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Due Process

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Answers given by the Curia of Hungary

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

- 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.*);

- disputes relating to official certificates, official instruments and the management of official registers (except for the management of the land and real estate register),
- disputes based only on the claim of an other party to the administrative proceeding,
- disputes concerning ancillary administrative acts,
- disputes relating to the right to freedom of assembly (except for the dispersal of an assembly),
- settlements (as a means to simplify the general court proceedings) may be made in every area in which the case's subject matter allows for their conclusion and their application is not expressly excluded by law.

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;

It is not the nature of the infringement, but the severity of the case and the parties' less conflicting interests which are decisive in that regard.

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

In simplified proceedings, the courts are also entitled to deliver a simplified judgement if the impugned administrative act or the first instance administrative act contains the case's factual background in a comprehensive and clear manner.

d. something else (please specify)?

The courts are also entitled to hear a case under the rules of simplified proceedings if the plaintiff requests them to do so in his statement of claims and the defendant does not oppose that request in his counterclaim.

A settlement may be made if there is a good chance that it will be concluded within a reasonable time with regard to the particular circumstances of the case.

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)?

For the time being, these possibilities are only defined in law, but the courts will soon elaborate their case-law on simplified proceedings.

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?

Yes.

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

The courts may decide to continue their simplified proceedings according to the general rules of procedure if it is necessary for ensuring the requirements of due process or if the provisions on simplified proceedings have been wrongfully applied due to the incorrect qualification of the impugned administrative act.

If the settlement does not comply with the applicable legislation, the court shall refuse it and shall resume its proceedings. A separate appeal may be lodged against the court's decision refusing the approval of the parties' settlement, which has no suspensive effect on the continuation of proceedings.

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 general rules of administrative court procedure are to be applied, subject to certain derogations laid down in a number of special provisions.

A court-approved settlement is enforceable in the same manner as a judgement. An appeal may be lodged against the court's decision approving the parties' settlement in accordance with the general rules on appeal.

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*.)?

If it promotes the streamlined completion and cost-efficiency of proceedings, the court may decide to:
a) waive the holding of a preparatory panel meeting,
b) draw up a memorandum instead of minutes about the procedural actions and refrain from calling upon the parties to make a statement relating to a request to supplement the minutes or the memorandum,
c) set deadlines different from those prescribed by law for the carrying out of procedural actions (except for the deadline for appeals),
d) accept, instead of an oral statement, a statement made by way of an electronic audio communication device.

In case of the parties' court-approved settlement, the general rules on the bearing of court costs are to be applied with some changes. If the settlement does not cover the issue of the bearing of court costs, then the parties have to bear their own costs. The court decides on the bearing of the costs advanced by the State and the suspended duties in proportion to the degree of success of the parties involved in the settlement.

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

There are no differences.

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.).

No appeal can be submitted against judgements rendered in simplified proceedings.

3.5 In simplified proceedings, can a court issue a judgement without the statement of reasons? NO

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

The statement of reasons cannot be completely omitted, however, some of its elements may be left out. If the facts established by the impugned administrative act were not contested and the court did not order, *ex officio*, any investigation or taking of evidence, then the court may decide to refrain from including the case's factual background in the reasoning part of its judgement.

Simplified judgements have to expressly refer to the circumstances allowing for the omitting of some of the elements of the statement of reasons and to the legal grounds for the delivery of such judgements.

- If YES, then:

  a. what kind of information does that judgement have to contain?
  b. do the parties to the proceedings have the right to demand for the judgement 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? (%)

The legal rules that expressly provide for the conduct of simplified proceedings will enter into force on 1 January 2018. Hence, there are no data available yet in that regard.

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.

The courts have yet no case-law on simplified proceedings.

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)?

There are no such types of administrative cases.

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;

Cases cannot be resolved without holding a hearing (*i.e.* in written proceedings), if evidence has to be taken (except for the admission of documentary evidence).

d. other bases, for example at the request of one of the parties to the proceedings?

If none of the parties to the proceedings requested the court to hold a hearing and the court also deems it unnecessary to hold one, then the court decides on the merits of the case in a session, *i.e.* in written 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)? NO

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

  No discussion has been held so far 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?

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

In general, certain parts of the oral proceedings may also be carried out outside the courtroom, but not the whole of such proceedings. However, in asylum proceedings, it may occur that the procedural actions accomplished outside the courtroom constitute the very essential part of the proceedings. If the applicant submits, prior or subsequent to entering the territory of Hungary, his asylum application in a transit zone, then the court reviewing the asylum authority's decision has to hear the applicant in person in the transit zone at the State border. Nonetheless, the relevant piece of legislation also provides for the opportunity to conduct a personal interview with the asylum-seeker by means of telecommunications techniques, if the judge or court secretary seized with the case wishes to conduct the interview from the court's seat or from another place outside the transit zone. The courts' case-law shows that such personal interviews have so far been conducted typically by the use of telecommunications services.