







Personal Injury claims against public bodies

	Ana Romero, Spain
	Alice Kubů Frýbová, Czech Republic
	Silvio Riesen, Switzerland
	Solenn Le Tutour, France



PI-claims against public bodies



Public body?

- State Administration
- Administrations of the Autonomous Communities
- Entities that integrate the Local Administration (town halls, ports...)
- Public Institutions (hospitals, schools, museums...)



PI-claims against public bodies

Public body?



Public authority - anyone exercising state or municipal/regional power by:

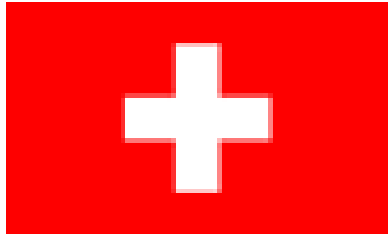
- issuing formal decisions (e.g., courts, ministries)
- pursuing official procedures (e.g., police)

Not

- Bodies providing services such as hospitals, schools or social services
- Public insurance companies – somewhere in between



Public body?

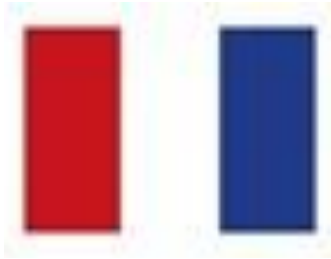


- Federal Government, Cantons or Municipalities (e.g. cantonal police or municipal swimming pool)
- Public law corporations / companies (e.g. public hospitals)
- Private company performing public tasks (e.g. snow removal on a public street by a private company)



PI-claims against public bodies

Public body?



- Public institutions responsible for running public services:
 - The State
 - Local authorities (“départements », « régions », Communes »)
 - Institutions which are responsible for running
 - administrative public services (“EPA”)
 - Industrial and commercial public services (“EPIC”) when making regulatory decisions
- Private organisations running a public service when using public prerogatives



PI-claims against public bodies



Jurisdiction and procedural rules

The Contentious-Administrative Jurisdiction will deal with claims for damages when a public body:

- denies liability after a preliminary claim (compulsory part of the procedure),
- does not respond within the legally established deadline (usually 6 months) to the preliminary claim, or
- when the claimant wishes to challenge the compensation granted after a preliminary claim.



PI-claims against public bodies

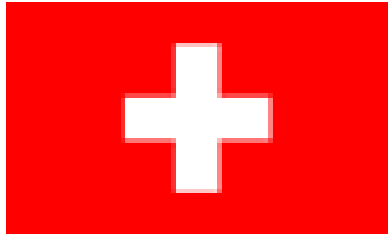
Jurisdiction and procedural rules



- Obligatory request for damages to the Ministry of Justice or another administrative authority **prior** to legal action.
- Civil courts



PI-claims against public bodies



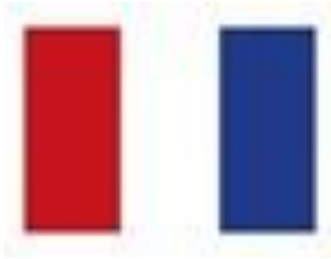
Jurisdiction and procedural rules

- At **federal** level: formal letter regarding liability and compensation for damages to the responsible public body, subsequently formal decision of the public body. Appeal proceedings (two court instances) or lawsuit before the federal supreme court (single instance)
- Each **canton** regulates its jurisdiction and procedural rules independently > usually lawsuit before the civil or a public court, sometimes same proceedings as at federal level with appeal proceedings (usually two court instances)



PI-claims against public bodies

Jurisdiction and procedural rules



In the context of liability claims

The administrative court may be seized 2 months after a denied preliminary claim .

Administrative court (“Tribunaux administratifs”) have exclusive jurisdiction to hear

- Requests of appointment of medical experts against administrative
- Claims for compensation when the preliminary claim was denied
 - Either formally
 - Or unformally : when the claim has remained unanswered by the public
 - With 2 months of the decision denying the claim

Insurers may be brought to the administrative proceedings if the insurance contract with the public body is of a public nature.



PI-claims against public bodies



Limitation period

Article 67.1 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations:

*"The right to claim shall expire **one year** after the event or act causing the damage occurred or after its harmful effects became apparent."*

The limitation period cannot be interrupted and a preliminary claim must be filed before the anniversary.



PI-claims against public bodies

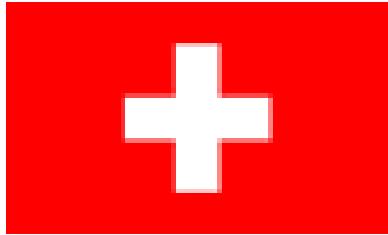
Limitation period



- 6 months for non-material damage
- 3 years for material damage
- 2 years for damage caused by criminal detention



PI-claims against public bodies

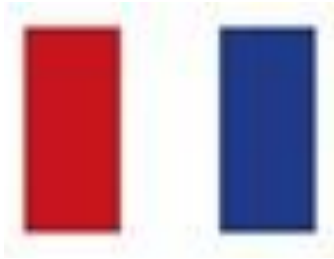


Limitation period

- At **federal** level > **3 years** after the claimant has sufficient knowledge about the damages suffered. Longer periods in case of criminal offenses.
- At **cantonal** level > **different** rules, also shorter periods in some cantons. Longer periods in case of criminal offenses



PI-claims against public bodies



Limitation period

Liability claims are time barred

"four years from the first day of the year following that in which the rights were acquired. The following are time-barred within the same time limits"

(Loi n° 68-1250 du 31 décembre 1968)

If accident occurred on 3rd April 2023, the administrative claim will be time barred after 1st January 2027.



PI-claims against public bodies



Assessment of damages

- The **Baremo** is only of compulsory application for RTAs. However, the system established in Law 35/2015 of 22 September applies by analogy and guidance to claims against Public Bodies.
- However, judges are entitled to exercise their freedom in the assessment of damages.



PI-claims against public bodies

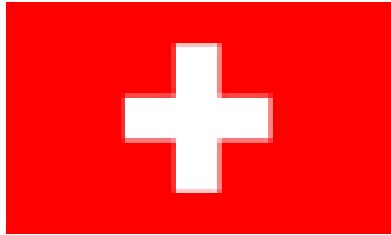
Assessment of damages



- . Same as in all civil proceedings
- . Case law related to unduly long duration of court proceedings or criminal detention



PI-claims against public bodies



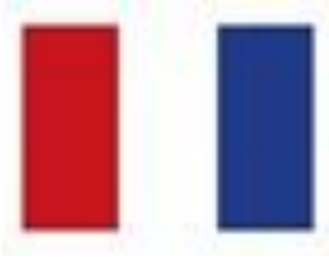
Assessment of damages

- At **federal** level > Same principles as in civil liability claims / proceedings
- At **cantonal** level > Usually same as in civil liability claims / proceedings > usually reference to the respective provisions



PI-claims against public bodies

Assessment of damages



Application of Dintilhac grid, but administrative case law less generous than civil case-law with respect to:

- Bodily injuries (pain and sufferings, incapacity, loss of amenity etc.)
- Care and assistance

However similar damages regarding loss of earnings.

If the fault is also a criminal offense:

Possibility to start parallel criminal proceedings and claim for civil damages before the Civil (against the Fund of compensation of criminal offense) after deduction of the damages obtained before the administrative court.