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ESTONIA

Due Process

Questionnaire for the ACA Seminar in Tallinn, 26–27 April 2018

Part A

Efficiency of Court Proceedings (at the Expense of Procedural Guarantees)

1. Simplified proceedings

Does your administrative procedural law provide for the possibility of resolving administrative cases in simplified proceedings: on the level of the highest administrative court and/or in lower administrative courts? (**YES**)

Yes. *Since the 1st of January 2012, the regulation of simplified proceedings is found in the Code of Administrative Court Procedure (CACP)[1] in Chapter 14 Division 4 (§§ 133–136, see also §§ 185(2), 211(5); 252(2), 279(1)). According to this, it is possible to resolve administrative cases (inter alia an application for interim relief and appeals in procurement matters) in simplified proceedings at all levels of the administrative courts.*

2. Prerequisites of simplified proceedings

2.1 Is the prerequisite to hear a case in simplified proceedings:

a. that the dispute is in a specific area of law? Please specify which areas (for example, minor traffic violations, administrative fees, aliens' cases, extradition *etc.*); **- / +**
b. **a minor infringement?** Please specify criteria for which infringements are considered minor (for example, is the breach of law in question of a low priority or is the amount of the claim small; is it characterised by a monetary limit and if so, what is it?). If possible, please submit the legal definition of a minor infringement or a small claim, as well as examples or definitions from case law; **+**
c. that the solution to the case is clear and obvious; **-**
d. something else (please specify)? **+**

Section 133 of the CACP regulates the prerequisites for simplified proceedings.

First, the court may hear the matter in simplified proceedings because of ***the legal value of the case****.*

From 2012 to 2017, Section 133(1) of the CACP stipulated that the court might hear a matter in simplified proceedings provided ***the court be satisfied that this is fair*** *and the* ***infringement of the right for which the action seeks protection is a minor one****. The*

[1] Available in English: https://www.riigiteataja.ee/en/eli/512122017007/consolide.

*infringement of rights is deemed minor in particular when the disputed legal value has a money value and that money value does not exceed **200 euro**.*

*From the 1st of January 2018, Section 133(1) of the CACP reads that the court may hear a matter in simplified manner provided **the court is satisfied that this is fair** and the **impingement on the right for which the action seeks protection is a minor one**. In the case of legal values that can be appraised in monetary terms, impingement is deemed to be a minor one primarily when the disputed legal value is not valued higher than **1000 euro**.*

*Second, the court may also hear the matter in simplified proceedings **if the parties and third parties expressly consent** to this (Section 133(2) CACP). A participant of the proceedings may withdraw his or her consent for the matter to be heard in simplified proceedings only if the situation in the proceedings has changed in a significant manner.*

*Third, regardless of the infringement being a minor one and regardless of the consent given by participants of the proceedings or of allocation of the matter to be heard in simplified proceedings **the court may, until it enters a judgment in the matter, order the matter to be heard pursuant to the procedure specified in Division 2 (Court Session) or 3 (Written Proceedings) of Chapter 14 of the CACP** (Section 133(3) CACP).*

*Exceptionally, an appeal against the judgment of an administrative court, an appeal in cassation or an appeal against a ruling in a **procurement matter** may be heard in simplified proceedings regardless of the infringement of the right being a minor one and notwithstanding the express consent of parties to it (Section 279(1) CACP). In comparison, the hearing of an application for interim relief is subject to the provisions governing simplified proceedings in full (Section 252(2) CACP). In addition, unless the law provides otherwise, the court hears the application and decides the **grant of permission** without delay in a written ruling made by a single judge in simplified proceedings (Section 264(4) CACP). These cases mainly include applications by the tax authority to be granted permission for the performance of enforcement actions before the final decision is taken, and applications by the Police and Border Guard Board for the detention of an alien or an applicant for international protection. These exceptions are meant to **expedite proceedings in these usually time-sensitive matters**.*

2.2 Have the possibilities of hearing a case in simplified proceedings been exhaustively defined in law or is it case law instead that has a decisive role in whether it is used (for example, a discretionary decision)?

The possibilities for simplified proceedings are exhaustively defined in CACP. In simplified proceedings, the court has a wide discretion, as it is a value-based judgement of the court to apply simplified proceedings. The court has the right to decide if the matter meets the criteria set for the infringement of the rights and the money value of the case foreseen in Section 133(1) of the CACP or if the matter should be heard in a court session or in written proceedings instead. Therefore, the boundaries of the admissibility of the simplified procedure are formed by case law.

2.3 Can the court use simplified proceedings regardless of whether the parties to the proceedings agree to it?

Yes. *As described in the answer to question 2.1, the consent of the parties and third parties is only one of the bases for using simplified proceedings (Section 133(2) of the CACP). When the decision of the court is based on other provisions, no consent of the parties is needed. However, if a participant of the proceedings has already given his or her consent, they may withdraw it only if the situation in the proceedings has changed in a significant manner (same Section). Nonetheless, regardless of the infringement being a minor one and regardless of the consent given by participants of the proceedings or of allocation of the matter to be heard in simplified proceedings the court may, until it enters a judgment in the matter, order the matter to be heard in a court session or in written proceedings instead (Section 133(3) CACP).*

2.4 Can a person appeal the implementation of simplified proceedings separately from the final court decision?

Concerning simplified proceedings, this question is not yet answered by the Supreme Court. According to Section 90 of the CACP a participant of proceedings may file an objection to the actions of the court. If a participant of proceedings does not file an objection at the latest by the end of the court session during which the infringement took place or in the first declaration submitted to the court after the time-limit for correcting the minutes has expired, although the participant knew or should have known of the error, that participant may not file the objection subsequently and may not rely on that error in appealing the decision made in the matter, except in the case in which the court has infringed an important principle of administrative court procedure.

In the case of written proceedings the Supreme Court has stated recently (case no 3-3-1-84-16[2]) that choosing written proceedings invades the fundamental right to participate in one's proceeding (Article 24(2) of the Constitution[3]), more specifically the right to attend any hearing held by the court in his or her case. It is an important principle of administrative court procedure to guarantee this procedural fundamental right. Therefore, the Administrative Chamber of the Supreme Court has said that it is possible to contest the choice of the proceedings in an appeal notwithstanding the omission to file an objection to the actions of the court earlier.

2.5 Can simplified proceedings be carried over into general procedure and *vice versa*?

1) From simplified proceedings into general procedure

Yes*. It is the task of the court to solve a matter in a right way and in due time. If the application of simplified procedure endangers the fulfilment of these aims, it might be justified to carry the proceedings over into general proceedings. Regardless of the infringement being a minor one and regardless of the consent given by participants of the proceedings or of allocation of the matter to be heard in simplified proceedings,* ***the court may****, until it enters a judgment in the matter,* ***order the matter to be heard in a court session or in written proceedings instead*** *(Section 133(3) CACP), i.e the proceeding of the matter can be carried over into general procedure.*

[2] Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-84-16.
[3] Available in English: https://www.riigiteataja.ee/en/eli/521052015001/consolide.

All the same, it is not forbidden to fulfil the rules of general procedure when hearing a matter allocated to be heard in simplified proceedings.

2) From general procedure into simplified proceedings

Yes. *At least in theory, the general procedure can be carried over into simplified proceedings. For this, the prerequisites for resolving administrative cases in simplified proceedings must be fulfilled (see Sections 133(1) and 133(2) of the CACP and answer to question 2.1). The law does not foresee this possibility expressis verbis and there is a lack of court practice concerning the issue. As it is widely accepted in court practice that oral proceedings may be carried over into written proceedings and there is no legal basis for that*[4] *either, the same possibility for general procedures being carried over into simplified proceedings should be guaranteed. At the same time, it is allowed to fulfil the rules of general procedure when hearing a matter allocated to be heard in simplified proceedings (f.ex. order that a court session must be held; see also Section 133(3) CACP)).*

3. Nature of simplified proceedings

3.1 Which rules of administrative court procedure are mandatory in simplified proceedings (for example, hearing the parties, general principles of administrative court procedure, *etc.*)?

In simplified proceedings, ***the court has to regard solely the essential principles of administrative court procedure, and must guarantee that the fundamental rights and freedoms and essential procedural rights of participants of the proceedings are observed, and that the participants are heard if they so request*** *(Section 134(1) CACP).*

Pursuant to Section 134(3) of the CACP, in simplified proceedings the court may not derogate from certain provisions, regulating administrative court procedure, courts, participants of proceedings before administrative courts, actions etc (see Chapters 1–4, 10–13, 16 and 17 CACP).

In Section 135 of the CACP the hearing of persons is regulated. In simplified proceedings, the court does not need to hold a court session to hear a person. In addition, such hearing does not need to take place in the presence of other participants of the proceedings and, before entering judgement, the court is not obligated to inform the other participants of the submissions made during the hearing. For example, it is possible, amongst other means, to hear an explanation of a participant of the proceedings via the telephone or, in relation to the hearing of a person, deem the person's written or electronic position to be sufficient.

3.2 Which general rules of administrative court procedure do not need to be followed in simplified proceedings (are there exceptions, for example, in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, public announcement *etc.*)?

[4] Still it is stipulated that instead of written proceedings the court may order the matter to be heard in a court session (Section 131(4) CACP).

Pursuant to Sections 134(2), 169, 201(5) and 231(1) of the CACP, if ***it facilitates the determination of the matter in a manner which is speedier and involves lower costs, the court may in simplified proceedings amongst other things****:*

1) make a written record of procedural acts only to the extent deemed necessary by the court;

2) forgo inviting the other participants of the proceedings to state their positions regarding the application to have the record corrected;

3) establish time-limits otherwise than provided in the law, except for the time-limit for appealing a court decision;

4) derogate from formal requirements for presenting and taking evidence and also use as evidence information which does not appear in a format that the law foresees in relation to the proceedings, including explanations of the participants of the proceedings not given under oath, as well as hearing witness testimony or explanations of participants via the telephone by way of procedural conference;

5) derogate from formal requirements that are provided in the law in respect of delivery of procedural documents and the documents submitted by participants of the proceedings, except in respect of delivery of the action to the respondent and to any third party;

6) forgo conducting written preliminary proceedings or convening a court session;

7) enter a judgment without the descriptive part and reasons. (See further in question 3.5.)

3.3 Are there differences in using simplified proceedings across the court instances?

No*, there are no differences. The circuit court may determine the matter in simplified proceedings, regardless of the type of proceedings that the administrative court had conducted in the matter (Section 185(2) CACP). Proceedings in cassation are governed by the provisions regarding proceedings in the administrative court, including the provisions regarding simplified proceedings, unless proceedings in cassation are subject to other provisions and unless the provisions concerning proceedings in administrative court are incompatible with the nature of proceedings in cassation (Section 211(5) CACP).*

3.4 What are the limitations on the right to appeal in case of simplified proceedings? Can an administrative case that is resolved in simplified proceedings be appealed up to the highest instance? If there are differences compared to general procedure, please describe how a case for which simplified proceedings are used moves through the court system (for example, the appeal might be submitted directly to the highest court, etc.).

There are no limitations of appeal*. The court may not establish the time-limit for appealing a court decision in order to determinate the matter in a manner which is speedier (Section 134(2)((3))).*

3.5 In simplified proceedings, can a court issue a judgment without the statement of reasons? (**YES**)

- If YES, then:

    a. what kind of information does that judgment have to contain?

b. do the parties to the proceedings have the right to demand for the judgment to be supplemented with the statement of reasons?

Pursuant to the conditions specified in Section 169(1) of the CACP in simplified proceedings, ***the court may enter a judgment without the descriptive part and the reasons provided all of the following conditions are met****:*

1) the action is dismissed;

2) the reasons for the court's disagreement with the assertions made by the applicant in the course of court proceedings and for the court's refusal to consider the evidentiary items referred to by the applicant are set out exhaustively and clearly in the administrative act, decision on challenge or the response submitted to the action;

3) the court follows the reasons referred to in point 2 of this subsection, stating its agreement with those reasons and referring to this subsection and to the document in which the reasons are set out.

According to Section 201(5) of the CACP, in simplified proceedings, ***the circuit court may enter a judgment without the descriptive part or the reasons, provided all of the following conditions are fulfilled****:*

1) the appeal against the judgment is dismissed;

2) the reasons for disagreeing with the assertions made by the appellant in the proceedings on appeal and for refusal to consider the evidence referred to by the appellant are set out exhaustively and clearly in the administrative act, decision on challenge, response submitted to the action or appeal or in the judgment of the administrative court;

3) the court follows the reasons referred to in point 2 of this subsection, stating its agreement with those reasons and referring to this subsection and to the document in which the reasons are set out.

In simplified proceedings, ***the court and the circuit court may initially pronounce its judgment in public without the descriptive part and the reasons, among other things, confining itself to an oral proclamation of the operative part of the judgment****.*

From 2012 to 2017, Section 169(2) of the CACP stipulated, that in such a case the full text of the court judgment must be made public within 15 days starting from the pronouncement of the operative part, except in the case that the parties and third parties, before the full judgment is made public, declare in writing or in a court session, that they waive the right to appeal the judgment. Section 201(6) of the CACP stipulated, that in such a case the full text of the circuit court judgment must be made public within 30 days starting from the pronouncement of the operative part, except in the case that the parties and third parties, before the full judgment is made public, declare in writing or in a court session that they waive the right to lodge an appeal in cassation against the judgment.

From the 1st of January 2018, Section 169(2) of the CACP reads: A judgment formalized as its operative part is to be supplied by the court with the descriptive part and the reasons if, within 15 days following public proclamation of the operative part, a participant of the proceedings notifies the court of his or her intention to appeal the judgment. No reasons are required to be given for the intention to appeal. Such a judgment must be publicly proclaimed in full within 30 days following presentation of the intention to appeal. The same applies to the judgement of the circuit court (Section 201(6) CACP).

Unless otherwise provided, the judgment of the Supreme Court is subject to the provisions applicable to the judgment of the administrative court (Section 231(1) CACP).

4. Simplified proceedings in court practice

4.1 What is the share of cases resolved in simplified proceedings out of all resolved cases? (%)

During the first half of the year 2017 (there are no statistics yet for the second half), 98 cases were resolved in simplified proceedings. Among them, 78 cases concerned the application by the Tax and Customs Board to get an authorisation for acts ensuring enforcement and 13 cases concerned different disputes of prisoners with their prisons. There were some cases (4) concerning the application by the Police and Border Guard Board to obtain permission to place a person in a detention centre, and some (3) concerning different disputes of individuals (2 of them soldiers) with Estonian Defence Forces, Defence Resources Agency and Ministry of Defence. All in all, during the first half of the year 2017 Estonian administrative courts of First and Second Instance resolved 2607 cases, thus resolving 3,8% of resolved cases in simplified proceedings.

4.2 Has the case law in your country pointed to any problems related to simplified proceedings, and if it has, what kinds of problems were they? Please give up to 3 examples.

For five years (2012–2017), the courts of Estonia have had the possibility to resolve cases in simplified proceedings. The Administrative Chamber of the Supreme Court of Estonia has not resolved many cases in simplified proceedings. For example, the Administrative Chamber resolved the case no 3-3-1-44-15[5] (see point 9) in simplified proceedings as any delay would have caused a threat to the interests of a party to the case. Second, the Administrative Chamber found in one case that the hearing of the matter in simplified proceedings was unjustified and expressed its views on the prerequisites of the procedure. Namely in case no 3-3-1-80-13[6] (see points 11–13) the Administrative Chamber found that the infringement of right for which the action sought protection is not automatically deemed to be a minor one when the disputed legal value has a money value and that money value does not exceed 200 euro. If the infringement of right is a major one (f. ex. an intensive infringement of the right to freedom), the prerequisites to hear a case in simplified proceedings are not fulfilled. The legal value of committing a prisoner unlawfully to a punishment cell for a period of 45 days has a higher money value than 200 euro.

Since the 1st of January 2018, the amendments to the provisions of simplified proceedings that will widen the possibilities to use this procedure are in effect. Main reasons for the revision of this five years old regulation are enumerated in the explanatory notes to the Draft amending the Code of Administrative Procedure[7]. According to the explanatory notes, until 2018 the simplified procedure has not been widely used because its prerequisites were too strict and did not thus contribute to the resolving of a case in simplified proceedings.

First, the prerequisite that the infringement of the right for which the action seeks protection should be a minor one might (in original Estonian wording) lead to a conclusion, that there

[5] Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-44-15

[6] Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-80-13

[7] Available in Estonian: https://www.riigikogu.ee/tegevus/eelnoud/eelnou/a8032ed5-482b-4ac5-8884-7d5fe0ef8e99/Halduskohtumenetluse%20t%C3%B5hustamiseks%20halduskohtumenetluse%20seadustiku,%20riigil%C3%B5ivuseaduse%20ja%20riigi%20%C3%B5igusabi%20seaduse%20muutmise%20seadus

are rights and freedoms that are of lesser importance and there are rights and freedoms that are of higher importance. That prerequisite was hard to consider and to apply in a court case. Instead, it should be clear from the wording that the infringements are of minor and of major intensity.

Second, the monetary value of a case less than 200 euro was low enough to cover only a small share of all administrative cases. This led to a situation where general procedure was conducted in both more and less complex cases thus not fulfilling the aim to contribute to procedural efficiency and smaller costs for both the state and the parties to the proceedings and shorter duration of proceedings.

The judges found that the courts need more flexibility in deciding which proceedings to use in which cases.

From the 1st of January 2018 the monetary value of a case that could be resolved in simplified proceedings is five times higher (1000 euro) and an important prerequisite for resolving a matter in simplified proceedings is the intensity of the infringement (see Section 133(1) CACP).

Part B

Right to Public Hearing

1. Are there any types of administrative cases or any court instances in which only oral proceedings are allowed (i.e. written proceedings are prohibited)?

According to Section 126(1) of the CACP, ***a matter is usually heard in the court session and can only be heard in written proceedings in the cases provided by law****. There are no types of cases or court instances where written proceedings are completely prohibited.*

2. Under which circumstances may cases be resolved in written proceedings? Can the justification be, for example:

a. exclusively legal questions; **+**
b. highly technical questions; **-**
c. the case raises no questions of fact or law that cannot be adequately resolved on the basis of the case file and the parties' written observations; **+**
d. other bases, for example at the request of one of the parties to the proceedings? **+**

According to Section 131(1) of the CACP, ***the administrative court and the circuit court*** *(Section 185(2) of the CACP)* ***may hear a matter by way of written proceedings if, in the assessment of the court, the facts material for determining the matter can be ascertained without holding a court session, and****:*

1. *all parties and third parties have agreed to the matter being heard by way of written proceedings or*
2. *it is evident that, in view of the legal values at issue and the nature of the dispute, including cases in which the only issues disputed by participants of the proceedings are points of law, participants of the proceedings do not have any reason to demand the holding of a court session.*

Irrespective of the agreement of participants of the proceedings, or of the assignment of the matter to be heard by way of written proceedings, ***the court may, until it makes a decision in the matter, order the matter to be heard in a court session*** *(Section 131(4) of the CACP).* ***Dismissing an application by a participant of the proceedings for an oral hearing must be done by way of a reasoned ruling*** *(Section 131(6) of the CACP).*

According to the case law of the Supreme Court, the requirement of an oral hearing is an important principle of administrative court procedure, and choosing written proceedings in the absence of the preconditions mentioned above may lead to the annulling of a judgment.[8] *Oral hearings also include the discussion of relevant legal questions, so even if the only issues disputed are points of law,* ***the court must take into account the value of the dispute to the parties and the nature of the dispute when choosing the manner of hearing the matter****.*[9]

The Administrative Law Chamber of the Supreme Court, however, hears appeals in cassation usually in written proceedings, unless it considers it necessary to convene a court session (Section 223(1) of the CACP).

3. Can oral proceedings also be carried out *via* videoconferencing (i.e. in a manner where either a party to the proceedings or their representative or counsel can be in a different place during the hearing and carry out procedural acts in real time, through an audio-visual transmission)? **YES**

- If YES, then:

a. what are the legal limitations (for example, in which kinds of cases is it not permitted)?
b. have the risks of videoconferencing and the protection of a person's rights been discussed? What were the main positions on the issue?

Section 350(1) of the Code of Civil Procedure[10] *– CCP – (applicable in administrative court procedure according to Section 129(3) of the CACP) provides that* ***the court may organise a session in the form of a procedural conference such that a participant in the proceedings or his or her representative or adviser has the opportunity to stay at another place at the time of the court session and perform the procedural acts in real time at such place****. In a court session organised in the form of a procedural conference, the right of every participant in the proceeding to file petitions and applications and to formulate positions on the petitions and applications of other participants in the proceeding shall be guaranteed in a technically secure manner and the conditions of the court session in respect of the real time transmission of image and sound from the participant in the proceeding not present in court premises to the court and vice versa must be technically secure. With the consent of the parties and the witness and, in a proceeding on petition, with the consent of the witness alone, the witness may be heard by telephone in a procedural conference (Section 350(3) of the CCP).*

[8] Judgments of the Administrative Law Chamber of the Supreme Court in cases no 3-3-1-84-16 (available in Estonian: https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-84-16), and no 3-3-1-20-16 (available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-20-16).
[9] Judgment of the Administrative Law Chamber of the Supreme Court in case no 3-3-1-20-16, referred above.
[10] Available in English: https://www.riigiteataja.ee/en/eli/ee/515012018001/consolide/.

*So, **the only legal limitations to holding a court session via videoconference are related to the technical security and to guaranteeing all participants' procedural rights**. No type of case is excluded from videoconferencing.*

There have been no disputes in the Supreme Court concerning videoconferencing. The main problems in courts of first and second instance have been technical. There has been some discussion among judges that videoconferencing lessens the direct contact between the court and parties, as well as witnesses. When good quality of transmission is guaranteed, however, this is a minor concern.

4. Can oral proceedings also be carried out outside the courtroom (in prison, hospital *etc*)? In which circumstances is this possible?

*According to Section 129(2) of the CACP, **as a rule, the court session is held in the courthouse** in whose service area the place lies in accordance with which jurisdiction is determined. **Having regard to the interests of participants of the proceedings, the court may hold the court session elsewhere**.*

So, the provision gives the court a wide margin of discretion to decide on moving the session outside the courtroom. In practice, one of the more often used possibilities is holding the session in another courthouse instead of the one based on jurisdiction, if the applicant lives far away from that courthouse and has difficulties travelling. In addition, court sessions have been held both in prison and in hospital. In both these cases, the option of videoconferencing has mostly replaced the need to hold the session outside the courtroom. Another situation where a session could be held outside the courtroom, which is still relevant today, is if there are so many participants to the proceedings that they would not fit inside a courtroom. In one Estonian criminal case, it has occurred that the court session was held in a big conference room instead of the court for this reason.