Research and Documentation Directorate

RESEARCH NOTE

Existing internal review mechanisms in international and national courts

General note

Subject: Analysis of existing internal review mechanisms in international and national courts

[…]

November 2019
[…]

'Judicial architecture must be seen as an integral part of the discourse about justice' [1]

SUMMARY

INTRODUCTION

1. In a manner akin to the various extensions of the buildings which compose it, the judicial architecture of the Court of Justice of the European Union has undergone several reforms designed to adapt it to the evolution of the competences entrusted to the Union by the Treaties, and to take account of successive enlargements.

2. Similarly, the Statute of the Court of Justice of the European Union and the Rules of Procedure of its constituent jurisdictions have been subject to major overhauls in order to enable them to deal with the cases brought before them under the best possible conditions, with the requisite speed and with due regard for the rights of the parties to the proceedings.

3. The most recent reform, implemented through Regulations 2015/2422 [2] and 2016/1192 [3] relate to the judicial architecture of the Court of Justice of the European Union. This reform led to the abolition, on 1 September 2016, of the Civil Service Tribunal (CST) and the transfer of jurisdiction relating to EU civil service disputes to the General Court. The latter has seen the number of its judges double in three successive phases, the last of which took place with the swearing-in of seven

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1 Branco, E. P, « Justice et architecture: la relation entre accès au droit et architecture judiciaire » in *Espaces du droit et droits des espaces*, Paris, L'Harmattan, 2009, p. 52.

2 Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ 2015 L 341, p. 14).

3 Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137).

additional judges on 26 September 2019.

4. The background against which this reform of the judicial architecture of the European Union has taken place has also led the Court of Justice and the General Court to reflect on the allocation of jurisdiction between those two instances and on the possibility of making certain changes, in particular with regard to the handling of appeals by the Court of Justice, [4] in view of the steady increase in the number of cases brought before it. [5] In that context, on 1 May 2019, a system for determining whether appeals should be allowed to proceed in cases which have already been examined twice, first by an independent board of appeal of one of the offices or agencies of the Union, and then by the General Court, entered into force. [6]

5. In addition to the introduction of this system for determining whether appeals should be allowed to proceed, other means for reducing the number of appeals brought before the Court of Justice [7] are being examined, in particular that of establishing an internal review mechanism within the General Court.

6. In the light of the foregoing, the aim of this study is therefore to contribute to the

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4 Press release No 53/19, 30 April 2019, available via the following link: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-04/cp190053en.pdf.

5 The judicial statistics for 2018 highlight that 849 new cases were brought before the Court of Justice, an unprecedented amount for that court with 110 more cases than in 2017, marking an increase of almost 15%. The number of referrals for a preliminary ruling in 2018 was 568, compared with 533 the previous year. As for the number of appeals brought against decisions of the General Court, this increased by 35% from 147 to 199. See on this point Press release No 39/19 of 25 March 2019, available via the following link: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-03/cp190039en.pdf.

6 The system for determining whether the appeal should be allowed to proceed is a procedure enabling the Court of Justice to allow an appeal, in whole or in part, only where the appellant has demonstrated, in their application for admission joined to the application for appeal, that they are raising one or more questions of importance in terms of the unity, coherence or development of EU law. Protocol No 3 on the Statute of the Court of Justice of the European Union (insertion of Article 58a of the Statute) and the Rules of Procedure of the Court of Justice (insertion of Articles 170a and 170b) have been amended accordingly.

7 […]. More recently, there has been discussion in France of a reform to the procedure before the Court of Cassation in civil matters. On 20 December 2018, the Minister of Justice set up a task force chaired by Henri Nallet, who submitted his report on the matter on 7 November 2019. The working group made several proposals, including strengthening the procedure for determining whether the appeal should be allowed to proceed and applying differential treatment depending on the nature of the appeals. See on this point:

https://www.actualitesdudroit.fr/browse/civil/procedure-civile-et-voies-d-execution/24479/pourvoi-en-cassation-une-reforme-decidement-bien-difficile.

debate by verifying, as a first step, the existence of mechanisms or means of internal review within international judicial bodies, and also within the courts of the 28 Member States, [8] with the next step being to examine, where appropriate, the rules governing them.

7. On this point, it should be noted that some international judicial bodies have internal review mechanisms. Thus, in the European Court of Human Rights (ECtHR), a party may request referral of a case, on an exceptional basis, to the Grand Chamber; decisions made by the Second Chamber of the Benelux Court of Justice may be the subject of an appeal on a point of law before the First Chamber of that court.

8. With respect to the scope of this study, in view of the stated objective, administrative bodies in the legal systems of the Member States, along with quasi-judicial bodies, such as international arbitration bodies, [9] have been excluded from the scope of this note. [10] Similarly, the various review mechanisms akin to those with which the Court of Justice and the General Court are acquainted, which exist in some form in all national courts, and which make it possible to bring proceedings anew before the court which issued the contested decision, in other words, applications to set aside default judgments or third-party proceedings, requests for revision and for rectification of clerical mistakes, claims for failure to adjudicate and applications for interpretation, will not be dealt with in this note.

9. Given their fundamentally different nature, international judicial bodies and the courts of the Member States will be examined in turn. Therefore, this note will begin by examining the existence of internal review mechanisms within international judicial bodies and, where relevant, the rules governing them (part I), before then

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8 The courts of third States will not be examined as part of this study. To all intents and purposes, it should be noted that a search of the supreme courts of a few representative third States (Australia, Canada, Iceland, Norway, Switzerland and the United States) did not come up with any points relevant to this study.

9 The International Centre for Settlement of Investment Disputes – ICSID, the dispute settlement body of the World Trade Organization (which has an internal mechanism for appealing a panel's decision to the members of the Appellate Body), the Permanent Court of Arbitration, the International Court of Arbitration of the Paris International Chamber of Commerce or the Court of Conciliation and Arbitration of the Organization for the Security and Cooperation in Europe.

10 Santulli, C., « Qu'est-ce qu'une juridiction internationale ? Des organes répressifs internationaux à l'O.R.D », in *Annuaire français de droit international*, vol. 46, 2000, p. 70 to 81.

proceeding to do likewise for the courts of the Member States (part II).

10. A table, appended to this summary, provides a general overview of the responses gathered for all the international and national courts examined (Appendix 1). This summary table is supplemented by tables presenting a detailed description for each court (international and national) in which a form of internal appeal mechanism has been identified, information on the rules governing the relevant review proceedings, by way of an assessment of the following four elements: the conditions for bringing an application for review, the court formation competent to carry out the review, the nature of the review carried out and the scope of the decision issued (Annexes 2 and 3).

I. EXISTENCE AND ARRANGEMENTS FOR INTERNAL REVIEW MECHANISMS IN INTERNATIONAL JUDICIAL BODIES

11. After making some preliminary remarks (Part A.), examples of internal review mechanisms identified in international judicial bodies will be presented (Part B.).

A. PRELIMINARY REMARKS

12. International judicial bodies have varying jurisdiction. Some have universal jurisdiction, before which proceedings may be brought by all States, subject to the prior expression of their consent. International judicial bodies with universal jurisdiction include those with general jurisdiction, such as the International Court of Justice (ICJ), before which proceedings may be brought for all types of legal disputes, and those with specialised jurisdiction, limited to a specific subject matter, such as the International Tribunal for the Law of the Sea. There are also regional or sub-regional courts, such as the ECtHR, their jurisdiction being limited to the region or sub-region concerned. [11]

13. Despite the differences in their jurisdiction, the common denominator among all international judicial bodies is the objective of settling a dispute by means of a

[11] Iovane, M., « L'influence de la multiplication des juridictions internationales sur l'application du droit international », *Collected courses of the Hague Academy of International Law*, 2017, p. 265.

binding decision issued through the application of the rules of law. [12] Furthermore, international justice is voluntary and optional, which means that the authority of the international court rests on the explicit acceptance of its power by sovereign States and on their consent to submit to the decision duly issued. This voluntary basis entails significant differences between international and national judicial functions. [13]

B. Arrangements for internal appeal mechanisms in international judicial bodies

14. By examining the composition and procedural rules of some 20 international judicial bodies, [14] it has been possible to identify six judicial bodies which currently have an internal review mechanism. These are the European Court of Human Rights (ECtHR), the Benelux Court of Justice, the International Criminal Court (ICC), the Special Tribunal for Lebanon, the Court of Justice of the Common Market for Eastern and Southern Africa (COMESA Court) and the Court of the Eurasian Economic Union. [15] Within these courts, three types of internal review may be mentioned: the special mechanism for referring cases to the Grand Chamber of the ECtHR (Part 1), the internal review for examining the legality of the contested decision (Part 2) and the appeal mechanism in international criminal courts (Part 3).

1. Special mechanism for referring cases to the Grand Chamber of ECtHR

15. An analysis of the internal appeal mechanisms identified in the six international judicial bodies mentioned above shows that the mechanism requested for referring cases to the Grand Chamber of the ECtHR, on an exceptional basis, by any party, [16] is very specific. The specific nature of this mechanism relates not only to the formation which is competent to examine the referral and to the stringent nature of

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12 Santulli, C., see note 11, p. 61.

13 Iovane, M., see note 12, p. 251 and 252.

14 The international courts examined are set out in the summary table in Appendix 1 to this summary.

15 It is interesting to note that the rules of operation of the Court of the Eurasian Economic Union are based on those of the Court of Justice of the European Union. See, in this regard, the presentation of the functioning of the Court of the Eurasian Economic Union, available via the following link: http://courteurasian.org/en/page-24651.

16 Mechanism provided for in Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 73 of the Rules of Procedure of the European Court of Human Rights.

the mechanism for admitting requests instituted by the judges of the panel of the Grand Chamber, [17] but also to the nature of the review conducted by the latter. In fact, the latter does not act 'as an appeal court whose function is to correct alleged errors of fact or of assessment of the various features of each individual case. The intervention of the Grand Chamber is instead limited to cases which, by their nature and by the nature of their legal, social and political implications, are capable of having a serious impact on the extent and scope of the protection afforded by the Convention'. [18]

16. The judgment delivered by the Grand Chamber, adopted by a majority of the sitting judges, is final. Any judge who has taken part in the consideration of a case by the Grand Chamber is entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.

2. INTERNAL REVIEW AIMED AT EXAMINING THE LEGALITY OF A CONTESTED DECISION

17. The Benelux Court of Justice, the COMESA Court and the Court of Eurasian Economic Union all have an internal review mechanism, which the parties to the proceedings may request with a view to reviewing the legality of the contested decision (a mechanism similar to an appeal on a point of law, known in many Member States).

18. The first instance decision of a chamber is reviewed, only in law, by another formation of the Court (composed of different judges). At the **Benelux Court of Justice** and the **COMESA Court**, appeals and appeals on points of law are not subject to prior determination as to whether they should be allowed to proceed. On the other hand, the **Court of Eurasian Economic Union** provides for a mechanism for determining whether the appeal should be allowed to proceed, based on compliance with the formal requirements of the application laid down in its rules of

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[17] In practice, most requests for referral are rejected in the absence of raising a serious question relating to the interpretation or application of the Convention or its Protocols, or a serious question of a general nature. Over the 2014-2018 period, the 'acceptance rate' of referral requests is slightly less than 8.5%.

[18] Practice followed by the Panel of the Grand Chamber in deciding on requests for referral under Article 43 of the Convention (October 2011). Document available via the following link: https://www.echr.coe.int/Documents/Note_GC_ENG.pdf.

procedure. A specific formation of that court is responsible for examining the requests which will be allowed to proceed if they meet the formal requirements mentioned. The Appeals Chamber will adopt an order as to whether the appeal will be allowed to proceed or not (based on compliance or non-compliance with the formal requirements) and will inform the parties to this effect within 10 days of the request being submitted.

19. Finally, it is interesting to note that both the COMESA Court and the Court of Eurasian Economic Union stipulate a time limit within which the Appeals Chamber must, in principle, issue a ruling. This period is set at 60 days from the hearing at the COMESA Court and 45 working days from the date of submitting the request to the Court of the Eurasian Economic Union.

3. APPEAL MECHANISM IN INTERNATIONAL CRIMINAL COURTS

20. Given its criminal jurisdiction for trying the most serious crimes with international ramifications, it will come as no surprise that the **ICC** has a mechanism for the internal redress of its decisions in the form of an appeal. It is heard by five judges from the Appeals Chamber, who are never the same as those who delivered the judgment at first instance. The facts of the case are reviewed and an appeal may be brought on any of the following grounds: procedural error, error of fact, error of law or any other ground likely to compromise the fairness or lawfulness of the procedure or decision.

21. The Appeals Chamber may decide to confirm, reverse or amend the decision or conviction. The Appeals Chamber may also order fresh proceedings at first instance before a chamber with a different composition. The judgment of the Appeals Chamber is adopted by a majority of the judges and delivered in court. A statement of reasons is provided. Where the judgment is not unanimous, it presents the positions of the majority and the minority, but a judge may present an individual opinion or a dissenting opinion on a question of law.

22. The International Criminal Tribunals for Rwanda (ICTR) [19] and for the former

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[19] Established by United Nations Security Council Resolution 955 (1994) of 8 November 1994.

Yugoslavia (ICTY), [20] when still in operation, had the same appeal mechanism before an Appeals Chamber composed of five judges for the ICTR and seven judges for the ICTY. [21] The work of those two ad hoc courts was completed on 31 December 2015 and 31 December 2017 respectively.

23. This overview of international criminal courts would not be complete without mentioning hybrid or mixed criminal courts [22] in whose establishment the United Nations (UN) was involved. These are the Special Court for Sierra Leone [23] and the Special Tribunal for Lebanon. [24] While still in operation, the former also had an appeal mechanism before an Appeals Chamber composed of five judges. The same appeal mechanism still exists within the latter.

24. While the fact that internal appeal mechanisms exist within the international judicial bodies examined does not really come as a surprise, this is not the case in the courts of the Member States.

II. EXISTENCE AND ARRANGEMENTS FOR INTERNAL REVIEW MECHANISMS IN THE COURTS OF MEMBER STATES

25. After briefly listing the Member States which have no, or no longer have, internal review mechanisms within their courts (Part A.), we will then move to the heart of the matter and examine the Member States whose courts have specific mechanisms for or elements of internal review (Part B.).

A. MEMBER STATES WITHOUT ANY INTERNAL REVIEW MECHANISMS WITHIN THEIR NATIONAL COURTS

26. The first point to make straightaway is that half of the Member States examined

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20 Established by United Nations Security Council Resolution 827 (1993) of 25 May 1993.

21 Santulli, C., see note 11, p. 64-69.

22 The'mixed or hybrid' nature of the criminal court means that it is composed of international judges and judges put forward by the State concerned. These are very specific international courts.

23 Established by an agreement between the United Nations and the Government of Sierra Leone signed on 16 January 2002. The Court concluded its work on 31 December 2013.

24 Established by an agreement between the United Nations and the Lebanese Republic pursuant to Security Council resolution 1664 (2006) of 29 March 2006. The Tribunal became operational on 1 March 2009 in The Hague, following United Nations Security Council resolution 1757 (2007), adopted on 30 May 2007.

(**Belgium, Croatia, Denmark, Estonia, Finland, Germany, Ireland, Latvia**, [25] **Lithuania, Luxembourg, Malta, Slovakia,** [26] **Slovenia** and **Sweden**) do not currently have any forms of internal review mechanisms in their courts, such as those addressed by this study.

27. This finding is mainly due to the fact that, in those States, judgments delivered by a court may, in principle, [27] be challenged before a higher court, in line with a classic pyramid model, with a 'supreme' court at the top.

B. MEMBER STATES WITH SPECIFIC INTERNAL REVIEW MECHANISMS WITHIN THEIR NATIONAL COURTS

28. The other half of the Member States examined (**Austria, Bulgaria, Cyprus, Czech Republic, France, Greece, Hungary, Italy, Netherlands, Poland, Portugal, Romania, Spain** and **United Kingdom**) have specific internal review mechanisms or, at the very least, elements of an internal review system within their courts. We will now attempt to establish a classification for them.

29. In several supreme courts (**Portugal, Greece, Poland**), internal reviews may be requested by certain public authorities in order to ensure inter alia the consistency or uniformity of case-law (Part 1.). We will also examine a number of specific internal review mechanisms in the field of civil procedure (Part 2.). With regard to criminal proceedings, there is a wide variety of internal review mechanisms, with two worthy of particular mention, the appeal and the appeal on a point of law within the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) in **Romania** (Part 3.). In administrative proceedings, several internal review mechanisms also exist, including the appeal in cassation before the Varhoven administrativen sad (Supreme Administrative Court) in **Bulgaria** (Part 4.). Finally, we should mention other types of specific remedies existing within the Anotato Dikastirio (Supreme Court) in **Cyprus** (Part

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25 The existing internal appeal mechanism within the Augstākā tiesa (Supreme Court) was repealed following the judicial reforms of 2015 (civil law) and 2017 (criminal law) aimed at reducing the time limits for judicial proceedings before the Augstākā tiesa (found to be excessive in certain cases by the ECtHR) and at further promoting the quality and consistency of case-law.

26 The existing internal appeal mechanism within the Najvyšší súd (Supreme Court) was repealed during the major reform of civil procedural law in 2015, with the legislature considering that this mechanism was ineffective.

27 With the exception of the cases provided for by national law for judgments delivered at first and last instance.

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1. REMEDIES WITHIN CERTAIN SUPREME COURTS INTRODUCED BY PUBLIC AUTHORITIES

30. In view of the pyramid model followed by appeal mechanisms in national courts, it could be assumed that few courts have internal appeal mechanisms similar to those previously presented in international judicial bodies, specifically a procedure for having the case reviewed, in fact or in law, by a dedicated chamber within the same court.

31. However, it should be noted that this model seems to exist in particular in three supreme courts of Member States which have mechanisms for internal review that can be requested by certain authorities or public persons.

32. This is the case in **Portugal** where the Supremo Tribunal de Justiça (Supreme Court) has jurisdiction [28] inter alia to hear applications for review aimed at standardising case-law. The application for this type of review, limited to questions of law, which may be brought by the Public Prosecutor's Office, is made before the plenary session of the civil division of the Supremo Tribunal de Justiça against a judgment of that court, when the latter contradicts one of its previous judgments (which has acquired the force of *res judicata*) on the same fundamental question of law. It is interesting to note that this application for review is subject to a preliminary examination of admissibility by the Judge-Rapporteur. The latter rejects the application for review where it does not comply with the formal requirements laid down or where, in the document instituting the proceedings, the applicant has not precisely identified the contradiction between the decision relied upon and the error attributed to the contested decision or has not specified the reasons why they consider that this decision must be annulled or amended. Similarly, the application for review is inadmissible if the contested decision complies with the standardised case-law of the Supremo Tribunal de Justiça. This decision by the Judge-Rapporteur may be challenged before the Plenary Chamber. The judgment delivered by the Plenary Chamber is final.

33. The Supremo Tribunal Administrativo (Supreme Administrative Court, **Portugal**)

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[28] The Supremo Tribunal de Justiça also has jurisdiction to hear and determine, in plenary session, appeals against decisions handed down by the plenum of the criminal division in order to ensure the right of appeal in criminal matters. In addition, the plenum of the chambers of the Supremo Tribunal de Justiça is competent to hear appeals against decisions adopted at first instance by the civil, criminal and social divisions (each consisting of three judges).

may also hear the same type of application for the standardisation of case-law on contentious administrative proceedings brought before the Plenary Chamber for contentious administrative proceedings. [29] The plenary session of the chamber for tax litigation, for its part, has jurisdiction to examine applications for the standardisation of case-law in the field of tax litigation.

34. In **Greece**, the Elegktiko Synedrio (Court of Auditors), the supreme court for the control of public expenditure, [30] may hear appeals on a point of law brought by persons having a legitimate interest (general adviser of the Elegktiko Synedrio, competent minister or a relevant legal entity governed by public law) before its plenary session against a final decision of one of its chambers. The review carried out leads to the examination of questions of law only and its objective is to ensure the consistency of the case-law and the annulment of the flawed decision.

35. Finally, it should be noted that in **Poland**, a new appellate mechanism, called an 'extraordinary appeal' ('skarga nadzwyczajna'), was introduced by the reform of the Law on the Sąd Najwyższy (Supreme Court) of 8 December 2017, which came into force on 3 April 2018. The examination of this appeal, which is limited to questions of law, comes under the remit of one of the newly created chambers of the Sąd Najwyższy, the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Extraordinary Review and Public Affairs Chamber). This appeal may be lodged by certain public bodies (such as the Attorney General or the Ombudsman) [31] against a final decision of a court [32] closing the proceedings, if that decision flagrantly infringes constitutional rights and freedoms, provisions of law, or is patently incoherent in the light of the evidence relied upon in the proceedings. This appeal may be classified as internal based on the assumption that the contested decision was issued by a chamber of the Sąd Najwyższy itself. In this case, the hearing of the appeal will be assigned to a chamber composed of five judges – members of the Izba Kontroli Nadzwyczajnej i

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29 It should be pointed out again that the Plenary Chamber for contentious administrative proceedings is also competent to hear appeals limited to questions of law, against decisions handed down at first instance by the Chamber for deliberative contentious administrative proceedings with a reduced panel of three judges. As is the case with the Chamber for contentious administrative proceedings, the plenary session of Chamber for tax litigation, for its part, has jurisdiction to examine appeals against the decisions of the Chamber for deliberative tax litigation with a reduced panel of three judges.

30 Under Article 98 of the Hellenic Constitution.

31 The person concerned may act only through the public bodies specified.

32 Ordinary court or military court.

Spraw Publicznych – and two assessors. [33] Finally, it should be noted that, in view of the relatively recent entry into force of this extraordinary appeal procedure and of the fact that the type of hypothetical case described above appears to be exceptional, no such appeal has yet been noted.

2. SPECIFIC APPEAL MECHANISMS IN CIVIL MATTERS

36. The **United Kingdom** has an internal mechanism in the High Court of Justice **(England & Wales**) for appealing against a decision on procedural issues arising before the hearing, adopted at first instance by a *Master*, *Registrar* or *District judge* of the High Court of Justice. The appeal is brought before a senior judge in the hierarchy of the High Court of Justice, who reviews the matter both in law and in fact. It should be noted that prior authorisation is required to lodge the appeal. The request for authorisation must be submitted to a judge of the High Court of Justice. Authorisation is granted only when the competent judge considers that the appeal has real prospects of success. [34]

37. There is a specific form of ordinary appeal, called '*autoremedura'* (auto-reversal) in the **Czech Republic** in the civil courts of first instance and, in **Poland**, in the civil courts of first instance and appeal. This involves the court whose decision has been challenged [35] to rule itself, under certain conditions, in fact and in law on the appeal and to proceed with a rapid reversal of the erroneous decision. This mechanism is open to the court concerned. In addition, it should be pointed out that, in both **Poland** and the **Czech Republic**, the *autoremedura* mechanism also exists within the criminal courts of first instance and appeal. [36]

38. The civil courts of first instance and appeal in the **Czech Republic** also have an

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33 In the event of an appeal against a decision issued by an ordinary court (first instance or appeal) or an appeal court, the chamber hearing this appeal will be composed of two judges – members of the Izba Kontroli Nadzwyczajnej i Spraw Publicznych and an assessor.

34 In **England and Wales**, a similar appeal mechanism exists in the County Court. See, in relation to this appeal, the summary table for the United Kingdom (England and Wales) in Appendix 3. In addition, in **Scotland**, the Court of Session and the Sheriff Court have similar mechanisms in civil cases. See, in relation to these appeals, the summary table for the United Kingdom (Scotland). Finally, in **Northern Ireland**, the High Court of Justice in Northern Ireland also has an internal appeal mechanism in civil matters against orders issued at first instance by a junior judge known as the '*master of the High Court*'. See, in relation to this appeal mechanism, the summary table for the United Kingdom (Northern Ireland).

35 The *autoremedura* mechanism concerns, in particular, orders in the Czech legal system and only orders in the Polish legal system.

36 See point 43 and note 38 below.

appeal mechanism called an ‘action on account of confusion’, the use of which is limited to serious procedural errors, making it possible to set aside decisions with the force of res judicata issued in proceedings fraught with such errors. This is an extraordinary remedy under the cassation system, which does not, however, confer unlimited jurisdiction. The appeal is in principle heard by a different formation from that which issued the contested decision.

39. In addition, the legal system in **Poland** has many cases of ‘horizontal’ claims against procedural orders which, in principle, terminate the proceedings. Recourse to this practice has recently increased as a result of the latest reform of the Code of Civil Procedure, which entered into force on 7 November 2019, with the particular aim of authorising the use of the mechanism for internal complaints also within the courts of first instance. They will therefore be subject, for the first time, to review both in law and in fact, by the same court of first instance (composed of three judges) against decisions establishing the system of immediate enforcement or against decisions rejecting a judge’s application for an objection. The scope of these latest amendments is significant in that the extension of the jurisdiction of the courts of first instance affects different types of orders and therefore, no longer only those terminating the proceedings.

40. Finally, **Austria** has an internal review mechanism within the appellate court against the latter’s decision to allow or not the ordinary action for ‘Revision’ before the Oberster Gerichtshof (Supreme Court). In certain cases, the parties may request the appellate court to alter its declaration of admissibility of the action. If the appellate court (ruling with the same composition) considers that the request for an amendment is justified, in so far as it is shown that a question of substantive or procedural law arises which is of considerable importance in terms of unity, legal certainty and the development of the law, it will alter its declaration of admissibility by means of a reasoned order. Otherwise, it dismisses the application and request for ‘Revision’ by means of an order without reasoning.

3. SPECIFIC REVIEW MECHANISMS IN CRIMINAL MATTERS

41. The internal review mechanisms in criminal matters appear to be very varied, as highlighted by the classification given below. [37]

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[37] In the context of this sub-section relating to criminal matters, it is worth mentioning again the

a) REVIEW MECHANISMS AGAINST ORDERS ISSUED BY A SINGLE JUDGE (INVESTIGATING JUDGE OR EXECUTION JUDGE)

42. In **Italy**, reviews (at the request of a party) of and appeals (lodged by the accused or the Public Prosecutor's Office) against orders adopting interim measures limiting personal freedom issued by the investigating judge are carried out before the Tribunale del riesame (Criminal Review Court), which expresses opinions on matters of law. The Tribunale del riesame is a specialised section of the court in which the relevant judge sits.

43. In the **Netherlands**, decisions issued by the investigating magistrate adopted under the Code of Criminal Procedure may be appealed before the court in which they sit. This involves a full review in fact and law of the investigating magistrate's decision.

44. Finally, in **Hungary**, an internal appeal option is provided for in only one very specific case, in the event of an appeal against certain types of orders issued by the judge responsible for sentencing. The appeal is heard by a chamber at second instance of the court in which the relevant judge sits. This chamber is composed of three professional judges. [38] The review carried out relates to both the facts and questions of law.

b) INTERNAL REVIEW MECHANISM BEFORE A DEDICATED FORMATION

45. In **Spain**, the Audiencia Nacional (National High Court) has jurisdiction over the entire territory. It is a centralised and specialised court, competent to deal with certain serious crimes carrying prison sentences of more than five years, such as terrorism, organised crime, drug trafficking or financial crimes damaging the national economy. This court has four chambers: a criminal chamber, a chamber for contentious administrative proceedings, a social chamber and an appeals chamber. This last chamber, composed of three judges, including the President of the

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autoremedura mechanism, operating in the **Czech Republic** and **Poland**, which is also applicable in criminal proceedings. See, on this point, the relevant considerations concerning civil procedure (see paragraph 39 above).

38 According to the well-established case-law of the Alkotmánybíróság (Constitutional Court), the right to an effective remedy is not infringed if the applicant can approach a higher forum, within the same entity or organisation, provided that any infringement of this right can be remedied in an effective and efficient manner. The Alkotmánybíróság has therefore confirmed that the internal appeal mechanism provided in this way against orders issued by the execution judge is compatible with the right to an effective remedy.

Audiencia Nacional, was created on 1 June 2017, with the aim of speeding up the criminal justice system, reinforcing the procedural guarantees of the parties and reducing the workload of the Tribunal Supremo (Supreme Court). It examines, in fact and in law, appeals against decisions adopted by the criminal chamber of the Audiencia Nacional. An appeal in cassation may be lodged against the judgment before the Tribunal Supremo (Supreme Court).

46. In the **United Kingdom**, the High Court of Justiciary in **Scotland**, which has jurisdiction over criminal matters, has an internal appeal mechanism against decisions issued at first instance by a single judge and a jury of fifteen persons as part of formal proceedings initiated by indictment. Prior leave from a judge of the High Court of Justiciary is required to lodge an appeal. If it is granted, the appeal is heard in fact and in law by a panel composed, in principle, of three judges of the High Court of Justiciary. [39]

47. In **Romania**, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) has an internal appeal mechanism against decisions previously adopted by its criminal chamber, acting as a court of first instance, in exceptional and special cases, in particular in the case of offences committed by senators, MPs, members of the government or magistrates of the Înalta Curte de Casație și Justiție itself. The appeal is heard in fact and in law by a panel composed of five judges. [40] If the appeal is allowed, the contested decision is set aside in whole or in part (with or without referral). The decision issued is subject to an appeal in cassation, also heard by a panel of five judges, based on a mechanism determining whether the appeal should be allowed to proceed.

48. In **Greece**, the criminal courts of first instance and appeals have internal appeal mechanisms because of the existence of different formations within the same court. Therefore, the Plimmeliodikeio (Criminal Court) is composed of two formations: a single-judge formation and a three-judge formation competent to rule on appeals against decisions adopted by the single judge. The Efeteio Kakourgimaton (Court of

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39 It should be noted that the panel may be extended (five, seven or nine judges, or a plenary session) where a case raises important or complex issues or where there is conflicting case-law on the question raised. See, for this appeal mechanism, the summary table for the United Kingdom (Scotland) in Appendix 3.

40 Under Article 24(1) of Law No 304/2004 of 28 June 2004 on the organisation of the judiciary, as amended.

Appeal) has three different formations: a single judge, three judges (to hear appeals against decisions issued by the single judge) and five judges (to hear appeals against decisions issued by the formation of three judges). The appeal judge conducts a full review of the case, both in law and in fact.

49. Finally, in **France**, there is the possibility that a case judged at first instance by an assize court may be reviewed on appeal, both in law and in fact, by the same assize court, with a different composition, in order to prevent any infringement of the right to a fair trial. This is a derogation from the rule of ordinary law according to which appeals against adverse judgments handed down by the assize court at first instance are brought before another assize court designated by the criminal division of the Court of Cassation (this is an option not an obligation for the Court of Cassation). Several derogations are allowed depending on the matter concerned (organised crime, terrorism, etc.) and the complexity of the case (financial crime), but also on the location of the assize court of first instance (overseas department or territory).

c) APPEAL TO A SUPREME COURT AGAINST DECISIONS PREVIOUSLY ADOPTED BY THAT COURT AS A COURT OF APPEAL

50. **Romania** also has another type of internal appeal mechanism consisting of an appeal in cassation brought before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) against decisions previously adopted by its criminal chamber, acting as an appellate court, in exceptional and special cases, in particular in the case of certain offences committed by military personnel, offences committed by magistrates or senior dignitaries, offences involving the national security of Romania, as well as offences of high treason.

51. The application for appeal is first examined in closed session by a single-judge formation. An interlocutory judgment states admissibility in principle or the rejection of the application. If the appeal is admitted in principle it is referred to a formation of usually three judges, but also of five judges (who must be different from those who have already heard the case on appeal before that court), in order to examine the merits of the case. It is important to note that the single judge who ruled on the admissibility of the appeal is a member of the formation called upon to hear the case. The review is limited to questions of law, in particular verification of the decision's compliance with the relevant legislative provisions.

4. SPECIFIC REVIEW MECHANISMS IN ADMINISTRATIVE MATTERS [41]

52. In **Bulgaria**, the Varhoven administrativen sad (Supreme Administrative Court) has jurisdiction as a court of first instance composed of three judges for actions referred to in Article 132(2) of the Administrativen protsesualen kodeks (Code of Administrative Procedure), in particular when it hears actions concerning the annulment of regulatory (non-legislative) acts, acts of the Council of Ministers, the prime minister, deputy prime ministers and ministers, of the Vishia sadeben savet (High Judicial Council), the Bulgarian National Bank and other acts designated by law. These decisions issued at first instance by the Varhoven administrativen sad may be the subject of an appeal on a point of law before a panel of five judges of the Varhoven administrativen sad. [42] The appeal may be brought by the unsuccessful party and must relate to questions of law, but is not limited, for example, to questions relating to the coherence, unity or development of the law. [43]

53. **Bulgaria** is also acquainted with specific actions against the orders of the president of an administrative court imposing an administrative penalty in the event of non-compliance with a court decision. This action is submitted before a chamber composed of three judges from the same court (sad [court]) within seven days of notification of the order by the president. This chamber, composed of three judges, rules in law on the merits of the case and its decision is not subject to appeal.

54. In the **Netherlands, there is**a form of action involving an application to set aside a judgment handed down by an administrative court (court of first instance or court of appeal, in a formation comprising one or three judges) under the simplified procedure which closes the investigation of a case without a hearing having been held. This procedure may be followed where the judge considers that it is not necessary to continue the investigation of the case, in the event that the court manifestly has no jurisdiction or the appeal is manifestly inadmissible, manifestly unfounded or manifestly well founded. A judgment delivered following the

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41 In **Greece**, with regard to decisions issued by the single judge of an administrative court, those decisions could be challenged on appeal before a panel of three judges within the same court. This mechanism was repealed in 2008 in favour of an appeal heard by the Dioikitiko Efeteio (Administrative Court of Appeal), which has been a single judge since 2010.

42 Under Article 217(1) of the Administrativen protsesualen kodeks (Code of Administrative Procedure).

43 See Articles 209, 210 and 220 of the Administrativen protsesualen codeks (Code of Administrative Procedure).

application of the simplified procedure may not be appealed. However, the parties concerned may lodge an application to set aside a judgment before the court which delivered it. The procedure for submitting an application to set aside a judgment concerns only the question of whether the administrative judge was right to issue the decision under the simplified procedure. With regard to the examination of the application, it should be pointed out that judges who are part of the formation which issued the contested decision cannot be part of the formation considering the application to set the judgment aside. However, the number of judges in both formations remains the same (one or three judges). The application to set the judgment aside may be declared inadmissible, unfounded or well founded. If the application is declared to be well founded, the contested decision is annulled and the investigation of the case will resume from the status it was at.

5. OTHER TYPES OF SPECIFIC REMEDIES

55. In **Cyprus**, the Anotato Dikastirio (Supreme Court) is the only court which has internal review mechanisms. Currently, [44] there are two types of such mechanisms in this court has.

56. Firstly, the Anotato Dikastirio has jurisdiction to hear, at first instance, maritime cases with the formation of a single judge. [45] The appeal is brought before the plenary formation of the Anotato Dikastirio, composed of at least five judges. The process involves a full review of the case, both in law and in fact.

57. Secondly, the Anotato Dikastirio has jurisdiction to hear, at first instance, applications (ex parte) for '*prerogative writs'*. The appeal is heard by the same court with a formation of five judges (review in law). *Prerogative writs* may be issued in both civil and criminal proceedings. They are issued only in exceptional circumstances and in particular when there is no other remedy. There are four types

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[44] The internal appeal for administrative matters was repealed in 2015, with the creation of two new administrative courts tasked with hearing administrative appeals at first instance, with the aim of lightening the workload of the Anotato Dikastirio in this area. Nevertheless, it retains its jurisdiction to appeal against the decisions of these two new courts.

[45] However, see, for this appeal, the information featuring in the summary table for Cyprus in Appendix 3.

of *prerogative writs*, [46] the best-known of which is the habeas corpus order intended to give a person deprived of their liberty the right to have the lawfulness of their detention subject to judicial review.

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In view of the wide variety of mechanisms identified, a table providing a general overview of the responses gathered for all the international and national courts examined is appended to this summary (Appendix 1). As a reminder, this summary table is supplemented by tables presenting, in detail, for each judicial body (international and national) in which a form of internal review mechanism has been identified, information on the rules governing the relevant review procedure (Annexes 2 and 3).

[…]

[46] See, with regard to this remedy, the information contained in the summary table for Cyprus set out in Appendix 3.