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THE ACCESS OF THE PUBLIC TO ADMINISTRATIVE JURISDICTIONS

GENERAL REPORT

BY Mr. Kamel GORDAH

Mr. President, Ladies and Gentlemen,

The well-organised society, in the words of R. David, is that in which the rule of law is both established and assured (1).

That is why the way in which individuals take a stand against the overwhelming power, the abuses and misuses of administrative authority, and the occasional slackness of the administration, offer a valuable yardstick as to the operation of the rule of law in a given society and beyond that, to assess how well-run that society is.

The guaranteed right to justice for all, and more especially the right to administrative justice, whose task it is to govern and moderate the relations between individuals and the administration, and to bring under judicial scrutiny all administrative acts and decisions judged to be unlawful, are amongst the criteria for claiming that a State really is "subject to the rule of law".

To assist it in its task of applying a profilerating jumble of legislative provisions, the administrative system has an inexhaustible arsenal of statutes, regulations, decrees, orders, circulars and decisions of every shape and size.

The State, playing an ever-increasing role — despite the occasional 'voices in the wilderness' crying for less State intervention — intervenes daily in all areas of the individual's public and private life. Its growing role in economic planning, social and cultural affairs, the growing pace of urban development, major local and regional infrastructural projects, add to the often coercive machinery of intervention at its disposal. Today, more than ever before, electronic data processing and the ability to cross-reference data and information by computer have handed the administration a powerful and dangerous means of interfering ever further with the private lives of ordinary people. Nor is this 'Big Brother' system, as oppressive as it is omnipresent, immune to the risk of abuse.

This is not to say that the individual is defenceless before this might. More sensitive to slights and better informed, he is less inclined than ever to bow meekly down before Authority; aware of his rights, steered through the administrative maze by the host of voluntary bodies, associations and trade unions backing his stance against the whims of bureaucracy, he mounts a determined assault on "Fortress Administra-

(1) R. David. Le dépassement du droit et les systèmes de droit contemporains, in Archives de philosophie du droit et de sociologie juridique, 1963, p. 4.

tion". Clearly, in a "nanny" administrative system with responsibility for the individual from cradle to grave, its acts, no less than its omissions, must from time to time be the source of frictions, recriminations, even complaints and legal proceedings. It is a rare individual who, some day, will not come up against the petty annoyances of the administration.

The question we must ask ourselves, therefore, is what 'bankable assurances' does the individual have against arbitrary administrative action ?

The signposts pointing the way to the means available to the individual to check the abuse of power must be looked for in effective 'on the ground' practicalities. To defend the individual against the State, to reconcile discretionary powers with the protection of individual rights, to steer a course between the tyranny of the one and the anarchy of the other — that is the solemn duty conferred upon administrative justice. And that is why it is essential to determine the extent to which the judicial review of administrative action assures effective protection for the citizen.

It is, therefore, to a thoroughgoing analysis of the precedent developed by administrative courts and tribunals and the objective study of the techniques upon which it is based, that we must look for evidence as to how far the various systems as they presently operate meet the expectations of individual users. Above and beyond the abstract and impersonal legal rules, and the geographical, cultural, social and economic particularities, it is daily custom and routine practice which show the political systems of our countries in their true colours, and the law really applied there.

While it has been no easy matter to do full justice to the contributions made by all the national reports submitted by sixteen administrative jurisdictions, I would ask you to bear in mind that, with one or two exceptions, the reports which will be circulated to you — and are ultimately destined for publication — were received only during the second quarter of 1986. The short time then available to me, compounded by the complexities and difficulties of a frequently concise translated version, left no time for a thorough scrutiny of the reports with a view to identifying the key practical features of systems or provisions particular to certain countries.

Judicial review of administrative action is a universally-accepted principle, even if it varies widely in scope, organisation and effectiveness

from one jurisdiction to another. Its definition and appraisal depend on a number of factors: the area to which it applies, the way in which it is organised, the procedure to be followed, and the powers of the court. The topic proposed for discussion at this meeting revolves around two core questions: within what limits, and subject to what conditions, does the individual exercise his acknowledged right to bring before the court a dispute between himself and the public authorities? We need to know how and to what degree the positive law of a country enshrines the principle of the legality of administrative acts in the relations between the administration and the public. What, in fact, would be the point of conferring individual rights if, in practical terms, the administration were not subject to secrutiny by the courts? With no way of securing real redress, remedies are pointless and assurances mere windowdressing. A remedy in the hand is worth two on the statute book. And the only way to assess the effectiveness of a rule is to examine the results of its application.

Sociological studies of administrative litigation can help deepen our understanding of the law. With its emphasis on practicalities, quantification and inquiry, sociology has a prime recording role, making a valuable addition to our store of knowledge. Side by side with the advantages of a given system, it can lay bare the same system's defects and shortcomings. Does delayed cancellation of a decision produce the same effects for the recipient as a cancellation in time? Do certain types of administrative act fall outside the scope of judicial control? Who institutes proceedings? Sociological studies have the merit of determining how far a court is capable of settling litigation pending before it with a more or less reasonable delay, the extent of its powers of control, its ability — narrow or wide — to provide redress against illegal acts, and its capacity to enforce compliance with its decisions. From its attitude towards complainants, its degree of independence from the administration, the general tendency of its decisions and reasoning, it will stand revealed as either a champion of the individual against the administrative system, a shield for the administration or an impartial arbitrator. And it is on this precise point that the majority of the national reports have lapsed into vagueness. Significant lessons cannot be drawn from fragments of raw data. For example, between 1963 and 1982 the Administrative Chamber of the Supreme Court of the Ivory Coast delivered 77 judgments, 37 of them in cases of excess of powers (substantive ultra vires). Are we seriously to conclude from

this that administrative litigation is virtually unknown in Ivory Coast? It would be rash to do so without a more deep-reaching study setting the contentious administrative business in the wider context of the Supreme Court's general business. At the same time, however, we must not ignore the traditional cantonal chiefdom system, still very prevalent here, nor the great religious confraternities elsewhere.

Urgent proceedings brought before the Committee for Contentious Legal Business of the Conseil d'Etat of the Grand Duchy of Luxembourg must be brought from preparatory inquiries to final judgement within three months and, generally speaking, matters are disposed of within very reasonable delays. But can this — highly laudable — assiduity be separated from the relatively small volume of business actually handled by the court? Might we not also, in certain cases, be underestimating the part played by politicians, also effective intermediaries in the relations between individuals and the administration? Here again, I have purposely chosen to illustrate my point with an example showing how little weight can be attached to "potted" statistics.

A review of decisions handed down in Tunisia indicates that disputes fall into three broad categories: in the first of these, contentious administrative business, which accounted for 82.7% of all proceedings to set aside decisions in 1978, had fallen to 68.9% by 1984, but remained far and away the largest class of business. The second category groups together proceedings against acts of administrative agencies in economic and social matters, town and country planning disputes, and those concerning the professions; with individuals becoming increasingly aware of their rights and the possibilities for impugning municipal authorities for acting beyond the scope of their powers, town and country planning disputes are increasing to a marked degree.

Conversely, individuals in trade and the manufacturing and service industries seem far less inclined to go to law. Of itself, this does not indicate a lack of confidence in the administrative courts so much as the frequent reluctance of the individual to antagonise the administration in the risk of adversely affecting the normal tenor of his relations with it. Despite that, this area of litigation is steadily rising — from 11% in 1978 to 19% in 1984. Finally, the third category contains challenges to traditional administrative activities in matters of the general maintenance of law and order, civil liberties (freedom of the press), etc... The volume of litigation in this class, it must be emphasized, is derisory: in 1978 it accounted for a mere 1.2% of all applica-

tions to set decisions aside, and decreased by a marked 0.16% in 1984.

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I should like now to move on to broach the series of questions selected as the general theme for this meeting, and which relate to the access of individuals to administrative jurisdictions. To facilitate matters, I propose to keep to the plan or outline suggested by our Secretary General and to which the authors of the national reports have by and large adhered.

Two classes of questions were formulated, which led to the setting up of two committees, the third committee being principally concerned with scrutinising possible amendments to the constitution of our Association.

I shall begin by sketching out the identifying features of the broad classes of complainant as they emerge from the answers given, moving on from there to an appraisal of the extent to which they exercise their right to challenge administrative acts before the courts, having regard to the maxim that rights and freedoms "are eroded only when not used". I shall then go on to consider what type of administrative acts can be contested before the courts, in an attempt to delimit the scope of judicial control of the administration. I shall conclude with a review of the procedure and conditions in which proceedings are commenced in administrative courts and the obstacles preventing or restricting access to administrative justice.

One final prefatory remark: in the view of the authors of the reports, the solutions drawn from proceedings to set decisions aside were rightly accorded prominence, and the theme for discussion excluded contractual or purely pecuniary proceedings.

I-WHO HAS THE RIGHT TO BRING PROCEEDINGS, AND WHO BRINGS THEM?

Generally speaking, access to administrative justice has no place for the "actio popularis" of Roman law (action in which it was in the public interest that an individual should be allowed to sue for a penal-

ty). This form of action was also known to Muslim law where it was called "heçba".

Unlike ordinary civil proceedings, however, which presuppose the existence of a subjective right 'in personam', proceedings for substantive ultra vires (excess of powers) are essentially a challenge against an administrative act tainted with illegality rather than against the administrative agency itself. Consequently, an action to set a decision aside is an objective matter, the central issue of which is the lawfulness or otherwise of the administrative act. The right to bring proceedings therefore depends on proving the existence of a special interest in the matter (no interest, no proceedings), but the admissibility of the action does not depend on a right being infringed. Such, at least, is the position in a sizeable majority of countries, including Belgium, Egypt, France, Greece, Indonesia, Senegal and Tunisia.

In contrast, some countries impose no requirement as to locus standi (recognised interest) for the bringing of proceedings, and all citizens have a recognised right to challenge the lawfulness of administrative acts in the courts. Here, we are very close to the "actio popularis", where the interest upon which the proceedings are founded is nothing more than the interests of justice. Such is the case in Colombia, where any individual or public or private body corporate — national or foreign — has a right to apply to the court to set aside an administrative decision purely in the interests of justice. The right to bring proceedings is not confined to acts of general scope, but would also appear to be available against decisions affecting individuals. Poland offers a more complex, but no less original, example. The High Administrative Court, which may not act proprio motu, is not confined to the grounds set out in the petition. It may cite other reasons for its decision than the grounds advanced by the petitioner. It is thus empowered to set aside the whole of an administrative decision of which only a part may have been contested by the complainant. The complainant's withdrawal of his action — which ousts the matter from the court's jurisdiction — may, where the contested decision is adjudged unlawful, lead the High Administrative Court to re-examine the substance of the case, on the grounds that an administrative decision in conflict with an existing law cannot be allowed to stand on grounds of public policy.

A-Who can bring proceedings?

1-a) Capacity

With the exception of the rare cases I have cited above, the requirement to show locus standi in proceedings to avoid an administrative act puts this right outside the general body of proceedings available to all disinterested public-spirited citizens.
As far as capacity to institute proceedings before the administrative courts goes, this would seem to be universally the same as for ordinary civil proceedings. It is not sufficient simply to show a special interest, the complainant must have the capacity to act at law. And while the rules as to capacity raise no problems with regard to natural persons, artificial persons must have legal personality and act through the individuals empowered to represent them.
An initial distinction must clearly be made here with the often liberal construction of the French Conseil d'Etat which has long accepted that certain artificial persons, who are without or no longer have legal personality, have the capacity to bring proceedings in administrative courts — if only to challenge as ultra vires an administrative act adversely affecting the interests it is their duty to defend.
The jurisprudence of Luxembourg administrative law interprets the matter more restrictively : artificial persons must have legal personality in order to institute proceedings. Hence, trade unions not incorporated in the prescribed manner for non-profit associations have a recognized independent legal personality, but may not bring legal proceedings. The same is true of Sweden, where trade unions and unincorporated associations have no power to challenge administrative acts in the courts except where the decision adversely affects their own interests.

b) Locus standi

Here, the position in all countries reviewed was broadly similar, with only minor variations in details. The need to prove a recognised special interest to bring proceedings is the general rule, and the court may not itself initiate adjudicatory action.
Generally, the complainant must have clearly ascertainable standing. The contested decision must directly affect the personal interest of the applicant; his interest must be genuine, neither too remote nor un-

certain, and must not be a merely contingent interest. It may, however, be a future interest, provided it is ascertainable.

As to its nature, the interest may be either material or simply moral, and while it must be a special interest it need not be peculiar to the applicant alone; it may be either private or public.

This applies only, of course, to proceedings for substantive ultra vires (excess of powers). For while here the applicant need only prove a recognised interest in the matter, in ordinary civil proceedings — which is, above all, subjective litigation — he must also prove the infringement of a legal right. Briefly, while the proven infringement of a right is not a general requirement, some jurisdictions (such as the Luxembourg Conseil d'Etat) have repudiated the distinction drawn in French law between the infringement of a legal right and an act which prejudicially affects an interest.

Finally, to conclude this section, I should like to note that the reports as a whole suggest that the existence of an interest is determined at the time of filing the application or petition. The answer to the question as to whether that interest must continue to subsist right through to final judgement is less cut-and-dried, however. The Belgian Conseil d'Etat not only requires the interest to exist at the time avoidance proceedings are commenced but, unlike French jurisprudence on the matter, requires that interest to continue throughout the entire proceedings right up to final judgement.

Such is also the case in Egypt which today, after long consideration, requires the interest to subsist through to the final court decision. In principle, however, where the interest disappears before final judgement, the court of trial will order either that the proceedings be discontinued or that the case should not proceed to judgement.

That said, a handful of particular solutions deserve comment or at least a mention, such as, for example, that of Poland, which I referred to earlier, and Colombia where proceedings for excess of powers once instituted cannot be discontinued.

2-The applicants

a) Taxpayers

Disputes concerning assessment to income tax, which a number of reports show as being markedly on the increase, deserve separate consideration as a case apart.
French, Greek and Tunisian taxpayers have two distinct avenues of redress open to them: a strictly legal action by which the aggrieved taxpayer can seek exemption from or the reduction of the taxes for which he is chargeable. In such proceedings, the taxpayer must prove a material interest and a pecuniary right which has been infringed. In addition to this, the taxpayer also has the right to challenge a tax regulation for excess of power in defence of an interest arising out of his capacity as a resident in a municipality or as a taxpayer in a 'département'.
Belgian, Portuguese and Swedish jurisdictions, in contrast, will only allow applications from taxpayers within a municipality to challenge an administrative act on the grounds of ultra vires where they can show that interests peculiar to them have been prejudicially affected. In these countries, the taxpayer has no standing per se to commence proceedings in the general public interest.

b) Users of public services

The authors of the reports in the main glossed over this aspect of the question. However, subtle differences in approach to the solutions adopted did emerge from the indications given, and careful distinctions must be drawn. The French report notes that this category of applicant has the locus standi to challenge measures concerning the organisation and functioning of public services of which they are users on the grounds of excess of powers. This solution, which initially referred to a local public service, was subsequently extended to users of national public services. A user of the telecommunications authority's services, therefore, would have the locus standi to contest a decree raising charges for those services. Greece offers a similar solution. The Belgian answer is more restrictive: the user of a public service has locus standi only insofar as the act alleged to be ultra vires has a direct effect on his rights and obligations. Hence, the user may challenge the rates charged

for public services, but not their organisation, for that would be considered a "popular action". Contrast this again with Italy, where the user of a public service cannot bring proceedings for excess of power since what interest he may have is not considered sufficiently personal to give him standing.

c) Public servants

Public servants may challenge in the administrative courts individual decisions which prejudicially affect their careers. A public employee may thus bring proceedings for excess of powers not only against specific administrative acts affecting his occupational position (transfer, assessment, disciplinary proceedings, promotion, termination of service), but also against regulatory acts adversely affecting the rights and privileges of the service to which he is attached.
In contrast, he has no locus standi to challenge regulations governing the organisational structure of the public service by which he is employed or the orders of his hierarchical superiors concerning the performance of public services. Generally speaking, therefore, the public servant and the user of public services do not have the same locus standi to bring proceedings for excess of powers.
Proceedings for the setting aside or annulment of such acts are an available remedy in the majority of countries. Less favourable remedies are the rule among others. An illustration of this is Colombia where, with the exception of removal from post, decisions relating to the discipline of public servants fall outside the jurisdiction of the administrative courts.
A like restriction can be found in Ivory Coast, where access to the jurisdiction of final instance, for public servants, appears confined to established officials.
In Sweden, disputes concerning the service regulations and careers of civil servants are part of general employment legislation and thus, here also, are outside the competence of the administrative jurisdictions.

d) Regional and Local Authorities

Regional and local authorities everywhere appear to have the necessary recognised locus standi to challenge administrative acts by which they are affected — whether such acts originate from central authorities or

another regional or local authority — provided the acts affect their existence, organisation, privileges or assets, and their interests are adversely affected thereby. Pride of place in this area of litigation is held by proceedings for ultra vires brought by regional and local authorities against acts of the administrative supervisory authority. The sole reported exception is Finland, where regional and local authorities have no right of appeal against decisions setting aside or reversing their decisions.

e) Legal Persons

As a general rule legal persons constituted under private law — such as trades and other unions, associations, friendly societies, federations, etc. — for the collective defence of their members' interests have a legal right to a remedy provided the proceedings for cancellation of a decision are in the interests of all or some of their members, and in the latter case provided they do not prejudice the interests of other members. A purely personal interest, therefore, offers no standing for proceedings by the body corporate. In other words, if the administrative decisions are neither regulatory nor collective but purely individual, their lawfulness cannot be challenged by the body corporate unless the special interest claimed is also a collective one. The Italian rapporteur notes that pressure groups may not challenge in court administrative decisions which do not adversely affect them.

f) Foreign nationals

The reports as a whole emphasize the right of foreign nationals, whether natural or legal persons, to apply to the administrative courts subject only to the general rules as to the admissibility of actions. Thus, a foreign individual may contest a decision to deport, extradite or refuse him asylum, whilst a foreign body corporate may challenge a decision to dissolve or wind it up. With the exception of Italy, where access to the courts by foreigners is statutorily subject to the existence of reciprocal agreements, no other countries impose restrictions contingent on the nationality of the applicant.

B-Who brings proceedings?

Generally speaking, what stands out here is the absence of any systematic sociological study of this question. Some reports — France, Ivory Coast and Italy, for example — report occasional studies, but they are few and far between and, most importantly, not very recent.
Nevertheless, a number of conclusions can be drawn from the findings which emerge from the reports as a whole:
1. Natural persons are more litigious than artificial persons: for example, 82% of the proceedings heard by the French Conseil d'Etat in 1965/66 were brought by individuals, a percentage which has remained in the order of 70% of all appeals ever since, despite a slight decline in the years immediately following (1966 and 1967/68). Such is also the case with Poland, where actions commenced by natural persons accounted for 91% of all business disposed of by the High Administrative Court.
2. A notable majority of complainants seem to come from the more well-off, better-educated strata of society: thus, of those applicants to the French Conseil d'Etat who declared their occupations in 1965/66, 45% were senior managers or members of the professions, and 22% were from middle management. A circumspect analysis of the Tunisian report likewise indicates that, in 1984, 20% of complainants came from the more highly-educated, better-off sections of society, 22% from middle managerial occupations, and 40% were minor officials.
In the French example, the preponderance of complainants in the higher social categories could be explained by both financial and educational factors. And while the same reasoning would seem to hold good for at least the upper and middle managers in the Tunisian illustration, account must be taken here of the relatively flexible procedure which allows serving and retired public employees — by far the largest category to institute administrative proceedings — to file applications for accrued benefits, thus also ensuring easier access to the courts for the less privileged.
3. Proceedings concerning conditions of administrative employment head the list:
it emerges from the majority of reports that serving civil servants — with an increasing number of retired public employees — are most litigious of all. Taxpayers come second, followed by complainants

against compulsory purchase orders and other victims of urban sprawl and environmental protection interests.
This trend is illustrated by Belgium, where one third of all administrative disputes were related to civil service conditions of employment, France with one sixth of appeals, Italy with 40% at first instance, Tunisia with 68.9% (in 1984), and finally Lebanon and Luxembourg in the same category.
Having said that, I should like to conclude this section by remarking on the appreciable increase since 1980 of proceedings commenced in Belgium by foreign nationals against deportation measures, as well as in environmental cases. Italy and Luxembourg have also experienced a rise in town and country planning cases in general and environmental proceedings.

II-ACTS WHICH MAY BE CHALLENGED BY EACH CLASS OF APPLICANT

Here, the national reports clearly point to more sharply differentiated solutions intimately bound up with the very structures of our respective jurisdictions. Overall, however, they can be classed — with limited exceptions — into two broad groups: in the first, all individual and regulatory acts can be challenged with no provisos as to their nature or the administrative authority doing the contested act or taking the contested decision. Such is the case with Belgium, France, Greece and Senegal in particular. It is also the case with Italy where, with the exception of regulations made by the autonomous administrations (which can be challenged directly), applicants must bring their proceedings against the regulatory act and the individual decision taken in application of it in one and the same petition.
In the second group, only individual decisions may be contested, never the regulatory act itself.
Where no direct redress is available against a regulatory act, a complainant may still raise the exception of illegality where the decision he is impugning draws its authority from a regulation whose lawfulness he contests. Into this group fall Colombia, Finland, Luxembourg, Poland, Portugal, Sweden and Tunisia for decrees of a regulatory nature.

1 Regulatory acts

In the definition of a regulatory act, your discussions in committee emphasized its unilateral, generally-applicable and impersonal character as being what sets it apart from an individual or collective act affecting a number of people. And yet some participants pointed out a need to go beyond this strictly binary view of grading administrative acts either as regulatory acts or individual acts. In support of their argument they advanced the emergence of a new breed of acts described as non-regulatory acts, giving as an example a decree approving a development plan.

Yet other participants noted that the only acts which could be described as regulatory are administrative decisions giving rise to rights or duties exerciseable by or incumbent on individuals, as opposed in particular to unilateral acts not containing a decision, such as opinions, rules of internal management, circulars and departmental instructions...

While, in principle, all administrative legislative acts may be challenged in the courts on the grounds of ultra vires, certain acts of an interpretive nature slip through the net of judicial review. Only regulatory circulars may be reviewed on the grounds of ultra vires.

It was also pointed out, moreover, that the illegality of a regulatory act of final effect may be invoked in proceedings against another regulatory act or an individual decision taken under the regulation; this is the exception of illegality which may be raised at any time during legal proceedings. There exists another area — that of international relations or the interrelations of constitutional authorities — whose acts, irrespective of the supposition or context, are not susceptible to challenge in the administrative courts and tribunals, some jurisdictions applying here the principle of acts of State, which effectively excludes them from judicial review.

One noteworthy exception is that severable acts deriving from a diplomatic convention may be challenged in ultra vires proceedings before the French Conseil d'Etat.

That said, and with the exception of parliamentary legislation in the strict sense, which cannot be declared void by the courts, all other administrative acts: rules, autonomous decrees, implementing decrees, orders and regulations issued by deconcentrated or decentralised agencies may, subject to the preceding remarks, be challenged before the

courts or invoked to support a claim of illegality or a claim for damages against the administration.
In conclusion, it should be added that, generally-speaking, the only remedy against regulatory acts of semi-public bodies is to have them annulled, individual decisions falling within the scope of judicial review.

2-Individual decisions

These are personal in scope, concerning only the individuals actually designated in them, individually by name or in a specific order. Amongst these are disciplinary sanctions, and rosters for promotion or advancement to a higher step within the judiciary. Such administrative acts may affect several dozen individuals.
There was unanimous agreement from the participants that where review is sought of an individual act on grounds of excess of powers, the act so challenged must be a legal act of a unilateral nature, enforceable, and imposing a legal burden.
Proceedings for annulment of such decisions, which may be explicit (positive) or implicit (negative), are subject to the same conditions as those in respect of regulatory acts.
It should also be noted that the exclusions concerning rules of internal management and governmental acts are generally applicable here also in the same conditions as for regulatory acts. To these exclusions should perhaps be added invitations to tender, automatic public tendering, tenders for works, decisions to award public contracts, etc...
It was also specified that a preliminary objection of illegality cannot be raised against a separate individual act during proceedings to challenge a named individual act.
Individuals in Poland more frequently challenge decisions affecting housing, town planning, taxation, farming and customs matters, while State-owned companies and cooperatives most often come to court over income tax, protection of the environment and water resources policy.
In Lebanon, public servants are by far the largest class of administrative litigants, followed by civil engineering contractors and taxpayers.
In Luxembourg, appeals by serving and retired civil and public servants have increased to unexpected levels in recent years, making disputes over conditions of employment a particularly important area of

administrative litigation. These are just a few typical examples of individual decisions chosen at random to illustrate my point.

III-The preconditions for instituting formal proceedings

1) Is there a preliminary review procedure ?

Six questions were put on this topic in the questionnaire serving as the basis for the national reports. On this first question — the obligation to submit to a preliminary review procedure before applying to the courts — two classic solutions were clearly identifiable from the information provided by the rapporteurs. The codes of procedure of several countries do require individuals to seek their redress through the administration before resorting to court proceedings, although certain exceptions are provided.
In the other systems, preliminary reviews of this nature remain, generally-speaking, optional, save where positively required by statute. It should be noted, however, that in all the systems studied, both judicial control for excess of powers and disputes for the infringement of a legal right, presuppose the existence of a prior administrative decision — if necessary, one induced by the complainant himself.

a) The obligation to seek a preliminary review

The mandatory nature of preliminary redress through the administration, as dictated by the statutory code of contentious administrative procedure making it a procedural requirement of public interest, seem to proceed from the same order of concerns: firstly, to enable the administration to clarify its own attitude to the dispute and perhaps to determine the matter in the complainant's favour (thus saving the costs of a formal trial), and failing that, to alert it to the possibility of legal proceedings being brought against it — whence the requirement for the complainant to give it the fullest details possible of his claim. This requirement also has the advantages of forestalling much litigation and preventing the award of damages against the administration or the cancelling of the contested act.
Thus conceived, the device of the preliminary review — whether internally by the agency committing the act or by a hierarchically superior body — is necessarily bounded by time limits: firstly, the delay within

which the formality must be accomplished, and secondly, the time allowed for the administration to take explicit or implicit action on it. Alongside its advantages, however, the system has manifest defects: it inevitably delays access to the courts and, more seriously still from the public policy standpoint of view, an application for a preliminary review made out of time will render a subsequent petition inadmissible. The mandatory preliminary administrative review as just outlined is prescribed in the codes of procedure of countries as dissimilar as Ivory Coast, Greece, Poland and Tunisia.
The Tunisian system, however, provides an exemption in cases where the complainant is obliged to induce an administrative decision. In such cases, preliminary review becomes optional and the failure to seek redress through the administration has no effect on the admissibility of the application.
I should like to conclude this section by remarking on another peculiarity of Tunisian law, which is that in proceedings involving monetary claims, the preliminary review procedure is again optional, with the notable exception of municipal affairs (appeal to the supervisory authority).

b) The system of optional preliminary reviews

Where he is not obliged to first seek redress, through the administration, the individual complainant may apply directly to the court. Provided he acts within the time for bringing legal proceedings, he may, at his own discretion, also appeal to the agency committing the act or its organisational superior. With rare exceptions, such an application will extend the time for bringing court proceedings, which will then begin to run from the time of the explicit or implicit administrative decision given on the optional administrative appeal. The individual thus runs no risk of being non-suited on procedural grounds.
Broadly speaking, the reports studied seem to indicate that the optional nature of the preliminary administrative review would appear to be inspired by the desire to benefit from all the advantages of the mandatory preliminary review with none of its shortcomings by giving the individual the free choice of whether or not to seek redress through the administration. The optional preliminary review is no less useful than its mandatory counterpart in acting as a sieve for redress through the courts, and seems widely used in certain countries.

That said, however, while as a matter of principle the system imposes no obligation to submit grievances to the administration as a procedural prerequisite for application to the court, certain differences are clearly distinguishable in the precise solutions adopted. Belgium, for example, offers three possible alternatives. Firstly, those where no such remedy is provided by statute: the remedy is still available unless expressly prohibited.

The rapporteur does, however, note that they are ill-received by the courts, which tend to look on them as a source of procedural complications for the notable reason that they may induce a new administrative decision, not necessarily identical to the first, which may itself become the object of a complaint. Given that, such optional preliminary reviews do not suspend the time for instituting court proceedings.

The second possibility concerns appeals to the supervisory authority. But where provision is made for such redress, the procedure is compulsory and it is only the decision of the supervisory body which may be appealed in court on the grounds of ultra vires. Where no such provision exists, however, long-established precedent exists to support the view that such an appeal — known as a 'complaint' — does suspend the limitation period for seeking judicial review.

Finally, where statute does provide for the hearing and determination of disputes by the administration, the Conseil d'Etat presumes that such proceedings are necessarily mandatory with the result that an appeal on the grounds of substantive ultra vires will lie only against the decision given at the preliminary review.

The most widely adopted system is more flexible and makes the preliminary review procedure compulsory only in certain specified instances. Such is the case with Egypt where the system of preliminary review by the administration is optional for all matters other than proceedings concerning conditions of service of public employees. The same is true of France, where redress through the administration is purely optional in all matters except litigation in taxation matters, reparcelling of land and areas where decision-making has been deconcentrated. In practice, administrative review is widely used and, with rare exceptions, operates to suspend the limitation period for court proceedings.

In Italy, the individual may also opt to bring his grievance before a superior administrative body. Where he does so, and an explicit deci-

sion is given with which he is dissastisfied, it is against that decision he must seek redress through the courts.
Italy also has provision for an extraordinary appeal to the President of the Republic with the unanimous consent of the Conseil d'Etat. This procedure precludes all redress through the courts.
In Lebanon, an application for preliminary review will always result in an explicit or implicit decision. Since the sole purpose of the procedure is to induce a decision which may or may not be challenged, it is compulsory for the applicant and poses no problems as to interruption of the time for instituting ordinary legal proceedings.
The application for internal administrative review must be made to the appropriate administrative agency whose decision is contested. It does not suspend the time within which court proceedings must be brought, from which it must be assumed (the Lebanese report is not clear on this point) that it is optional.
Luxembourg has a variety of preliminary review procedures, all of which are optional, the essential requirement being the existence of a prior administrative decision on the matter at issue on which a preliminary ruling is sought.
In cases alleging excess of powers in Senegal, preliminary review procedures are compulsory only where expressly provided by statute or regulation. Applications for annulment are admissible, therefore, only after the preliminary ruling procedure has been exhausted. Outside of such cases, complainants have the options of internal administrative review or appeal to a superior administrative agency.
The only situation in which the Swedish system provides for the possibility of a reference for a preliminary ruling, and actually provides rules to that effect, is in taxation matters.
Recent legislation also imposes on the administration a duty to reconsider a decision which, in the light of new circumstances or for any other reason, is shown to be manifestly incorrect.
In such a case, the administration must take immediate action to rectify its decision in a manner non-prejudicial to third-party rights.
In the foregoing cases, moreover, the administration is still required to reconsider its decision even if that decision is already the subject of proceedings for judicial review.
It should be noted in this respect that proceedings already disposed of by an administrative appeal court may be appealed on the merits to the Supreme Administrative Court, but only with exceptional leave, the

rule being to restrict the number of appeals sent to the Supreme Administrative Court in order to allow it to devote its time to its principal task of establishing stare decisis and unifying the application of the law by the inferior administrative jurisdictions.
Finally, separate mention should be made of the Indonesian system, where the relations between administrative authorities and citizens are governed by civil law, and where all grievances are determined by the ordinary civil courts with, as jurisdiction of final resort, the Supreme Court. While there is admittedly nothing in the Indonesian system prohibiting appeals to the administrative body whose decision is contested, or its hierarchical superior, before resorting to the courts, such appeals are not part of the procedure for judicial review and have no effect on the time for bringing a court action, the limitation periods for which are fixed by common law.

2) What is the limitation period for bringing court proceedings ?

a) Is there a time beyond which a decision is regarded as final ?

A few prefatory remarks seem in order here. Generally-speaking, the national reports studied indicate that judicial control of administrative acts is subject to limitation periods which vary from one system to another. In most of them, however, the desire to preserve legal certainty, and hence a degree of consistency in public policy, has prevailed over the desire for a seamless and chronologically unlimited control over unlawful administrative acts. Indeed, the limitation periods within which actions must be commenced are, in the main, comparatively short.
It is also of note that the majority of systems have different limitation periods for different administrative proceedings, such as disputes over taxation, ordinary legal actions against administrative agencies and proceedings alleging excess of powers.
One further remark is equally pertinent to systems with compulsory preliminary administrative review procedures, which is that the limitation periods for such proceedings do interfere with the limitation periods for ordinary proceedings, notably by postponing them.
The length of the limitation periods varies widely between systems. Where statute and regulation are silent on the matter, the courts have

tended to intervene to extend the periods to settle such matters as travel from outside the jurisdiction and force majeure.
Finally, as a general rule, the rapporteurs consider the limitation periods as being matters of public policy.
In Belgium, the periods of time within which an application must be made are fixed by law, vary according to subject matter, and are strictly enforced. In proceedings before the Conseil d'Etat, a distinction is made between :
- claims for compensation, which are time-barred sixty days after notice of rejection of an application for a preliminary ruling on a claim for compensation, or where the administration has failed to take a decision, the limitation period runs for three years from the date of such application ;
- applications to annul or set aside an administrative act, rule or decision lapse sixty days following publication or notification of the contested act, rule or decision. Where there is no requirement of publication or notification, the limitation period runs from the date upon which the applicant actually had notice of them ;
- other applications and forms of action, notably appeals, must be introduced within the particular periods fixed for them. The Belgian procedure provides for an extension of the limitation periods for persons attending from outside the jurisdiction of thirty days for persons residing in a European country not abutting Belgium and ninety days for those living outside Europe.
The limitation periods in Colombia vary between four months for a petition for annulment to two years for an application for compensation.
In Ivory Coast, court proceedings must be instituted within two months following an explicit rejection by the administration following an application for a preliminary review submitted within two months following publication or notification of the contested decision, or within four months after the inference of an implicit rejection.
However, the Ivory Coast's Supreme Court can postpone the limitation period where the applicant is impeded by circumstances of 'force majeure' ; and in the event that an applicant commences legal proceedings without having first applied for a preliminary administrative review where such is mandatory, the Supreme Court can accord him a period of grace within which to apply for a preliminary ruling, thus

putting his application in order and preventing it failing on the grounds of procedural irregularity.

The limitation period in Egypt is also sixty days from the date of publication or notification of the contested act, or the date on which the applicant actually has notice of it; there is a vast body of jurisprudence in Egyptian administrative law prescribing the precise conditions of validity of the various methods of publication of administrative acts and their service upon individuals likely to require notice of them.

There is also considerable administrative precedent for the extension or postponement of limitation periods for proceedings for judicial review. Such is the case where the applicant is under a disability (loss of capacity or imprisonment); the time for bringing proceedings is also interrupted by an application for legal aid or an (optional) preliminary administrative review.

In Finland, the limitation period for an action to set aside an administrative decision is thirty days.

In France, the general period of limitation for judicial review of administrative actions is two months, although other — shorter or longer — periods are fixed for particular matters.

The limitation period runs from the publication of the decision susceptible of being challenged on the grounds of ultra vires if in the nature of a regulation, or from its notification in the case of a decision of an individual nature. In the majority of cases, an application for a preliminary review to the agency from which the decision or act emanates will suspend and maintain the limitation period for the commencement of legal proceedings. Appeals must also be lodged against first instance judgements within two months of the date upon which the judgement is served on the appellant.

On the other hand, there are certain matters in which the aggrieved person is bound by no limitation periods whatever, notably in civil court proceedings against the administration and in claims for compensation against the Public Works agency. The jurisprudence of the Conseil d'Etat also suggests that limitation periods may not apply to proceedings against omissions to act, which cannot, under any circumstances, become final and binding, and are thus open to challenge at any time.

In Greece, proceedings for the judicial review of administrative decisions must be commenced within a specific period, failing which the decision will be deemed final and binding. There is no generally appli-

cable limitation period — they vary according to the type of action and the court or tribunal before which they are commenced.
Proceedings for judicial review commenced in the Conseil d'Etat by civil servants must, failing any express provision to the contrary, be brought within sixty days of the receipt of notice of the contested administrative decision by the party concerned. Where the aggrieved person is resident abroad, the period is extended by thirty days. Proceedings on the grounds of excess of powers must be commenced within sixty days, or within ninety days for an aggrieved person resident abroad.
The limitation period runs from the date of publication of the contested act (if in the nature of a regulation), or from its notification in the case of a decision comtemplating an individual. Failing such publication or such notification, as the case may be, the period runs from the date on which the complainant first actually had notice of the contested act.
Other particular periods are prescribed for fiscal litigation and proceedings before the various sections of the Audit Office.
In Indonesia where, as I mentioned earlier, the relations between the citizen and the administration are governed by civil law, and redress against the administration is obtained through the ordinary courts of law, the limitation period for the judicial review of administrative decisions is the same as that for civil law actions under the Indonesian Civil Code — thirty years.
In Italy, proceedings for judicial review on the grounds of substantive ultra vires must be commenced within sixty days from publication or notification of the contested decision, or from the time it came to the notice of the complainant. In claims for the recovery of debts from the administration, proceedings must be brought within five years of the date on which the right to the debt arose.
In Lebanon, applications for judicial review must be brought before the Conseil d'Etat within two months. This limitation period can be neither extended nor postponed, save in prescribed cases.
The limitation period in Luxembourg is three months from the time of notification of the administrative decision. The period is placed in abeyance where the individual exercises his optional right to call for a review of the decision by the agency or its superior. The three months' limitation period is extended by one month for persons resident outside the Grand Duchy.

General public holidays are included in the computation of the limitation period. However, where the final day of the period falls on a Saturday, Sunday, legal holiday or compensation day, the period expires on the next working day following.

Proceedings for judicial review cannot be brought before the High Administrative Court of Poland until all other avenues of redress before the various administrative courts, tribunals and inquiries provided by the code of administrative procedure have been exhausted.

The appropriate administrative organ considering a contested decision by way of preliminary administrative review has thirty days within which to alter, cancel or avoid that decision, failing which it is that organ itself — and not the applicant — which is obliged to forward the application for judicial review, together with the papers in the case and its own observations, to the High Administrative Court.

Portuguese procedure encompasses a wide range of limitation periods: from one month in cases where a preliminary administrative review is mandatory before proceedings for judicial review, to two months where the complainant is resident in continental Europe or in the autonomous regions, four months where the complainant is resident in Macao or abroad, one year is the case of the State Attorney, or where the decision challenged is an implicit rejection, and no limitation period whatever in proceedings against acts deemed void or the failure to perform a duty.

In Senegal, the limitation period for proceedings for annulment is two months from the date of publication or notification of the administrative decision concerned, or three months following notification of a decision in taxation matters. Appeals in cassation (to quash or strike down a decision) must likewise be instituted within three months from service of the decision of final effect.

Where the decision is an implicit decision of rejection, the periods are four months, and six months in taxation matters. The failure of an administrative agency to reply within four or six months, respectively, is taken to infer an implied decision of rejection.

In proceedings before the Supreme Court, the foregoing limitation periods are suspended by an application for legal aid until such time as a decision is taken on the application.

In Sweden, proceedings for judicial review must be commenced within three weeks of the service of notice of the contested decision. The application will nevertheless be maintainable after the expiry of that

period where the notice is flawed by factual errors. Proceedings in taxation matters must be commenced within two months.
Where an applicant to the Supreme Administrative Court has commenced proceedings out of time, invoking a lawful excuse or impediment such as illness, the date of expiry of the limitation period may be reviewed and extended to allow the action.
In certain circumstances, notably where the contested administrative decision or judgement of an administrative jurisdiction of first instance has final effect, the Court is equally empowered to revive the plaintiff's lapsed action and consider the substance of the complaint where such reconsideration is justified by the emergence of new circumstances or new facts, or where the prior proceedings were manifestly illegal, or where the resulting decision was attributable to criminal action or prejudice on the part of the person responsible for taking the contested decision.
In Tunisia, where an application for a mandatory preliminary administrative review is disallowed by an explicit decision within four months from the date it was filed, the complainant has a further two months to institute judicial proceedings for annulment of the decision. The failure of the relevant administrative agency to give a decision within four months is taken as an implicit decision of rejection which must be challenged in the courts within two months. Other particular periods are fixed for taxation matters and disputes involving a pecuniary penalty, fine or damages. All limitation periods are prescribed by statute; they are a matter of public policy and cannot under any circumstances be extended.
As a general rule, an individual who fails to exercice his redress against an administrative decision within the limitation period will find himself bound by it. With regard to decisions having the character of regulations in respect of which the time for bringing proceedings has expired, but which are nonetheless illegal, two questions emerged out of the discussions:
1. Can such regulations, unlawful but having acquired binding force, be impugned through proceedings to challenge an individual decision taken in application of them?
2. Can the application of such unlawful regulations be avoided, in cases other than where a preliminary objection of illegality is raised, by claiming that they have lapsed, particularly with respect to very much

older regulations which, while never expressly or implicitly repealed, have never been enforced?
- On the first of these questions, the discussion contributions confirmed what had clearly emerged from the reports — that there is no limitation as to time on raising a preliminary objection of illegality at any stage during proceedings.
- On the second question, it emerged from the discussions that no legal system or corpus of laws accepts that legislative or regulatory provisions not expressly repealed can lapse by effluxion of time, even though all participants could cite administrative regulations which, in practice, had fallen into desuetude.
The French and Egyptian delegates firmly upheld the principle that an unrepealed statute or regulation could at any time be implemented or invoked, however long it had remained extant but unused.

b) Is there provision for implying a decision to reject?

As a general rule, where an administrative authority before which a matter has been brought gives an implied decision by its silence, or more properly, fails to give an explicit decision, within a certain time, its silence is construed as a rejection of the application. The applicant may seek judicial review of such decisions within the statutory limitation periods.
It would, in fact, seem to be a well-established rule that silence on the part of the administration, or its failure to take action, far from constituting a final decision from which no appeal lies — which would prejudicially affect the individual citizen — is, on the contrary, to be construed in the complainant's favour as an implied decision of rejection affording grounds for interference by the courts within the statutory limitation periods for proceedings.
During the discussions, the Italian delegate noted that, in regard to "acts of omission" such as this, the rule in his legal system was that the court was not confined to setting aside the administration's negative decision. It could impose on the administration a period within which to act, at the expiry of which a commissioner — who would be a member of the Conseil d'Etat — would be charged with rectifying the administration's failure to act by taking the requisite decision in its stead.

This device of a constructive rejection was mentioned in a number of reports, including those from Belgium, Colombia, Egypt, France, Greece, Luxembourg, Poland, Portugal and Tunisia.
In Sweden, the right of redress against an administrative act presupposes the existence of an explicit administrative decision. Consequently, the failure of an administrative agency to act, ex hypothesi, cannot constitute a decision susceptible to review by the courts. However, where the failure of an autority to act may be deemed negligence or a failure to perform its duties, the case would fall within the province either of the Attorney General or the Ombudsman.
I might add that, as a general rule, three conditions must be fulfilled before a constructive rejection will be implied:
- firstly, the application to the administrative agency must have called for a decision to be taken. A mere request for information, a statement of objections, or the submission of proposals, suggestions or declarations will not be enough to ground a constructive decision of rejection;
- secondly, the application must be submitted to the authority competent to take the decision sought. Proceedings for judicial review grounded on the failure of an inappropriate administrative authority to reply will fail for want of an implied decision of rejection;
- finally, a constructive rejection will automatically be implied at the expiry of the prescribed period.
It should also be noted that, alongside the device of constructive or implied rejection, situations may arise in French administrative law where an administrative authority's silence at the expiry of a prescribed period is treated for the purpose of certain statutes and regulations as a constructive acceptance or authorisation: this is so after four months in the case of demolition permits, six months for permission to establish a private clinic, etc...

3. Is legal representation compulsory?

The question of legal representation for complainants was put forward, and received a variety of replies: in some countries it is compulsory, in others optional, while yet others have moved from one solution to the other.
Naturally, what best serves the interests of administrative justice — compulsory or optional legal representation — is conceived differently in different countries.

Clearly, where a complainant is compelled to act through a lawyer, the costs of litigation will be appreciably increased — and in proceedings to have a decision set aside for substantive ultra vires (excess of powers), the complainant is liable for the full costs of the action, whatever the result.

That is why some systems have made provision for the payment of lawyers' fees in their legal aid systems.

The obligation to act through a lawyer (and sometimes through a particular category of lawyer, such as counsel with a right of audience before the Court of Cassation) would seem to be impelled by the desire not to place the petitioner — who may not necessarily be experienced practitioner in administrative law and procedure — in danger of forfeiting his rights by procedural errors, poorly constructed arguments, or the poor presentation of facts and submissions, making it impossible for the court to arrive at a proper decision on the merits or to dispense effective administrative justice.

The inquisitorial nature of the preparatory inquiries conducted by administrative jurisdictions in general, does not always allow the court — which must remain an impartial arbiter — to rectify improperly formulated petitions and applications.

However, we should not underestimate the deterrent effect of the obligation to retain the services of a lawyer where the cash value of the right being enforced against the administration works out at less than the fees charged by the complainant's lawyer, particularly where those fees are not — or are only partially — taken in charge by the legal aid fund.

In practice, three classes of solution are found here:

- those where legal representation is compulsory in all cases;
- those where it is generally compulsory, with particular exceptions;
- those where it is generally optional, but compulsory in certain specific instances.

a) complainants are always required to act through legal counsel in Colombia, Egypt, Italy, Lebanon, Luxembourg, Portugal and in proceedings before the Supreme Court of Senegal;

b) compulsory legal representation is the rule, subject to numerous exceptions, in both France and Greece;

c) complainants have free choice and the right to be represented and advised by counsel if they wish in the Belgian, Finnish, Indonesian, Polish and Swedish systems.

Finally, in this section, we have the situation typified by Ivory Coast, where legal representation may be compulsory or optional depending on the level of the court or tribunal in which the proceedings are being heard. Thus, while legal representation is not mandatory in the Administrative Chamber of the Supreme Court, it is required in proceedings before the lower courts and tribunals.
Tunisia has a similarly hybrid system, where legal representation is mandatory before the Plenary Assembly of the Administrative Court sitting to hear appeals in "cassation", but optional in ultra vires proceedings brought before other Chambers of the Court.

4. Is there provision for legal aid ?

The replies to the question were, generally speaking, relatively uniform. All countries, it seems, have legal aid provision and applicants with disposable income and capital below stated amounts, fixed statutorily or under a discretionary power, are granted free legal assistance for the whole or part of the costs of their case.
Court costs in Luxembourg are so low that, in practice, applications for legal aid are very rare. In some systems, the means-tested amounts by which an applicant may qualify for legal aid are objectively fixed: in Lebanon applicants must show that they are not listed as taxable landowners or chargeable to income tax; in Sweden, applicants must show an annual income not exceeding 110,000 krona. Aside from a lack of disposable income, another condition imposed by certain legal assistance regulations is that the application must not be manifestly inadmissible or groundless.
That is the position in France, Egypt, Greece and Tunisia. On average, the Legal Aid Office of the French Conseil d'Etat receives some 900 to 1,000 applications a year (accounting for 4 to 5% of all actions before the court) and awards the whole or part of the costs of their proceedings to some 30 to 40% of those applicants.
In general, an application for legal aid suspends the limitation period for judicial review proceedings, except in Tunisia.

5. Is there a system of court costs ?

Access to administrative courts is not wholly free. The applicant must generally expect to pay some legal expenses, including registry charges, registration fees and stamp duty on the one hand, and experts' and lawyers' fees on the other. Stamp duty is not always recoverable, while all the other costs are awarded against the unsuccessful party. Where a case does not proceed to judgement or an application is partly disallowed, each party will pay his own costs, save where the court orders otherwise. Some jurisdictions do not accept that, in the absence of express statutory or regulatory provisions, the whole or part of the lawyers' fees should be awarded against the unsuccessful party.

6. Are there penalties for vexatious litigation ?

Aside from the award of costs against an unsuccessful party, which is a generally accepted rule and has the character of a sanction, two types of fine are to be found in contentious administrative proceedings, the penal or dissuasive effect of which seems to originate in the idea of penalising vexatious actions :

a) security against costs : here, the applicant is required to deposit a sum of money — either a fixed amount or a percentage of the total amount of his claim — which will be returned to him only where his action is wholly or partly successful. This system obtains in Egypt, Greece and Senegal in particular.

b) a fine proper : this second type of penalty is wholly within the discretion of the court, who may order an applicant whose action is manifestly inadmissible or shows no cause of action to pay a fine, the precise amount of which varies with the system. The French Conseil d'Etat has the power to impose a maximum fine of 10,000 francs and on average imposes a score of such fines in any year — a number judged insufficient by the French rapporteur in view of the proportion of actions which truly deserve such a penalty. The Greek Conseil d'Etat may levy a fine equal to the amount of the security lodged against costs, but in practice rarely does so. A similar solution is found in Portugal, where the possibility of proceedings for pecuniary liability also exists against vexatious litigants.

Other systems also provide for fines to be levied for particular types of vexatious action, such as in Luxembourg, where unsuccessful third

party interveners are subject to a fine of 50 francs, and Tunisia, where unsuccessful third party interveners may find themselves faced with a fine of 10 to 50 dinars.

IV VOLUME OF BUSINESS BEFORE THE ADMINISTRATIVE COURTS

1. Significant statistics

Proceedings before all administrative jurisdictions less outstanding cases from previous years:

Country	Reference Year	Cases Listed	Disposed of
Finland	1980	—	43,913
France	1983 to 1985	80,000	62,000
Egypt	1984/85	16,516	15,152
Greece	1983 to 1985	68,850	60,725
Italy	1984	59,256	29,070
Portugal	1983	2,374	1,810
Sweden	1985	186,645	203,866

before supreme administrative jurisdictions:

Country	Reference Year	Cases Listed	Disposed of
Belgium	1975 to 1984	1,211	815
Finland	1984	—	6,216
France	1983 to 1985	8,900	7,200
Egypt	1984/85	3,259	4,157
Greece	1983 to 1985	6,078	6,185
Italy	1984	5,373	2,996
Luxembourg	1984/85	180	145
Poland	1985	13,170	12,308
Portugal	1983	1,900	1,386
Sweden	1985	5,881	5,896
Tunisia	1975 to 1984	2,777	1,820

2. Relation between the total case load of the courts and their ability to dispose of court business

Not all rapporteurs answered this question, and those who did by no means painted the same picture. The replies fell into two groups: the first in which the courts were stated to be able to dispose normally of the volume of business brought before them; this group included Luxembourg, Poland, Sweden and Tunisia — although the report from the latter country was less than explicit on this matter. The second group considered their administrative court systems to be overburdened; this included France, Egypt, Greece, Italy and Portugal.

Finally, on this point, it should be noted that the Italian rapporteur stressed the preferability of looking at the total number of cases pending rather than the new actions listed each year, adding that judgements were not always on the substantive issues and could be partial, interlocutory, or on requests for a stay of execution.

In conclusion, I should like to add that I do not intend to labour the point as to the value of stocktaking and quantified assessments, for we are all aware that "statistics is the most important of sciences at the service of administrative law". What is important, then, is to discover what the figures represent by way of the nature of contentious proceedings in a country — all the more important when dealing with disputes between public authorities and the individual.

Increasing government intervention in economic, social and cultural life, the complexity of the administrative task, the extension of bureaucracy, in short, all the new imperative restrictions of law, all add to the existing burden on our court systems.

And at a certain level, we must face the fact that volume poses its own problems, and no-one I think would argue with J. Rivero's observation that "the more infringements are committed, the more infringements go unpunished" (2).

Raising the problem of the overloading of the court system, which has become particulary acute in some countries, the delegates considered firstly what were the causes of the problem, and secondly, what could be done to remedy it.

As to the causes of the backlog, they proved to be many and various.

(2) J. Rivero, "Sanction juridictionnelle et règle de droit", in Mél Julliot de la Morandiére, 1964, p. 458.

Firstly, it was emphasized, there was very probably a correlation between the growth and variety of administrative intervention in all areas of life and the increase in litigation involving the administration as defendant.
Secondly were the sociological and psychological factors of the growing awareness on the part of the public of their rights with regard to the authorities, and, perhaps, a tendency to be more suspicious of, and self-assertive towards, the administration. This demand and assertive attitude appears to be fostered — even encouraged — in certain countries by the trade unions (particulary in Belgium) and the media (as seems to be the case in Sweden).
Thirdly, an abrupt but temporary increase in litigation may follow the introduction of fresh legislation in sociologically sensitive areas — an experience reported by Belgium in the wake of the promulgation of new social assistance and immigration laws.
In the same line of thought, several speakers confirmed that the increasing complexity of legislation resulted in a rise in contentious proceedings, with a consequent proliferation in the legal profession, who thus became indispensable to the pursuit of remedies through the courts. The Greek and Swedish delegates referred in this context to a disturbing trend towards an increase in vexatious litigation.
A number of delegates, however, offered for consideration the solutions proposed by their various legal systems to free the logjam of judicial work:
- a pre-selection procedure for applications to be referred for judgement to the administrative court (Canada and Sweden), or
- a simplified or accelerated procedure of preparatory inquiries and judgement, which seems to be the most widely-adopted solution, and is applied in France, the Netherlands, Belgium and Luxembourg in particular.
The system prevailing in the Federal Republic of Germany includes a preventive procedure to avoid the build-up of a backlog in the administrative courts. It consists of a preliminary administrative review by joint administrative committees comprised of civil servants and members of the public and whose effectiveness is not to be denied.
A natural inclination would be to consider increasing the staff of administrative review bodies; but that may not be possible for a number of reasons, and the Greek rapporteur emphasized the dangers of a decline

in quality and a sapping of the responsibility of administrative judges which might result from swelling their ranks too greatly.
That the question of the overloading of administrative jurisdictions loomed so large in the discussions clearly shows to what extent this problem is one of the gravest ills aggravating the already complex relations between the administration and the public in that, by delaying ever longer the individual's right to his 'day in court', the judicial office itself will suffer thereby and ultimately compromise the access of the public to justice, with the only losers being the public themselves.

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Well-armed with all the data you have so kindly furnished me, with here and there a modest and judicious urging for further, infinitely valuable, information in the earnest hope of faithfully reflecting to the best of my ability your thoughts and adjustments as they emerged from our discussions in committee, here, finally, with your approval, embodied in this report, is the culmination of that exhaustive task, the testimony to the completion of which is that the majority of you have persevered with it from the very beginning.
On this, I should like to add a few brief comments of my own. I have sought to avoid condensing each of the major questions which have served as topics for our labours into too compressed a digest. In my view, the solutions developed in various places and detailed in the majority of reports offer incontestable advantages for being expounded on and discussed in as great a detail as possible.
Throughout my review, I have, wherever possible, endeavoured to group together those techniques springing from a common legal tradition — but not at the expense of the prevailing practices and systems peculiar to individual countries — since beyond expression lies that understanding which implies a degree of kinship between the rules and procedures applicable from one jurisdiction to another.
The questionnaire compiled for us by our Secretary General, Mr. Franc, was widely circulated and the national reports attest to a wide diversity of legal development between jurisdictions. Most of our jurisdictions have highly sophisticated legal structures, but the law applied and procedures followed are, on occasion, simply chalk and cheese.

It is clear that we act according to very different cultural, legislative and administrative traditions and within very different conditions of development.

That said, the closer one gets to the heart of the matter, the more frequent the similarities are. When the task of the administrative court is seen in its loftiest perspective, and when the general principles of law are defined, then we are justified in saying that we act and think as one.

Contemporary societies more-or-less the world over have acknowledged their obligation, in the relations which bind the administration to the individual, to guarantee access to justice for all — and particularly administrative justice. In enshrining this principle, the community not only reaffirms the importance of the individual, but also protects itself from chaos and confusion. And the administrative arbiter is in no small measure part of these moral and realistic goals.

It is clear — and I firmly believe — that the question of administrative law, which is a court and case law par excellence, cannot be broached without an understanding of the bodies who forged its rules. This topic, however, was discussed at your inaugural meeting in Paris three years ago, and it was both a logical and methodical approach to devote this Tunis meeting to a consideration of the procedural conditions in which those bodies adjudicate, and in examining in a concrete fashion how, through the substantive and adjectival law made available to the public, access to our respective jurisdictions becomes a daily more effective reality. Far from claiming that we have exhausted the topic in the discussions for which this meeting — the second of its ilk — has been the occasion, it is probable (and it is my hope) that the International Association of Supreme Administrative Jurisdictions will continue — strengthened by the active support of all and impelled by the desire to explore together the field of our respective techniques — to discharge the tasks conferred upon it.

Having described the conditions governing access to administrative jurisdictions, might some consideration now not be given to the techniques of functioning of those jurisdictions. Food for thought for a future congress, perhaps?

Administration is an essential reality; and it will always remain a constant, more-or-less oppressive, more-or-less criticised one. While some long for a society in which the State will be almost undetectable and light as a feather, the question remains whether the administration is

truly adapted to the new burdens which are today being assumed by the State ?

Over and above conciliation and concerted action which may, to a certain extent, reduce tensions within the administration and implies increased civic consciousness from the general public, action is also required on the functioning of the administration, its organization, personnel and methods for the greater good of the state and the rule of law.

The raw materials of the general report which I am honoured to submit to you is drawn from the national reports communicated at the beginning of the year. Building on those replies which presented a special interest, and adding to them your thoughts and comments, I have endeavoured to show how the fundamental rights of the individual are integrated into our national legislations and in the practice of our respective courts and tribunals.

Before concluding, I should like at this juncture to offer my particular thanks to all the national rapporteurs who freely volunteered, despite the burden of their own duties, to contribute by their studies to this Second Congress of the International Association of Supreme Administrative Jurisdictions. Their reports represent an in-depth study of the topics aired during our discussions. They are also a major source of information for our long-term task, a contribution to bringing our techniques closer together, and last but not least, a fountain-head of inspiration.

It has been a rewarding experience for me to learn about legislation and practice in so many different countries near and far, and to see how, behind the diversity of forms, the essence remains always constant — the desire for improved ways of assuring all citizens the best possible conditions of access to administrative jurisdictions.

Such, Mr. President and esteemed Colleagues, painted on a very broad canvas, are the reflections produced by this second meeting organized by our Association.

I hope I have lived up to your expectations, and thank you for you kind attention.