of an act, leaving indirectly to its being modified, or invalidate only its effects on certain individuals.

Sengalese law applies the principle that the judge in administrative courts cannot assume the powers of the administration. This principle applies both to cases under full review and to ultra vires actions, but does not apply to cases concerning fiscal and electoral matters falling into the former category.

In spite of this principle, the judge often causes administrative decisions to be reshaped, by replacing the original legal basis on grounds for the decision with different ones, or by invalidating the grounds given for the decision. He may even use these techniques in an ultra vires action.

The power to give full judicial review

The court has considerable powers in cases falling within its full review jurisdiction. The judge determines the rights of the parties and their scope, and may order the administration to restore and respect the plaintiff's rights or pay him damages.

Other powers

Although the judge in administrative courts has no power of substitution and cannot award injunctions or impose fines, he may, in certain cases, order the payment of damages.

## 18) SPAIN

Article 117 of the Spanish Constitution of 1978 provides for a single court system. The organic law which regulates the judicial power divides all the legal institutions into four jusrisdictions, and cases are allocated amongst them according to their subject-matter. One of these judges administrative cases, hearing claims concerned with administrative acts whose exercise is governed by rules of administrative law and regulations.

This jurisdiction is, nevertheless, an integral part of the judicial power: its judges and those of the other courts are all members of a single, unified profession.

The power to quash or vary an administrative act

The Spanish legal system does not draw any distinction between petitions to have the administrative act quashed and petitions for full review. The object of the proceedings is simply to settle the claims of the parties. Thus in general, the positive law confers the same powers on the judge as it does on the parties.

In any administrative case, the judge is required to decide whether the law has been breached. This duty is not limited to certain types of action. The action is based on the illegal nature of the administrative act. Thus, administrative courts have both the power to quash an administrative act and the power to review the matter fully, without any formal distinction being drawn between the two types of case. Nevertheless, sections 41 and 42 of the law governing the jurisdictions distinguishes between the two according to the subject of the action brought.

Other powers

If the case is decided in favour of the plaintiff, the unlawful administrative act will be totally or partially quashed. If the judge decides that the plaintiff has standing under administrative law, he may take any measures he deems necessary in order that the plaintiff's rights be enforced. In such a case, the judge has not only the power to quash an administrative act, but also the power to vary it and the power of substitution. What is more, he may order the payment of damages if this has been requested.

Compulsory or elective referral before international courts

The Spanish Constitution expressly recognises the competence of both the European Court of Justice and the Court of Human Rights The jurisprudence of these two jurisdictions is directly applicable in Spanish administrative courts. Spanish judges co-operate with judicial and executive bodies in foreign countries through other international conventions.

## 19) SWEDEN

Sweden has a separate system of administrative courts.

The power to quash or vary an administrative act

The administrative courts may quash or vary administrative decisions which have an individual application. If the contested decision was made by the communal authorities, the court may only quash it, however.

Other powers

The judge in administrative courts may not order the payment of damages, but in certain cases, statute gives him the power to issue orders and impose fines to enforce his decisions.

In cases where the act which is challenged takes the form of a rule, the judge has the power, on his own initiative or when asked to do so by any public body, to

declare it to be unenforceable if it conflicts with a provision of the Constitution or of any other superior law. Acts emanating from the Government or from Parliament can only be set aside in this way if the conflict is manifest.

The communal authorities may also bring an action before the administrative courts demanding that a decision taken by a collective body be quashed.

Compulsory or elective referral before international courts

Administrative courts and tribunals in Sweden have neither the power nor the duty to refer cases before international courts.

## 20) SWITZERLAND

Switzerland has an autonomous system of administrative courts, because of its federal structure. Their jurisdiction covers all the cantons, except Uri and Appenzell, and they apply federal public law and the law of their respective cantons. There is also the Federal Administrative Supreme Court which hears cases arising under federal public law and ensures that administrative measures taken in the cantons respect the federal constitution. Thus, in the first type of case, the federal judge sits as a superior administrative judge, and in the second, he sits as a judge of the Constitution.

The confederal system in Switzerland draws a distinction between specialized administrative courts which deal with particular areas of public law, and general administrative courts, the true "general practitioners" in administrative law.

The power to vary an administrative act

Generally speaking, the judge in Swiss administrative courts has full discretion to vary a decision and may even replace the administrative decision by his own, for example, by granting the authorization which had been refused to the plaintiff, as long as he gives the grounds for this in his judgment.

There are, however, limits on this power to vary an administrative act: the court may not vary it in such a way as to make it less favourable to the paintiff. Moreover, the court may only examine the facts and law relevant to the decision, and not its appropriateness, except in some cases concerning disciplinary matters, for example.

The judge in administrative courts has no power to annul a law on the grounds that it is illegal or

unconstitutional. he may only quash or vary the administrative act issue to implement such a law. The law itself remains theoretically in force, even though it has no effect in practice.

The power to give full judicial review

Some administrative courts of first instance are empowered to hear cases between the State and individuals. Their most important work is the full review of cases concerning finance.

At the national level, the federal tribunal has a power of full review in financial cases arising under the law of the cantons.

Compulsory or elective referral before international courts

The judge in administrative courts has no power or duty to refer a case to an international court. It is for the parties to do this, if the need arises. Such cases usually go before the European Court of Human Rights.

## 21) THAILAND

Recent reforms have established an independent "Juridical Council", based on the systems operating in some European countries. The Council currently has the status of a government department linked to the Prime Minister's office.

The Council is composed of a "Law Council" and a "Petition Council", which deals with disputes arising in the administrative law field, and which is staffed by 36 "Petition Councillors" who are appointed by the King on the proposal of the Government and following the consent of the national Assembly.

Procedure before the "Petition Council" is based on procedure in French administrative courts and thus differs from that followed before the ordinary courts, which is based on common law systems.

Before the "Petition Council" a written procedure is used, following the inquisitorial and adversarial models. A written petition must be addressed to the Council. The procedure is then similar to that followed before the French "Conseil d'Etat", even requiring the participation of a Government Commissioner, as the French system does.

The "Petition Council" can make unenforceable, non-binding recommendations to the Prime Minister. These recommendations only have legal effect if he makes such an

order. The Thai legal system resembles that operating in certain European countries in the nineteenth century.

Judgments given by the "Petition Council" are enforced by the "Report Council". So far, this latter body has not functioned effectively, due to a lack of personnel.

Initiatives are currently being taken to reorganise and modernise administrative procedure.

## 22) TURKEY

### The power to quash an administrative act

According to sectgion 125 of the Turkish constitution of 1982, which deals with the power to quash, all administrative acts and decisions may be subject to review, except those listed in this and other sections of the constitution.

These exceptions include those decisions which the President of the Republic can take at his own discretion, decisions taken by the Military Council or by the Supreme Council of Judges and Prosecutors, and the final decisions of the State Audi Office.

Other types of decision, listed by laws brought into effect by the National Security Council between 12 September 1980 and 7 December 1983 are also immune from legal actions brought under section 125 of the constitution.

The judge's power to quash is thus limited by these exceptions.

### The power to vary an administrative act

The judge has no such power: his powers are limited to quashing unlawful administrative acts

### The power to give full judicial review

The judge in administrative courts is accorded a power of full review by section 125 of the constitution, which states that the administration must compensate for any loss suffered through its activities, acts and decisions.

### Other powers

On the other hand, the judge has no executive role in relation to the administration. He may not issue orders against it and has no power to take decisions in its place or impose sanctions.

## 23) THE UNITED NATIONS

### The power to quash administrative acts

Under section 9 of the rules governing the Administrative Tribunal of the United Nations, the Tribunal can quash an administrative act if it considers the petition against it to be well-founded. This power can be exercised against any administrative act of the United Nationas falling within the jurisdiction of the court as laid down by section 2 of the rules. There are, however, only two types of case which can be brought before the United Nations Administrative Tribunal: those concerning the international civil service, and those relating to the interpretation of regulations governing the work of regional or international bodies accountable to central administration of the United Nations.

### The power to vary an administrative act

The rules governing the United Nations Administrative Tribunal do not explicitly allow for such a power. Nevertheless, the Tribunal does have a certain power of variation, in that if it decides to quash only part of an administrative act, the other provisions will remain in force, and thus the Tribunal's decision will bring about a variation of the act.

However, there is no rule which authorizes the Tribunal to take decisions in the place of the administrative body, and so the Tribunal has no power to vary an administrative act, in the strict sense of the term.

### The power to give full judicial review

Section 9 of the rules gives the Tribunal the power of full review in certain types of case, in that it confers the power to fix the amount of damages payable to the plaintiff if the administration refuses to obey the court's order.

## CONCLUSION

The above comparison shows that great differences exist between the powers of judges in different administrative courts. the point which they all have in common is the power to decide whether an administrative act is unlawful.

Although in most cases this power can only be exercised when a personal, individual right is threatened, many systems allow a general right of action which

challenges the administrative act itself, independently of its effects in any particular case.

In countries which have a separate system of administrative courts, the judge's power to vary administrative acts and his power of full review are often only available in a limited number of cases. The principle of the separation of powers between the judiciary and the executive, means that in certain countries the judge in administrative courts cannot take a decision in the place of the administration.

Many countries have a system whereby the ordinary courts have a general jurisdiction, and the administrative courts are only competent in cases for which the law declares them to be so. This explains the fact that administrative courts do not have the powers to order the payment of damages, to issue an injunction, and to impose a fine in all countries.

These features are not present in countries which have a single system of courts and where administrative law is merged with private law.

It is apparent that administrative law in such countries is gaining a certain degree of autonomy, due to an increasing level of interaction between the administration and the citizens whom it governs.

These countries with single court systems have allowed for this autonomy, either within the context of the ordinary courts, or by establishing a separate system of administrative courts with limited jurisdiction in narrowly-defined areas of administrative law. A clear example of the latter case is the Israeli legal system which, whilst haveing a "unitary" court structure, boasts a large number of specialized courts with competence in certain fields of administrative law.

In countries where the administrative courts are separate from the ordinary courts, the judicial judge has a general jurisdiction. However, a certain tendancy can be seen in these countries for the powers of the judge in the ordinary courts. This has certainly been the case in Belgium, where the law of 19 July 1991 introduced the possibility of bringing an action following an urgent referral procedure for administrative matters. Luxembourg is currently in the process of introducing such a summary procedure for public adjudication before its "Conseil d'Etat", within the context of European law.

## II
## THE INFLUENCE AND LEGAL EFFECTS OF THE DECISIONS OF ADMINISTRATIVE COURTS

A) The distinction between erga omnes and inter partes effects
B) Ex tunc or ex nunc effects
C) Effects on, and effects of, decisions coming from other courts

The most superficial of comparative studies would suffice to show that decisions given by the administrative courts and tribunals of the participating members have widely divergent legal consequences. There is, however, one principle which finds its place in every system: decisions given in cases brought under a general right of action have a general binding effect, whereas court decisions in personal actions only bind the parties concerned and only have a prospective effect. Most countries have encountered difficulties in putting this principle into practice and have been obliged to settle conflicts between questions of principle and individual rights through jurisprudence and legislative measures. The resulting law is complex and often based on fine distinctions. For reasons of space, the general report cannot give detailed consideration to this albeit interesting topic.

### BELGIUM

#### The distinction between erga omnes and inter partes effects

A decision which rejects the plaintiff's claim because it is inadmissible does not prevent the same plaintiff or a third party from bringing another action. Similarly, a decision which rejects the claim on its substantive merits only has relative binding authority and does not bind third parties.

The effect of the decision on the courts themselves depends on the nature of the decision in question. If the administrative act which has been upheld has an individual application, the judgment binds the other courts in cases arising between the same parties. If the decision is one rejecting a demand that a regulation be quashed, it has absolutely no binding force over courts or tribunals, however: they may simply decide not to follow it.

Judgments which quash administrative acts which have an individual application, or regulations, have a general binding effect.

A measure declared illegal by an administrative court no longer has any legal effect. Thus a decision quashing

an administrative act binds both third parties and the courts. However, there are two exceptions to this general rule: firstly, if the act is quashed following a claim brought by an individual, the judgment has no effect on third parties who are not in the same position and have not made a similar demand; and secondly, the decision quashing the act only applies to the act itself and cannot require the administration to withdraw or repeal other similar or identical acts.

Ex tunc or ex nunc effects

A decision emanating from the Conseil d'Etat which quashes an administrative act of an individual or regulatory nature has a retrospective effect. This ex tunc effect is limited, however, by considerations of equity, public utility and certainty in litigation. When an administrative act is quashed, the decisions taken by virtue of that act also lose their legal basis, retrospectively. Since this principle is not regulated by law, jurisprudence has determined how it is to be applied.

Administrative acts which stem from another, "parent" act of a regulatory nature will only be quashed with it if this is specifically requested. Otherwise, such "subsidiary" acts become final. Administrative acts derived from another "parent" act which has an individual application are quashed with it if they cannot be dissociated from it in law.

Changes in the applicable law

If the rule of law upon which the decision to quash is founded changes, this only affects the execution of the court's decision by the administration, and does not mean that the judgment is withdrawn. Neither will this affect possible variations to the act, which will be made in accordance with the rule in force at the time of the judgment.

Effects on, and effects of, decisions coming from other courts

Because it has an absolute binding effect, a decision ordering that an administrative act be quashed creates a precedent binding before all courts, including the ordinary courts. In theory, the Conseil d'Etat is not bound by the decisions of other courts, but in fact it takes them into consideration.

Under Article 17 of the Court of Arbitration Act (i.e. "Cour d'Arbitrage") (1) judgments made by the Council of State, which are based on a provision of a statute - or any other equivalent rule provided under Article 17 - and which

have subsequently been annulled by the Court of Arbitration or which have been carried out according to such a rule, may be quashed wholly or partly.

An action must be taken within the term of six months beginning from the publication of the Court of Arbitration's judgments in the Belgian Official Gazette i.e. the "Moniteur belge".

The Arbitration Court also gives preliminary rulings when hearing legal matters which fall under its jurisdiction. The Council of State must refer to the Court of Arbitration for preliminary hearings if such an action is brought to it. Also, the Council of State may refer ex officio to the Arbitration Court.

The Council of State must comply with the judgment made by the Arbitration Court, as any other ordinary court does.

Treaties incorporated into national law have a binding force. The administrative, like other, courts are bound by the decisions of the European Court of Justice and the court of the Benelux countries, and also by decisions given on points of interpretation by the European Court of Human Rights.

---

(1) The Court of Arbitration hears cases involving actions for annulment of statutes, as well as regulations which take the form of acts of Parliament breaching provisions which assess the jurisdiction between the State, the Communities and Regions.

Furthermore, the Court has the power to sanction the infringements of Articles 6, 6bis and 17 of the Constitution.

## COLOMBIA

### The distinction between erga omnes and inter partes effects

A judgment of an administrative court in Columbia which declares an administrative decision to be void has absolute authority and is generally binding. If the decision does not quash the act, it is still of absolute authority, but only in relation to the grounds given for it by the court.

Judgments concerning the restoral of an individual's rights only have a relative binding effect, as do judgments concerning contracts or direct compensation.

### Ex tunc or ex nunc effects

Decisions quashing an administrative act or restoring an individual right have retrospective effects: the act in question is considered to have never existed. Since the decisions of administrative courts have the force of res judicata, a later change in the law will not affect them.

### Effects on, and effects of, decisions coming from other courts

In theory, the decisions of administrative courts have no effect upon those or other courts. Nevertheless, they may have the weight of non-binding precedent. Columbian administrative law provides for the jurisprudence of the Conseil d'Etat to be harmonized through plenary sittings for contentious business falling within the competence of the administrative courts.

Decisions of international courts may require domestic law to be adapted in order to comply with international law, and thus, without being binding, may influence decisions of the administrative courts.

## THE EUROPEAN ECONOMIC COMMUNITY

### The distinction between erga omnes and inter partes effects

A decision of the European Court of Justice quashing an act of a Community institution has an absolute effect in that the act is considered as having disappaeared from the legal order, "erga omnes".

However, for reasons of certainty, the consequences of such a decision may be limited to the particular plaintiff.

A judgment which rejects a demand that an administrative act be quashed because it is illegal only has limited authority, since the rejection only applies to

the grounds given for that particular action. The same principles apply to dismissals at a pre-trial stage.

A declaration that a Community act is unlawful has a general binding effect, whereas a declaration that it is lawful is subject to challenge and only binds the parties.

Ex tunc or ex nunc effects

A decision which quashes an administrative act makes it disappear from the legal order, and thus necessarily has a retrospective effect, quashing the act "ab initio".

However, the Treaty of Rome empowers the court to limit the effects of its decisions to quash, either over time, or, when it quashes regulations, by leaving such of its provisions intact as are necessary in order to preserve certainty in litigation.

## FINLAND

Finnish law follows the principle whereby an action brought within the prescribed time-limit has a suspensive effect. However, many exceptions have been established to this rule, in the general interest, for example, the law may stipulate that an act must become immediately enforceable due to its nature, or that it must come into effect without delay, in the public interest.

The distinction between erga omnes and inter partes effects

The decisions of the Administrative Supreme Court have no binding force outside the context of the case in question. In certain circumstances, authorization has to be given before the case can be brought, because it is of special importance to other, similar cases. Decisions given in such cases form binding precedent and help to make court judgments more consistent.

Ex tunc or ex nunc effects

The decision may include limitations as to its own effect. In certain cases, the judgment can be modified if the parties agree or if such a modification is necessary in the general interest.

Effects on, and effects of, decisions coming from other countries

Court decisions only bind other bodies within the context of their respective functions. If legal rules change, those in force at the date the action was brought will apply.

Finland ratified the European Convention on Human Rights on 10 May 1990 and thus is bound by the decisions of the court which enforces it.

Most other international conventions which bind Finland have been transposed into national law and thus take effect as sources of law.

## FRANCE

### The distinction between erga omnes and inter partes effects

In France, the effect of a court decision varies: in most cases it is only relative, but may be absolute if the decision quashes the administrative act as ultra vires.

Judgments with relative authority only bind the courts in a later case if the parties to, grounds for and subject of the action are all the same.

When hearing a new case, the administrative judge won't make another judgment on the same question, if the same parties in dispute bring to court the same action and invoke the same grounds relating to the same case.

So, should the new case involve but one new point of law, the judge will hear again the action which is put to him.

Final court judgments have general binding and peremptory force and may, thus, be invoked by third parties.

Once administrative acts have been quashed, they lose all legal effect and can no longer be enforced, either by the administration itself or by any court, even the ordinary courts. Court judgments rejecting for substantive reasons a demand that an act be quashed as ultra vires have only relative binding effect, however.

### Ex nunc or ex tunc effects

Judgments made in administrative courts take effect immediately and the administration must perform in accordance with the judgment which is provided with res indicata effect.

Acts quashed as ultra vires are deemed to have never existed and they disappear with retrospective effect (ex tunc effect) from the country's legal framework. They may no longer be applied, nor by the administration, nor by any law court, even an ordinary judicial court. However, the application of this principle of law does, occasionally, cause complex problems, since the quashed

acts are considered to have never occurred. Indeed, the revival of past situations is often very complex, for it affects third parties rights.

Changes in applicable legal rules may cause the judgment to be challenged as illegal.

On the one hand, by means of the plee of illegality, the administrative judge may prevent the illegal regulation from being applied, whether the regulation has been unlawful ab initio, or the regulation became unlawful afterwards, due to changes which are related to factual or legal circumstances. On the other hand, the administrative judge requires the administration to comply with claims for rescission, abolishment or annulment of unlawful regulations, whether these regulations have been illegal ab initio or have become unlawful since, once again, due to changes related to legal or factual circumstances.

Hence, a rule or regulation may easily be rescinded by the administration or annulled by the administrative judge, by means of a plee of illegality, should it have been declared lawful at the very moment it had been passed, whenever changes related to factual or legal circumstances, have, meanwhile, occurred.

However, when personal legal situations of the past have become final, they do remain intangible, even though the regulation on which they are based has become unlawful, following a change in legal norms.

Anxious to obey the principle claiming that individual situations should be unaltered, the judge only operates for the future changes in the legal norms, that govern individual situations which create rights.

Effects on, and effects of, decisions coming from other courts

France has developed a system for settling preliminary questions in cases where the jurisprudence of ordinary courts conflicts with that of administrative courts. Indeed, the administrative judge is in principle competent to declare an administrative act lawful and the ordinary judge, when dealing with a question of legality which is bound to solve the case at trial, will stay judgment until the administrative judge has settled this point of law. Criminal courts, however, are allowed to settle themselves the question whether acts, that take the form of regulations, are lawful or not.

The administrative judge, as well, must stay judgment when he is hearing cases which involve the

jurisdiction of the ordinary judge without any exception.

By virtue of this double system consisting of preliminary hearings, both administrative and ordinary (i. e. judicial) courts are, eventually, involved in the settlement of the same dispute.

In cases, such as preliminary hearings, the administrative courts are legally bound by the decisions of the ordinary courts and vice versa. Besides these cases, the effect of judicial precedent coming from ordinary, administrative and constitutional courts, is not only efficient, but reciprocal as well: all these three orders of jurisdictions cooperate with each other and take each other's decisions into account. Therefore, cases of dissension are most uncommon.

As for the influence of international courts, only judgments of the European Court of Justice have binding effect on domestic law, since there is a system of cooperation between national courts and the EEC Court of Justice.

However, as a matter of fact, one should point out that decisions of the European Court of Human Rights do infer on French courts, although they have a non-binding effect on them.

## GERMANY

### The distinction between erga omnes and inter partes effects

Judgments given in administrative cases only have relative authority and are subject to challenge. They only bind the parties, in relation to the matter concerned.

This relative effect stems from the fact that the object of the action is not to decide whether the administrative act is unlawful, but to pass judgment on the plaintiff's claim. The subjective nature of an action to have an administrative act quashed explains the fact that the decision only has relative binding authority.

However, third parties are of course bound by the fact that the administrative act has been quashed. The effects of this extend to all public bodies. On the other hand, administrative acts capable of affecting the rights or interests of third parties can only be quashed if the third parties concerned took part in the procedure. If this is not the case, the administrative act stays in force.

By contrast, decisions quashing regulations are final. Moreover, such decisions are published, as were the acts which they declare illegal.

Decisions rejecting the plaintiff's claim have only relative binding effect, however, and may be the subject of a later, successful appeal, as social conditions and legal ideas change.

Ex tunc or ex nunc effects

When an administrative act is quashed it is made retrospectively invalid. If possible, it is deemed to have never existed. A decision of the court declaring that a regulation is unlawful takes effect ab initio unless this would cause disruption to the legal order, or legal uncertainty.

In cases where the law applicable to the act has changed, the judge bases his decision on the relevant facts and law as they stood at the date when the act was issued or carried out.

Effects on, and effects of, decisions coming from other courts

In theory, the judge in the civil law courts is bound by the decisions of the administrative courts, but conversely, the judge in the administrative courts is not bound by earlier judgments of an administrative nature coming from the civil law courts. Court decisions have great practical influence upon the decisions of public bodies, irrespective of their binding authority.

## GREECE

The distinction between erga omnes and inter partes effects

In Greece, the authority of an administrative court judgment depends on whether the case was brought under a general or a personal right of action.

Decisions in cases where the action was brought under a general right of action have a general binding effect, whether they are given in ultra vires actions or in cases for which the judge exercises full powers of review over an administrative order. Decisions quashing or varying administrative acts of an individual application, given in cases brought under personal standing, also have "erga omnes" effects.

A decision which rejects a demand that an administrative act be quashed and final judgments of administrative courts only have effect on the parties.

In cases brought with personal standing, the ratio of the judgment is the only part which is binding, whereas in cases brought independently of such standing, decisions quashing the administrative act or rejecting the demand derive their relative binding character from the grounds given.

Ex tunc or ex nunc effects

Judgments which quash administrative acts take effect retrospectively: the act is considered to have never existed. The legislator may not quash court judgments retrospectively, since this would be contrary to constitutional principles. There are, however, some exceptions to this rule.

Effects on, and effects of, decisions coming from other courts

In law, decisions of administrative courts do not lay down a precedent. In fact, a rule which is laid down consistently and repeatedly may acquire the status of jurisprudence. The same rule applies to decisions of international courts, apart from those of the European Court of Justice.

## ISRAEL

The distinction between erga omnes and inter partes effects

The fact that Israel has a single court system means that the decisions of the Supreme Court of Justice and of administrative courts have the same value as precedent as those of the ordinary courts. Decisions of the Supreme Court have an absolute binding effect on lower courts and tribunals. Decisions of the lower courts only have a binding effect on the parties.

Ex tunc and ex nunc effects

The question of whether or not a judgment has retrospective effect depends largely upon the type of action concerned.

In general, however, judgments of courts and tribunals do have retrospective effect, although the courts may interpret this principle restrictively.

## ITALY

### The distinction between erga omnes and inter partes effects

Generally speaking, a judgment only has effects on the relationships between the parties to the case.

However, if the administrative act, which has been quashed, is legally indivisible, in other words, if the annulment of that act or decision affects all the parties to the case (regulation, competition, etc ...), the judgment has a diriment and peremptory effect i.e. erga omnes effect. But, the legal authority of the judgment i.e. res indicata (action for enforcement) doesn't affect the litigants.

A court judgment quashing an administrative decision, on the other hand, cancels it completely. However, if the decision is legally divisible, only that part of it which affects the party who brought the action is quashed.

Administrative courts tend to follow their own decisions, but generally they also acknowledge the authority of the case law of the Supreme Court of appeal and the "audienza plenaria" of the "Consiglio di Stato".

Italy is bound by the authority of decisions of the European Court of Human Rights, and, as a member of the European Economic Community, by decisions of the European Court of Justice, made within its sphere of competence as laid down by the Treaty of Rome.

### Ex tunc or ex nunc effects

A judgment which quashes an administrative act has retrospective effect. The illegitimate administrative act is deemed to have never existed. Only the alternation of a factual or legal situation (destruction of a building, changes of acts, statutes and regulations, changes in town planning, ...), which takes place after the judgment has been made, may prevent the entire "restitutio in integrum" by the judge who is in care of implementation.

However, a decision quashing an administrative act which has an individual application has only prospective effect.

### Effects on, and effects of, decisions coming from other courts

Judgments pronounced by the civil or criminal courts may influence administrative cases. Conversely, judgments of administrative courts may be of persuasive authority in civil or criminal courts. All the courts may delay making

their decision until another court has decided the point which may affect the case before them. The Italian administrative judge is bound by the judgments of the European Court of Justice and by the European Court of Human Rights.

## THE IVORY COAST

On the Ivory Coast, the binding nature of the judgment depends on the subject-matter of the case.

### The distinction between erga omnes and inter partes effects

With certain exceptions, all court judgments quashing an administrative act have absolute binding force. Those which have an erga omnes effect also apply retrospectively. Decisions given in cases where the court exercises full review powers only have a relative effect, and, as declaratory court judgments, only apply prospectively.

### Effects on, and effects of, decisions coming from other courts

Court decisions quashing an administrative act bind all jurisdictions absolutely, whereas decisions varying such an act are subject to challenge. It must be remembered that the Ivory Coast has a single court system.

Little is known of the decisions of international courts, which have no direct influence on the behaviour of the administration.

## LUXEMBOURG

### The distinction between erga omnes and inter partes effects

According to the law in force in Luxembourg, only the ratio of a decision, and not the reasons for it, has final authority. The effects of the court decision are also limited by the fact that it does not apply to third parties, unless it changes the legal order by its very existence. In administrative law, these principles apply to all decisions of an individual nature.

In the unlikely eventuality of the "Comité du Contentieux" quashing a regulation, the decision has a general binding effect since it removes the regulation from the legal order.

A court decision rejecting an action as inadmissible for procedural reasons does not prevent the plaintiff or third parties from bringing another action, provided the time-limit has not expired. A court decision rejecting an action on substantive grounds does not prevent another

action being brought on different grounds, again as long as the time-limit has not expired. A decision emanating from the "Comité du Contentieux" which quashes an administrative decision necessarily has a retrospective effect, although it cannot affect rights which have already been lawfully established.

Judgments which vary an administrative decision of an individual character only have a prospective effect, since they only replace the original decision once they are of final authority. The action in itself has no suspensive effect. However, if, during an action brought to have an administrative decision varied, the "Comité du Contentieux" decides to quash it because it is unlawful, the judgment will take effect retrospectively.

Effects on, and effects of, decisions coming from other courts

The ratio of judgments of the "Comite du Contentieux" are binding on the ordinary courts. In many cases, the ordinary courts delay their decision until the administrative court has heard the case. On the other hand, the decisions of the ordinary courts have no binding effect on the decisions of the "Conseil d'Etat". The "Conseil d'Etat" does take their decisions into account, however, and is subject to the general binding effect of judgments made in criminal courts.

In Luxembourg, international treaties are considered as a source of law, and prevail over national law. Decisions of the European Court of Human Rights have an increasingly powerful effect, not only on jurisprudence, but also on legislation. Decisions of the European Court of Justice and of the Benelux court have binding effect on courts in Luxembourg.

## THE NETHERLANDS

The distinction between erga omnes and inter partes effects

Judgments quashing a decision of the administration have absolute and retrospective effects: the decision is deemed to have never existed.

However, the "Conseil d'Etat" has the power to declare that the consequences of the administrative decision are not to be affected by the judgment quashing it.

Ex tunc or ex nunc effects

The decisions of the "Conseil d'Etat" are strictly retrospective and thus even if legal rules change, the decision will remain unchanged.

Effects on, and effects of, decisions coming from other courts

There is no true doctrine of binding precedent in the Netherlands. Nevertheless, the "Conseil d'Etat" follows its own past decisions whenever possible. In cases concerning the lawfulness of an administrative decision, the ordinary courts consider themselves to be bound automatically by the opinion of the "Conseil d'Etat".

The Treaty of Rome establishing the European Economic Community, and that establishing the Union of Benelux countries, places a duty upon the Dutch courts to refer questions of interpretation arising in any case falling within the scope of these treaties before the European Court of Justice and the Benelux Court.

## SPAIN

The distinction between erga omnes and inter partes effects

Section 86 of the law regulating the administrative courts lays down the effects of their decisions according to the subject-matter of the case.

According to this provision, judgments dismissing an action or declaring it inadmissible only have binding effect on the parties concerned. A court order which quashes an administrative act has binding effect on the parties concerned, as well as on all other parties who may be affected by the act. Such an order has a limited "erga omnes" effect, since anyone affected by the judgment who was not a party to the original action has the possibility of reopening proceedings.

The courts have found a solution to this problem: jurisprudence has established that decisions quashing an administrative act may have general binding effect, in order to avoid the development of contradictory decisions. Thus, third parties who do not take part in the court action are also bound by the decision.

Ex tunc or ex nunc effects

Court decisions reviewing the lawfulness of an administrative act generally have retrospective effect, but for reasons of legal certainty, the administrative act may be left in force. However, administrative acts which take the form of rules are considered valid and have full legal effect until they are invalidated or quashed, no matter the nature of the illegality. A subsequent administrative act may remedy the illegality of the first, with the result that the decision becomes inapplicable on legal grounds.

Effects on, and effects of, decisions coming from other courts

The Spanish Constitution states that the judicial function shall be exercised by each court independently, within the jurisdiction conferred upon it by law, and using powers and procedures also determined by Parliament. Thus, court judgments cannot constitute precedents which bind other courts, but nevertheless, judgments in administrative courts have non-binding persuasive effect.

Decisions given by international courts are followed in Spain and influence domestic law. As a member of the European Community, Spain is bound by rules of Community law and jurisprudence, and also recognises the authority of decisions of the European Court of Human Rights.

## THE UNITED NATIONS

The distinction between erga omnes and inter partes effects

None of the rules governing the United Nations Tribunal clearly establish whether its decisions have a general binding force or not. However, a close examination of the rules leads to the conclusion that the decisions of the Tribunal have no such effect. This conclusion is confirmed by the way in which the Tribunal operates in practice.

Ex tunc or ex nunc effects

The rules are no more explicit about the effects of the Tribunal's decisions over time. The question has never come before the Tribunal, but could arise in a future case.

The decisions of other courts have barely any effect on those of the Tribunal, and vice versa. Steps are currently being taken to harmonize the work of the Tribunal with that of other international courts, such as the court of the International Labour Office.

## POLAND

Erga omnes and inter partes effects

The decisions made by the Polish Supreme Administrative Court are of general effect (erga omnes) and therefore bind not only the parties to the particular case in question but also the organs of the State and all other bodies. It is perhaps appropriate to point out that there is only one court with jurisdiction to hear administrative cases and that its decisions may be challenged before the Supreme Court in exceptional cases only.

Ex tunc and ex nunc effects

The decisions handed down by the Court take into account the law as it stands on the day that judgment is pronounced. Any change that occurs in the law after a judgment has been made may allow a new administrative decision to be taken or a new act made.

The effect of the judicial decision varies according to the seriousness of the fault that has been found to vitiate the administrative act in question. The annulment of an administrative decision is deemed to be an act which is source of law and therefore has effect ex nunc.

If an administrative act or decision is so seriously at fault that it cannot be allowed to have any effect whatsoever, the judicial decision which quashes such an act or decision is considered to take effect ex tunc.

The influence of court decisions

The judgments of the Supreme Administrative Court and those of the judicial courts have a reciprocal influence upon each other.

The judgment of a criminal court may, however, have a decisive influence on the judgment of the administrative court.

There exists, furthermore, a certain degree of interaction between the decisions of the different categories of court.

There is not, however, any significant current exchange of influence or ideas between the decisions of the administrative court and those of the international courts.

## PORTUGAL

Erga omnes and inter partes effects

Will only have inter partes effect if any decision of the court that rejects an action for want of locus standi on the part of the applicant or on the grounds that the action initiated is, for some reason, inappropriate.

If the grounds for the annulment of an administrative act or decision are that it is illegal and if the illegality in question affects the act or decision in its entirety, the decision to quash implies that the act or decision contested effectively disappears, the decision to quash being erga omnes, that is, applying to any other

parties that may have been affected by the act or decision thus annulled.

Ex tunc and ex nunc effects

If the court quashes an administrative act or decision erga omnes this implies, in law, that such is quashed ex tunc.

If the legal rule applicable to the decision is changed, this may have an effect on the act that is challenged.

If a non-administrative court is faced with an action which concerns in some way the jurisdiction of the administrative court, it may stay proceedings until the administrative court has rendered its decision.

The influence of court decisions

The judgments of the administrative courts are veritable precedents and are therefore referred to and applied in similar cases. The Supreme Court's precedents are very influential.

The decisions of the European Court of Human Rights and those of the EEC Court of Justice bind the Portuguese courts whereas the judgments handed down by other international courts have only a persuasive influence and are not binding on the Portuguese national courts.

## RUMANIA

Erga omnes and inter partes effects

In Rumania the principle is that judgments handed down by administrative judges have only inter partes effects. Since, indeed, the decisions made by the administrative courts may only concern the individual rights of the parties to a particular case, the decisions handed down by an administrative judge may have an inter partes effect only.

Sometimes, however, the judgment may have erga omnes effect and therefore be applicable to all.

The judgment of an administrative court which merely declares that an administrative act or decision is quashed without considering the further question of whether an individual right was affected by the administrative decision quashed may have erga omnes effect.

The question as to exact extent of the effect of administrative court decisions loses much of its practical

interest in Rumania when one realises that the authorities may themselves reshape or withdraw a decision that has been unlawful.

Ex tunc and ex nunc effects

The decisions of the administrative courts have, in principle, declaratory value and take effect ex tunc. When, however, the decision of the court modifies or creates rights, it only has effect ex nunc.

Changes in the applicable law affect any decision made by the administrative courts. The principle that laws are not retroactive is, nevertheless, generally applied.

The influence of court decisions

In Rumanian law judicial precedent and judicial practice are not considered to be a source of law. In practice, however, the precedents of the Supreme Court are, because of their special authority, followed by the other courts.

The administrative courts respect the international agreements that have been ratified and the rules and principles adopted by the international organizations to which it belongs.

## SENEGAL

Erga omnes and inter partes effects

In this respect the principle is that the decisions of the administrative courts are only of relative or so-called inter partes effect. By way of exception to this rule, a judgment which quashes an administrative act or decision on the grounds that it is ultra vires has an absolute or so-called erga omnes effect.

When a request that an act be quashed on the grounds that it is ultra vires is rejected on the grounds that it is not ultra vires (as opposed to being rejected on simple formal grounds), such a decision will only be deemed to be erga omnes in effect if all the arguments raised by the party concerned were based on rules that the administration was obliged to respect, otherwise the decision will merely have effect inter partes.

Civil court decisions do not bind the Supreme Court unless the object, reason and parties are the same in both cases.

Criminal court decisions also bind the administrative court.

Ex tunc and ex nunc effects

Any act which is annulled on the grounds that it is ultra vires is reputed to have never existed and therefore such annulment is retroactive in effect. Applying a declaration of retroactivity is none the less variable and complex in practice.

Since, indeed, a declaration that a decision is retroactive tends towards fiction rather than reality, such a principle is, in some cases, doomed to failure in practice.

The influence of court decisions

Senegal has signed an international agreement which provides that the decisions of a foreign court may influence matters in the national courts.

## SWEDEN

Erga omnes and inter partes effects

In Sweden the general rule is that the decisions of the administrative courts have inter partes effects only.

The essential role of the Supreme Administrative Court is to lay down precedents which thus have an indirect influence on the administrative courts and authorities.

The Supreme Administrative Court may, exceptionally, order that a case be reopened so that in effect it may reconsider a case which is, in principle, closed.

Ex tunc and ex nunc effects

Whether a decision has ex tunc or ex nunc effects depends on what type of case it is. Normally a judgment takes effect ex nunc, and this is so even if there still remains a possibility of appeal or challenge. The Court may, however, order a stay of proceedings.

Should the applicable law change, the legislator normally specifies the way in which the law is to be applied in the clauses dealing with the transitory provisions. Should this not be the case, the change in the law or rule takes effect from the date it is published. The Constitution, however, forbids tax and criminal law from having any retroactive effect.

The influence of court decisions

The decisions of the Supreme Court may have an indirect effect on the decisions of the Supreme Administrative Court and vice versa.

In certain circumstances the decisions of the criminal courts bind the administrative courts.

The decisions handed down by international courts have no direct influence on the decisions of the national administrative courts.

However this may be, some decisions of the European Court of Human Rights have led to amendments of Swedish law.

## SWITZERLAND

Erga omnes and inter partes effects

In Switzerland the general rule is that the effect of the decisions of the administrative courts is relative or inter partes, the ratio decidendi of the decision applying to the parties to the case, including the administration, only.

The special nature of certain decisions implies, however, that they sometimes have absolute or erga omnes effect. The most frequently occurring case of this type is formative judgments.

Ex tunc and ex nunc effects

Whether an administrative judgment has ex tunc or ex nunc effects depends principally on the law applicable to the question in dispute and the nature of the decision applied for.

In principle, decisions which reject a request for judicial review have ex tunc effect and the administrative decision in question is confirmed as being legal as from the date on which it was made.

As for cases where judgment has not been given in last resort, a challenge still being possible, the administrative court judgment affects not only the administrative decision or act in question but also the original text or act on the basis of which it was supposedly authorized.

In other cases, the legal situation is modified only from the date on which the judgment takes effect; that is to say, the effect of the judgment is merely ex nunc.

If there is a change in the law during the hearing of a case, and no transitory provisions are provided, then if the law which is introduced aims to protect the public interest over and above any private interests that may exist, the newly introduced law will take precedence over the law that it replaces. If on the other hand, the public interest is not of supreme importance in the particular case in question, the new law will affect it in any way.

The influence of court decisions

The courts are, in principle, bound by the decisions of the administrative courts. Notably, a decision of an administrative court which obliges a citizen to act or do something in a particular way binds the criminal courts.

On the other hand, the administrative court is bound by the final decisions of the civil, criminal and other courts.

The different judicial and administrative authorities make their decisions independently and are not bound by any rules of precedent.

The administrative authorities may also ignore the practice of an administrative court. In this respect any difficulties that might arise are usually resolved informally through an exchange of views between the administrative judge and the supreme, cantonal or executive power.

In Switzerland the European Convention on Human Rights forms part of the internal body of law and those coming before the courts may rely directly on its provisions. Should a conflict arise between a rule of law resulting from the Convention and a federal law, it is quite possible that the judge will apply the federal law.

## THAILAND

Erga omnes and inter partes effects

The decisions of the Petition Committee, completed by the order of the Prime Minister as head of the Government have inter partes effect only.

The applicant may refer his case to the Petition Committee for reconsideration, within a limited period of five years, if he can prove the existence of new evidences.

Ex tunc and ex nunc effects

In general, the decisions of the Petition Committee for the revocation of an administrative act take effect ex tunc, i.e. they normally have a retrospective effect. However, the order of the Prime Minister must clearly state whether or not and to what extent or under what conditions such order will have a retrospective effect.

The influence of court decisions

The decisions of the Petition Committee have no effect on the decisions of other courts and vice versa. The other judicial and administrative authorities do, however, take into account the principles of law and the legal theory developed by the Petition Committee.

## TURKEY

Erga omnes and inter partes effects

In Turkey the influence and legal effect of an administrative court decision depend on the nature of this decision.

A decision rejecting an application only has relative or inter partes effect, whereas a decision annulling an administrative act or decision has absolute or erga omnes effect.

Ex tunc and ex nunc effects

A decision of the Court rejecting the application simply confirms the validity of the administrative decision or act that was challenged and therefore has no retroactive effect. If, on the other hand, the Court quashes an administrative act or decision, its decision takes effect from the date that the act challenged came into effect; that is, it has effect ex tunc.

The influence of court decisions

A decision by an administrative court to quash an administrative act or decision is final in that the other courts are bound to take it into consideration in coming to their own decisions. The decisions of the Constitutional Court that are published in the Official Journal bind the executive authorities, the legislative powers and the judicial authorities as well as the administrative authorities.

The administrative courts follow the precedents of the Council of State.

Certain ministries and administrative bodies comply with administrative decisions. Others, on the other hand, continue to ignore the decisions handed down by the courts. This is notably the case when the acts or decisions in question are political in nature.

If there is disagreement or inconsistency between the decisions made by the several divisions of the Council of State, the question is debated before the General Assembly for the Harmonization of Precedents so that a definitive solution may be agreed and decided.

## CONCLUSIONS

In all the countries considered administrative judges have jurisdiction to make decisions with regard to administrative acts or decisions to the extent that they affect individual rights. In many countries this jurisdiction may be extended so as to cover rules and regulations (règlements) of a legislative nature.

One may propose the principle that, as a general legal rule, if an act is quashed it disappears from the date of the legal order declaring such, irrespective of whether the act challenged is reglementary in nature, and therefore general in character, or is merely an administrative act or decision which affects individual rights only. Such a judgment has, then, effect erga omnes and ex tunc.

Court decisions rejecting applications made before it take effect merely inter partes.

The fact that some legal systems are divided into separate administrative and non-administrative courts has no effect on the general principles explained above.

As to the effect of a modification in the law applicable to a case during the hearing of that case one may note that, with the particular exception of Switzerland, such a modification leaves unchanged the situation as it existed in law and in fact at the time the administrative act or decision was made.

As a general rule, one may assert that, with only a few exceptions, all the countries studied respect the rules of international law irrespective of whether they are actually recognised as a source of law in the national legal system.

## III
## ENFORCEMENT OF THE DECISIONS OF THE COURTS

a) The attitude of the authorities.
b) Forced enforcement.
c) Difficulties, reasons, remedies, reactions.

### FOREWORD

It goes without saying that the general aim of any judgment is that it be applied, otherwise such would be of purely theoretical and academic interest, and that the primary aim of such judgments is to establish, or to re-establish, the law.

This is quite obvious with regard to the relations that should exist between the judiciary and those coming before the private law courts in order to seek redress, but is not so immediately obvious with regard to the relations that might exist between the ideal of the rule of law and the reality of public power and authority. Within the organization of the State machinery the public authorities seem to consider themselves to be on an equal footing with the judicial power and therefore refuse to submit to its decisions.

Thus, besides the manifest bad faith with which they sometimes act, the public authorities often tend to protect themselves in law, or by other means against the courts' decisions and especially those of the administrative courts, which are often, moreover, in organizational terms at least, derived from the executive.

A study of the way in which the AIHJA Member States apply the courts' decisions should be instructive in this respect.

### ALGERIA

a) In Algeria the administration is bound to respect the decisions of the courts.

b) When, however, judgment is given against the administration, such a decision cannot be enforced in the same way as other judgments, not least because public property may not be seized. It is customary that the administrative courts do not declare injunctions against the State.

c) Where the administration acts in bad faith, the applicant to the Court may require that all administrative decisions or acts which are in contradiction with the

decision of the Court be quashed and the administration condemned.

d) In practice the enforcement and application of the decisions of the administrative courts is unsatisfactory, discourages those applying to the courts and propagates the idea that the administration is above the law.

## BELGIUM

a) The attitude of the authorities

In many cases the administration does not execute the decisions of the courts spontaneously. In cases where the annulment of a decision does not create a gap in the law, the administration rarely considers itself concerned by the case again.

The administration often encounters real difficulty in the execution of the judgments handed down by the courts, most frequently because of the slow progress of proceedings before the administrative courts.

The legislator also sometimes interferes with the enforcement of the decisions of the administrative courts by ratifying administrative acts or decisions which have previously been quashed by the Council of State.

This approach has been severely condemned by the legislation division of the Council of State.

b) Enforcement difficulties

Belgian law provides that persons and bodies subject to public law enjoy a privilege which protects them from the enforcement of certain decisions and which is claimed particularly with regard to decisions which might otherwise require an order of forced performance.

This privilege, justified on the grounds that public services must be allowed to continue without hindrance, is severely criticized by certain academics.

c) The system of forced enforcement

- Some laws force public persons and bodies subject to public law to register in their accounts, should the case arise, the debts that result from adverse judgments handed down by the administrative courts, the respect of such orders being subject to the scrutiny of a supervisory authority. Others oblige such persons or bodies to apply any decision of the courts which has been given in final instance, again the respect of such being subject to the possible scrutiny of a supervisory authority.

- The applicant may, in the case where a Council of State decision has not been applied, apply to the non-administrative courts so as to obtain reparation of the loss suffered, and he may also request the annulment of the new administrative decision which has been taken notwithstanding the previous final and adverse judgment of the court.

- A law passed on 17 October 1990 has introduced several important amendments to the procedure to be followed before the Court's administrative divisions and which aim to reduce the length of proceedings in cases where the applicant applies for the annulment of the administrative decision or act. This same law introduced the possible imposition of periodic fines on the administration so as to combat its reluctance to apply the Court's judgments.

- The law of 19 July 1991 provides an urgent reference procedure, which allows the Conseil d'Etat to suspend the carrying out of a particular act or decision by the administration when this act or decision is likely to cause the applicant serious loss or damage and which would be very difficult to repair once incurred.

## COLOMBIA

a) The attitude of the authorities

The administrative authorities have no choice but to respect the decisions of the administrative courts. The administration has a period of thirty days in which to take all measures necessary to comply with the judgment of the administrative courts.

b) Forced enforcement

If the administration is ordered to pay a sum of money to the other party, the latter may apply to the non-administrative courts for an order that the judgment be enforced.

c) In general the enforcement of the court decisions does not pose any particular problems, the main difficulty being the insolvency of the debtors.

The system of enforcement

So as to ensure that the decisions of the administrative courts are enforced, the law provides for a series of measures; notably it lays down sanctions to be applied against civil servants who comply to administrative court judgments too slowly or do not comply at all.

Public opinion

In Colombia public opinion expects the decisions of the administrative courts to be applied promptly.

## EUROPEAN COURT OF JUSTICE

a) The enforcement of the Court's decisions does not seem to have posed any particular problem since the Community institutions have always taken the steps necessary to ensure such.

b) There is no system of forced execution in respect of the Court's decisions. By virtue of Article 176 of the Treaty, the institution concerned is compelled to take all steps necessary for the proper application of the Court's decisions.

If the institution concerned does not take the necessary steps, the persons concerned by such an omission may apply to the Court for reparation of any damage or loss suffered as a result.

Attachment orders and orders affecting the property belonging to the Community may be made since such property does not enjoy absolute protection.

## FINLAND

Simple notification of the court order may be enough in itself to ensure enforcement. More often than not enforcement is ensured by coercive measures.

In principle, a court order or decision need not be executed until all possible avenues of appeal and challenge have been exhausted. With regard to municipal cases, however, decisions of the court may be applied before judgment has been given in final resort.

If the administrative court judgment is not applied voluntarily, the law authorizes the different authorities concerned to use various coercive methods of enforcement (conditional fines, threat of enforcement).

## FRANCE

### a) Attitude of the authorities

The great majority of the decisions of the administrative courts are applied and respected without difficulty. The number of applications claiming that decisions have not been applied has, however, increased over the last fifteen years. Putting aside bad faith on

the part of those involved, the principal cause of this state of affairs is to be most frequently found in the complexity of the decisions and the lack of legal knowledge of many of the persons and bodies subject to public law.

b) The enforcement system

A Decree passed on 30 July 1963 provides for a mechanism that aims to prevent administrative court decisions being ignored and to encourage such to be applied. A separate division of the Council of State has, indeed, been created so as to ensure that this aim is attained.

An Act of Parliament passed on the 16th of July 1980, which has been completed by an Act of the 30th of July 1987, reenforced the above stated provisions, by adding coercive measures.

The parties who benefit from judgments ordering persons or bodies subject to public law to pay periodic fines, may, thus, effectively oblige them to respect court orders and making them pay.

This law has also given the Council of State the opportunity to impose periodic penality payments i.e. compelling fines on persons or bodies subject to public law, and, in more general terms, on private persons or bodies which are in charge of running public services, so as to ensure the implementation of judgments that are made to their detriment by administrative courts.

All those measures have worked out to be efficient, since they have solved almost all implementation problems. The number of complaints which the Council of State is dealing with, has decreased ever since, for this number represented 1,6% of all the judgments made by the administrative courts in 1988 and represented only 0,95% in 1991. The average period of time which is required to solve implementation problems, is, as well, constantly diminishing.

## GERMANY

a) Attitude of the authorities

In general the administration respects the principle of the rule of law and applies the decisions of the administrative courts without direct outside pressure. The administration strives to apply or respect each decision in its entirety.

b) System of enforcement

The decision of a court which quashes an administrative act or decision effectively declares the law and is enforceable as it stands without the need for any other measure to be taken. Such enforcement measures are, moreover, very rare since an application requesting that an act be quashed generally suspends the effects of the act or decision challenged which therefore prevents the administration from imposing "faits accomplis".

Problems of enforcement only really occur in those cases where the application brought before the court does not have a suspensory effect on the act or decision challenged. In such cases when the administrative court declares an act or decision annulled it may, upon an application by the interested party, specify the way in which the administration must apply its judgment.

The administrative courts may oblige the administration to take a decision or carry out an act that it had previously refused so to do. Such a court order may be accompanied by the imposition of a periodic fine and forced enforcement.

As a general rule the Code of Civil Procedure may be relied upon even in administrative matters so as to ensure that the decisions and judgments of the administrative courts are enforced against the State according to the method provided therein, although such enforcement may not be applied against the property of the State or local government which constitutes public property.

The Code of Civil Procedure provides a specific measure to be used so as to encourage the administration to comply, voluntarily, with the decisions of the courts. The court must, before deciding on what enforcement measures to adopt, inform the administration of the decision it intends to pronounce and accord a specific time-limit in which the decision should be applied.

c) Practical difficulties

On certain rare occasions practical difficulties occur in the enforcement of judgments. Thus, the application of a decision may be very delicate for the administration when the dispute concerns politics in some respect.

By way of amendment of a text, the legislator may, without flouting the constitution, correct a precedent it considers inappropriate or mistaken.

The suspensory effect of an application requesting that an administrative act or decision be quashed means

that the applicant avoids an administrative "fait accompli", and yet the administration's work is not impeded excessively.

## GREECE

The public authorities are bound to apply the judgments of the administrative courts in the same way as any other person.

If the administration fails to apply a judgment of the court, given in final resort, such amounts to an unlawful use of power and will incur the civil liability of the administrative body or person concerned.

Since no proper study has been carried out it is not possible to determine whether the decisions of the administrative courts are applied, in general, or not. It would seem, however, that in the large majority of cases the administration applies the decisions of the courts.

Public opinion still seems to feel, none the less, and however such an opinion is mistaken, that in most cases the decisions of the courts are not enforced. This may be explained by the fact that when a decision is quashed on grounds of procedure or form, the same substantive decision may still be taken thereafter, as long as form and procedure are properly followed.

Complete satisfaction or execution is often difficult to achieve because a relatively long time may elapse between the date on which the administrative decision was taken and the judgment of the administrative court.

Forced enforcement is frequently unavailable and this encourages implicit or frank refusal to apply the decisions of the courts.

## ISRAEL

### a) The attitude of the authorities

Never in Israel's legal history has a judgment pronounced against an administrative authority been ignored, despite the fact that the courts may not declare injunctions.

### b) The system of enforcement

Despite this fact, a forced enforcement mechanism does exist. The Minister of Justice has, moreover, provided, by decree, for a progressive procedure aimed at ensuring that the government applies the decisions of the courts.

The Organic Law lays down the way in which the decisions of the special administrative courts may be enforced.

The "Contempt of Court Ordinance" gives certain courts jurisdiction to impose fines on a public authority or imprison a civil servant should they refuse to apply a judgment ordering them to do or not to do a particular act. Such jurisdiction applies both to public and private persons, without distinction.

c) The enforcement of the decisions handed down by the judicial courts, unlike that of the administrative courts, is not always easy, especially with regard to actions seeking the payment of sums which have already been ordered by the court.

## ITALY

### a) The attitude of the authorities

The attitude of the authorities must be considered from two points of view: that of the parties to an action and that of third parties whose rights may be affected by an administrative decision.

In this latter case, the Council of State's decisions set precedents and are taken into consideration by the administration. If the central authority considers it appropriate it may propose that the principles declared in the precedents be adopted in law.

A judgment will normally bind the parties to a particular case. Even in this case, however, the enforcement of such a decision depends on the attitude of the authorities.

As for the application of the judgments of the administrative courts that are given against the public authorities, current data and resources do not permit any accurate appreciation to be made as to the administration's diligence and good faith in this respect.

### b) The system of enforcement

As soon as a judgment has been given against the administration in final resort, be it civil or administrative, the administrative courts have jurisdiction to deal with their enforcement.

The Council of State may impose an injunction or even appoint a "commissioner ad acta" who is empowered to comply with the judgment on account of and instead of the public authority concerned.

Forced enforcement of judgments is not always easy because the authorities are frequently called upon to take another decision. In other cases enforcement is complex and complicated.

## IVORY COAST

Even though the administrative court judgments that are given in final resport should be respected both by the administrative authorities and the private individuals concerned, some administrative authorities seem to consider that such constitutes a hindrance to the proper working of the administration and therefore resist their enforcement.

Of the 13 judgments annulling administrative acts or decisions between 1987 and 1990, 6 have still not been applied. The refusal to comply, or bad faith of the administration, is encouraged by the fact that there are no procedures available that provide for the forced enforcement of decisions given against the State.

Even when enforcement procedures are open to the victims of a refusal by the administration to apply a judgment, they do not bother to use them because of the difficulties and slow nature of such.

In fact the application of the decisions of the administrative court depends ultimately on the will of the administration itself.

## LUXEMBOURG

### a) The attitude of the authorities

In the great majority of cases the administration takes all steps necessary to ensure the proper application of the decisions of the courts that quash administrative acts or decisions.

It may happen, however, that because of legal, technical or even budgetary reasons, the administration does not properly perform the decisions handed down.

It may thus occur that in the case of a dispute concerning the allocation of public contracts, the annulment decision is only pronounced after the completion of the work in question. In such a case the applicant could, nevertheless, bring a successful action for damages before the civil courts.

b) The enforcement mechanism

The provisions of the law, passed on 25 February 1986, dealing with the enforcement of the decisions of the "Comité du Contentieux" (Litigation Committee) give this court the discretion to empower a special commissioner to take the decision required to ensure that a decision quashing an administrative act is complied with. The Committee may use this discretionary power if the applicant makes a request to that effect and if the administrative body concerned refuses or fails to comply with the Committee's judgment. This method of enforcement may not be used, however, if the Constitution has reserved the decision in contention as part of the exclusive power of a particular body or organ.

Thus, for example, Article 35 of the Constitution reserves the appointment of a civil servant to the Grand Duke, and thus this privilege may not be accorded to another party or body should he not carry out his functions as specified.

Luxembourg law does not provide for the forcible enforcement of court decisions against those persons or bodies subject to public law.

This principle implies that the State and local authorities are ultimately impervious to the decisions of the courts and such a state of affairs could be considered contrary to the ideal of the rule of law. In fact, the local authorities always honour their obligations in respect of any judgments made by the courts.

## THE NETHERLANDS

a) The attitude of the authorities

Consideration of the information available to us suggests that the attitude of the administration towards the decisions of the administrative courts in generally favourable. One should, however, note that the fact that a decision has been quashed does not always mean that other decisions producing the same effects cannot be lawfully taken, after better preparation.

b) The enforcement mechanism

There is an enforcement mechanism and even though it is quite complicated it does not appear to present any major problems in practice.

Often the Council of State's decisions are enforced thanks to the intervention of the non-administrative courts only.

Since the refusal to comply with the decision of an administrative court is deemed to be an unlawful use of power, such gives the applicant the right to make a new application before the Council of State.

Finally, Dutch law provides for a special additional procedure which allows an injunction, accompanied by a periodic fine, to be imposed in order to force compliance with a court order.

## POLAND

### a) The attitude of the authorities

With regard to the attitude of the public administration and the decisions of the Supreme Administrative Court, one must make a distinction according to the nature of the judicial decisions.

A decision which quashes an administrative act or decision has direct effect. On the other hand, decisions which require that another decision be made are often not enforced or are only enforced after an excessively long period of time.

It is possible to obtain damages if the public authorities refuse to comply with a decision.

It is possible to bring an action before the Supreme Administrative Court to force the administration to act should it prove to be slow or reticent to comply with a court order.

The administration often has a very negative attitude towards the decisions of the courts and one still comes across legislative attempts to exclude the power of the courts to review the legality of the acts and decisions of the administration, although the Supreme Administrative Court strives to defend its power of control.

### b) The enforcement mechanism

Polish law does not provide for any legal methods of enforcement.

### c) Practical difficulties

Practical reasons frequently explain the slow application of the Supreme Administrative Court's judgments.

The current reorganization of the administrative machinery is another practical difficulty which explains the slow compliance with the court's decisions.

Through disucssions with the public authorities and co-operation with the administration, the Supreme Administrative Court is striving to improve the current state of affairs in Poland.

## PORTUGAL

It is customary for the Portuguese administration to apply the judgments of the administrative courts. In the rare cases where such compliance is not readily forthcoming, the Court will enforce its previous decision by specifying exactly how it should be applied.

When the administration experiences difficulties, real or otherwise, in the application of a particular judicial decision it may seek to escape the effects of the decision. If, however, the Supreme Court does not agree that the difficulties exist in reality, the administration will generally comply with the court order.

Public opinion, encouraged by the mass media, is very sensitive to the problems experienced by the courts in enforcing their decisions against the sometimes reluctant administration.

## RUMANIA

### a) The attitude of the administration

In general the authorities comply with the decisions of the courts, including those of the administrative courts.

Some of the decisions which are made against the administration are not, however, complied with because the usual enforcement procedures do not apply.

What is more, public property may not be seized or distributed. Finally, because compliance with such decisions sometimes requires co-operation between civil servants and law officers, acting under the orders of the executive and the administrative authorities, the court's judgments may, theoretically, exclude the participation of these authorities when the decision is to be applied against these very authorities themselves.

### b) The enforcement mechanism

Given these circumstances, the legislator has provided, in the law relating to the review of

administrative acts or decisions, for a number of special measures aimed at persuading the administration to comply with the decisions of the courts. The courts have thus been given jurisdiction to impose periodic fines on the administrative authority concerned.

Furthermore, should the administration fail to comply within 30 days, the case may be referred to the Council so as to obtain compliance.

Both public opinion and the administration accept the necessity of forced enforcement procedures and support measures which facilitate the implementation of such.

## SENEGAL

### a) The attitude of the administration

Some administrative court decisions are not complied with or are inadequately applied.

The difficulty in obtaining compliance is a reflection of what might be called the paradox of administrative law. Police power is not on the side of the judiciary who, therefore, do not have the means to force the administration to comply with its decisions.

### b) Problems in ensuring enforcement

Difficulties also result from serious problems that compliance with the administrative court's decisions may pose the administration, particularly problems related to budgetary restrictions.

Non-compliance may be tacit, for example stubborn inertia of the administration, or the introduction of new measures rendering the judgment obtained inapplicable.

### c) The enforcement mechanism

Although the key to the system is that the personal liability of the civil servants concerned is incurred, economic conditions or the hierarchical level of the officer refusing to comply means that the application of this system is difficult in practice.

Public opinion provides the most effective guarantee that court decisions will be complied with or enforced.

The introduction in 1992 of a mediator might also encourage compliance with the administrative court decisions.

## SPAIN

### a) The attitude of the authorities

The administration often hides behind the self-compliance mechanism. In practice, the administration does very little and moves very slowly to accept compliance with court judgments, notably by hiding behind the time-limits for compliance which are accorded to the administration.

The administration has developed the habit of sometimes taking the same decision as that previously quashed by the court, but under a different legal form.

What actually amounts to compliance of court decisions has been clouded, moreover, by the Organic Law passed on 2 July 1987.

### b) The enforcement mechanism

The judge has jurisdiction to order whatever measures he considers necessary to obtain compliance with court judgments. He can order that the judgment be applied at the administration's cost, and even sollicit the co-operation of persons or bodies, public or private.

### c) Enforcement difficulties

The enforcement of court judgments, be they administrative or civil, is sometimes hindered by the prerogative which prevents the administration's rights, funds, goods and property from being seized.

The privilege that finances are not distrainable is, however, not laid down neither in the Constitution nor in the Organic Law concerning the judiciary, although mention is made of public property. Such uncertainty adds to the enforcement difficulties.

Some legal solutions to these problems are currently envisaged by the public authorities, but have not yet been enacted.

## SWEDEN

### a) The attitude of the authorities

In general, and at least with regard to State administration, administrative court decisions are scrupulously complied with and applied. Some municipal authorities have not, however, always complied with judgments annulling their decisions.

It should be pointed out that neither the administrative courts nor the administration itself are obliged to comply with the decisions of the Supreme Administrative Court. The latter's precedents do, however, have great persuasive authority.

b) The enforcement mechanism

There are a number of different enforcement procedures that the administrative courts may apply. Judgments accompanied by periodic fines may be imposed in certain cases.

Finally, the contempt of court procedure may be used against the party that fails to comply with planning regulations.

## SWITZERLAND

a) The attitude of the authorities

The decisions of the administrative courts are, as a general rule, and despite any misgivings that the administration may have, properly complied with by the relevant authority.

The reasons for such compliance are, firstly, that the executive has a general respect for the judiciary and, secondly, that not only are financial penalties imposed if compliance is not forthcoming, but also, the judge may himself make orders with regard to administrative action to be taken.

c) Practical difficulties

Often judgments concerning planning and construction law are not applied because of the lack of housing.

These phenomena, however, remain exceptional. Judgments concerning the right of asylum are also sometimes left ignored, and this for humanitarian reasons.

## THAILAND

a) Enforcement mechanism

An Organic Law provides that the Juridical Council must ensure that the decisions made by the public authorities and civil servants are respected, but only after the Prime Minister has decreed such order as provided by the law.

A special department, based on the French model, was created first to ensure that this law was applied. The specific role of this department is to ensure that the decisions of the courts and the Prime Minister's decrees are applied more quickly and efficiently.

Lack of staff has, however, meant that it has not really achieved what was expected.

Recently, the Juridical Council proposed a bill to the Prime Minister aiming to ensure the proper application of such decisions, notably providing for the application of the above-mentioned enforcement procedures.

In 1985 the Government approved this bill and submitted it to this scrutiny of the Juridical Council.

The public authorities have still not, however, taken any steps with regard to this bill.

The last cabinet had prepared, in 1989, a different bill providing for the institution of a real separate Supreme Administrative Court.

The political changes that occurred in 1991 meant, however, that these suggestions had not been applied.

The provisional Government is not currently very optimistic about the prospects of a future modernization in the Thai law applicable to administration, which should nevertheless be improved very soon.

## TURKEY

### a) The enforcement mechanism

The administration must make a decision or take some form of action within 60 days, depending on the decision of the administrative court. The decision of the court must be complied with notwithstanding any procedure or challenge that is made against it.

When the Court has powers of review, the ..... may apply for payment either to the body ensuring the decision is complied with or first to the administration itself. In practice, the administration will comply with a judgment without the need for a compliance application to be made.

The administration is obliged to comply with the decision. Since there is an absolute obligation to comply with the court's judgment, the administration may not avoid its obligations by payment of damages.

If, within 60 days, a judgment has not been complied with, the person concerned may bring proceedings against the administration, before the administrative court, and against the civil servant concerned, before the non-administrative court.

b) The attitude of the authorities

The administration authorities do not look kindly on judgments which are given against them, especially those which quash their decisions.

The administration considers, for example, the decisions which quash decisions making appointments of particular persons to particular posts, has a judicial intervention into an area which is a matter for administrative, rather than judicial, discretion.

## UNITED NATIONS

a) The attitude of the authorities

The administrative authorities of the United Nations have always complied with the administrative court judgments.

Sometimes the judgments in question include recommendations which, it must be said, the administrative authorities are not always in a hurry to apply. They do, however, always comply to the letter with the different aspects of the actual judgment itself.

The administration has the discretion either to comply with a judgment or to pay damages instead.

b) The enforcement mechanism

There is no forced enforcement mechanism. Such has never been necessary in practice.

## CONCLUSIONS

The manner in which the decisions of the administrative courts are applied depends on the legal, or other, methods available to those relying on the judgment.

The efficiency of these methods depends, above all, on the degree of legal protection that the countries concerned allow citizens in their relations with the public authorities.

One may note, however, that in general the public authorities apply the decisions of the courts.

If the authorities concerned are reticent to comply with the courts' judgments, there are often procedures available, notably periodic fines, which may be used to persuade proper compliance.

In other countries, those concerned may challenge the administrative authorities before the courts should the judgment be ignored.

One must note, however, that with a few exceptions, administrative court judgments are not always complied with and enforcement of such decisions could be improved.

The reports submitted by different countries show, moreover, that nearly all the countries concerned are currently seeking to reinforce the means presently available in law, to force the administration to comply with the decisions of the administrative courts.