



**Seminar organized by
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“Due process”

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Answers to questionnaire: Spain



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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-Zraggen 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.

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, in Spain the Jurisdiction Act has established a "fast-track procedure" for certain cases exhaustively defined therein. Thus, it is a prerequisite that the dispute is in a specific area of law. These areas (contained in Article 78.1 of the Law 29/1998, 13 July 1998, governing Administrative Jurisdiction –Spanish acronym LJCA–) comprise issues related to:

- public Administration personnel;
- foreign citizens;
- non-admissions of applications for political asylum;
- doping in sport;
- all matters involving sums of 30.000 euros or less.

Moreover, administrative proceedings are also conducted through the fast-track procedure when the Administration fails to execute its own final acts (Article 29.2 LJCA).

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)?

Those matters involving sums not exceeding 30.000 euros (Article 78.1 LJCA), being the amount of the claim determined by the economic value of the applicant's demand (Article 41.1 LJCA).

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)?

They have been exhaustively defined in law.

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

Yes.

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

No, according to Article 78.9 LJCA, "(...) the judge shall decide and shall apply the appropriate procedure for the amount that the judge has determined. The judge's decision shall not be amenable to appeal".

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

No.

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.*)?

All the general principles of the administrative procedure are applicable to the fast-track procedure, which is based in the principle of orality.

Article 78.23 LJCA states that: "In all things not provided for in this chapter, the fast-track procedure shall be governed by the general rules of this act".

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.*)?

There are certain specialities with regard to evidence, according to what is established in Article 78 LJCA, paragraphs 13 to 16:

- Questions to be put when examining the parties shall be proposed orally, without admitting written interrogatories.
- Documents containing written questions and cross-questions shall not be admitted for securing oral evidence. When the number of witnesses is excessive and, in the view of the judicial authority, the witnesses' statements may constitute pointless repetition of testimony concerning matters that have been made sufficiently clear, the judicial authority may limit the number of witnesses at its discretion.
- There shall be no objection to witnesses. Only in the closing arguments may the parties make observations with respect to witnesses' personal circumstances and the veracity of witnesses' statements.
- In the taking of expert testimony, the general rules on the selection of experts by random drawing shall not be applicable.

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

No

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.*).

Regarding the right of appeal, the same limitations which apply to the cases conducted through the ordinary procedure are applicable to the fast-track procedure.

With respect to judicial review before the Supreme Court, the last amendment of the Jurisdiction Act has introduced a new regulation of this appeal, which at present is based on two principles: firstly, the existence (or inexistence) of an 'objective interest in resolving the appeal' in order to develop case law (system which is more similar to the *certiorari*) and, secondly, the universal access to the appeal, because all judgments pronounced in single instance by the administrative lower courts can be appealed before the Supreme Court, as well as single instance decisions or appeal decisions pronounced by the Administrative Chamber of the National High Court (*Audiencia Nacional*) or by the Administrative Chambers of the Regional High Courts of Justice.

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. The requirement for a statement of reasons derives from the principle of effective judicial protection, enshrined in the Spanish Constitution. Thus, a judgment cannot be issued without stating the reasons, as this could constitute a ground for nullity.

- 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? (%)

In first or single instance, the local administrative courts or the central administrative courts have resolved through the fast-track procedure 82.61 per cent of all cases¹.

¹ Data concerning the year 2016 provided for by the Statistical Service of the General Council of the Judiciary:

Local administrative courts: standard procedures 22 771 (21 973 directly resolved and 798 by conversion) and fast-track procedures 110 184 (106 617 directly resolved and 3 567 by conversion).

Central administrative courts: standard procedures 897 (860 directly resolved and 37 by conversion) and fast-track procedures 2 317 (2206 directly resolved and 111 by conversion).

Administrative Chambers of the Regional High Courts of Justice: standard procedures 35 196 (35178 directly resolved and 18 by conversion) and fast-track procedures 226 (directly resolved).

Administrative Chamber of the National High Court: standard procedures 6 939 (5 093 directly resolved and 1 846 by conversion).

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.

Yes. Some examples are:

- possibility to invoke, at the hearing, issues which were not raised in the administrative complaint;
- undue delays, due to backlog in the scheduling of hearings;
- delimitation of what constitutes «a personal issue».

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)?

Those cases referred to in paragraph 2.1, though Article 78.3 LJCA provides that, even in said cases, the appeal can be resolved without submission of evidence or without hearing if the claimant so demands, additionally, in his or her claim.

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?

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.

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

No. The use of videoconference is only provided for in law for witnesses and experts but not for the parties. According to Article 78 LJCA the hearing in the fast-track procedure is the trial before the judge and it specifically states that the parties must appear for trial.

- 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?

No. The oral proceedings are carried out at the seat of the court. Moreover, since every party must appear accompanied by a lawyer who represents him or her, the party's physical presence is not compulsory, reason why there is no need to go outside the court-room.

Thank you!