



**Seminar organized by  
the Supreme Court of Estonia and ACA-Europe**

*“Due process”*

Tallinn, 18-19 October 2018

**Answers to questionnaire: Italy**



Seminar co-funded by the «Justice » program of the European Union

## Due Process

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

*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)

- 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?
- If YES, please answer questions 2–4.

*Yes, it does, but never at the expense of the procedural guarantees.*

*The Italian administrative procedural law, in fact, is based on the whole set of the following principles:*

- *effectiveness of the protection, according to the principles of the Constitution and of European law,*
- *due process (parity of the parties and fullness of contradictory),*
- *reasonable duration of the process, in every type of procedure, ordinary or simplified, on the level of both the highest administrative court (i.e., the Council of State) and the lower courts (i.e. the Regional Administrative Tribunals).*

#### 2. Prerequisites of simplified proceedings

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

- 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.);

*Yes, it is.*

*Disputes concern the specific matters provided by article 119, of the Code of Administrative Process, such as:*

- *procedures for the awarding of public works, services and supplies;*
- *measures taken by independent administrative authorities;*
- *procedures for the privatization or disposal of public companies or assets, as well as the constitution, modification or suppression of companies, businesses or institutions by local authorities;*
- *measures adopted in the strategic sectors of defense and national security, energy, transport and communications;*

- procedures for occupation and expropriation of areas for public use, and other cases.

Moreover, according to the Code, are simplified procedures precautionary judgments. and the rites relating to:

- access to administrative documents,
- compliance proceedings (proceedings for the execution of previous judgements),
- appeals “against silence” (against the inertia of the public administration),
- electoral disputes.

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;

*No, it isn't.*

*The Italian system does not provide criteria based on the economic value of the dispute or the seriousness of the violation.*

c. that the solution to the case is clear and obvious;

*Yes, it is.*

*In the event that the Court detects the manifest soundness or the manifest inadmissibility, unacceptability, or lack of grounds of the application, it decides with a simplified judgment. In this case, simplification concerns the grounds of the judgment, since they may be more synthetic and consist of a brief reference to the point of fact or law deemed conclusive or, if appropriate, to a conforming precedent.*

d. something else (please specify)?

*Our system also provides:*

- a) terms beyond which the action can no longer be exercised (so called, procedural deadlines);*
- b) the possibility of quickly and jointly handling several cases concerning the same issue, by deviating from the roll order;*
- c) the halving of the terms of handling the appeal in the subjects provided by answer n. 2.1;*
- d) the fast setting of hearings in case of urgency;*
- e) the possibility of notifying in a public rather than a personal form;*
- f) the possibility of making fax communications or certified mail;*
- g) cases in which the judge solicits the agreement of the parties as an alternative to the sentence (trials on sums of money);*
- h) the possibility for the judge to decide ex officio, prior notice to the parties;*
- i) the possibility for the parties to be present and to be heard in the proceedings in private chamber (i.e. without public hearing);*

*l) personal defence by the parties in proceedings concerning access to administrative documents, electoral matters and proceedings concerning the right of EU citizens to move freely and reside in the territory of Member States;*

*m) the prohibition to raise new questions or bring new evidence in the second instance judgment (i.e. appeal),*

*n) the duty of conciseness of the acts (especially with the telematic process).*

**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 of hearing a case in simplified proceedings are exhaustively defined in law.*

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

*Yes, it can, but the judge always informs the parties first.*

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

*No, he cannot; the person can only appeal the final decision.*

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

*Simplified proceeding cannot be carried over into general procedure, but general procedure can be defined with a simplified judgment (see answer sub 2.1., c))*

### **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, are mandatory the rules of:*

- hearing the parties (if they want to) although not always in a public hearing,*
- reading all the documents,*
- observing the procedural terms,*
- giving grounds for the judgment.*

**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.)?

*In simplified proceedings, the rule of hearing the parties does not need to be followed if they don't want to be heard, and there is no need to hold public hearings. Furthermore, in proceedings concerning access to administrative documents, electoral disputes and the right to move and reside in EU Member States, there is no need to be defended by a lawyer.*

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

*No, there are no substantial differences among the Courts of first and second instance.*

**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.).

*In our system, there are no limitations on the rights and guarantees of the parties, in case of simplified proceedings.  
Simplifying means reducing time, not guarantees, both in the first and second instance (see answer n. 1).*

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

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

*No, it cannot.*

*Our judgements are always grounded and issued according to the rule of law, and not to equity.*

- 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?

#### **4. Simplified proceedings in court practice**

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

*Around 25%.*

*It has to be specified that this 25% is composed not only by “simple cases” (see answer 2.1, lett. c) but also by “complex cases” that are examined through a simplified procedure disciplined by the law (e.g., public procurements, antitrust, regulatory acts: see the whole list under answer 2.1, lett. a).*

**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.

*In some cases, parties complain about the shortness of the procedural terms to submit statements and documents, especially when the legal case is difficult and the terms are halved.*

## **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)?

*No, there aren't.*

**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?

*Our process is a written process, but the parties can be present at the hearing and can be heard, if they want to. Otherwise, the judge can decide on the written documents.*

**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)

*No, they cannot.*

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

*No, it has not.*

- 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?

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

*Oral proceedings can also be carried out outside the court-room when it is necessary to gather evidence by inspecting things, persons, or places; making verifications; hearing witnesses (even if our process is essentially based on documents); rogatory letters to foreign States.*

*Thank you!*