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Due Process

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This questionnaire focuses on the limiting of a person's procedural rights based on the principle of procedural economy. First and foremost, it seeks to answer the questions whether Member States have regulated the simplification of procedure in resolving certain types of administrative disputes, and where is the line drawn between effective court procedure and the protection of a person's procedural rights.
The principle of effective judicial protection is a general principle of European Union law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and which has also been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union (joined cases C-402/05 P and C-415/05 P: Kadi, p 335; C-432/05: Unibet, p 37, and the case law referenced therein). The Court of Justice of the European Union (CJEU) has stated that the principle of effective judicial protection laid down in Article 47 of the Charter comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (C-199/11: European Union v. Otis NV and others, p 48).
On the other hand, it is the CJEU's settled case law that fundamental rights, such as respect for the rights of the defence, do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (C-166/13: Mukarubega, p 53, and the case law referenced therein). In addition, the CJEU has stated that the principle of effective judicial protection does not only require that everyone should be able to exercise their right of access to court, but also that the administration of justice should be effective (F-3/11: Marcuccio, p 53). For instance, according to the CJEU, as long as the person can exercise their right to be heard, Article 47 of the Charter does not require an oral hearing in each case (see, for example, C-239/12 P: Abdulrahim, p 42; joined cases T-589/14 and T-772/14: Musso, p 59).
It follows from Article 52 subsection 3 of the Charter and the explanations relating to Article 47, that when defining the meaning and scope of the principle of effective judicial protection, it is also important to look at Article 6 of the European Convention for the Protection of Human Rights and the case law of the European Court of Human Rights (ECHR) on the topic.
According to Article 6 subsection 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of a fair trial also includes the format of hearing a matter. According to the case law of the ECHR, a court case generally has to be reviewed in an oral hearing by at least one court instance; however, Member States can implement simplified proceedings for smaller and less complex disputes. This can serve the interests of the parties by facilitating access to justice, by reducing costs related to the proceedings and by accelerating the resolution of disputes.
According to ECHR case law, simplified proceedings can generally mean written proceedings, except in cases when the court deems an oral hearing to be necessary or if a party to the proceedings requests a hearing (in which case the request may be

refused by the court) (see Pönka vs Estonia, No. 64160/11, p 30; on the obligation to hold a hearing see also: Göç v. Turkey [Grand Chamber], No. 36590/97, p 47, ECHR 2002-V, and the case law referenced therein; Miller v. Sweden, No. 55853/00, p 29, February 8, 2005). ECHR has accepted exceptional circumstances for foregoing an oral hearing in cases where the proceedings concerned exclusively legal or highly technical questions, and which by their nature are not complex (see Koottummel v. Austria, No. 49616/06, p 19, December 10, 2009, and the case law referenced therein, Allan Jacobsson v. Sweden (no. 2), p 49; Valová, Slezák and Slezák v. Slovakia, p-s 65-68, Varela Assalino v. Portugal (dec.); Speil v. Austria (dec.), Schuler-Zgraggen v. Switzerland, p 58; Döry v. Sweden, No. 28394/95, p 41; and contrast Salomonsson v. Sweden, p-s 39-40; Jussila v. Finland [GC], No. 73053/01, p-s 41–42 and 47–48). A case can also be heard in simplified proceedings or written proceedings if the case raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see Döry v. Sweden, p 37) or if written proceedings are more effective than oral ones (Jussila v. Finland [GC], p-s 41–42 and 47–48).

Simplified proceedings in the context of this questionnaire mean special arrangements in administrative court procedure (a type of procedure) that allow for the court proceedings to be carried out in a simpler or faster manner than usual (shortened proceedings, accelerated proceedings, simple proceedings or any other special arrangements for resolving an administrative case in administrative court). Simplified proceedings, their prerequisites and nature are dealt with in part A of this questionnaire. It must be noted that in part A of the questionnaire, simplified proceedings do not include written proceedings without any other simplification, nor limitations of the right to appeal. The possibilities for resolving administrative cases in written proceedings will be dealt with in part B of the questionnaire, which also briefly touches upon the possibility of conducting a hearing via videoconferencing.

If simplified proceedings do not exist as a separate type of procedure in administrative courts in your country, when answering please do consider whether there are other, specific possibilities to make procedures more effective in certain ways (for example, exceptions 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, etc.).

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/NO)

Answer:

Slovenian Administrative Dispute Act (ADA-1) sets out a number of possibilities that allow for the court proceedings to be carried out in a simpler or faster way.

1. First, it regulates so-called model procedure. If actions against more than twenty administrative acts in which the rights or obligations are based on the same or similar factual and legal grounds have been filed with the court, the court namely may, after receiving answers to the actions, carry out a model procedure on the basis of one of the actions and suspend the other procedures. Before the procedural decision to suspend a procedure is issued, the court must enable the claimant to make a statement regarding statements made in the responses to the action. The court must give priority to resolving cases which are being decided in a model procedure.

After a decision issued in a model procedure becomes final, the court must, without a hearing, make decisions on the suspended procedures, if these procedures contain no essential differences of a factual or legal nature from the model procedure, and if the facts of the case have been clarified. If the court decides in the same way as it did in the model procedure, it may also decide on all the actions by a single decision.

2. In accordance with ADA-1 the first-instance court must adjudicate after the main hearing. In this case the court must take evidence when and to the extent necessary for adjudication in the administrative dispute, if the evidence was not already presented in the procedure in which the contested administrative act was issued, or if other facts point to the need for a different assessment of the evidence from that made by the authority which passed the contested administrative act. The court must notify the parties of all the hearings for the presentation of evidence which the parties may attend. The parties may pose questions to witnesses and experts.

Further, the court may adjudicate without a main hearing (trial in a session) if the facts of the case that were the basis for the issuing of the administrative act between the claimant and defendant are not contentious. If the court adjudicates in a session, the session is not public and the court may only make its decision based on the facts of the case established in the administrative procedure.

- If NO, then are there any other possibilities for simplifying administrative court procedures (are there exceptions in, for example, 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, etc.)? Have there been discussions about the creation of simplified proceedings as a separate type of procedure? What are the main positions on the issue?

Answer:

The ADA-1 also provides other possibilities for simplifying administrative court procedures, for example:

- When the Court makes its decisions after the main hearing, the claimant may state new facts and new evidence in the action, but must explain why they were not already stated in the procedure in which the administrative act was issued. New facts and new evidence may only be taken into consideration as reasons for the claim if they existed during the period in which the first-instance decision was being made in the procedure on issuing the administrative act, and if the party could not submit or state them in the procedure for issuing the administrative act.

- The Administrative Court makes decisions in a panel of three judges. A single judge of the Administrative Court shall decide on the following cases:
a) if the value of the matter in dispute, in cases where the right or obligation of a party is expressed in monetary value, does not exceed 20.000 EUR and the case does not represent an important legal question;
b) if in the process for issuing an administrative act procedural decisions are contested;
c) if simple facts of the case and a simple legal situation has been established;

d) if the contested administrative act has such deficiencies that it cannot be tested.

- The court always keeps s record of the main hearing. If written applications are documented, the record may refer to them, but only essential facts, circumstances and the operative part of the decisions shall be entered in the record.

- There is no settlement hearing or stay of proceedings in an administrative procedure.

- If the defendant does not appear at the main hearing, the hearing shall proceed regardless.

- If none of the parties appear for the hearing or if the plaintiff does not appear, the court may decide on the dispute without a main hearing.

- If YES, please answer questions 2–4.

2. Prerequisites of simplified proceedings

2.1 To hear a case in simplified proceedings, is the prerequisite:

1. 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.*);
2. 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;
3. that the solution to the case is clear and obvious;
4. something else (please specify)?

Answer:

In accordance with the ADA-1 there are no such demands for model procedure. In view of the above the court may adjudicate in a non-public session if the facts of the case that were the basis for the issuing of the administrative act between the claimant and defendant are not contentious.

In addition to the aforementioned essential characteristics of the trial in a session there are no other conditions for such procedures.

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)?

Answer:

The possibilities for simplifying administrative court procedures are defined in law.

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

Answer:

The answer is yes.

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

Answer:
The answer is no.

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

Answer:
The court may at its discretion carry out a model procedure or adjudicate after the main hearing instead of in a non-public session.

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.*)?

Answer:
The court may at its discretion carry out a model procedure or adjudicate after the main hearing instead of in a session.

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.*)?

Answer:
See the answer to the question number 1.

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

Answer:
Above stated simplified proceedings relate only to the first instance court.

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.).

Answer:
There are no limitations on the right to appeal in those cases. Adjudication at the first instance is carried out by the Administrative Court and the adjudication on appeals and on reviews rests within

the competence of the Supreme Court. In accordance with the ADA-1 an appeal may be lodged against a decision issued by the administrative court, if the court itself established the facts of the case differently from those established by the defendant, and if it amended the contested administrative act on the basis of these facts, or if the court adjudicates on the legality of individual acts and actions with which authorities have encroached on the human rights and fundamental freedoms of an individual.

3.5 In simplified proceedings, can a court issue a judgment without the statement of reasons? (YES/NO)

Answer:
No. In accordance with the ADA-1 and regardless of the procedure, the court doesn't need to cite the reasons for the decision if it follows the justification of the administrative act and establishes this in the decision.

- If NO, then why is such a possibility not provided?

Answer:
As stated above, shortened explanation is possible in all procedures.

- If YES, then:

1. what kind of information does that judgment have to contain?
2. do the parties to the proceedings have the right to demand for the judgment to be supplemented with the statement of reasons?

4. Simplified proceedings in court practice

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

Answer:
There is no specific statistics on that topic.

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.

Answer:
There is no settled case-law on model procedures.

Above mentioned rules on adjudication after the main hearing are complemented by extensive case law on adjudication in a session. The main problem is that when the court adjudicates in such a way, often makes its decision based not only on the facts of the case established in the administrative procedure but also on the facts established in the administrative dispute.

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)?

Answer:
The oral hearing is of major importance when the court adjudicates on the legality of individual acts and actions with which authorities have encroached on the human rights and fundamental freedoms of an individual. Therefore, in such disputes the court doesn't rule on the legality of final administrative acts (an administrative act is an administrative decision and other individual act issued under public law, unilaterally, by a government authority as part of the execution of an administrative function, whereby an authority has decided on a right, obligation or legal benefit of an individual or legal entity, or of any other person who may be a party in the procedure of issuing the act). In the light of the foregoing the factual situation is treated exclusively before the court of first instance and not before an administrative body. However, the main hearing may be dispensed if the facts of the case between the claimant and defendant are not contentious.

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

1. exclusively legal questions;
2. highly technical questions;
3. 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;
4. other bases, for example at the request of one of the parties to the proceedings?

Answer:
See the answer to the question above.

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 audiovisual transmission)? (YES/NO)

- If NO, then has the creation of such a possibility been discussed? What were the main positions on the issue?

- 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?

Answer:

In an administrative dispute, the provisions of the Act regulating civil procedure (hereinafter ZPP) are applied, unless otherwise provided by ADA-1.

Therefore it is possible for evidence to be taken by videoconference directly by a court. In all administrative dispute, Article 114a ZPP applies, which provides that a court may, with the consent of the parties, allow parties and their legal representatives to be at different locations during the hearing

and conduct procedural activities there, provided that there is voice and image transfer from the place where the hearing is held to the place or places where parties and representatives are located and vice versa (videoconference). Subject to these conditions, a court may decide also to take evidence by examining parties and witnesses, and by taking evidence from experts.

In light of the above considerations videoconference can be used to examine parties and witnesses, as well as for taking evidence from an expert. Generally, parties and legal representatives may conduct all procedural activities from a remote location. There are no restrictions regarding locations where the other party is outside the court. The ZPP restricts the possibility to take evidence by videoconference to exhaustively listed evidence (examining parties and witnesses, taking evidence from an expert). Therefore, it is not possible to use videoconference for taking evidence by inspecting a location or taking evidence by examining documents.

Critics of videoconferencing often argue that the use of such technology could jeopardise the principle of the right to a fair trial. Videoconferences should have a negative impact on the behaviour of the parties, the judge and other participants. Such concerns are somewhat eligible but there is no empirical data of negative impacts of videoconferencing communication before courts in Slovenia.

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

Answer:
See the answer to the question above.

Thank you!