AIHJA
IASAJ

Grand-Duché de Luxembourg

COUR ADMINISTRATIVE

THE RULE OF LAW:

CONCEPT AND PROSPECTS

SYNTHESIS REPORT

Seminar of the International Association of Supreme Administrative Jurisdictions, organised by the Administrative Court of the Grand Duchy of Luxembourg

Luxembourg, 17th and 18th September 2026

OUTLINE OF THE SYNTHESIS REPORT

METHODOLOGICAL NOTE

This report constitutes the synthesis of the national contributions submitted in response to the questionnaire circulated in preparation for the seminar. Those contributions emanate from supreme administrative jurisdictions belonging to a variety of legal traditions, whether continental, *common law* or mixed, and cover every continent.

They are the supreme administrative jurisdictions of the following countries: Albania, Algeria, Austria, Belgium, Benin, Bulgaria, Canada, Chad, China, Colombia, Cyprus, Czech Republic, Democratic Republic of the Congo, Egypt, Finland, France, Gabon, Germany, Greece, Hungary, Iraq, Italy, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Malta, Mexico, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Senegal, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Thailand, Togo, Türkiye, Ukraine and Uruguay.

The questionnaire designed to support the seminar takes the rule of law as its theme. It is divided into two parts. The first, devoted to the very concept of the rule of law, seeks not only to attempt a definition of the notion but also to grasp the concrete role of the administrative judge within the rule of law. The second part of the questionnaire addresses the prospects of the rule of law. The point is thus to ascertain whether the rule of law, in the aspects previously defined, is liable to be called into question, whether as regards its normative foundations or in its practical implementation. The questionnaire concludes with the means and tools available to the administrative courts to ensure the vitality of the rule of law.

That questionnaire comprises thirty-five questions, some of which are subdivided into sub-questions in order to give greater scope and critical perspective to the answers to be provided.

It should be emphasised that this synthesis cannot claim to be exhaustive. Since the contributions display differing degrees of detail, the report seeks to identify structural convergences and significant divergences rather than to draw up a complete inventory of national solutions. The fact that a country is not mentioned in the examination of a particular point therefore does not mean that it lacks an appropriate mechanism, but that its solution differs, or simply that its contribution does not expressly address the point under consideration.

The forty-seven contributions analysed below, submitted by the supreme administrative jurisdictions of the States concerned, constitute the sole source of this report. The reference given in brackets in the body of the report refers to the corresponding contribution.

INTRODUCTION

The notion of the rule of law occupies a singular position in contemporary legal and institutional discourse. Paradoxically, it is at once universally invoked and claimed, yet rarely defined and diversely understood. The questionnaire submitted to the supreme administrative jurisdictions took that very observation as its starting point: the notion of the rule of law, and its very definition, may be received in different ways depending on the legal systems and traditions concerned, including where the concept does not appear under that name.

The contributions received emanate from particularly contrasting legal horizons, whether from a geographical standpoint (Western and Northern Europe, Central, Eastern and Southern Europe, Africa and the Maghreb, the Near and Middle East, the Americas and Asia), in terms of legal systems (continental, *common law*, mixed or hybrid; dualist or monist) or in terms of political regimes, ranging from consolidated democracies to States in transition or in situations of conflict. That diversity lends the comparative exercise a particular richness.

The analysis of the contributions fully confirms the initial intuition, which constitutes the first lesson of this report. None of the jurisdictions consulted reports the existence of a complete and rigid normative definition of the notion. Some expressly observe that the notion has never been defined in any constitutional text or in any other legal text and that it has been developed by legal scholarship, or indeed that there is no written and rigid definition of the term in national legislation. Others state more bluntly that there is no explicit definition of the rule of law, or that the notion, although frequently employed in political discourse, is not the subject of any known definition. Elsewhere, the absence of any organic definition in the Constitution or in ordinary legislation is expressly noted, the expression itself not being used in the constitutional text.

That **absence of a definition** does not, however, entail an absence of content, still less an absence of practical consequences drawn from the notion. It reflects, rather, the matrix-like character of the notion: the rule of law lends itself less to definition than to decomposition into operative principles. It constitutes a kind of **matrix principle** which, at times, does not speak its name. It is significant that the contributions converge very largely on the identification of those principles – legality, the hierarchy of norms, the separation of powers, legal certainty, the protection of legitimate expectations, non-retroactivity, equality before the law, proportionality, the prohibition of arbitrariness, the independence of the judiciary and the right to an effective remedy – even though they diverge as to their textual basis, their normative rank and their mode of enshrinement.

A further lesson concerns the **central place occupied by the administrative judge** in the effectiveness of those principles. The administrative courts constitute the **cornerstone of the rule of law**, and numerous contributions emphasise that they have, since their establishment, amply demonstrated their effectiveness. The administrative courts conceive of their tasks through the fundamental role of **guardian** of the rule of law, often **in the front line**, administrative law being fundamentally structured around the **review of public authority**. The majority of the contributions state that, unlike civil or commercial proceedings, in which the parties are in principle on an equal footing, administrative litigation is intended to protect individuals against the arbitrary exercise of public authority.

The final lesson is, for its part, more concerning and calls for our attention. Certain contributions report, with increasing frequency, challenges, pressures and even **forms of resistance affecting the exercise of the judicial office**. Those phenomena display neither the same intensity nor the same nature from one State to another, but they outline a **shared concern** which this report is bound to convey.

Two preliminary observations are, moreover, called for. The first concerns the **striking convergence of the answers as to substance**: almost all States connect the rule of law to the same cluster of principles. The second concerns, conversely, the **extent of the divergences as to form** : the modes of enshrinement of the notion, the architecture of the court system, the techniques for referring questions to the constitutional court, the intensity of review and the responses given to the pressures bearing upon the judicial office. It is within that **tension between unity of substance and plurality of forms** that this synthesis unfolds.

The structure adopted follows from those findings. A first part will be devoted to the resonance of the rule of law as a common foundation: the definition of the rule of law as it emerges from national legal orders, and then the substance of the office entrusted to the administrative judge in order to guarantee it (*I*). A second part will examine the test to which the rule of law is subject and the tools of resilience available to the administrative judge, addressing contemporary factors of weakening, on the one hand, and the instruments of consolidation employed or contemplated, on the other (*II*).

Within each development, the analysis proceeds from the most widespread model towards the more singular solutions, so as to bring out both the lines of convergence and certain national particularities.

PART I: THE COMMON FOUNDATION: A SHARED CONCEPT AND A CONSOLIDATED JUDICIAL OFFICE

Examination of the contributions reveals a common architecture, the first foundation of which is conceptual and the second institutional. The definition of the rule of law, first, everywhere proceeds from a variable combination of constitutional, jurisprudential and supranational sources (*A*). The enshrinement of the office of the administrative judge, next, constitutes its procedural and organic expression (*B*).

A. - The definition of the rule of law: substantive convergence and plurality of the modes of enshrinement

1. The scarcity of textual definitions and the diversity of constitutional foundations

The most consistent feature of the replies is the almost general absence of any normative definition: the notion is nearly always proclaimed without being defined. Four modes of enshrinement nonetheless emerge.

A first group of States expressly enshrines the **notion in the constitutional text** without defining it. The State is then characterised as an "*État de droit*", that is to say a State governed by the rule of law (Colombia, Czech Republic, Democratic Republic of the Congo, Latvia, Romania), while other constitutions enshrine the formula in a dedicated article (Albania, Bulgaria, Gabon, Greece, Hungary, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Türkiye, Ukraine): for instance, since the Greek constitutional revision of 2001, the "*social State governed by the rule of law*", placed under the guarantee of the State in the same way as human rights, has been expressly enshrined. Likewise, the Portuguese Republic is a democratic State governed by the rule of law, founded on popular sovereignty, pluralism of expression and democratic political organisation, respect for fundamental rights and freedoms, and the separation and interdependence of powers. The Constitution of the People's Republic of China, for its part, combines proclamation with a statement of content: Article 5, paragraph (1), provides that the State shall practise law-based governance so as to build itself into a socialist country under the rule of law, a formula which the contribution explains as comprising four limbs, namely the quality of legislation, the strict enforcement of the law by the administration, judicial fairness and observance of the law by all citizens.

Several texts merely refer to the notion in their **preamble**, thereby conferring on it the value of a **founding proclamation** rather than that of a defined norm (Albania, Benin, Chad, Democratic Republic of the Congo, Latvia, Lithuania, Madagascar). The preamble affirms the will of the people to create a State governed by the rule of law and by pluralist democracy in which human rights, public freedoms, the dignity of the human person and justice are guaranteed, protected and promoted (Benin), or the will to build a State governed by the rule of law and a united nation founded on public freedoms and fundamental human rights (Chad), or indeed the aspiration to an open, just and harmonious civil society and to a State governed by the rule of law (Lithuania). The preamble to the Malagasy Constitution of 2010 states that those who govern and those who are governed are subject to the same legal norms, under the supervision of an independent judiciary, and that of the Latvian constitution of 2014 characterises the State as democratic, socially responsible and national, founded on the rule of law. Certain very recent instances of enshrinement deserve mention: the *Rechtsstaat* was introduced into the general clause of the Constitution in 2022 in the Netherlands and in 2023 in Article 2 of the Constitution of the Grand Duchy of Luxembourg.

That diversity of textual supports often mirrors the constitutional history of each State. States emerging from a recent democratic transition have frequently inscribed the formula at the very forefront of their basic law, as a re-founding act (Czech Republic, Democratic Republic of the Congo, Poland, Romania, Slovenia). Several point out that ordinary legislation extends the constitutional guarantee: a law on normative acts imposes on the norm-making process requirements of proportionality and foreseeability designed to serve the rule of law (Bulgaria); a law on administrative procedure enshrines the legality of public action, while remaining narrower than the constitutional principle (Latvia). As a federal State with a federal Constitution and twenty-six cantonal constitutions, Switzerland recalls that its fundamental values appear in the preamble to and the opening provisions of the 1999 Constitution, having been identified by the case-law of the Federal Supreme Court well before their express inscription.

The detail of the African contributions warrants particular attention, in that it illustrates the meeting of a continental legal heritage with a distinctive constitutional affirmation. The most fully developed construction has, since 1995, articulated a substantive conception around respect for the hierarchy of norms, the subjection of the authorities to the law, the protection of fundamental rights, the rights of the defence, legal certainty and the prohibition of administrative arbitrariness (Benin). Another contribution structures its definition around five explicit pillars: the subjection of the State to the law, the hierarchy of norms, the guarantee of rights and freedoms, the separation of powers and the independence of the judiciary (Togo). A third adopts a substantive definition based on the primacy of law, equality before the law, the separation of powers and the independence of the judiciary (Democratic Republic of the Congo).

A third group proceeds by deduction from structural provisions. Thus, in Germany, the principle is attached to Article 20(3) of the Basic Law, under which the legislature is bound by the constitutional order and the executive and the judiciary by statute and law. It finds specific expressions in the subjection of the three branches of government to fundamental rights, the guarantee of an independent judiciary, judicial protection against interference by the public authorities and the guarantee of the lawful judge. It is likewise deduced from Article 1 of the Latvian Constitution, from which constitutional case-law derives the principle of a democratic State governed by the rule of law, or from Article 2 of the Polish Constitution, on the basis of which the Constitutional Court identified, between 1990 and 1997, the very substance of the concept.

One particular configuration deserves mention: although the Austrian Constitution does not expressly refer to it, the rule of law constitutes one of the fundamental principles of national constitutional law and enjoys specific protection, any substantial amendment of the Constitution amounting to a total revision thereof within the meaning of Article 44(3), which is subject to a referendum. A comparable, and indeed stronger, protection results from the **eternity clause** laid down in Article 9(2) of the Czech Constitution, which prohibits any amendment of the essential requirements of a democratic State governed by the rule of law and thus prevents any majority, even a constitutional one, from abolishing those principles, thereby forestalling the legal subversion of the democratic order by way of amendment.

Lastly, in *common law* systems or those of Anglo-Saxon inspiration, enshrinement takes its own particular paths. The rule of law, referred to in French as **primauté du droit**, is expressly set out in the preamble to the Canadian Charter of Rights and Freedoms and was indirectly constitutionalised from the outset by the preamble to the Constitution Act, 1867, which states that the country rests on the same principles as the United Kingdom. It is, moreover, characterised as an unwritten constitutional principle underlying the Constitution. In Malta, although there is no single, explicit definition in the Constitution or in any particular text, the notion is understood as a fundamental constitutional principle rooted in the supremacy of law, reinforced by Article 6 of the Constitution, which asserts the Constitution's own supremacy over any inconsistent legislation.

2. The decisive role of constitutional case-law

Where the text is silent or confines itself to a proclamation, it is **constitutional case-law** that gives substance to the notion. The Bulgarian Constitutional Court has thus held that the rule of law means the exercise of public authority on the basis of the Constitution, within the framework of laws that are substantively and formally consistent with it and established in order to preserve human dignity and to give effect to freedom, justice and legal certainty. The Romanian constitutional court has defined the essential feature of the rule of law as the supremacy of the Constitution and the obligation to comply with the law, one of the requirements of the principle of legality relating to the quality of normative acts. In Spain, the constitutional court has held that democratic principles can be none other than those of the democratic order flowing from the institutional and regulatory framework of the Constitution, from which there results a system of powers, rights and balances constituting the national variant of the democratic model.

The most fully achieved illustration proceeds by sedimentation, as exemplified by Beninese constitutional case-law, which, as early as 1995, held that the rule of law has constitutional status and then progressively attached to that notion legal certainty and the intelligibility of norms, the rights of the defence and the adversarial principle, as well as respect for the hierarchy of norms. Another court goes further still, elevating the rule of law into an autonomous constitutional norm the breach of which is in itself sufficient to found the unconstitutionality of a statute (Albania). The converse trajectory is also documented: while the rule of law has long been recognised as an unwritten constitutional principle (judgment in *Roncarelli v. Duplessis*, 1959), the Supreme Court of Canada has tempered the scope of that solution by refusing to allow it to constitute an autonomous basis for invalidating a statute (*Imperial Tobacco*, 2005; *Trial Lawyers*, 2014).

That constitutional role is frequently accompanied by a **monopoly**. The capacity to identify principles of constitutional status falls in principle within the exclusive jurisdiction of the Constitutional Court, which alone has jurisdiction to rule on the conformity of a statute with the Constitution. It would be surprising if the administrative judge were able to enshrine such principles without their having first been recognised by that court (Luxembourg). That reservation in favour of the constitutional court alone is shared elsewhere, the administrative judge confining himself to implementing the principles or to identifying general principles of law inspired by the Constitution (Gabon, Madagascar, Türkiye).

An important qualification must nonetheless be entered. The **administrative judge retains**, in many legal orders, **a creative capacity within administrative law**. He may identify, through case-law, principles connected with the rule of law such as legality, legal certainty, the protection of legitimate expectations, equality, proportionality or non-retroactivity (France, Luxembourg, Greece, where the constitutional status of the principle of proportionality was recognised in case-law well before the constitutional revision of 2001). Certain contributions state that they are subject to no limitation in this respect (Democratic Republic of the Congo) or observe that the activity of their courts creates rules expressing the rule of law, some of which are connected with principles of constitutional status (Chad).

The question of **divergences of interpretation between domestic courts** arises to an uneven degree. One acute illustration is reported: the Constitutional Court of the Democratic Republic of the Congo, relying on the notion of the rule of law, has extended its jurisdiction so as to entertain the unconstitutionality of judicial decisions, including judgments of the Council of State, which reveals a tension between the branches of the court system. Others note an almost complete absence of divergence, the decisions of the constitutional court being binding on all, including in advisory matters (Madagascar), or acknowledge divergences relating not to the very existence of the rule of law but to its extent, its limits and the hierarchy of the values it protects (Morocco). Most report a **high degree of consistency between national courts**.

Whatever its sources, the **content of the notion displays a remarkable homogeneity**. Several contributions structure their reply around a theoretical distinction between a **formal conception**, that is to say mere compliance with legality and with the hierarchy of norms, and a **substantive conception** relating to adherence to substantive values of justice and to fundamental rights. The shift, in the aftermath of the Second World War, from an essentially formalist conception to a substantive one is thus described (France). The *formal rule of law* is expressly contrasted with the *material rule of law*, the latter requiring that the law incorporate fundamental values and procedural justice (Czech Republic) Another contribution adopts the same opposition by distinguishing formal legality, which merely requires that the rights and obligations of citizens be determined by law, from a substantive rule of law requiring that the very object and content of the law comply with the constitutional imperative of protecting fundamental rights (South Korea).

The detail of its components confirms that kinship. **Legal certainty**, the protection of **legitimate expectations** and **non-retroactivity** form an **almost universal core**. The requirement that norms be of good quality, clear and intelligible is at times expressly emphasised (Benin, Poland, Romania, Slovenia). Listed among the unwritten elements identified by the constitutional court are legal certainty, substantive justice, precision, proportionality and the guarantee of a fair trial (Germany). One contribution stresses the singular place of the independence of the judiciary, the only characteristic of the rule of law to be expressly enshrined at constitutional level, in Article 117 of the Constitution (Bulgaria). Lastly, the "*social*" dimension of the rule of law is expressly asserted (Colombia, as early as Article 1 of the 1991 Constitution, Greece, Latvia).

3. The influence of supranational standards and the resistance of constitutional identities

The influence of **supranational standards** constitutes one of the clearest lessons of the analysis, although it operates according to **very uneven modalities** and with **very uneven intensity**.

Within the European area, that influence is far-reaching and openly acknowledged. Thus, in Belgium, a joint *memorandum* addressed to the incoming government on 19 July 2024 by the Court of Cassation, the Constitutional Court and the Council of State characterised the rule of law as a general principle of law of constitutional status requiring all components of the public authorities to comply with the law, emphasising that both the preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the "***ECHR***") and that of the Treaty on European Union enshrine respect for the rule of law as a precondition for the protection of the other common fundamental values. The case-law of the European Court of Human Rights (hereinafter the "***ECtHR***") and of the Court of Justice of the European Union (hereinafter the "***CJEU***"), as well as the opinions of the **Venice Commission**, are moreover abundantly cited (Austria, Belgium, Czech Republic, France, Germany, Hungary, Latvia, Netherlands, Slovenia).

A comparable dynamic, albeit based on other instruments, may be observed **outside the European Union**. The understanding of the rule of law has been able to evolve substantially under the influence of the case-law of the Strasbourg Court, the opinions of the Venice Commission and the requirements associated with the accession process (Albania). Although ratified in 1952, the

ECHR was not incorporated into Norwegian law until 1999, by the Human Rights Act, the concept having undergone certain developments since then, in particular the strengthening of the principle of legality in criminal matters.

Within the European Union, that pressure has also brought about a restructuring of the court system in 2022-2023 (Cyprus) and reforms in 2020 concerning the procedure for appointing judges and the separation of advisory and prosecutorial functions (Malta). Several contributions emphasise the disciplining role of the European Commission's annual rule of law reports, which compel States to respond to the Commission's questions and to set out any shortcomings on their part (Belgium, Cyprus, Italy, Malta).

Supranational influence is not confined to institutional reforms: it **shapes the very substance of the notion**. Recent debates concern the applicability of rule of law standards to automated decisions and decisions based on artificial intelligence, as well as the independence and impartiality of judges (Netherlands). The interpretation of Article 6 ECHR has extended to administrative proceedings fair-trial guarantees traditionally attached to criminal matters (Czech Republic). The growing importance of guarantees of judicial independence and the strengthening of proportionality review are also to be noted (Latvia, Slovenia).

Outside the European area, openness operates towards other regional systems: the case-law of the Court of Justice of the Economic Community of West African States (hereinafter "***ECOWAS***") and the norms of the West African Economic and Monetary Union (hereinafter "***WAEMU***") and of the **African Union** (Benin), or indeed the Court of Justice of the Economic and Monetary Community of Central Africa (hereinafter "***CEMAC***") and the **African Court on Human and Peoples' Rights** (Chad). The same applies to the far-reaching reception of human rights treaties through the mechanism of the "*constitutional block*" under Article 93 of the Colombian Constitution and review of compliance with conventions in the light of the case-law of the Inter-American Court.

That **penetration is, however, neither uniform nor free from resistance**. Several contributions firmly recall the primacy of the national Constitution, consistently recognised by the administrative courts as the legal act at the apex of the hierarchy of norms in domestic law, international law admittedly having supra-legislative but infra-constitutional status (France). Exceptions to the incorporation of norms emanating from the institutions of the European Union are enshrined in the Constitution or in constitutional case-law in the form of counter-limits, those norms being required to comply with the fundamental principles of the democratic State governed by the rule of law (Germany, Italy, Portugal) or with sovereignty in matters of national identity (Slovakia).

Certain contributions formulate an **explicit doctrinal criticism** of that development, noting the emergence of an unprecedented institutional interconnection (European Commission, Venice Commission, European Court of Human Rights, European Parliament, Court of Justice of the European Union) involving the normative formulation of the rule of law paradigm, its elevation above the other fundamental values and, consequently, its enforceability against any other domestic or international provision, with the risk of discretionary interpretation and application (Hungary). Another contribution, without sharing that analysis, notes a parallel development in emphasising the **shift from a formal to a substantive conception**, the review of the independence of the national judiciary by the supranational judge and the creation of a form of conditionality principle applying to national norm-making (Togo).

Conversely, **several contributions put the very existence of any supranational constraint into perspective**. Although the expression "supranational rules" must be used with caution where the country does not belong to a legal order comparable to the European Union, the model is that of a national constitutional order open to international human rights standards through the mechanisms provided for by the Constitution (Egypt). Elsewhere, there has been no formal development of the notion as a result of any influence of supranational norms (Canada).

4. The place of international law: monism, dualism and procedures of incorporation

Pursuing the foregoing analysis, the contributions attest to the persistence of the ***summa divisio*** **between monist and dualist systems**, which governs the practical arrangements for the reception of international standards relating to the rule of law.

The vast majority of States adhere to a **monist logic** recognising international law as having supra-legislative but infra-constitutional status, the Constitution providing that duly concluded international treaties and agreements have, upon publication, an authority superior to that of statutes, subject to reciprocity (Algeria, Chad, Democratic Republic of the Congo, France, Greece, Morocco, Ukraine). One remarkable exception is to be noted: a "*moderate*" monist system gives directly applicable treaty provisions precedence over national legislation, including over the Constitution, pursuant to Article 94 (Netherlands). The same holds true under the Luxembourg legal tradition. A comparable monist logic results from Article 6, paragraph (1), of the Korean Constitution, under which treaties duly concluded and promulgated, as well as the generally recognised rules of international law, have the same effect as domestic legislation, although Article 60 nevertheless makes the most important treaties subject to the consent of the National Assembly.

In parallel, several systems retain the **dualist model**. Since international treaties must be transposed by an Act of Parliament in order to be enforceable, the ECHR was incorporated by a specific Act, whereas European Union law is governed by the principle of primacy established by another Act (Malta). Owing to the dualist nature of the legal system, international law has no direct effect until the Norwegian legislature has incorporated it, the presumption of conformity nonetheless requiring national law to be interpreted, so far as possible, in accordance with international obligations. International law must in principle be incorporated, either by rendering it directly applicable or by transposing it, without any specific procedure, European Union law nevertheless constituting an exception by virtue of the primacy accepted in the fields of competence transferred (Sweden). Dualism is likewise adopted for treaties generally (Slovakia, Thailand). A combination of the two approaches is, lastly, documented: dualist as regards treaties, which must be transformed into domestic law, but monist as regards international custom, which is automatically applied by the courts (Canada). A distinct configuration must further be noted: in China, the Constitution contains no general provision on the application and rank of international law.

The **arrangements for incorporation** confirm that division. In monist systems, ratification, often subject to parliamentary authorisation for the most important treaties, suffices to integrate the norm: authorisation is reserved for treaties concerning public finances, the status of persons or the territory (Democratic Republic of the Congo), treaties amending national legislation (Chad, Madagascar) or treaties relating to rights and freedoms, which are subject to ratification by Parliament (Ukraine). Parliamentary approval may also be required for treaties containing provisions of a legislative nature or of particular importance, a two-thirds majority being required where the commitment concerns the Constitution or a transfer of powers that is significant from the standpoint of sovereignty (Finland).

Only one **genuinely specific procedure** is reported: treaties must be approved by Congress and then submitted to prior, automatic and comprehensive review by the Constitutional Court, a *sine* *qua non* condition of their ratification (Colombia, Article 241(10)). For the rest, no State reports any procedure reserved for the incorporation of supranational rules relating to the rule of law: everywhere, it is the general regime for treaties that applies. Several contributions nonetheless emphasise that accession to the European Union has redefined the articulation of legal orders, the obligation to disapply conflicting domestic law and the establishment of the Court of Justice having altered the exclusive jurisdiction of the constitutional court (Austria), the primacy of European Union law being expressly enshrined in the Constitution (Austria, Slovakia, Sweden).

5. The reception of the concept by administrative case-law: an indirect use

The most consistent feature of the contributions is the **rare, indirect or implicit invocation of the notion of the rule of law**. The administrative judge very generally prefers **to reason by reference to the principles derived from it rather than to the concept itself**.

It is rare for the supreme administrative jurisdiction to refer to it directly, although, through the **review of legality** that it carries out, it ensures the protection of litigants' rights against any arbitrariness on the part of the public authorities and thus **takes part** on a daily basis in **safeguarding the rule of law**, the principle of legality being a **corollary** thereof (Belgium, France). The notion is even presented as "*so self-evident*" that the courts have never felt the need to state it formally, as in the case of the principle of legal certainty, which was recognised as a general principle of law only in 2004 (France). Elsewhere, the notion is only rarely mentioned expressly, the rule of law constituting an evolving concept rather than a notion endowed with a single and exhaustive definition, its recognition in case-law resulting above all from the concrete application of the principles of which it is composed (Switzerland). The principle may also serve to fill gaps in written law and to give precision to existing abstract standards, thereby performing a subsidiary function, being activated only where the written provisions appear insufficient (Germany).

That restraint is explained by **converging procedural and cultural reasons**. The Belgian Council of State is bound by the pleas raised by the parties, who are more inclined to allege the infringement of specific principles (legal certainty, legitimate expectations, proportionality, the principles of good administration, the *audi alteram partem* rule) than an infringement of the rule of law as such. The case-law of the Administrative Jurisdiction Division of the Netherlands Council of State mainly reflects the concrete elaboration, in the form of norms, of basic ideas founded on the rule of law, the constitutional principles themselves being only rarely mentioned explicitly, which is explained by the courts' focus on the concrete resolution of the dispute and by the absence of a legal tradition of developing abstract concepts (only eight judgments have expressly invoked the notion since 2011). The constitutional principle is more often referred to as the principle that the administration is subject to the law, applicants relying on the principles of good administration derived from the administrative procedure act (Finland). Applicants rarely rely, as such, on an infringement of the rule of law (Norway, Sweden). One court, lastly, openly acknowledges a deliberate refusal to use the expression in its judgments, out of a concern for textual neutrality, while readily employing it in conferences and reports, having developed its own legal tools for subjecting the administration to the law: the principle of legality, the action for annulment on grounds of ultra vires, the general principles of law and review of compliance with international conventions (Togo).

That **economy in the use of the concept** is at times reflected in illuminating **quantitative data**. The Czech contribution emphasises that the terms corresponding to the rule of law appear in approximately 12,000 decisions out of a database of 200,000, that is to say around 6% of the whole, whereas explicit citations of Article 1 of the Constitution, which enshrines the rule of law, concern only some 1,700 cases, that is to say slightly more than 1% of the total analysed. Statistical research reveals a concentration of references in the disciplinary law applicable to civil servants and in police and security law (Germany). Certain supreme courts nonetheless refer to the principles of the rule of law and of the separation of powers in particular cases, as in a recent case concerning the justiciability of the government's annual climate report (Finland).

Conversely, **a few legal orders make the notion a direct and explicit basis**, consolidated by administrative case-law. Thus, Article 129 of the Ukrainian Constitution requires the judge to *be guided* by the rule of law in the administration of justice, the code of administrative procedure making it one of the fundamental principles of procedure; the administrative judge applies it practically every day, since it features in the reasoning of almost every decision in disputes between citizens and the State. In other States, administrative judges refer to it as a constitutional principle, relying on the doctrine developed by the Constitutional Court, particular attention being paid to it in tax matters, where it protects taxpayers against arbitrary changes in administrative practice, and in disciplinary matters, where it prohibits the imposition of sanctions on judges on account of their legal opinions (Lithuania). Decisions are based on the constitutional formula of the "*State governed by the rule of law*" and on judicial review of all acts of the administration (Türkiye). The notion was extensively recognised by the administrative courts well before its constitutionalisation in 2011 (Morocco), and explicit references appear in the case-law of the administrative chamber of the Supreme Court (Chad).

Two **conceptual particularities** deserve, lastly, to be noted. Two notions coexist in the national legal vocabulary, one generally likened to the *rule of law* of *common law* systems, the other referring rather to the German *Rechtsstaat* and to the rule of law of continental tradition, that distinction being primarily a matter of the history of concepts and not translating into competing approaches in case-law (Thailand). Elsewhere, since the notion is often mentioned in the parliamentary travaux préparatoires in its German and English translations, the Constitutional Court treats it as a meta-principle, a kind of umbrella principle encompassing access to a court and an effective remedy, which has enabled it to recognise the constitutional status of principles that are *a priori* unwritten, such as legal certainty, legitimate expectations, proportionality and non-retroactivity (Luxembourg).

B. - The office of the administrative judge: the institutional and procedural expression of the rule of law

While the **definition** of the rule of law remains **largely implicit**, its **institutional expression** is, by contrast, **strongly objectified**. The contributions describe, with remarkable convergence, a judicial office structured around the basis of jurisdiction, the architecture of the court system, access to a court, the intensity of review and the instruments of interim protection, to which are added administrative transparency and the dialogue with the constitutional court.

1. The basis of jurisdiction and the architecture of the court system

The **jurisdiction of the administrative judge** is **very generally enshrined in the Constitution or in legislation**, and at times in both. Thus, in Türkiye, the guarantee is primarily afforded by Article 125 of the Constitution, under which judicial review is available against all acts and measures of the administration, the Council of State being, moreover, expressly governed by the Constitution. In France, it is attached to a fundamental principle recognised by the laws of the Republic, derived from decisions of 1980 and 1987, the duality of the branches of the court system having been enshrined in the Constitution since 2008. Elsewhere it is based on Articles 160 and 161 of the Belgian Constitution, on Article 95 of the German Basic Law, read together with the guarantee of a judicial remedy against any interference by the public authorities laid down in Article 19(4), the keystone of the system, on Articles 209 and 212 of the Portuguese Constitution, which enshrine the administrative and tax courts as a distinct branch of the judiciary, on Articles 129 to 136 of the Austrian Constitution, or indeed on Article 197 of the Thai Constitution of 2017.

A qualification must be entered as regards **systems that have not enshrined the administrative branch of the court system as such**. The existence of the administrative branch is not expressly enshrined at constitutional level but implicitly founded on the constitutional framework, in particular through the principles of the rule of law, the separation of powers and judicial review of administrative decisions (Norway). Elsewhere, there is no administrative branch of the court system as such, although the enabling legislation may establish several levels of jurisdiction within a given administrative regime, as in matters of immigration and refugee protection (Canada). At times, again, the constitutional order does not establish an autonomous and detailed administrative branch as a constitutional subsystem, but clearly presupposes the existence of a public administration and subjects it to the principle of legality (Czech Republic).

The question of the **duality of the branches of the court system** receives contrasting answers. The dominant model remains that of duality, with separate ordinary and administrative branches (Algeria, Belgium, Chad, France, Greece, Iraq, Luxembourg, Madagascar, Morocco, Portugal, Togo, Türkiye). That model displays notable variants: the logic of specialisation is taken as far as five branches of jurisdiction – ordinary, labour, administrative, social and fiscal – in Germany, or three separate branches, judicial, administrative and financial (Gabon).

At the other end of the spectrum, several systems are based on the **unity of jurisdiction**: the principle of unity of jurisdiction is the foundation of the organisation and functioning of the justice system under Article 117 of the Constitution (Spain). All courts have general jurisdiction, the Supreme Court being at once the highest administrative, constitutional and ordinary court (Norway). A comparable approach based on courts of general jurisdiction prevails elsewhere (Canada). An intermediate position combines specialised administrative courts with unification at the apex by the Court of Cassation, without any jurisdictional disputes tribunal (Morocco). Lastly, the distinction between ordinary and administrative courts does exist, the Supreme Administrative Court settling conflicts between administrative courts and the Constitutional Court those arising between the two branches (Austria). Elsewhere there is neither a distinct administrative order nor an administrative judge vested with a separate jurisdiction, the people's courts hearing administrative cases in the exercise of the adjudicatory power which, under Article 131 of the Constitution, they exercise independently, Article 12 of the Administrative Procedure Law setting out an exhaustive list of twelve categories of admissible claims, among them administrative penalties and compulsory measures, licences and permits, the confirmation of rights over natural resources, expropriation and the compensation thereof, the failure of an administrative organ to perform its statutory protective duties, administrative agreements and, residually, any infringement of personal and property rights (China).

The **resolution of conflicts of jurisdiction** mirrors that diversity: a jurisdictional disputes tribunal composed on an equal basis (Algeria, France, Madagascar, Togo), the Court of Cassation (Belgium, Morocco), the Constitutional Court (Austria, Gabon, Luxembourg), an *ad hoc* Conflicts Court composed of the presidents and vice-presidents of the two supreme courts (Portugal), a Joint Committee bringing together the civil and the administrative judge (Iraq), or a statutory referral mechanism (Germany). The most fully developed arrangement is based on a tribunal created in 1872, composed on an equal basis of members of the Council of State and of the Court of Cassation, which hears on average thirty to forty cases a year under four procedures (negative conflict, positive conflict raised by the prefect, conflicting judgments entailing a denial of justice and, since 2015, conflict on a preliminary reference, which has become the ordinary route for settlement) (France). Several States emphasise that such conflicts have in practice become marginal (Germany, where they are "*surprisingly rare*", France, Gabon, Luxembourg).

The existence of **several levels of jurisdiction** is very generally established, although at times of recent introduction: two levels of jurisdiction provided by the administrative tribunals established in 1953 and the administrative courts of appeal in 1987, subject to review on points of law by the Council of State (France); three levels since the code of procedure of 1960 (Germany); a three-instance system since 2014, following the so-called "*9+2*" model of nine regional administrative courts and two federal courts (Austria); three levels (Portugal, Sweden); two levels (Finland, Iraq, Luxembourg); two levels since 1998, with the Council of State and the administrative tribunals, to which administrative courts of appeal were added in 2022 (Algeria). One striking fact emerges from the African and Asian contributions: the very recent establishment of specialised administrative courts, with the administrative tribunals set up in October 2018 (Gabon), the administrative tribunals created in 1993 and the administrative courts of appeal in 2006 (Morocco), and the birth of administrative law and of the administrative courts with the 1997 Constitution (Thailand). A two-tier system, in which the second-instance decision is final and may give rise only to an application for retrial before the court at the next higher level, has been in force since October 1990 (China). A three-tier system was introduced by the amendment of 27 July 1994 to the Administrative Litigation Act, which entered into force on 1 March 1998 in place of a two-tier system, certain special statutes, such as the Monopoly Regulation and Fair Trade Act, nevertheless maintaining two tiers by conferring first-instance jurisdiction on the Seoul High Court (South Korea).

Several particular situations warrant attention. In Lebanon, while the organisation of the courts remains relatively centralised around the Council of State, an Act of 2000 provided for the creation of first-instance administrative tribunals which have never become operational, so that the Council of State remains the sole administrative court, a bill on the independence of the administrative judiciary contemplating their effective creation. In the absence of any administrative court of appeal, the decisions of the Madagascan Council of State are delivered at first and last instance, access to a court being, moreover, limited by geographical distance and inadequate infrastructure. Lastly, a large-scale restructuring carried out between 2022 and 2023, prompted by criticism relating to judicial backlogs and by the recommendations of the European Commission's annual reports, split the former unified Supreme Court of Cyprus into a Supreme Constitutional Court and a Supreme Court, alongside a newly created Court of Appeal, with a view to strengthening judicial independence and guaranteeing access to justice.

The **structure of review on points of law** varies appreciably. Several States confer on their supreme administrative court the function of a court of precedent in the strict sense: the administrative courts of appeal grant leave to appeal in more cases than the Supreme Administrative Court, which enables the latter to devote itself to settling the case-law (Sweden). The Norwegian Supreme Court hears only cases raising questions of principle, admission being a matter for the Court itself. Elsewhere, the Council of State combines the functions of a court of cassation in respect of the judgments of the administrative courts of appeal and of a court of first and last instance for regulatory acts of ministers and certain decisions of independent administrative authorities with national competence (France), or acts most often as a court of cassation in respect of specialised first-line administrative courts, in particular the Council for Alien Law Litigation created in 2007, which limits the extent of its review of legality (Belgium).

2. Access to the administrative judge: standing, formal requirements and legal aid

Access to a court constitutes, in all the contributions, the **foremost operative criterion of the rule of law**. Thus, in France, the right to a remedy is presented as a long-standing principle of case-law, deriving from a decision of 1950 which affirmed the existence of a general principle of law under which the action for annulment on grounds of ultra vires lies, even in the absence of any express provision, against any administrative decision, standing being assessed very liberally and the range of challengeable acts having been continually broadened. Elsewhere, the right to a fair trial within a reasonable time is expressly guaranteed by Chapter 2 of the Instrument of Government, its requirements being aligned with those of Article 6(1) of the Convention (Sweden). Article 132 of the Austrian Constitution determines who is entitled to bring proceedings before the administrative courts, and Article 83(2) enshrines the right to be heard by the court having jurisdiction.

The **conditions of access reveal a structuring doctrinal opposition**: the model of the action available to the holder of an infringed subjective right (*Verletztenklage*), which requires the possibility of an interference with the applicant's own rights, stands in contrast to the model of the action available to any interested person (*Interessentenklage*), where a factual interest in bringing proceedings suffices (Germany, France). Actions by associations are confined to the fields in which legislation expressly provides for them, such as environmental law (Germany), and proof of a genuine need for judicial protection is required (Norway). **Standing** is thus generally assessed strictly as regards its characteristics, but often flexibly as regards its scope: the interest must be personal, direct, present and certain, the case-law taking the view that it is established in the case of any person affected by the effects of an act causing him adverse consequences, whether moral or material (Luxembourg).

Beyond standing, **the conditions of admissibility display strong constants**: the requirement of a prior adverse decision, a time-limit for bringing proceedings, a prior administrative appeal that is at times mandatory, and the possibility of remedying certain defects in the course of the proceedings. The ordinary time-limit is frequently two months (France), one month from notification (Germany) or four weeks (Austria), shorter time-limits applying in electoral matters or in the law relating to foreign nationals. Failure to comply with procedural rules entails inadmissibility only where it has the effect of actually impairing the rights of the defence, the parliamentary travaux préparatoires insisting that inadmissibility be declared only in that situation (Luxembourg). Extensive procedural assistance is described: the registry notifies the applicant of the steps required to remedy defects (signature, address for service, schedule of documents, payment of court fees) and informs him of the consequences of failure to comply with time-limits (Belgium).

Mandatory representation by a lawyer and **legal aid** display considerable heterogeneity. The trend is clearly towards no requirement at first instance and a mandatory requirement on appeal on points of law (Germany, before the higher courts; Austria, before the Supreme Administrative Court; Belgium, where only the appeal on points of law requires it; France, where the action for annulment on grounds of ultra vires is exempt; Gabon, on appeal on points of law). Representation by a lawyer does not, in principle, constitute a general condition of admissibility, in particular in actions for annulment on grounds of ultra vires, pension cases, individual disputes involving public servants, and in tax and electoral matters, that flexibility forming part of the intention to guarantee effective and broad access. No mandatory representation is imposed elsewhere (Norway, Sweden). A legal aid mechanism or court-appointed counsel is provided for in almost all the contributions (Germany, Austria, Belgium, France, Sweden, in certain matters such as involuntary psychiatric care or the protection of minors).

The treatment of **applications brought by persons without legal training** reflects a shared concern for effectiveness. Where the applicant is unrepresented, the court of first instance must give him the instructions necessary to formulate a proper claim and to supply the indispensable information (Germany). The judge is entrusted with an extensive duty of procedural *guidance*, and even with the power to order the assistance of counsel where the case cannot be presented intelligibly (Norway). The admissibility of applications from non-lawyers is approached flexibly as regards formal requirements (France). The institution shows greater indulgence towards unassisted applicants and endeavours to give meaning to loosely drafted pleas (Belgium, Luxembourg). A new and worrying phenomenon is reported as regards the proliferation of applications drafted by artificial intelligence, which do not satisfy procedural requirements and are prompting the institution to undertake specific reflection (Belgium). Nor is legal representation required, the retaining of a lawyer being a right rather than an obligation, the claim being capable of being brought orally and recorded by the court where the party has genuine difficulty in preparing a written complaint, templates being further made available (China).

Review of the **cost of access to a court** warrants particular mention. The supreme court reviews whether the amount of stamp duty or of the other fees required as a condition of admissibility is at such a level as, in practice, to deter or render impossible the exercise of a remedy, especially for litigants of limited means. Where the financial burden appears disproportionate, it takes the view that the core of the right of access to a court is affected and subjects the rules to strict review, having thus struck down a provision making the exercise of a remedy conditional on the payment of a sum proportionate to the value of the dispute without any ceiling (Greece). Conversely, in certain cases, the almost complete absence of cost, and indeed the entirely free nature of proceedings in electoral matters, is emphasised (Madagascar).

The **reasonable time** requirement completes that demand for effectiveness. Few States impose legally binding time-limits for adjudication. In France, apart from statutory exceptions, there is no mandatory time-limit for the determination of the merits, average durations standing at approximately 9 months at first instance, 11 months on appeal and almost 7 months on appeal on points of law, exceeding the reasonable time having engaged the liability of the State for simple fault since 2002. Particularly well-developed special time-limits are, by contrast, laid down (48 hours for the urgent application for the protection of a fundamental freedom, 96 hours for actions against orders to leave the territory concerning a detained foreign national, 20 days for the urgent pre-contractual application, 2 to 3 months in local electoral matters, 10 months for certain building permits). Elsewhere, indicative time-limits of 15 to 18 months have been set for annulment proceedings since the reforms of 2023-2024 (Belgium). No statutory time-limit is laid down elsewhere, an ordinary case taking on average more than a year at first instance as a result of asylum litigation, compensation being available for excessive duration (Germany, Ukraine). There is no fixed time-limit, the average time for resolution at first instance being 3 months depending on the state of the evidence (Iraq). A notable exception must be recorded: the trial periods are fixed by statute, at six months at first instance and three months on appeal, any extension requiring the approval of the higher court, the review of an application for retrial being itself confined to a six-month period (China). A final model rests on a statutory time-limit devoid of sanction: the Korean code of civil procedure, applicable by reference to administrative litigation, prescribes that judgment be delivered within five months of the commencement of proceedings or, on appeal and on appeal on points of law, of receipt of the case file, but that prescription is construed as merely directory, so that its expiry does not render the decision unlawful, the average durations recorded in 2024 standing at 311.6 days at first instance, 276.2 days on appeal and 141.6 days on appeal on points of law.

3. The intensity of judicial review

The contributions describe a **gradation that is now widely shared**, combining review of legality and full jurisdiction, limited review and full review, assessment of proportionality and the balancing of interests.

In the classical manner, the judge carries out a **review of legality in annulment proceedings** (lack of jurisdiction, breach of an essential procedural requirement, infringement of the law, misuse of powers, error of fact) and a review in the exercise of full jurisdiction in the corresponding proceedings. A distinction is thus drawn between the action for annulment on grounds of ultra vires, a "*trial of an act*" conferring only a power of annulment, and the action in the exercise of full jurisdiction, in which the judge may vary the decision, determine compensation, fix the amount of a tax or the results of an election. The intensity of review of the administration's assessment is modulated, ranging from a refusal to review (selection boards) to review limited to manifest error (discretionary power) and then to ordinary review including proportionality in policing matters (France). Elsewhere, the principle of full review, on both the facts and the law, is laid down, guaranteed by Article 19(4) of the German Basic Law, the margin of assessment (*Beurteilungsspielraum*) remaining exceptional, and the balancing of interests being conducted in a structured manner according to the stages of suitability, necessity and proportionality in the strict sense. Review varies according to the administration's discretionary power, being strict, extending as far as proportionality review, in matters of fundamental freedoms, administrative penalties and adverse decisions, or limited, in certain cases, to manifest error of assessment where the administration exercises a fully discretionary power.

Two significant qualifications are reported. Under Article 21-*octies* of the Italian law on administrative procedure, an act adopted in breach of procedural or formal rules is not liable to annulment where it is manifest that, having regard to the circumscribed nature of the power exercised, its operative part could not have been different. In Belgium, where the report of the auditor concludes in favour of annulment, the authority concerned or the intervening party may request that the effects of the decision be maintained, the Administrative Litigation Section being able to state, exceptionally and by a specially reasoned decision, which of the effects of the annulled individual acts or regulations are to be regarded as definitive or provisionally maintained.

The treatment of the **plea alleging a failure to state reasons** concretely illustrates that gradation. A distinction is thus drawn between review of the formal presence of a statement of reasons (the absence of which constitutes a breach of an essential procedural requirement liable to entail annulment, save in cases of absolute urgency) and review of the reasons themselves where the law requires reasons to be given (France). By virtue of the obligation of full review, an inadequate statement of reasons does not in principle affect the judicial decision, annulment on that ground alone being incurred only where the defect was capable of influencing the tenor of the decision, in particular in matters of discretionary power (Germany).

Discretionary power is, lastly, the subject of a remarkable **conceptual framework**. The administration may enjoy a margin of assessment, especially where it must assess the public interest or technical considerations, but that margin remains subject to judicial review. The judge then verifies that it has been exercised within statutory limits, for a lawful purpose, without misuse of powers, without manifest error of assessment and without infringing constitutional rights. In that sense, the margin of assessment lies not outside the rule of law: it is exercised under the rule of law (Egypt). According to the case-law of the Supreme Administrative Court of Thailand, the rule of law is characterised in particular by compliance with the principle of legality, the non-arbitrary exercise of administrative power, the framing of discretionary power by legislation and the general principles of law, the protection of fundamental rights and freedoms and observance of procedural safeguards.

4. Interim judicial protection in situations of urgency

The existence of urgent procedures is **almost unanimously attested**, with varying degrees of sophistication.

The most fully developed range results from the French Act of 30 June 2000, which created three procedures (the urgent application for suspension, based on serious doubt as to legality; the urgent application for the protection of a fundamental freedom, available in the event of a serious and manifestly unlawful interference with a fundamental freedom, on which the judge rules within forty-eight hours; and the urgent application for "*useful measures*"), which today account for the majority of urgent applications, one quarter of the cases determined by the administrative tribunals falling within those procedures. The review carried out by the judge hearing urgent applications for the protection of fundamental freedoms has gradually been extended to "*rights to positive action*" in the fields of asylum and disability. An urgent action for the protection of rights, freedoms and guarantees, provided for by the code of procedure of the administrative courts, ensures that citizens obtain a prompt decision where the action of the administration is essential to the timely exercise of a right or freedom (Portugal). An ordinary urgent procedure and an extremely urgent procedure, involving *prima facie* review, are organised by Article 17 of the coordinated laws (Belgium). Interim judicial protection is provided for, the intensity of which increases where the measure entails consequences that are difficult to repair, such as removal or expulsion (Germany). Suspensive effect is as a general rule attached to first-instance proceedings (Austria). A stay of execution may be sought, in particular where the decision entails irreversible consequences such as removal, demolition or harm to the environment (Norway).

Certain systems display more restrictive configurations. The main mechanism is the **stay of execution**, which allows the execution of a decision to be provisionally suspended where a serious ground of annulment is relied on and where serious harm is liable to result from its execution, the governing legislation also providing for procedures falling within the remit of the judge hearing urgent applications, without the system attaining the degree of development of the continental model (Lebanon). One contribution reports no urgent procedure properly so called, the law providing neither for direct access to the supreme court at first and last instance nor for any adjustment of review in situations of urgency. Indeed, the Administrative Procedure Law merely organises a summary procedure for first-instance cases where the facts are clear, the relations of rights and obligations definite and the dispute of limited significance, namely an act made on the spot, a claim below a certain amount and applications concerning government information disclosure. That procedure may moreover be extended to other cases with the consent of all parties (China).

As to **whether urgency alters the intensity of review**, the answers diverge. A twofold movement is described. The progressive broadening of the fundamental freedoms that may be relied on, extended to rights to positive action presupposing active intervention by the public authorities, is accompanied by a tightening of review through the requirement of "*manifest*" illegality, a stricter test than the mere illegality required on the merits (France). Review is in principle summary, but its density approaches that applied to the merits where the measure entails consequences that are difficult to repair, the judge then granting interim protection in case of doubt in order to prevent irreversible harm (Germany). Urgent procedures do not fundamentally alter the nature of review, but lead the judge to assess within a short time whether the statutory conditions are met, thus carrying out a *prima facie* examination and reconciling the general interest with the safeguarding of rights (Thailand).

5. Administrative transparency and access to documents

Access to administrative documents constitutes, in almost all the contributions, a **recognised component of the rule of law**, although the degree of organisation varies considerably.

Article 32 of the Belgian Constitution provides that everyone has the right to consult any administrative document and to obtain a copy thereof, save in the cases and on the conditions laid down by law, administrative transparency having been elevated into a fundamental democratic right and all levels of government, federal and federated, having adopted rules enshrining it (Belgium). The Austrian Act on access to information, which entered into force on 1 September 2025, requires courts and administrative authorities to provide information of general interest (activity reports, statistics, expert opinions, contracts) not only upon request but also proactively, a proportionality test being required where national security, the protection of personal data or business secrets are at stake. In France, access is organised around a commission, referral to which is a mandatory precondition of any action before the courts, the applicant in principle not being required to state reasons for his request. It is recognised and regulated as an expression of the right of access to public information, founded on the Constitution and on transparency legislation (Mexico).

A two-tier arrangement deserves mention: the Lebanese Act on the right of access to information introduced a specific mechanism enabling a matter to be referred, in the event of an express or implied refusal, to the national anti-corruption commission, which has jurisdiction to examine complaints and to adopt binding decisions, those decisions remaining subject to review by the Council of State, the system thus resting on a twofold level of guarantee. An equivalent system is to be found in Luxembourg, as enshrined in the Act of 14 September 2018 on a transparent and open administration, which provides for mandatory referral to the national commission for access to documents, with an action before the courts at two levels of jurisdiction.

Conversely, several contributions report **non-existent or embryonic arrangements**. There are no specific procedures in this field, the administration not being required to grant access to administrative documents (Gabon). Decisions are published online selectively and non-exhaustively, within the framework laid down by the law on access to information (Morocco). More generally, most States have not established any specific remedy, a refusal of disclosure being challenged under the ordinary procedures – an action for annulment not open to appeal but only to review on points of law (France), an urgent application or an action for annulment with no dedicated procedure (Belgium), the ordinary administrative courts (Germany).

The **judicial treatment of secrecy** constitutes a particularly instructive point of tension. A provision of the German code of administrative procedure allows the competent ministry to refuse disclosure of documents where such disclosure would be prejudicial to the interests of the State or where the files must remain secret, in particular those of the authorities for the protection of the Constitution. That refusal may be reviewed, at the request of a party, before a formation specifically dedicated to the protection of classified information, sitting in camera on the basis of the unredacted files. The administrative courts have no power to classify documents as State secrets, but a decision refusing access on that ground may be challenged before them, their review being limited to assessing compliance with the law (Portugal). A specialised formation of the Council of State, cleared for national defence secrecy, itself verifies, without informing the applicant, the presence and merits of the information concerning him, and may order its correction or deletion, under adversarial arrangements that are necessarily adapted (France).

6. The dialogue with the constitutional court

The mechanism for **referring questions to the constitutional court** constitutes one of the most significant points of articulation between the administrative office and the **guarantee of the rule of law**. Several families emerge.

The first is based on **referral at the initiative of the parties**, along the lines of the priority preliminary ruling on the issue of constitutionality, the administrative judge acting as a filter as to whether the challenge is a serious one (Algeria, France, since 2010, Morocco, Togo), or of the preliminary question referred to the Constitutional Court (Belgium, Luxembourg). Figures shed light on the actual intensity of those mechanisms: in 2025, the administrative tribunals ruled on 365 priority preliminary questions on the issue of constitutionality and referred 22 of them to the Council of State, while the administrative courts of appeal ruled on 124 questions and referred 7, the rate of referral to the Constitutional Council being in the order of 25% (France). Some fifteen preliminary questions are referred each year to the Constitutional Court (Belgium).

Another requires the judge to make a **mandatory referral**. Courts which consider a relevant legislative provision to be unconstitutional must refer the matter to the Constitutional Court and stay the proceedings, the monopoly on striking down Acts of Parliament being reserved to the latter, the courts being able to disapply only regulatory provisions (Germany, Austria). Under Article 193 of the Polish Constitution, any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act with the Constitution, with ratified international agreements or with legislation, provided that the answer determines the outcome of the dispute. Article 95 of the Maltese Constitution allows any court exercising administrative jurisdiction to refer a question of constitutionality, the judge being required to stay the proceedings provided that the question is neither frivolous nor vexatious. In Lithuania, where an administrative court entertains reasonable doubts as to the compatibility of an applicable act with the Constitution or with a higher-ranking norm, it must stay the proceedings and refer the matter to the Constitutional Court. Under Article 41, paragraph (1), of the Constitutional Court Act, where the conformity of a statute with the Constitution determines the outcome of the dispute, the court seised must, of its own motion or on the application of a party, request the Constitutional Court to rule on that conformity, a mechanism of which the administrative judge makes substantial use as soon as he entertains reasonable doubt as to the constitutionality of the applicable text, although the number of such requests cannot be established on a uniform basis (South Korea).

Lastly, the final family dispenses with any referral by **entrusting the ordinary courts with diffuse review**. Any court may disapply an unconstitutional provision (Portugal). Courts are required not to apply legislation contrary to the Constitution (Greece). The administrative courts are empowered to interpret and apply constitutional principles by way of diffuse constitutional review, actions alleging unconstitutionality being open only to the authorities and entities expressly empowered to bring them (Mexico). That model is accompanied by corrective mechanisms: where a court refuses to apply a provision on grounds of unconstitutionality, the public prosecutor's office must bring a direct action before the Constitutional Court; where it applies a provision the unconstitutionality of which had been raised, the parties may bring an action against that part of the decision which rejected the complaint (Portugal). Where the Constitutional Court has already found a provision to be unconstitutional in another case, the ordinary court may no longer seek a declaration of unconstitutionality but only the exclusion of the application of the provision in the case before it (Hungary).

Several States simply have **no referral mechanism at all** (Finland, Iraq, where the constitutional issue is set aside for lack of jurisdiction, Sweden), the question being devoid of purpose where there is no separate administrative judge (Norway), or the mechanism existing in the form of the plea of unconstitutionality while remaining very rarely used (Senegal). Member States of the European Union add to those arrangements the reference for a preliminary ruling to the CJEU, a recent question having concerned remedies in tax matters (Slovenia). A distinct model finally entrusts constitutional review to the legislature: in China, the National People's Congress and its Standing Committee alone are responsible for it. The Supreme People's Court is empowered to submit to the Standing Committee a written request for review of an administrative regulation, a local regulation, an autonomous regulation or a separate regulation which it considers contrary to the Constitution or to a law. The relevant special committee and working body then conduct the review and provide an opinion.

One contribution, lastly, attests to a **particularly bold practice**. The administrative chamber of the Supreme Court disapplied a decision of the Council of Ministers directly on a constitutional basis, holding that the withdrawal of judges' service passports infringed Article 138 of the Constitution, which protects judicial benefits as acquired rights beyond the reach of any reduction by the executive, thereby establishing that the constitutional guarantee of independence may be relied upon directly against the executive by way of administrative proceedings, without any prior referral (Albania).

* * *

PART II: THE TEST: CONTEMPORARY CHALLENGES AND THE LEVERS OF CONSOLIDATION

In its second stage, the questionnaire expressly asked the courts about the **possible calling into question of the rule of law** and about the means of ensuring its vitality. The answers received paint a nuanced picture. Nowhere does the challenge assume a systemic character such as to jeopardise the very existence of judicial review, but almost everywhere tensions appear whose nature and intensity vary. An inventory of them should be drawn up (*A*) before examining the instruments by which legal orders respond to them (*B*).

A. - Contemporary factors of weakening

1. Public criticism of decisions and the contesting of the judge's role

Criticism of judicial decisions is unanimously recognised as legitimate in principle. It is even presented as a requirement. All decisions are open to public debate, whether as to the legal reasoning, the outcome or the case itself, and that holds true also for cases involving rule of law principles, especially where those principles are in tension, as between freedom of expression and protection against discrimination. Open public debate constitutes an essential feature of a democratic society. The possibility of publicly criticising judicial decisions within the framework of freedom of expression is regarded as a requirement inherent in a democratic society, such criticism amounting neither to interference with the administration of justice nor to unfounded allegations.

The **difficulty arises where criticism ceases to bear on the reasoning and is directed at the institution or at the person of the judge**. Criticism is legitimate, but judges are subjected to personal attacks in the press or on social media, which is unacceptable. The most frequent situation is one in which the rule of law is attacked because it constitutes the underlying basis of decisions of which certain political figures disapprove, such criticism denouncing an increased recognition of individual rights coupled with a marked proliferation of norms said to undermine the general interest and popular sovereignty for the benefit of a "***government of judges***", and thus setting the rule of law against the sovereignty of the people (France).

Several contributions report **criticism emanating directly from other constituted powers**. Decisions relying on the principle of the rule of law, the principle of legality, the right to a fair trial, effective judicial protection or the supremacy of the Constitution and of European Union law have, in recent years, been openly criticised by the executive, by certain political figures, by the media and by public opinion, without any formal consequences resulting therefrom (Poland). Decisions based on the principle of the rule of law or on the principles derived from it are often the subject of public criticism, political pressure or appeals, given that administrative litigation brings together persons seeking protection against the State. Criticism most often takes the form of public statements, legislative initiatives, information campaigns or petitions, appeals brought by the public authorities constituting, moreover, a common practice (Ukraine).

Other contributions note, by contrast, a **calmer climate, or at least the absence of any systemic challenge**. Decisions of last instance are generally accepted, criticism remaining occasional and concentrated in sensitive fields (migration, climate, animal welfare), the rare attacks by public office-holders prompting immediate and often cross-party support for the judiciary (Germany). Broad public criticism of administrative decisions remains relatively rare, individual expressions of disagreement being liable to arise, especially from the parties, without developing into a wider public or political campaign. A judgment of 23 December 2025 concerning a cartel in the construction sector nonetheless attracted considerable public attention (Latvia). Decisions relying on the notion of the rule of law are not the subject of public criticism or challenge, the criminal code punishing any public act, statement or writing tending to discredit judicial decisions and liable to undermine the authority of the judiciary or its independence (Algeria). The main reservations arise in asylum and migration litigation (Belgium).

That **gradation**, ranging from a peaceful acceptance of decisions of last instance in consolidated democracies to permanent challenge in the most exposed States, reflects the **uneven strength of collective adherence to the authority of the judge**, which is **nonetheless one of the surest markers of the effectiveness of the rule of law**.

2. External pressures on the judge in the course of proceedings

The question of **pressures exerted on a formation of the court** in the course of pending proceedings calls for cautious and often nuanced answers.

Several contributions acknowledge the **existence of such pressures**. The administrative judge may face external pressures, in particular in politically sensitive or financially significant litigation, such pressures being either direct or indirect: public statements, media campaigns, expectations of public opinion, political interventions, the religious or local sensitivity of certain cases, the budgetary significance of the case, or the institutional consequences of an annulment. The judge's principal protection remains judicial technique (collegiality, the secrecy of deliberations, the statement of reasons, proportionality review) and, where the pressure is media-driven, the restraint of the institution, the judge placing himself not on the ground of controversy but on that of legality (Lebanon). An increasing exposure of judges to personal attacks in the press and on social media is noted, to which the head of the court reacts immediately, if need be by legal proceedings (France).

The starkest typology is drawn up by a **State whose rule of law is tested by conflict**: public criticism accusing judges of "*working against the State*", blocked appointments, disciplinary proceedings following inconvenient decisions, budgetary pressure, media smear campaigns and "*telephone justice*" in the form of informal calls from officials. Judges respond not publicly but through procedural mechanisms, whether by strict adherence to the constitutional principle of independence, the reporting of interference to the High Council of Justice or to the anti-corruption bodies, the giving of reasons of the highest possible quality, compliance with judicial ethics or abstention from any extra-procedural communication (Ukraine).

Other contributions put matters into perspective without denying such exposure. A number of cases have placed the judge in a context of considerable political, economic or media exposure (actions directed against major industrial or environmental projects, administrative contracts involving considerable sums, cases calling into question the liability of political authorities), such situations being liable to give rise to significant external criticism, without it being possible, however, to assert the existence of direct pressure exerted on a formation of the court (Thailand).

Any judge may seek the **express protection** of the General Council of the Judiciary for the public defence of his independence, a measure used on numerous occasions (Spain). It is prohibited to exert pressure on the judge in the exercise of his functions and to interfere with the course of justice (Kuwait). Pressures are considered extremely rare and without influence on decisions

(Germany). Occasional approaches by political figures are reported, systematically notified to the head of the corps, who recalls the independence of the judiciary (Belgium).

One contribution reports an **illuminating decision of the ECtHR**. In a case in which the applicant argued that political and media attention had affected the disciplinary proceedings brought against her and the review carried out by the administrative courts, the Court found no violation of Article 6(1) ECHR, taking the view that there was no reason to doubt the independence and impartiality of those courts and accepting that their silence on the briefly formulated allegations of interference could be construed as an implied rejection, given that they had given sufficient reasons as to the lawful and justified nature of the penalty (Lithuania).

Those answers converge towards a **shared conviction**: the independence of the judge is defended less by public riposte than by legal rigour and the soundness of the reasoning, so that the more soundly a decision is reasoned, the harder it is to contest it politically.

3. Litigation with a high media and political profile

The contributions converge in identifying fields of litigation that are structurally exposed.

The administrative judge is increasingly faced with **criticism in sensitive litigation** such as the **law relating to foreign nationals** and the **environment**, being portrayed by some as seeking to substitute himself for democratically elected political decision-makers and by others as supporting an administration that infringes the rights of individuals. To this are added actions directed against **major infrastructure projects** (France). A particularly broad panorama is drawn elsewhere: the construction of major infrastructure projects, access to medicinal products intended to **end life**, transfers under the Dublin system, the removal of foreign nationals suspected of terrorism, the **protection of the climate** and of **animal welfare** (Germany). Also cited are the influx of extremely urgent applications during the **health crisis**, the numerous actions relating to the **freezing of Russian assets** on account of the presence of a central securities depository on the territory, public procurement involving military matters, arms **export licences** and major reforms in the field of **pensions or taxation** (Belgium).

Environmental and climate litigation is **cited repeatedly**. In France, a 2021 case in which the Council of State issued orders subject to periodic penalty payments of several tens of millions of euros against the State, or in Finland in the light of a recent judgment concerning a challenge to the government's annual climate report. Climate matters are ranked among the most exposed forms of litigation (Germany).

The **judge displays heightened vigilance elsewhere** in critical litigation in which compliance with the rule of law is continually put to the test. Such is the case with the enforcement of judicial decisions, gross illegality (voie de fait) and expropriation in the public interest (Morocco), with disputes relating to public freedoms and individual rights (freedom of movement, travel restrictions, freedom of expression, associations, peaceful assembly, access to public services), which attract attention in that they connect administrative legality with constitutional rights, and likewise with disputes relating to public employment and discipline, especially where they concern judges, police officers, academics, teachers or health-care staff (Egypt). Also concerned are disputes relating to rights enshrined in the Constitution, such as the right to vote, freedom of expression, the right to property, freedom of association and freedom of religion (Romania), administrative measures relating to the right of assembly and demonstration, the right to education, the right to work and access to public services (Türkiye), disputes relating to personal liberty and immigration (asylum, administrative detention, removal of foreign nationals) as well as to freedom of expression and information (Slovakia), actions against administrative acts, expropriations and tax challenges (Portugal), litigation involving public servants and litigation raising issues of public order (Madagascar), or indeed the discretionary management of human resources in the civil service (Thailand).

That increased media coverage, far from being incidental, reflects the new centrality of the administrative judge in adjudicating questions of society, and hence his growing exposure to the logic of public opinion.

4. Public order, security and operations with a foreign element

The questionnaire specifically asked the courts about the impact of **terrorist threats and drug trafficking**. The answers reveal a clear differentiation according to the place of the administrative judge in the national architecture of law enforcement.

A first group fully assumes that jurisdiction. The administrative judge is directly confronted with those threats because he is the guarantor of the fundamental balance between safeguarding public order and observing the rule of law, his role being to ensure the legality of administrative policing measures (Togo). The supreme court has confirmed that, in matters of migration or nationality, it may be relevant to determine whether the person concerned represents a danger to public order or security, terrorist offences being regarded as one of the most serious violations of the rule of law, and it upheld the proportionality assessment carried out when nationality was withdrawn for the preparation of terrorist offences (Netherlands).

A second group declares itself to have no involvement in such litigation. The administrative judge has no jurisdiction in these matters, although threats to public order in the field of terrorism or drug trafficking are self-evident (Chad). It does not appear from the available material that the judge is, directly and habitually, placed at the centre of the handling of such threats, which fall mainly within the scope of internal security policies, criminal law enforcement and review by the ordinary courts (Thailand). The court states that it is rarely seised of such litigation, save in matters of extradition (Belgium). It encounters such matters occasionally, in the law of associations and in residence law (Germany). Long exposed to terrorism and increasingly to drug trafficking, one State emphasises the role of its navy, which intercepted 87.6 tonnes of narcotics at sea in 2025, those operations, like strikes against terrorist cells abroad, falling within the review of the ordinary courts and not of the administrative judge (France).

The question of the **intervention of security forces beyond national borders** calls for particularly instructive answers. The security forces are under no general obligation to intervene beyond the borders, but the legal order contemplates, in exceptional circumstances, the possibility of extraterritorial operations within the framework of international cooperation agreements and international law, the most emblematic case having been the bombing, in March 2008, of a camp located on the territory of a neighbouring State, an action which gave rise to a tense diplomatic situation and to a debate on the limits of State sovereignty in the face of terrorism and transnational drug trafficking (Colombia). The courts are responsible for ensuring the legality of both domestic criminal investigations and intelligence operations conducted abroad, review having intensified with the adoption of the Intelligence Service Act, which makes several forms of cross-border operations subject to judicial authorisation, that review being complicated, however, by the secrecy of the procedures (Norway). Conversely, such measures fall outside the review of the administrative judge, being placed under the authority of the public prosecutor's office and of the Head of State (France). Nor do they fall within the remit of the German administrative courts, the legislation on foreign surveillance having, by contrast, given rise to several decisions of the Federal Constitutional Court. The court states that it is not directly concerned (Belgium). That dividing line, which reserves review of extraterritorial operations to the ordinary or constitutional courts rather than to the administrative judge, appears to be largely common.

Review of files and personal data is organised, in several States, around independent administrative authorities whose decisions are amenable to review by the administrative judge. A commission created in 1978 performs a twofold function of information and of supervision of data processing, litigation concerning its decisions being brought before the administrative tribunal (France). Standing committees supervising the police and intelligence services, answerable to Parliament and having the status of data protection authorities, as well as an *ad hoc* judicial appeal body in matters of security clearances, whose decisions may be challenged on points of law before the Council of State, ensure that review (Belgium). Certain administrative courts have jurisdiction to hear actions against decisions imposing travel bans or withdrawing passports, and examine decisions relating to the recording of criminal antecedents and their deletion, verifying the grounds, the purpose and any misuse of powers (Kuwait). There are no administrative courts specialising in national security measures or in access to intelligence files, such matters falling within the general administrative system, judges nonetheless having full jurisdiction to review decisions refusing or withdrawing clearances (Slovakia). A specific normative framework governs the supervision of intelligence activities elsewhere: a statutory law of 2013 provides that the classified nature of documents may not be relied on against judicial, disciplinary and financial authorities which request them for the exercise of their functions, provided that their disclosure does not endanger national security. Intelligence reports have no probative value but may serve as a guiding criterion, the *tutela* action and *habeas data* constituting the principal judicial mechanisms for access and rectification (Colombia).

5. Procedural incidents and resistance to enforcement

The questionnaire asked the courts about any increase in delaying tactics and about public refusals to comply with judgments.

On the first point, the answers are for the most part reassuring. Proceedings are governed by very strict **procedural time-limits**, the filing of an additional pleading beyond the number provided for by law being subject to the prior authorisation of the court, which on the whole remains in control of the timetable. Before the supreme court, procedural incidents are extremely rare and no delaying tactics have recently been noted (Luxembourg). No significant increase is observed (Germany). A structural rise in the number of applications is noted (more than 20% in 2025 and almost 80% over five years), rather than a proliferation of tactics, while acknowledging a strategy of systematic obstruction in town planning, environmental and public works matters, mechanisms for expediting proceedings existing moreover: dismissal by order, filtering of appeals on points of law, and fines for abusive applications (France). The principle of procedural good faith has had to be recalled in the face of pleas of public policy raised on the eve of the hearing and of late applications for recusal, as well as the phenomenon of applications drafted by artificial intelligence (Belgium). Nor is any appreciable increase in procedural objections raised for dilatory purposes recorded, or any general resort to delaying tactics. One contribution points instead to the increasingly prominent problem of the splitting of disputes and of repeated litigation by one and the same party over the same matter (China).

On the second point, **public refusals to comply** remain rare but not non-existent. To the knowledge of the authors of the report, no such case has ever occurred. In Luxembourg, even were such a situation to arise, national law provides for the office of special commissioner, which enables the latter to take a decision in the place of the competent authority where the latter fails to comply with a judgment that has become final. In the event of manifest opposition by the authorities, the judge has numerous enforcement tools at his disposal, such as the imposition of coercive fines or substitute performance by a third party, without prejudice to the possibility of referring the matter to the public prosecutor's office with a view to criminal proceedings in the most serious cases (Spain). Resistance on the part of the administration is not the subject of public statements (France). Such reluctance is acknowledged in asylum and migration litigation, and is at times penalised by the ECtHR (Belgium). A few notable cases are cited (the making available of a municipal hall to a far-right party, bans on the circulation of diesel vehicles) which gave rise to periodic penalty payments and to widely shared public criticism, compliance with decisions remaining the absolute rule (Germany).

6. The contesting of the method of appointment of judges

The question of the appointment of administrative judges constitutes, in several contributions, the most sensitive point.

The method of appointment, above all to posts of responsibility, is the subject of recurrent criticism, in particular from the judges' association and the Venice Commission, that criticism bearing mainly on the **influence of the executive** and the **role of the political authorities** in certain appointments, on the inadequacy of transparency guarantees and on the risk that a judge's career may be perceived as depending on factors extraneous to competence, merit and integrity (Lebanon). Elsewhere, criticism has focused primarily on the method of selecting the judges of the supreme court, observers having noted the limited transparency of the process and the extent of the largely non-public discretion exercised by the president of the court, the selection criteria being regarded as vague and the absence of public calls for applications being emphasised, comparable reservations having been expressed as regards the appointment of the president by the Head of State (Czech Republic). The extent of the supervision exercised by the parliamentary assembly attracts particular attention: that supervision is today confined to verifying the proper functioning of the court and the adequate management of its resources, and does not include any disciplinary or removal power, but a parliamentary initiative is calling for the introduction of disciplinary supervision of the judges of the federal courts, which would increase the assembly's influence (Switzerland). The challenge is particularly acute where the composition of the National Council of the Judiciary since 2018 has fuelled an intense public debate (Poland).

Other contributions report a **settled situation**. The methods of appointing judges and members of the Council of State have evolved and no longer give rise to criticism, judges now being recruited principally by competitive examination and enjoying a guarantee of irremovability laid down in legislation, the management of their careers and disciplinary proceedings being handled by an independent high council composed of elected judges, qualified figures and members of the Council of State (France). The method of appointment is not publicly called into question, access to the administrative judiciary being by way of a competitive examination followed by two years' training before assignment by the High Council of the Judiciary (Madagascar). The debate is left to occasional discussions at the level of the federated entities (Germany).

One contribution, lastly, reports a judgment of the ECtHR holding that the national authorities had infringed Article 10 ECHR on account of the disciplinary proceedings conducted against a judge who had publicly exercised her freedom of expression in order to scrutinise the activity of political office-holders with a view to protecting judicial independence (Bulgaria). Another emphasises that the judges of the administrative and tax litigation chamber have always approached such attitudes with professionalism and responsibility, reaffirming that the status of judges is an expression of the principle of judicial independence, inherent in the rule of law, and that it involves not privileges but a guarantee of the fundamental rights and freedoms of citizens (Romania).

B. - The instruments for consolidating the rule of law

The factors of weakening are matched by legal instruments which the contributions show to be continually strengthened. Those instruments operate on six registers: the constitutional entrenchment of the administrative court system, the statutory guarantees afforded to judges, the enforcement of decisions, the liability of the public authorities, technical expertise and openness to the public.

1. The constitutional entrenchment of the administrative court system

The **constitutionalisation of the very existence of the administrative court system** constitutes a structural guarantee against its being called into question by ordinary legislation. Thus, the system of administrative courts is directly protected by Article 125(5) of the Ukrainian Constitution, which expressly enshrines its existence, which means that administrative justice is constitutionally guaranteed and cannot be abolished by an ordinary statute. Elsewhere, the Constitution lays down the principle of the legality of administrative action, recognised in public law as an integral part of the fundamental right to judicial protection and to an effective remedy (Slovenia). In France, a fundamental principle recognised by the laws of the Republic is enshrined, guaranteeing the independence and the existence of the administrative courts as well as a core of jurisdiction as regards the annulment and variation of decisions taken in the exercise of public authority prerogatives. The administrative courts are likewise mentioned in Article 95 of the German Basic Law, the guarantee of a judicial remedy against any interference by the public authorities constituting the keystone of the system. The administrative and tax courts are also enshrined as a distinct branch of the judiciary (Portugal, Article 209 of the Constitution), the administrative branch being entrenched elsewhere in Articles 160 and 161 (Belgium), in Articles 129 to 136 (Austria), in Article 125, which opens judicial review against all acts of the administration (Türkiye), or in Article 197 of the 2017 Constitution (Thailand). The existence of the people's courts, as the adjudicatory organs of the State, is likewise enshrined in Articles 128 and 129 of the Chinese Constitution, the Organic Law of the People's Courts expressly assigning to them, through the adjudication of administrative cases, the task of ensuring that administrative organs exercise their powers in accordance with the law.

That constitutionalisation, by placing the very existence of the administrative judge beyond the reach of the ordinary legislature, constitutes a **structural guarantee of the rule of law**.

2. The statutory guarantees afforded to administrative judges

All the contributions place **independence of status at the heart of the instruments of consolidation**. The configurations converge as to principles and vary as to the bodies involved.

At constitutional level, judges are declared to be fully independent in their judicial activity and bound only by the Constitution, constitutional laws, international treaties and statutes. They enjoy appointment for life, the ultimate protection against political reprisals, and grounds for removal are strictly enumerated: a final conviction for an intentional offence, a decision of a disciplinary chamber for misconduct incompatible with judicial office, reaching the age-limit or loss of the conditions of fitness for office (Slovakia). Constitutional independence and subjection to the law alone are enshrined in Article 97 (Germany). Article 83 of the Latvian Constitution provides that judges are independent and subject only to the law, while Article 84 provides that they are confirmed by Parliament and are irremovable, a judge being liable to removal against his will only by Parliament, on the basis of a decision of the disciplinary board or of a criminal conviction. Independence and irremovability are also enshrined elsewhere, as in France, as a fundamental principle recognised by the laws of the Republic, of constitutional status, irremovability there resulting from legislation; in Portugal, where the appointment, assignment, transfer and promotion of the judges of the administrative and tax courts, as well as disciplinary action, are matters for the High Council of the Administrative and Tax Courts, which ensures the self-governance of the judiciary; and in Türkiye, where judges may not be removed, retired before the prescribed age without their consent, or deprived of their salaries, allowances or other personal entitlements, even where a court is abolished.

The **concrete guarantees are widely shared**. Among other guarantees, mention may be made of irremovability, immunity from criminal prosecution, a special regime of disciplinary liability, protection of official status and the confidentiality of deliberations. Moreover, in Hungary, it is the organic law that defines the grounds for terminating the legal relationship, the duration of service and the age-limit up to which judges are irremovable, the service relationship being liable to termination without their consent only in exceptional cases. In Romania there are also adequate procedural guarantees relating to the method of appointing judicial inspectors and to their independence, as well as a right of appeal to the supreme court sitting in a formation of five judges. In Belgium, members of the Council of State are appointed for life, as they are in the Netherlands, where appointment is by royal decree on the joint proposal of two ministers and functions cease at the age of seventy.

The organisation of **disciplinary liability** is the subject of an increasingly detailed statutory framework. In Slovenia, it is governed by the law on judicial service and by a new law on judges adopted in 2025 and entering into force on 1 January 2027, the law on the Judicial Council defining the bodies and procedures, no penalty being capable of being imposed otherwise than on the prescribed conditions. In Lithuania, it is governed by the law on courts and proceedings may be brought only in compliance with judicial independence. Disciplinary supervision, as well as questions relating to appointment, promotion and removal, fall to the self-governing bodies of the judiciary, principally the High Council of the Judiciary, removal being permitted only on limited grounds (Cyprus). Liability is structured by law and is not informal, the law on the Council of State providing for a disciplinary board composed from within the senior judicial structure, proceedings being based on an investigation, a statement of charges, evidence and notification to the person concerned, so that accountability and independence operate together (Egypt). The 2016 reform created specialised institutional bodies exercising disciplinary jurisdiction, a dedicated inspectorate conducting preliminary investigations before any referral, the persons concerned enjoying procedural guarantees and decisions being open to appeal before the Administrative Court of Appeal (Albania).

3. The enforcement of judicial decisions

The effectiveness of res judicata constitutes the ultimate criterion of the rule of law. One contribution recalls that the ECtHR established, through a series of judgments culminating in a 2012 pilot judgment, that the systematic non-enforcement of final judicial decisions by the public authorities constitutes a structural violation of the rule of law, incompatible with Articles 6(1) and 13 ECHR, which compelled the State to adopt a new compensation framework and to make enforceability an operational and not merely formal requirement (Albania).

The **instruments employed** fall into various categories. First of all, the **order accompanied by a periodic penalty payment**. In France, the judge was granted a power to issue orders and periodic penalty payments by legislation of 1980 and then of 1995. Since then, he may order the administration, where appropriate subject to a periodic penalty payment, to act so as to ensure the proper enforcement of a decision, may himself spell out the consequences of an annulment, may fix the amount of the periodic penalty payment and may even impose it of his own motion. Enforcement is secured by a non-judicial phase of dialogue which resolves most difficulties, only 2.7% of decisions favourable to applicants giving rise to persistent difficulties. The only general possibility provided for by Netherlands law consists in the judge deciding, in his judgment on the merits, that a periodic penalty payment will be due from the designated legal person for as long as the administrative authority fails to comply. A power to issue orders and periodic penalty payments also exists in Belgium but is very rarely used, the Council of State having in principle no jurisdiction to secure the enforcement of its judgments, the main difficulties being concentrated in asylum and migration litigation. In Germany, the amount of the periodic penalty payments that may be imposed was increased following the cases concerning bans on the circulation of diesel vehicles, a regional court having referred to the CJEU the question of the possibility of coercive detention of public officials, which was ruled out for want of a sufficiently precise legal basis. At times, the judge has no direct and general power to issue orders, but compensates for this indirectly by means of the periodic penalty payment (Morocco).

In addition, there may be **substitution mechanisms**. Where the competent administration has failed to take a decision in order to comply with the judicial decision, the individual is entitled to apply to the court for the appointment of a special commissioner, who will secure enforcement in accordance with the judgment having the force of res judicata (Luxembourg). An Act of 2002, adopted to give effect to Article 95(5) of the Constitution, specifies the obligation of compliance and establishes tripartite compliance councils (Greece). The code of administrative justice establishes a general enforcement regime which, for decisions of the administrative judge, removes the requirement that the decision be final and allows proceedings to be brought also against persons other than the public administrative authorities (Italy).

Lastly, a final category comprises **systems having no power to issue orders**. The power to issue orders to the administration is not provided for by the legislation in force (Chad). It is strictly prohibited to issue orders to the administration, a commission created by law being nonetheless responsible for the effective implementation of decisions that have become final (Gabon). The judge may annul administrative acts without substituting his own decision for that of the administration, while being able to issue orders with a view to giving effect to res judicata (Algeria). On judicial review, the injunction is one of the *common law* remedies that may be ordered by a superior court (Canada). The administrative authorities are bound by the force of res judicata and may neither annul the decisions, nor replace them with divergent decisions, nor depart from them in any other way (Switzerland). The bodies responsible for enforcement are required to enforce final judgments in enforceable form, enforcement being supervised by judges responsible for resolving any difficulties that may arise (Kuwait). An intermediate configuration finally deserves mention. The

Administrative Litigation Act in South Korea makes no provision for an action for the performance of an obligation, so that the judge cannot order the administration to adopt a specified favourable act, but the administration remains bound by the res judicata effect of a judgment annulling a refusal or declaring an omission unlawful and must decide in accordance with that judgment.

4. The liability of the public authorities

The possibility of establishing the liability of the public authorities before the administrative judge constitutes an **indispensable complement to legality proceedings**.

Liability may at times be established by way of an **action in the exercise of full jurisdiction**, on a **non-contractual or contractual basis**, the non-contractual action presupposing an event giving rise to liability, damage and a causal link, and being governed by different regimes (simple fault as a general rule, gross fault in particular cases, and even no-fault liability based on risk or on the breach of equality), serious and special damage giving rise to a right to compensation. Since 2016, that action may take the form of a class action in expressly specified fields (France). Article 106(2) of the Spanish Constitution provides that every person is entitled, on the conditions laid down by law, to compensation for damage sustained in respect of his property and rights, save in cases of force majeure, where such damage results from the functioning of the public services. The pecuniary liability of the State is expressly enshrined in Article 90 of the Colombian Constitution, the Council of State frequently invoking the concept of the rule of law in that field. Liability is established by way of an action in the exercise of full jurisdiction, actions being of two kinds, the action for annulment on grounds of ultra vires and the action for compensation (Algeria). The arrangements for the compensation action may also be expressly provided for by the enabling legislation, failing which the rules and principles of the procedural law of the province of application apply (Canada). Orders requiring public bodies to pay damages are mentioned as one of the concrete expressions of the rule of law in the case-law (Chad). Elsewhere, compensation for damage caused by an unlawful administrative act falls to be obtained before the people's courts by way of administrative compensation proceedings, the claim being capable of being brought either together with the action directed against the act or separately once the act has been confirmed unlawful. The conditions governing the separate action, relating in particular to entitlement to claim, the identification of the defendant, quantified claims supported by evidence of the damage sustained and prior handling by the compensating authority, are laid down by the Supreme People's Court (China).

Two particular configurations should be noted. A litigant who has obtained a finding of illegality may seek compensation from the author of the act, the party who has made that request no longer being able to bring an action in civil liability for the same damage before the ordinary courts, in accordance with the *una via electa* principle (Belgium). Conversely, litigation concerning the liability of the public authorities falls not within the jurisdiction of the administrative courts but within that of the ordinary courts (Luxembourg). That latter configuration is found in identical terms in South Korea, where the State Compensation Act affords any person injured by the intentional fault or the negligence of a public official in the performance of his duties an action for compensation against the State or the local authority concerned, but the Supreme Court construes that statute as a special enactment governing civil liability and accordingly reserves jurisdiction over such disputes to the ordinary courts.

5. Technical expertise and the independence of the judge's assessment

The question of the assessment of technical data engages the autonomy of the judge in relation to the position defended by the government.

The principle is asserted everywhere: the **judge is not bound by the position of the administration**. He is not required to rely solely on the material produced by it, the procedure being inquisitorial in nature; it is for him to conduct the investigation of the case, to order the production of documents, to hear the parties, to call upon any person able to provide useful explanations and to appoint an expert on questions of fact or of a technical nature, to the exclusion of questions of law, the material thus obtained being subject to adversarial debate. The court's assessment is in all circumstances independent of the position of the government, in accordance with the principle of the separation of powers. The judge must form an independent assessment based on the file, the court being able to order site visits and expert reports whenever it considers them necessary. Courts may rely on expert evidence, specialised reports and other technical material produced by the parties, while retaining their power of assessment.

Expert evidence does not, however, bind the judge. The expert assists the court; he does not determine the dispute. The administrative judge may thus accept the report, reject it, accept part of it, request that it be supplemented, prefer other documents in the file or decide that the available material is sufficient. The assessment remains that of the judge, expert evidence constituting an ancillary instrument of the judicial decision and not its exclusive foundation. Moreover, the judge is not bound by the expert's conclusions but must give reasons where he departs from them, the parties, including the administration, being able to challenge them by way of cross-examination and counter-expertise.

The **practical arrangements vary** from one State to another. The richest array comprises the interlocutory expert report, ordered where the judge considers that he cannot rule without additional technical material; three forms of expert measures in urgent proceedings (the formal record of findings, the urgent application for investigative measures allowing an independent technical analysis to be obtained before the trial on the merits, and the preventive urgent application allowing the condition of buildings to be recorded before and during works); the possibility of entrusting a person with the task of providing a technical opinion; recourse to the *amicus curiae* (illustrated by the consultation of the Academy of Medicine in the first end-of-life case); and the investigative hearing enabling the parties to be questioned in each other's presence, the judge thus having a genuine toolbox at his disposal (<u>France</u>). In <u>Belgium</u>, sworn experts may also be called upon, the court itself determining their remit. They receive the relevant documents and may be heard at a public hearing for information purposes, without ever determining any point of law. The judge may also appoint qualified external experts, either private persons in the context of a court-ordered expert report or persons having a service relationship with an administration other than that which is a party to the dispute in the context of a verification (<u>Italy</u>). The court may, of its own motion or at the request of the parties, order by way of an interlocutory decision that an expert report be prepared on the points it determines, the judge-rapporteur likewise having the power to appoint experts and to carry out any findings on site (<u>Democratic Republic of the Congo</u>). The court may of its own motion seek the opinion of an authority other than the one which took the decision, or of a private expert, the expert being required to be known for his integrity and competence. In certain matters, the formation of the court also includes expert judges, who are independent in the same way as ordinary judges (<u>Finland</u>).

In the fields of environmental and planning law, the court frequently relies on the opinions of an impartial, publicly funded expert foundation, whose advisers conduct documentary research, site inspections and interviews with all the parties (<u>Netherlands</u>). The court may order general expert reports, the significance of which as a matter of principle extends well beyond the dispute before it (<u>Switzerland</u>). Expert evidence proceeds by way of an expert witness, often on the basis of a formally signed affidavit, a right of cross-examination generally being available at the hearing (<u>Canada</u>). The judge may have recourse to expert evidence and carry out a site visit, a procedure frequently used

(Senegal). He has the power to appoint an independent expert or a specialised institute where the resolution of the dispute depends on the assessment of complex technical, scientific or financial facts (Slovakia). Experts take an oath of fidelity and sincerity, the court being able to appoint another expert if the initial report does not satisfy it (Kuwait). No obstacle deters the judge from having recourse to expert evidence as often as he considers it useful (Algeria). Experts are appointed either by the court or jointly with the parties (Madagascar). Court-ordered expert reports, technical consultation and the adversarial principle constitute the principal mechanisms ensuring that the decision rests on objective material (Togo). Expert reports are ordered at the court's discretion or at the request of the parties, the court being required first to allocate the burden of proof (Bulgaria).

The **practical obstacles are, lastly, unanimously identified** and **converge** towards a single finding: the lengthening of proceedings. The appointment of experts is fairly exceptional and occurs above all in highly technical town planning, environmental protection or public procurement cases (Belgium). Recourse to expert evidence is rare given the cost borne by the parties and the risk of bias where experts drawn from the administration itself are called upon, which is most often the case, the judge favouring instead the site visit (Madagascar). The main constraint lies in cost and duration, appointment imposing a significant financial burden and being liable to cause considerable delay, the principle of procedural economy being capable of deterring appointment (Malta). Courts should seek a further opinion only where the existing opinion rests on erroneous premisses, contains substantial contradictions or technical gaps, or where the expert's impartiality is open to doubt (Germany). Limited use is also explained by the need for questions to be precisely formulated (Lithuania), by the availability of specialists and by the requirements of adversarial process and procedural equality (Mexico). Courts of first instance frequently have recourse to the opinion of an independent expert, such evidence being, by contrast, inadmissible on appeal, which is confined to questions of law (Romania). Experts are frequently called upon before the lower courts, in particular in cases concerning involuntary psychiatric treatment, special members being appointed in certain matters such as property taxation (Sweden). Frequency varies considerably according to the nature of the litigation (Morocco).

6. Openness to the public, explanatory efforts and the drafting of decisions

The final register of consolidation is that of **institutional communication** and of the **accessibility of case-law**, the rapid growth of which is revealed by the contributions.

Thus, by way of example, the Greek supreme court has an official website through which it publishes its judgments and various institutional documents and issues press releases relating to decisions of major interest. It makes guidance texts and guidelines available to practitioners, pays particular attention to the publication of annual reports and activity data, has a spokesperson responsible for official information to the media, its president at times giving press conferences, and maintains active social media accounts. Each administrative court has its own official website on the single justice portal, where hearing lists, reports and press releases relating to cases of public interest are published without delay. Elsewhere, the courts have press offices and appoint spokesperson judges who organise press conferences and briefings (Ukraine). The court informs the media of pending cases and special events, any journalist entered in the professional register being able to apply for accreditation, photographs and filming being in principle prohibited within the court so as to prevent justice from becoming a spectacle (Switzerland). Press releases, an active presence on social media and an annual activity report are employed (France). The court makes its work known through the public nature of its hearings and decisions, on the one hand, and through active institutional communication, on the other, issuing press releases for decisions with a strong social or societal impact (Togo). Its work is brought to the attention of the public through case-law reports, publication on the website, conferences and quarterly meetings of justice sector stakeholders (Benin).

The **publication and accessibility of decisions** complete that picture. Decisions are published and made accessible immediately after delivery, with personal data redacted, on the centralised unified e-justice portal, only the operative part being published, by way of exception, where the case contains classified information (Bulgaria). Decisions are accessible through the public judgments portal, the case-law of the administrative chamber of the Supreme Court being organised by category of case, with thematic summaries also available (Latvia). The full online publication, as *open data*, of all decisions of the administrative courts has been undertaken (by the Council of State since September 2021, by the administrative courts of appeal since March 2022 and by the administrative tribunals since June 2022), supplemented by platforms giving access to decisions together with their analyses (France). Most judgments are published on the Council of State's website, which is equipped with a search engine and has been redesigned in order to make it more user-friendly (Belgium). Publication online is carried out selectively and non-exhaustively, through the portals of the High Council of the Judiciary and of the ministry (Morocco). In Luxembourg, all decisions of the administrative courts have been available online since 1997 and the creation of the administrative courts and, since 2001, they have been the subject of a methodical compilation in a collection of case-law (Pasicrisie) updated by the administrative judges themselves.

The **evolution of the drafting of decisions** is the subject of a **convergent movement**. Drafting has evolved towards greater clarity and accessibility for litigants, without compromising the precision of the legal reasoning, a particular effort being undertaken to strengthen the structuring of decisions in order better to meet the constitutional requirement of a special and detailed statement of reasons, the report of a working group chaired by a vice-president having recently been approved by the plenary assembly of the Council (Greece). A vade-mecum adopted in 2018 introduced simplified drafting, an explicit structure and the abandonment of the single-sentence judgment (France). Judgments are structured by headings and subheadings and complex decisions are rendered in accessible press releases (Belgium). Drafting has evolved with a view to facilitating understanding and accessibility for the general public, with the abandonment of archaisms and Latin formulas, the choice of a more direct style and recourse to fuller reasoning (Benin). The administrative courts endeavour to deliver decisions in the language in which proceedings were brought, using local dialects and providing decisions with sufficient and clear reasons, oral explanations also being given when decisions are delivered (Madagascar).

Through various channels, whether public access to decisions, the regular issuing of press releases, a presence on social media or the production of annual reports, transparency is thus ensured and contributes directly to confidence in administrative justice, which the contributions unanimously emphasise to be a condition of the effectiveness of the rule of law.

* * *

CONCLUSION AND PROSPECTS

At the close of this analysis, the question of the rule of law and of the role played by the supreme administrative judge in that regard could be formulated as follows: how is the authority of a judicial decision to be preserved where that decision is exposed to criticism or challenge, without thereby removing the judicial office from the democratic debate which is itself part of the rule of law. A **delicate balance** is to be struck between the **ever stronger resonance of the rule of law** and the **imperative need to provide its guardian**, the administrative judge, **with the appropriate tools of resilience**.

The contributions provide **no single answer**. They do, however, converge on one point. The judge's response to pressure can lie only in scrupulous compliance with the Constitution and the law, in judicial technique (collegiality, the secrecy of deliberations, the statement of reasons, adversarial process), in the quality of the reasoning and in an institutional pedagogy which explains without engaging in controversy.

From this there follow **four cross-cutting lessons** which deserve to be submitted for the consideration of the delegations.

The first relates to the very nature of the concept. **The rule of law almost never lends itself to capture by a legal definition**. It manifests itself through its effects and is measured by its guarantees. That indeterminacy, often presented as a weakness, is also the condition of its plasticity. It allows the notion to receive content adapted to national constitutional traditions while retaining a common core. Any attempt at a definition also carries the risk that the definition will prove insufficient or become so over time. That said, indeterminacy has a cost. Thus, where a concept is employed as a standard of external review, its plasticity may be perceived as opening the way to discretionary application. The articulation between the universality of the standard and the legitimacy of its implementation constitutes, in that respect, one of the major challenges of the years to come. Beyond the diversity of traditions, the rule of law is everywhere understood as the subjection of public authority to the law, guaranteed by an independent judge and by a cluster of substantive and procedural principles that are remarkably stable.

The second lesson concerns the **office of the judge**. The contributions attest to a **continuous movement of deepening**, whether in the broadening of the range of challengeable acts, the development of urgent procedures, the generalisation of proportionality review, the recognition of the power to issue orders and periodic penalty payments or the strengthening of access to administrative documents. That movement is not uniform, and several contributions report the absence of any power to issue orders (<u>Chad</u>, <u>Gabon</u>, <u>Lebanon</u>, <u>Luxembourg</u>) or the incomplete implementation of arrangements nonetheless provided for by legislation (<u>Madagascar</u>), but its direction is constant. As to forms, by contrast, the divergences remain considerable and instructive, whether, among other things, as regards express or purely implicit enshrinement of the notion, duality, plurality or unity of jurisdiction, concentrated, referral-based or diffuse constitutional review or, lastly, the model of broad standing as against that of the infringed subjective right. Those technical choices, far from being neutral, determine the practical effectiveness of judicial protection. The question that now arises is no longer so much that of the extent of the judge's powers as that of their practical effectiveness and of the material resources for their exercise.

The third lesson is of an **institutional nature**. The protection of the rule of law no longer rests on the judge alone but engages self-governing bodies of the judiciary, periodic monitoring mechanisms, independent transparency authorities and, in certain geographical areas, supranational review. An annual monitoring cycle at European Union level assesses each Member State against four pillars (justice system, anti-corruption, media freedom and checks and balances), the administrative courts contributing to that exercise through an interview with the European Commission and receiving indications aimed at ensuring compliance with European standards. There is a high degree of harmony between the national administrative courts, the constitutional court and the supranational bodies. National administrative case-law draws heavily on that of the CJEU and of the ECtHR and actively harmonises its decisions with it. References for a preliminary ruling to the CJEU, reliance on the Charter of Fundamental Rights of the EU, the application of the ECHR and of the case-law of the Strasbourg Court, and requests to the latter for an advisory opinion under Protocol No 16 are all common instruments for the protection of the rule of law.

That **multi-level architecture** is at once **a strength and a source of tension**. A strength, because it multiplies guarantees and prevents isolated regressions. A source of tension, because it raises the question of the articulation between national constitutional identities and common standards, as well as that of the democratic legitimacy of review. The contributions show that this tension is experienced differently according to traditions and circumstances, and that it calls less for abstract resolution than for constant and patient institutional dialogue.

In the final analysis, **the rule of law is everywhere recognisable by one and the same criterion, namely the existence of an independent and accessible judge endowed with the means of ensuring that the administration complies with the law**.

Moreover, and beyond those findings, the contributions implicitly outline **several shared prospects**.

The first relates to the **irruption of technology into the judicial office**. The question of automated administrative decisions and of artificial intelligence (Netherlands), like that of applications generated by artificial intelligence tools (Belgium), calls for unprecedented answers which will put the traditional guarantees of the rule of law to the test.

Another concerns the **youth of many administrative courts**: established in 1993 and 2006 (Morocco), in 1997 (Luxembourg, Thailand) and in 2018 (Gabon), not to mention the arrangements that have remained incomplete (Lebanon, Madagascar), the consolidation of which conditions the practical effectiveness of review of the administration.

The last is the **universality of the tension between openness to supranational standards and the preservation of a constitutional or identity-related core**, which runs through the Member States of the European Union as much as through the African, American and Asian legal orders represented (China, Colombia, Germany, Hungary, Italy, Morocco, Portugal, Slovakia, Togo).

So many lines of convergence and prospects, which will be well placed to inform the discussions and proceedings of 18 September 2026 in Luxembourg, bringing together several dozen national delegations.