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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)

- 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?

To be precise, simplified proceedings do not exist as a separate type of procedure in administrative courts in Latvia (comparably with civil courts). However, there are many procedural elements which simplifies proceedings within the general procedure (without

being actually distinct separate type of procedure). Given this obstacle, the answer should be NO, however, some of the questions from the section “Yes”, may be answered, and therefore, the answers will be provided as far as it relates to our situation.

Generally, cases from a court of first instance may be appealed to court of appeal and later to the Supreme Court as well. However, procedural laws provide that in certain types of cases general system of appeal may differ. For example, cases concerning Law on Submissions to governmental institutions or cases concerning asylum seekers may not be appealed to higher court; cases relating to procurement maters shall be appealed from the court of first instance directly to the Supreme Court, without filing an appeal to the court of appeal; for the cases related to competition maters the court of first instance is the court of appeal, this decision may be appealed to the Supreme Court; and additionally, for some types of cases the Supreme Court is the court of first instance, for example, cases concerning parliament elections. Thus it may be considered that changes in general system of appealing cases serves to simplification of adjudication.

There are certain cases which must to be reviewed as fast as possible (child cases, cases concerning dismissal of state officials). However, all the resting procedural requirements in these type of cases remain the same.

Procedural law provides opportunity for higher courts to state that the reasoning of a lower court was correct and sufficient without giving its own additional reasoning. That is, according to article 349 (4) of Administrative Procedure Law if the cassation court, while reviewing the case, finds that the reasoning of judgment of the lower court is correct and sufficient, the cassation court in its judgment is entitled to join to expressed reasoning of the judgment of the lower court. In this case, the cassation court does not provides additional reasoning. Equal article exists for court of appeal when it reviews the judgment of court of first instance (article 307 (4) of the Administrative Procedure Law).

As for taking minutes, according to article 136.[1] of the Administrative Procedure Law minutes may be taken by the court an assistance of technical devices. In such a case, if the minutes are recorded, according to article 137 (7) of the Administrative Procedure Law the paper version of minutes is simplified, it does not include:

1) explanations of participants in the administrative proceeding, testimony of witnesses, oral explanations of experts regarding their opinions, and information regarding examination of demonstrative and documentary evidence;
2) applications and petitions of participants in the administrative proceeding;
3) a brief summary of the opinion of an authority referred to in Section 30 of this Law;
4) a brief summary of the court argument.

Generally, administrative cases are reviewed in written procedure (without oral procedure sitting in court room). In the court of first instance, the parties are entitled to request the case to be reviewed in oral procedure (article 112^1 (4) of the Administrative Procedure Law). As for the court of appeal and the Supreme Court, it is their choice to review the case in oral procedure (article 112^1 (2) of the Administrative Procedure Law).

The Law provides an option for the court of cassation in cases stated in the law (for example, cassation complaint does not provide violations of material or procedural rights, the content of cassation complaint does not comply with the law, time periods for submission of cassation complaints is not observed or judgment cannot be appealed) to adopt so called leave-to-appeal decision in form of resolution (very short decision often not longer than one sentence) (article 338 (5) of the Administrative Procedure Law).

If the application or appeal (document of complaint) is excessively long, the court has the right to request the party to submit a summary of this application or appeal (for example, article 186 (1), 292 (4) of the Administrative Procedure Law).

An appellate instance court may choose to not examine facts as have been determined by a court of first instance and are not contested (article 305 (3) of the Administrative Procedure Law).

- 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.*);
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)?

As it was mentioned before, generally, cases from a court of first instance may be appealed to court of appeal and later to Supreme Court as well. However, procedural laws provide that in certain types of cases general system of appeal may differ. For example, cases concerning Law on Submissions to governmental institutions or cases concerning asylum seekers may not be appealed to higher court; cases relating to procurement maters shall be appealed from the court of first instance directly to the Supreme Court, without filing an appeal to the court of appeal; for the cases related to competition maters the court of first instance is the court of appeal, this decision may be appealed to the Supreme Court; and additionally, for some types of cases the Supreme Court is the court of first instance, for example, cases concerning parliament elections. Thus it may be considered that changes in general system of appealing cases serves to simplification of adjudication.

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)?

As it was mentioned, there is no such universal simplified proceedings, but the elements provided by the law which simplifies adjudicative 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?

As for the oral hearing sitting in court room, in the court of first instance, the parties are entitled to request the case to be reviewed in oral procedure (article 112^1 (4) of the Administrative Procedure Law). As for the court of appeal and the Supreme Court, it is their choice to review the case in oral procedure (article 112^1 (2) of the Administrative Procedure Law).

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

The question does not relate to Latvian administrative procedural law.

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

The question does not relate to Latvian administrative procedural law.

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.*)?

The question does not relate to Latvian administrative procedural law.

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.*)?

The question does not relate to Latvian administrative procedural law.

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

The question does not relate to Latvian administrative procedural law. However, procedural laws provide that in certain types of cases general system of appeal may differ (see the answer above).

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.).

The question does not relate to Latvian administrative procedural law.

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?
- 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?

The question does not relate to Latvian Administrative procedural law. However, as it was mentioned before, Administrative Procedure Law provides opportunity for higher courts to state that the reasoning of a lower court was correct and sufficient without giving its own additional reasoning. That is, according to Article 349 (4) of Administrative Procedure Law if the cassation court, while reviewing the case, finds that the reasoning of judgment of the lover court is correct and sufficient, the cassation court in its judgment is entitled to join to expressed reasoning of the judgment of the lower court. In this case, the cassation court does not provides additional reasoning. Equal article exists for court of appeal when it reviews the judgment of court of first instance. In this case only reasoning part of the judgment is absent, all the rest remains. Parties have not 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? (%)

The question does not relate to Latvian administrative procedural law.

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 question does not relate to Latvian administrative procedural law.

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)?

As it was mentioned before, the general principle is that administrative cases are reviewed in written procedure (without oral procedure sitting in a court room). In the court of first instance, the parties are entitled to request the case to be reviewed in oral procedure (article 112^1 (4) of the Administrative Procedure Law). As for the court of appeal and the Supreme Court, it is their own choice to review the case in oral procedure (article 112^1 (2) of the Administrative Procedure Law).

To our knowledge, there are no such a types of administrative cases in which only oral proceedings are allowed.

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?

As it was mentioned above, the general principle is that all administrative cases are reviewed in written procedure (without oral procedure sitting in court room). Only in exceptional cases, the case is reviewed in oral proceedings – if in the court of first instance the parties require the case to be reviewed in oral procedure (article 112^1 (4) of the Administrative Procedure Law) or the judge in any court instance finds that it is better to review the case in oral proceedings (article 112^1 (2) of the Administrative Procedure Law). Thus in Latvia, the oral proceedings are exception, not the written ones.

All the examples mentioned above will be a reason to review the case 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)? (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?

Yes, the Administrative Procedure Law provides an option for oral proceedings to be carried out via videoconferencing. Videoconferencing may take place if parties, witnesses or experts during the proceedings is somewhere else and cannot attend the court hearing. The Administrative Procedure Law does not expresses itself on legal limitations and risks of conferencing. Judges have discretion whether videoconferencing should be used, therefore, it is up to judges to guarantee that the procedural rights and person's rights are respected.

It should be noted that the videoconferencing does not decline general principles of adjudication of cases, that is to say, rules of Administrative Procedure Law have to be observed (respected). That includes verification of the identity of the persons present. Therefore, in practice videoconferencing mostly happens in between several court houses where employees verify identities of attendees and with an assistance of technical devices broadcasts these documents to the court where the case is reviewed.

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

Yes. For example, the Administrative Procedure Law provides that if documentary or demonstrative evidence can not be delivered to the court, the court must take a decision regarding its inspection and examination at the place where it is located. A court shall notify the participants in the administrative proceeding regarding on-site inspection of evidence. Failure of such persons to attend is not an impediment to the carrying out of an inspection (article 238 (1) and (2) of the Administrative Procedure Law).

As for the whole proceedings being carried out outside the court-room, it must be noted that the procedural law does not itself forbid the whole proceedings being carried out outside the court-room as far as the procedural rights and the person's rights are respected.

Thank you!