

Administration, public interest and the Judge

Association of Supreme Administrative Jurisdictions

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I. General report

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Mrs Adelita Ravanales, Minister of the Supreme Court of Chile

“Administration, public interest and the Judge”

The International Association of Supreme Administrative jurisdictions’ Congress is a forum for the exchange of experiences in the field of administrative law among member countries. The study was based on a summary drawn up from a questionnaire completed by members.

The questionnaire consists of 35 questions on the theme of the 15th Congress, *“Administration, public interest and the Judge”*.

Most of the questions were multiple choice and were classified into three themes:

- **Theme 1: “the competent judge to supervise the administration and guarantee the preservation of the public interest”**. This theme, comprising twelve questions, aimed at identifying the competent authority for hearing cases concerning administrative acts within the various member jurisdictions, as well as to identify the legal systems that have administrative courts.
- **Theme 2: “definition of public interest”**. This theme included fifteen questions aimed at determining whether certain jurisdictions have standards defining the public interest, whether they refer to it, what they understand by this concept in accordance with their doctrine and national legal traditions, whether the public interest is associated with or distinguished from other definitions, and whether it has evolved in line with international standards.
- **Theme 3: “judicial review by administrative courts over public interest objectives”**. The purpose of the eight questions grouped under this theme was to identify which public bodies may be involved in disputes relating to the public interest, and what type of control the courts exercise over the legality of administrative acts involving the reconciliation of several public interest objectives.

It should be noted that 39 of the 62 member jurisdictions answered to the questionnaire, and that the information gathered has been systematised, revised and translated.

Theme 1: “the competent judge to supervise the administration and guarantee the preservation of the public interest”

The vast majority of members who answered to the questionnaire indicated that disputes arising from administrative acts can be resolved within the administration, without recourse to the courts. In 32 States, this is possible through administrative review before the administrative authority that issued the contested act or whose action is being challenged. Among the countries where disputes can be resolved through administrative review, 29 indicated that such procedures are mandatory before bringing an action before the courts.

As for the existence of ordinary administrative courts having jurisdiction over disputes arising from administrative action, 18 countries indicated that such courts existed from the first instance to the cassation.

With regard to the history of administrative courts, several countries, such as France, Belgium and Austria, indicated that they had had a higher administrative court since at least the 19th century. Some states already had ordinary administrative courts of first instance in the 19th century and a procedure for seizing them.

Furthermore, most countries reported having specialised administrative courts. A majority also reported that the Constitution and national law determine the jurisdiction of courts to hear disputes involving the administration. It should be noted that, among the responses from the various jurisdictions, common criteria can be identified that determine the jurisdiction of administrative courts or specialised chambers of judicial courts responsible for dealing with disputes involving the administration. These criteria include organic, material, hierarchical and jurisprudential criteria.

The vast majority of countries reported having a special procedure applicable to disputes involving the administration, generally subject to mandatory preliminary procedures, special time limits, special rules relating to standing and other rules of admissibility.

Finally, most countries indicated that it was not possible for administrative judges to hold positions within the administration during their careers, and that there was an authority within their jurisdictional system competent to resolve conflicts of jurisdiction between administrative and judicial courts.

Theme 2: “definition of public interest”

The majority of jurisdictions reported having textual references to the concept of public interest, both in the Constitution and in legislation, as well as in other sources such as regulations. However, the standards in force do not generally define the concept, with the exception of those in Slovakia, Israel, Kuwait, Romania and Thailand.

In this context, and although in most countries the concept of public interest is not precisely defined, participants agree that it is a broad concept, referring to the common interests of society rather than those of individuals, which can encompass various interests depending on a concrete interpretation, but which nevertheless has common features across countries.

Similarly, in most participating States, the concept of public interest is similar to other concepts from which it nevertheless differs, such as the concepts of public interest or common good. For example, reference is made to public interest or public utility in areas such as land-use planning, expropriation, migration, tax law and the environment.

Elements that may be included in the concept of public interest are public order (which includes, in particular, good order, public safety, security and health), the fight against tax fraud, continuity of public service, aesthetic/architectural considerations, social considerations and economic considerations.

Furthermore, the evolution of the concept of public interest is an important issue. Most countries have stated that this concept has evolved under the influence of international standards and, in particular, European Union law for its Member States, for example in the field of nature and environmental protection. It has also been influenced by international or regional human rights conventions, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In this same context, it should be emphasised that the courts have taken into account current imperatives such as environmental protection, protection of historical and cultural heritage, legal certainty, competition law and the emergence of digital technologies in order to ensure, in particular, the preservation and protection of the environment, taking into account, where appropriate, the law and case law of the European Union for its Member States or the Paris Agreement, as highlighted, for example, by representatives of the Kuwaiti Court of Cassation.

Similarly, most States indicated that new standards enable courts to conciliate the public interest with rights and freedoms in areas such as personal data protection and access to information, the expulsion of foreign nationals posing a threat to public security, environmental protection and restrictions on property rights.

The question was also raised as to whether the concept of the public interest has now absorbed the concept of fundamental rights. Twenty-eight participants indicated that this was not the case in their legal systems. They generally specified that these are distinct concepts, which must be conciliated in each individual case. It was also emphasised that the concept of the public interest is broader and may constitute a limitation on fundamental rights.

Most states indicated that entities responsible for managing the public interest include the state (centralized or federal), local authorities (regions, municipalities, etc.), public institutions, *sui generis* public bodies, independent administrative authorities, and private individuals responsible for public interest missions.

Finally, the resolution of conflicts between different public interest objectives is governed in countries by the Constitution, the law, the administration in the absence of legislation, and the courts.

Theme 3: “judicial review by administrative courts over public interest objectives”

Most countries reported that their courts could hear disputes between several public bodies responsible for tasks in the public interest and that an increase in the frequency of such conflicts had been observed.

Given the nature of the Court's review of the legality of administrative acts involving the reconciliation of several public interest objectives:

- 16 of the 39 countries stated that their courts exercised rather restricted or limited control;
- 16 of the 39 countries stated that their courts exercised normal or extensive control;
- 14 of the 39 countries stated that their courts exercised maximum or proportionality control, or even control over the cost/benefit ratio between different interests.

In this context, answers differed on the question of whether courts can arbitrate and give precedence to one public interest objective over others. For example, some countries answered in the negative, while others highlighted that, even if one interest may prevail over another, this is not a matter for the judge to arbitrate. Rather, it is a decision based on legal principles or fundamental principles, resulting from the application of the rules in force.

Similarly, many countries have developed specific techniques to give precedence to the public interest, such as the principle of legal certainty.

In conclusion, we would like to thank all the jurisdictions which, through their responses to the questionnaire and their presence at this Congress, have made this enriching meeting possible. It will undoubtedly contribute greatly to our work as judges and to the workshops we will organise in the future.

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II. Reports on the workshops

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2.1. Report on workshop 1 - the competent judge to supervise the administration and guarantee the preservation of the public interest

Mr Vishnu Varunyou, Vice-President of the Supreme Administrative Court of Thailand

This report presents the discussions that took place during the workshop entitled “the competent judge to supervise the administration and guarantee the preservation of the public interest”, in which our colleagues from many different legal traditions (France, Switzerland, Chad, Belgium, Democratic Republic of Congo, Thailand, Algeria, Mexico, Colombia, Spain, Iraq, Kuwait, Türkiye, Romania, Greece, Ukraine, Finland, Kenya and Chile) were invited to compare their experiences and share their views on the role of the courts in overseeing administrative action. This theme raises questions in particular about how judges can, or should, exercise control over the objectives pursued by the administration when it acts in the public interest.

The concept of public interest, a cornerstone of administrative law, nevertheless resists any attempt at a single definition¹. It is characterised by structural indeterminacy, as its meanings vary according to the era, location and even the authorities interpreting it. Despite the impossibility of defining it, this concept is nonetheless indispensable: it permeates legal, political and administrative discourse as a vehicle for legitimisation, a normative goal of public action and a criterion for evaluating administrative choices.

In the tradition of the rule of law, the public interest has a threefold purpose: it is the *foundation*, the *purpose* and the *limit* of state power². It is its foundation, first, in that the exercise of public prerogatives, particularly through unilateral or coercive means, can only be justified by the pursuit of the common good. It is also its purpose, since all administrative decisions are supposed to aim at achieving public interest objectives, regardless of political or economic contingencies. Finally, it constitutes its limit, insofar as the exercise of power by administrative authorities can only be legitimately and legally authorised in the name of the public interest. Furthermore, invoking the public interest cannot justify arbitrariness or exempt authorities from respecting fundamental rights, the principles of legality, or judicial review.

The administrative judge thus appears to be the ultimate guarantor of a fragile balance: that between the freedom of the administration to act in the public interest and the need to ensure that this invocation is neither fictitious nor disproportionate. While the legislator is the main holder of the power to determine the objectives of public policy, it is up to the judge to verify their implementation in administrative acts.

This role of the judge in reviewing the objectives of the public interest is not without its difficulties. It requires the judge to strike a balance: he or she is neither a political actor nor a

¹ VEDEL G., « Préface » in *L'idéologie de l'intérêt général*, Economica, 1986.

² RANGEON F., *L'idéologie de l'intérêt général*, Economica, 1986, p. 21.

mere mouthpiece for the law. The judge must exercise substantial control over the objectives invoked by the administration, without, however, superseding the general will expressed through the law.

In this perspective, the theoretical considerations outlined above are further developed in the discussions held during this workshop, which have made it possible to understand, on the basis of national experiences, the practical modalities of judicial review of public interest objectives. It was no longer simply a question of laying the conceptual foundations for the role of the judge in supervising administrative action, but of examining, in a comparative manner, the institutional and procedural configurations through which national legal systems organise this control. In other words, it was a question of determining how, given the diversity of traditions and judicial systems represented, the judge is designated as the competent authority to assess the conformity of administrative decisions with objectives of public interest.

These exchanges highlighted a remarkable diversity in jurisdictional configurations, both in terms of institutional organisation and the procedural arrangements through which courts are called upon to exercise control over public interest objectives pursued by the administration. Far from being merely a juxtaposition of models, this diversity reveals how each legal system articulates the requirements of the rule of law with its legal and administrative traditions, with the common aim of ensuring effective judicial oversight without freezing the public interest into a rigid definition.

In the vast majority of the systems represented, disputes involving the administration may, prior to any jurisdictional action, be subject to administrative settlement, whether through informal or hierarchical appeals, or through alternative procedures such as mediation or arbitration. However, some jurisdictions have indicated that these procedures are mandatory, while others have specified that they are only required on a conditional basis or in cases defined by law. This situation raises questions about the scope of the right of access to the courts as a substantive guarantee of the rule of law, in a context where the desire to reduce the backlog of cases before the courts cannot justify a regression in the right to an effective remedy.

With regard to jurisdictional organization, most jurisdictions have an autonomous administrative system, structured in tiers (first instance, appeal, cassation), with courts having jurisdiction in principle to hear disputes arising from administrative action. In other systems, such as those of the Netherlands, Brazil and Chile, this judicial function is performed by ordinary courts within specialised divisions or chambers. However, discussions reveal that some States do not have administrative courts in the organic sense of the term, but have established specific mechanisms within the ordinary courts.

The functional specialisation of courts is another cross-cutting feature of the systems analysed. In many countries, there are specialised administrative courts with jurisdiction over specific types of litigation (tax law, urban planning, civil service, environment, intellectual property, etc.). This specialisation aims to ensure a better balance between the complexity of disputes and

the technical expertise required of judges, while maintaining the guarantees of impartiality inherent in the exercise of judicial functions.

In most of the countries surveyed, jurisdiction is determined on the basis of a combination of criteria: organic criteria (the status of the parties), material criteria (the nature of the dispute or the contested act), and sometimes functional criteria (the relationship with the exercise of public authority). Some countries have indicated that these rules are laid down by statute, while others have stated that they are based on constitutional provisions. Some countries also emphasised the essential role of case law in clarifying or developing these criteria. Far from being a source of uncertainty, this plurality of normative sources allows for the gradual adaptation of the scope of the competent court, in line with changes in public action and the diversification of objectives of public interest.

In procedural terms, the specific nature of administrative litigation is also reflected in the existence, in almost all of the States represented, of a separate judicial system: codes of administrative procedure, specific time limits, special conditions of admissibility, and emergency mechanisms (summary proceedings, injunctions, etc.). Some States have affirmed the existence of mandatory preliminary procedures in certain types of litigation, which reflects a constant tension between administrative efficiency and guarantees of a fair trial.

The conditions for exercising jurisdictional functions vary considerably from one country to another. Some countries have a separate body of administrative judges, recruited according to specific procedures, while others entrust this task to judges belonging to the judicial branch, sometimes assigned to specialised chambers. Thirteen jurisdictions allow, to varying degrees, mobility between jurisdictional functions and positions in the active administration. While the latter practice may be of functional interest, it nevertheless raises recurring questions about its impact on the objective independence of judges called upon to oversee the administration.

Finally, the issue of conflicts of jurisdiction between jurisdictional order was addressed from an institutional perspective. Several jurisdictions have an *ad hoc* body responsible for resolving such conflicts: the Tribunal des conflits in France, constitutional courts in other States, or special formations within supreme courts. The establishment of such mechanisms reflects a shared desire to preserve the unity of the judicial function while respecting the specific nature of the administrative system.

Ultimately, the workshop revealed a dual dynamic: on one hand, the increasing specialisation of the courts responsible for reviewing administrative action, correlated with the growing technicality and complexity of public policies; on the other hand, the reinforced legal framework surrounding the concept of public interest, which cannot be invoked without rigour and oversight. While the forms may differ, the substance remains the same: to ensure that a competent, independent and informed judge is able to assess the legality and proportionality of the public interest objectives put forward by the administration.

2.2. Report on workshop 2 – definition of public interest

Mr Dimitry Berberoff, Vice-President of the Supreme Court of Spain

The working group dedicated to “defining the public interest” brought together members of delegations from Albania, Algeria, Benin, Brazil, Burkina Faso, Canada, Chile, Congo, Egypt, Spain, France, Monaco, Romania, Thailand, Slovenia and Türkiye.

First of all, a methodological clarification is necessary: the discussion was structured on the basis of the questionnaire sent by the Supreme Court of Chile, in the sense that it is difficult to ensure that the public interest is satisfied without first defining the concept of public interest and identifying its objectives and constituent elements.

Although the theme of the public interest is highly theoretical, the participants always took care to redirect their analyses towards practice, demonstrating that, because it remains a central element of administrative law, the concept of the public interest can be applied in many concrete areas. Far from being obsolete, this concept is being revitalised day by day, as it is associated with new key concepts such as that of “services of public interest”.

The existence of a general concept of public interest was considered, as well as the possibility of inferring such a concept from national legal traditions. It was found that, although it is a fundamental concept in national administrative law, the concept of public interest is rarely defined in a precise and unambiguous manner.

In the legal sense, the public interest refers to what is beneficial or valuable to the community as a whole, to society, as opposed to the particular interest, which is that which benefits an individual or a small group of people. The public interest must be defined in relation to a particular social, geographical and temporal context, in the light of the values and principles that structure each legal system. Indeed, an abstract or decontextualised definition of the public interest could lead to confusion and anachronisms, causing the concept to lose its functional relevance. Furthermore, the public interest and the particular interest are not systematically opposed. In fact, on many occasions, the two concepts complement and interact with each other.

In any event, the absence of a precise definition of the concept of public interest does not prevent the legal standards of many countries from referring to it in various fields and contexts. In addition, this lack of definition does not undermine legal certainty. The public interest is a broad and malleable concept, the scope of which depends on its practical application. On the contrary, it is sometimes argued that a fixed definition could have a restrictive effect, introducing a rigidity that could compromise the application of the concept of public interest, since it is, by its very nature, evolving and must be assessed on a case-by-case basis. Some even argue that public interest cannot be defined in positive law.

The concept of public interest is also used in constitutional law, particularly when it comes to balancing rights such as freedom of worship and the principle of secularism. Similarly,

discussions among participants highlighted the potential conflict between the public interest and property rights. The latter may be restricted for the objectives of public interest pursued by the State, based in particular on national security imperatives, which may justify, for example, the non-return of confiscated property.

The working group emphasised that a distinction must be made between the abstract definition of the public interest and the concept of the public interest as assessed by administrative judges on a daily basis when ruling on disputes brought before them. In most cases, the identification of the public interest and its application as a legal or interpretative parameter depend on the circumstances of the case. The absence of a precise definition of the concept of public interest does not prevent it from being determined or applied in specific contexts. From this perspective, the conceptual definition of the notion of public interest differs from the approach of determining its content when the public interest is to be used as a criterion for the application of administrative law.

The aspects or elements that constitute the public interest will be determined by the context in which public policies are applied or, where applicable, on the basis of the weighing of interests subject to review by the administrative court. For example, it is generally accepted that the concept of public interest includes the protection of health, the preservation of the environment and the right to education for children. However, the working group highlighted the diversity of the components of public interest according to different legal systems. For example, public morality and human dignity are not always included in the concept of the public interest. It is also common for several public interest objectives to conflict with one another, such as environmental protection and economic activity, or restricting the movement of people in the name of health protection. We also asked ourselves whether the assessment of the public interest was not influenced by a certain degree of relativism, particularly in economic matters. We came to the conclusion that it was largely a question of priorities.

It is essential to analyse who is responsible for determining or setting public interest objectives in each area of administrative action. In a democratic society, it is up to the law to determine, in each area of administrative action, the public interest objectives that the administration must strive to achieve. Two considerations arise from this premise. On one hand, the administrative judge or constitutional judge is called upon to review the objectives and limits of the public interest. Our working group considered that the public interest has a functional dimension, enabling the administrative judge to rule on specific disputes. The public interest is therefore a legal parameter used to review the legality of administrative action. It is an essential mechanism in the hands of the administrative judge, which must be clarified in advance according to the circumstances of the case. The more abstract, vague or diffuse the rule of law is, the more complex this task becomes. On the other hand, the law defines the public interest, while it is up to the administration to pursue it, relying on the powers at its disposal. It seems widely accepted that the administration must seek to achieve the public interest through the exercise of its prerogatives, in strict compliance with the law and the principle of separation of powers. Indeed,

in the exercise of its function, the administration must objectively serve the public interest, beyond individual interests. The exercise of prerogatives of public authority is precisely justified by the pursuit of public interest.

However, it is not always easy to identify which public interest objective should take precedence over others, or over individual rights. Strengthening the protection of rights and freedoms requires rethinking the assessment of the public interest to ensure that it is properly reconciled with individual rights, both when drafting legal standards and when reviewing administrative action. Administrative action, based on the public interest, must respect these individual rights, and the administrative judge plays a fundamental role in reviewing its proportionality and legality.

Conclusions on guaranteeing and reconciling the objectives of the public interest in administrative action

The administration has a duty to serve as it must satisfy the public interest. However, particular caution is required, as the public interest is not the purely institutional interest of the administrative organization, as may exist, for example, in the management of the administration's assets.

Depending on the country, the public interest is pursued not only by the State, but also by local, regional, or municipal authorities, public institutions, and certain public bodies or independent administrative authorities.

Conflicts may therefore arise between different objectives of the public interest, depending on the individuals or public or private bodies invoking it. Indeed, the public interest cannot be considered monolithic, since it covers a variety of objectives that vary according to the field, such as education, health, infrastructure, public safety, and the preservation of public order. For example, there is often tension between the requirements of economic development and those of environmental protection, as is the case with energy supply or the construction of major transport infrastructures.

From a general perspective, it can be observed, on one hand, that the concept of the public interest has evolved in parallel with developments in society and administrative law; on the other hand, that in some countries its definition and determination are influenced by international and supranational factors, or by geopolitical circumstances.

The public interest is conceived in an evolving context, as it varies according to the needs and beliefs that prevail at any given time. On this point, the working group considered that there should be no regression in the definition of public interest objectives.

It also appears that judges must be particularly vigilant with regard to legislation relating to exceptional circumstances, such as restrictions imposed on individuals to ensure public health

during the COVID-19 pandemic. It is their responsibility to prevent the administration from adopting measures that infringe on individual rights or the public interest when such measures are not strictly necessary to achieve the objectives pursued.

Finally, the working group noted that the scenario in which several public interest objectives are invoked by different administrative bodies risks to weaken the concept of public interest.

The public interest is an objective that inspires administrative policies, as well as an instrument for monitoring the legality of administrative action. Its definition and application must therefore necessarily be in line with democratic values and the rule of law.

2.3. Report on workshop 3 - judicial review by administrative courts over public interest objectives

Mr Lynn Roy Spielmann, First Councillor of the Administrative Court of the Grand Duchy of Luxembourg

The third workshop focused on administrative courts' oversight of public interest objectives. It enabled representatives of high administrative courts to discuss and share their national practices on this issue, which is essential to the rule of law, bringing together participants from a wide range of countries: Chile, Belgium, France, Greece, Burkina Faso, the Czech Republic, Portugal, Uruguay, Luxembourg, South Korea, Brazil, Türkiye, China, Kenya, and Iraq.

The purpose of this report is to summarize the contributions of the workshop participants, highlighting the diversity of their views, but also the points of convergence regarding the administrative judge's approach to the concept of public interest. This complex concept, which knows no geographical boundaries, is constantly evolving and must also be understood from the perspective of access to justice and the protection of individual and collective rights.

The participants first addressed the key issue of the powers of administrative judges within their jurisdictions.

While the summary of the questionnaire responses was fairly balanced—with 16 jurisdictions indicating that they exercise rather limited control, restricted to manifest errors of assessment, 16 indicating that they exercised normal or extensive control, targeting errors of assessment, and 14 indicating that they exercised maximum proportionality control—the discussions highlighted that most countries nevertheless engage in some form of proportionality control, sometimes via a “balance check.”

Among the countries where administrative judicial review is more limited—as highlighted in particular by the representative of the Belgian Council of State—this limitation is justified by the principle of separation of powers. The administrative judge cannot substitute for the political authorities, whether legislative or executive. The administration thus retains discretionary power, which can only be sanctioned when it degenerates into arbitrariness.

All participants also agreed that the concept of public interest is an evolving one, both from a temporal and ethical perspective and from a geographical perspective. This is the case, for example, in environmental law. It could therefore be referred to this as universal public interest.

The examples cited by the participants mainly concerned environmental law, urban planning law, and public health, in particular the restrictive measures taken in the public interest during the COVID-19 pandemic - a topic that was also chosen for the last IASAJ Congress, held in Brussels in 2022 -.

During the debates, the concept of public interest was also weighed against those of fundamental rights and individual freedoms. The workshop chair raised the interesting question

of whether the public interest could be used to limit fundamental rights or whether, on the contrary, it should protect fundamental freedoms. While both approaches seem acceptable, participants agreed that the answer depended on the circumstances of each individual case.

Several contributors also emphasized the need to consider the concept of public interest from the perspective of vulnerable individuals, particularly when there is a risk of irreversible harm. Other participants, such as representatives from the Supreme People's Court of China, highlighted the dangers of new technologies, including artificial intelligence. These dangers must be carefully weighed against the benefits of technological progress. The great challenge in the future will be to find the right balance appreciated in relation to the public interest.

Several public interests may compete with one another: a global, worldwide, or universal public interest (e.g., the fight against climate change) may conflict with a national public interest (such as an economic interest), a regional or local public interest, or even the interest of a small group of people or an individual. However, this competition is only conceivable when the administrative act in question affects fundamental rights or civil liberties, such as journalists' freedom of expression.

A number of participants, such as representatives of the Supreme Court of South Korea, presented a more theoretical approach to the concept of public interest, in that it must be directly linked to a constitutional text or a law. Such an approach focuses first on the external legality of the administrative act in question and only secondarily on its internal legality.

Representatives of the Supreme People's Court of China further enriched the debate by illustrating the use of the concept of public interest in the context of land acquisition. They highlighted the need in such a context to respect a democratic and transparent procedure with fair and equitable compensation. On this point, representatives of the French Council of State emphasized the prior allocation of such compensation at the end of the expropriation procedure.

Most participants highlighted the vague nature of the concept of public interest, which is constantly evolving. The workshop, led by the representative of the Supreme Administrative Court of the Czech Republic, emphasized in particular that the concept of public interest must be applied with caution by administrative judges, who must not abuse it or overuse it to justify their decisions, lest they be accused of "government by judges." In order to avoid this risk, it seems desirable to define and apply the concept of public interest in each specific case in relation to written standards, such as the national constitution or legislation.

The workshop chair also raised the interesting question of whether it is possible to define a minimum common basis for the public interest, particularly from the perspective of public order, bringing together elements such as the safety of property and persons or public health, with a view to the proper functioning of a democratic society. In this context, the concept of public interest can also be understood in relation to the concept of public service.

The representative of the Greek Council of State highlighted the question of whether the public interest can be defined at a global level, given the divergent interests of different countries. However, it was agreed that it is possible for different countries to come together to define a universal public interest, particularly in areas such as environmental law and sustainable development, human dignity, social justice and public health. The main challenge is then to find a balance between universal values and local interests.

In its approach to interpreting and applying the concept of public interest, the workshop further emphasized that judges' reasoning must be transparent and consistent so that their decisions are understandable, also with a view to dialogue with litigants. On this point, the usefulness of collegial courts with judges from different backgrounds and perspectives was again emphasized. While there was consensus among those attending the workshop that administrative judges must apply and comply with the law, it was also highlighted that judges may also be guided by general principles of law in their interpretation. In order to determine whether a public interest exists, it is also advisable for judges to call on *amicus curiae*, technical experts, or even the parties to the hearing to express their views in more detail on the issue of the public interest invoked.

Finally, at the end of the workshop, an interesting question was raised about the position of the administrative judge when faced with an administrative decision that requires weighing different public interests (national public interest vs. regional or local public interest).

In conclusion, the workshop chair, starting from the premise that respect for the public interest is essential for safeguarding the rule of law, drew the attention of the various representatives to the current dangers of the erosion of the concept of public interest and the need to avoid tendencies to “privatize” missions of public interest or public service, such as in the energy sector, the public health sector, the organization of the prison system, or in the context of consumer protection.

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III. Synthesis and general conclusions

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Mrs Adelita Ravanales, Minister of the Supreme Court of Chile

Summary of workshop 1

Based on their answers to the questionnaire, participants shared their experiences with administrative appeal systems. The discussions highlighted the multiplicity of administrative procedures and the fact that, in some cases, administrative appeals or reports must be exhausted before a case can be brought before the courts.

It was debated how countries that do not have administrative courts can resolve difficulties involving challenges to their competence to hear a case, for example when there is doubt as to whether the case should be heard by an administrative chamber or a civil chamber. In Chile, all cases involving the State, whether acting as such or as a private individual, are heard organically by the administrative chamber. However, in cases of doubt, the President of the Supreme Court decides on conflicts of competence between the chambers. The discussions also highlighted the existence of legal systems with both a Council of State and a Supreme Court.

Debates also focused on the specialization of administrative judges. In France, there is a clear distinction between administrative judges and judicial judges, and their roles are incompatible. In other countries, such as Chile, specialized training is more individualized, without prejudice to common basic training.

The issue of judicial review was also discussed, whether it is strictly limited to reviewing legality or whether it is broader in scope.

Participants also shared their experiences on how to deal with migration. In Chile, where a National Migration Service has been created, it is often not possible to implement expulsion procedures despite the existence of fast-track procedures due to the lack of diplomatic relations with the main country of origin of the persons targeted by the measure.

The possibilities for a judge to move from one specialized chamber to another, or to move, for example, from civil to administrative judge, and to move from the administration to the judiciary and vice versa were also discussed.

Summary of workshop 2

Participants first considered whether the concept of “public interest” could be given concrete or abstract content, as well as how it is reflected in the legislation of each participating country, agreeing that despite the absence of a general definition, its objectives are set by the legislature and limited by the courts.

It was then debated whether the lack of a definition of public interest was a threat to legal certainty, given its inherently fluctuating nature and dependence on the political system. It was concluded that the public interest cannot be applied in an abstract manner, and that the courts must therefore sometimes balance the public interest against the particular interest. In this regard, the law and the constitutional judge in France mention the requirement of an overriding reason of public interest. Economic, architectural, and environmental circumstances, among others, may determine the objectives of the public interest.

Finally, it was noted that the link between the public interest and fundamental rights is determined by the rights that each State establishes in its Constitution. They may thus limit the public interest or integrate it. In addition, the “public interest” has been established by the States' enshrinement of the principle of non-regression, which prevents the removal of standards enacted in accordance with the common good.

Summary of workshop 3

To enable the study of judicial review based on the concept of public interest and its limits, each country provided concrete examples of general or specific criteria used, mainly in relation to enforcement during the COVID-19 pandemic, expropriations, and other proceedings.

It was concluded that public interest is an inherently vague concept with no precise definition, and that it is impossible to provide an exhaustive definition due to its constant evolution. There is no universal concept, as it is influenced by the reality of each country and the context in which the judge intervenes.

The question of whether it is possible to conceive a universal public interest was raised, leading to the conclusion that there are only certain universal fundamental values, such as public health and the protection of vulnerable groups.

Consideration was then given to the scope of judicial review of the administration based on the public interest. It was concluded that when judges review the administration taking into account the public interest, this does not constitute government by judges, but rather the application of the law. However, the vague nature of the concept must not allow everything to be included, which would then lead to the risk of government by judges. A balance must be found. If used without caution, the concept is lost and runs the risk of substituting for the administration. In short, the law must establish the consideration of the public interest, but also its limits.

General conclusions

As we come to the close of this important conference of the International Association of Supreme Administrative Jurisdictions (IASAJ), I would like to express my sincere gratitude to all of you for your commitment and valuable contributions. Over the past few days, we have shared experiences, reflected on common challenges, and explored innovative solutions that will strengthen our institutions.

The exchange of knowledge and perspectives that has taken place here allows us to move forward in building more effective, transparent, and accessible administrative justice systems. Each of the discussions has reaffirmed the fundamental role we play in protecting citizens' rights and guaranteeing the rule of law.

Although this conference is coming to an end, the work we have begun here continues. Let us take with us a commitment to continue collaborating, learning from each other, and applying the best practices we have discussed in our jurisdictions.

I would like to thank the organizers, speakers, and participants once again for making this meeting a true success. I am confident that we will continue to strengthen our ties and contribute together to a more just and efficient administrative justice system.

I wish you a safe return home and much success in the responsibilities and challenges you undertake.

Thank you very much.

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IV. Questionnaire

IV. Questionnaire

I. COMPETENT JUDGE FOR OVERSEEING ADMINISTRATIVE ACTS AND ENSURING THE PRESERVATION OF PUBLIC INTEREST

1. In your country, can disputes arising from administrative acts be resolved by the administration itself, without resorting to the courts?

- Yes
 No

If yes, how?

- Non-judicial administrative appeal to the administrative authority that issued the contested act or whose action is being challenged
 Hierarchical administrative appeal to a superior administrative authority
 Appeal to an independent administrative authority
 Appeal to a mediator, ombudsman, or another alternative dispute resolution method

2. Are these procedures mandatory before referral to a judge?

- Yes, always
 Yes, sometimes
 No, never

3. In your country, are there ordinary administrative courts having jurisdiction to hear disputes arising from administrative actions?

- Yes, from the first instance to final appeal (cassation)
 Yes, but only in the first instance and/or on appeal
 Yes, but only in final appeal (supreme administrative jurisdiction)
 Yes, but with a single supreme administrative court having jurisdiction in the first and last instance
 No, ordinary courts have jurisdiction for disputes involving the administration, with specialised administrative litigation chambers
 No, ordinary courts have jurisdiction for disputes involving the administration, without specialised administrative chambers

Please explain (*maximum 10 lines*):

4. If your country's judicial system includes administrative courts:

- Since when has there been a superior administrative court?

Date: ...

Not applicable

- Since when have there been ordinary administrative courts of first instance and/or appeal?

Date: ...

Not applicable

5. Are there specialised administrative courts with jurisdiction over certain contentious areas?

Yes

No

Please explain (*maximum 10 lines*):

6. How is the jurisdiction of courts for hearing disputes involving the administration determined?
(*Multiple options possible*)

The scope of jurisdiction is defined by the Constitution

The scope of jurisdiction is defined by statute

The scope of jurisdiction is defined by regulatory acts (decree, etc.)

The scope of jurisdiction is defined by case law

7. Mention the main criteria that determine the jurisdiction of administrative courts or specialised chambers of ordinary courts for hearing disputes involving the administration. You may provide examples (*maximum 15 lines*).

8. In your country, is there a special procedure that regulates disputes involving the administration?

Yes

Yes, but only in certain situations

No

9. Such disputes are usually subject to:

Mandatory preliminary procedures (e.g., mandatory administrative appeal)

Specific time limits for dispute claims

Specific rules regarding the standing to bring an action

Other specific admissibility criteria

10. Do the judges sitting in administrative courts belong to a special category?

- Yes
- No

11. Can judges of courts hearing disputes regarding administrative acts temporarily perform functions within the administration during their judicial career?

- Yes
- No

12. If your country's judicial system includes administrative courts, is there a body responsible for resolving jurisdictional conflicts between administrative courts and ordinary courts?

- Yes
- No

If yes, please describe how it is made up and how it works (*maximum 10 lines*):

II. DEFINITION OF PUBLIC INTEREST

A. Public interest according to national legal traditions

1. Does the law in your country make direct reference to the concept of public interest?

- Yes, in the Constitution
- Yes, in the statutes
- Yes, in other texts, particularly in regulatory acts
- No

2. Is the notion of public interest defined by the law in your country?

- Yes
- No

3. What is the traditional definition of the notion of public interest in your country? (*Maximum 10 lines*)

4. In your country, is the concept of public interest distinguished from other concepts (e.g., public utility, local interest, common good, imperative reason of overriding public interest, etc.)?

- Yes
- No

Please explain (*maximum 15 lines*):

5. What components, among others, can be included in the notion of public interest in the legal tradition of your country?

- Public order (including, in particular, good order, public safety, security, and health)
- Human dignity
- Public morality
- The fight against tax evasion
- Continuity of public service
- An aesthetic/architectural component
- A social component
- An economic component
- Other

Please specify your answer (*maximum 15 lines*):

6. In recent years, has the concept of public interest evolved in your country?

- Yes
- No

7. Has the notion of public interest evolved in your country in recent years under the influence of supranational rules (regional rules, international rules)?

- Yes
- No

Please explain (*maximum 10 lines*):

8. In your country, has the concept of public interest evolved to include current imperatives (such as environmental protection, protection of historical and cultural heritage, legal certainty, competition law, the emergence of digital technology, etc.)?

- Yes
- No

If yes, please explain and specify the new components of public interest in your country
(*maximum 15 lines*):

9. Has the increased protection of civil and individual rights and freedoms led to new balances in your country in reconciling the imperatives of public interest and the guarantee of these rights and freedoms in the current legal framework?

- Yes
 No

Please explain (*maximum 10 lines*):

10. Has the increased protection of civil and individual rights and freedoms led to new balances in your country in reconciling the imperatives of public interest and the guarantee of these rights and freedoms in the judicial control exercised by your court?

- Yes
 No

Please explain (*maximum 10 lines*):

11. Would you say that the concept of public interest has currently absorbed that of fundamental rights in your legal system?

- Yes
 No

Please explain (*maximum 10 lines*):

B. Ensuring and reconciling public interest objectives in administrative action

12. Which persons and bodies represent public interest at national and local levels in your country?

- The State (centralised or federal)
 Federated entities
 Local authorities (regions, municipalities, etc.)
 Public institutions, *sui generis* public bodies
 Independent administrative authorities
 Private individuals entrusted with public interest missions
 Other(s)

13. In your country, are there cases of conflicts between the public interest objectives pursued by different public or private persons and bodies?

- Yes
- No

14. Please provide one to three notable examples of conflicts between various public interest objectives in your country (*maximum 15 lines*).

15. In your country, the resolution of conflicts between different public interest objectives is regulated by (*multiple answers possible*):

- The Constitution
- The statute
- Regulatory acts or other texts
- In the absence of texts, by the administration
- In the absence of texts, by the judge
- Other (please specify:)

III. THE CONTROL OF THE ADMINISTRATIVE COURTS OVER PUBLIC INTEREST OBJECTIVES

1. Can your court hear disputes between various public bodies entrusted with public interest missions?

- Yes
- No

If yes, please provide one to three examples (*maximum 15 lines*):

2. Have you observed that conflicts between various public interest objectives are becoming more frequent in the cases heard by your court?

- Yes
- No

3. What is the nature of the control exercised by your court over the legality of administrative acts that involve reconciling several, sometimes divergent, public interest objectives? (*Multiple answers possible*)

- A rather restricted or limited control
- A normal or broad control
- A maximum or proportionality control, or even the exercise of a cost/benefit balance between various interests
- Other, particularly in the case of limited review as a court of cassation

Please explain (*maximum 15 lines*):

4. In this context, can your court set a balance and give primacy to one public interest objective over others?

- Yes
- No

Please explain (*maximum 15 lines*):

5. Regardless of the nature of the judicial control exercised, has your court developed specific techniques to prioritize the public interest, e.g., in the name, for example, of the principle of legal certainty, over other considerations?

- Yes
- No

6. For example, can the judge postpone the effects of the annulment of an illegal unilateral administrative act in order to consider the public interest?

- Yes
- No

7. For example, can the judge decide not to annul an administrative contract that is nonetheless tainted by irregularity or illegality, postpone the effects of its annulment, or order its termination only for the future or at a later date in order to consider public interest objectives and the imperatives arising from legal certainty?

- Yes
- No

Please explain (*maximum 15 lines*):

8. If other notable techniques have been applied in your country, please indicate them (maximum 10 lines)