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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)

Yes, both the rules of procedure of the Court of Justice and of the General Court of the EU provide for simplified proceedings.

1. The rules of procedure of the Court of Justice set out the following two types of simplified proceedings:

   (a) The expedited procedure, which concerns both preliminary references and direct actions, enables the Court of Justice to deal with cases within a short time, when the nature of the case so requires. With regard to preliminary references, the relevant provisions are Articles 105 and 106 of the rules of procedure of the Court

of Justice. With regard to appeals and other direct actions, the relevant provisions are Articles 133 to 136 of the rules of procedure of the Court of Justice.

(b) The urgent preliminary ruling procedure, which concerns solely preliminary references and only specific areas of law (see below), enables the Court of Justice to deal with preliminary references as a matter of urgency or extreme urgency. This procedure is set forth in Articles 107 to 114 of the rules of procedure of the Court of Justice.

Besides the above-mentioned procedures, there are other means for the Court of Justice to deal with cases in a simplified or quicker manner:

(a) With regard to preliminary references, Article 99 of the rules of procedure of the Court of Justice makes it possible for the Court of Justice to adopt reasoned orders. The Court of Justice may decide to rule by reasoned order where a question referred to the Court for a preliminary ruling is identical to a question on which the Court of Justice has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt. The reasoned order may be adopted at any time, which means that it could be adopted even before the preliminary reference is notified to the parties and Member States.

(b) Similarly, Articles 181 and 182 of the rules of procedure of the Court of Justice make it possible for the Court of Justice to adopt reasoned orders with regard to appeals. Pursuant to Article 181, where an appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court of Justice may decide by reasoned order to dismiss the appeal in whole or in part. According to Article 182, where the Court has already ruled on one or more questions of law identical to those raised by the pleas in law of an appeal and considers this appeal to be manifestly well founded, it may decide by reasoned order. The reasoned order must refer to the relevant case-law to declare the appeal manifestly well founded. Pursuant to Article 181, the reasoned order may be adopted at any time, which means that it could be adopted at a very early stage in the procedure, i.e. even before the appeal is notified to other parties. In contrast, pursuant to Article 182, the parties must be heard before the reasoned order is adopted.

(c) With regard to both preliminary references and direct actions, Article 53(2) of the rules of procedure of the Court of Justice sets forth that, where the Court of Justice has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, it may, at any time, decide to give a decision by reasoned order without taking any further steps in the proceedings.

(d) Article 53(3) of the rules of procedure of the Court of Justice provides that the President of the Court of Justice may decide that a case be given priority over others.

2. The rules of procedure of the General Court also provide for an expedited procedure (Articles 151 and 152 of the rules of procedure of the General Court) and for a possibility to give a case priority over others (Article 67(2) of the rules of procedure of the General Court). In addition, the General Court may decide by reasoned order where it is clear that it has no jurisdiction to hear and determine an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law (Article 126 of the rules of procedure of the General Court) and where it has already ruled on one

or more questions of law identical to those raised by the pleas in law of the action and it finds that the facts have been established (Article 132 of the rules of procedure of the General Court).

- 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.*);

The urgent preliminary ruling procedure applies to preliminary references which raise one or more questions in the areas covered by Title V of Part 3 of the Treaty on the Functioning of the EU (TFEU), namely the so-called "area of freedom, security and justice". The area of freedom, security and justice covers policies on border checks, asylum and immigration, judicial cooperation in civil and criminal matters as well as police cooperation.

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;

NA

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

See question 1 above (developments on Articles 53(2), 99, 181 and 182 of the rules of procedure of the Court of Justice as well as Articles 126 and 132 of the rules of procedure of the General Court).

d. something else (please specify)?

See questions 1 above and 2.2. below (with regard to urgency).

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)?

Articles 105 and 106 as well as 133 to 136 of the rules of procedure of the Court of Justice and Articles 151 and 152 of the rules of procedure of the General Court contain detailed rules concerning the expedited procedure. Likewise, Articles 107

to 114 of the rules of procedure of the Court of Justice contain precise rules concerning the urgent preliminary ruling procedure.

Nonetheless, the case law has been instrumental in defining certain notions that trigger the initiation of those simplified procedures, in particular the notions of "urgency" (urgent preliminary ruling procedure) and "case whose nature requires that it be dealt with within a short time" (expedited procedure).

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

With regard to preliminary references, the simplified procedures may be resorted to without the parties to the main proceedings being heard:

1. Further to Article 105(1) of the rules of procedure of the Court of Justice, the President may decide to deal with a preliminary reference pursuant to the expedited procedure "at the request of the referring court or tribunal or, exceptionally, of his own motion […], after hearing the Judge-Rapporteur and the Advocate General".

2. Further to Article 108 of the rules of procedure of the Court of Justice, "the decision to deal with a reference for a preliminary ruling under the urgent procedure shall be taken by the designated Chamber, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General".

With regard to direct actions, the Court of Justice and General Court may not resort to the expedited procedure without having heard the parties:

1. Further to Article 133(1) of the rules of procedure of the Court of Justice, the President may decide to deal with a direct action pursuant to an expedite procedure "at the request of the applicant or the defendant […], after hearing the other party, the Judge-Rapporteur and the Advocate General". Likewise, further to Article 133(3) of the rules of procedure of the Court of Justice, "exceptionally, the President may also take such a decision of his own motion, after hearing the parties, the Judge-Rapporteur and the Advocate General".

2. Further to Article 151(1) of the rules of procedure of the General Court, "the General Court may, at the request of the applicant or the defendant, after hearing the other main party, decide, having regard to the particular urgency and the circumstances of the case, to adjudicate under an expedited procedure". Similarly, further to Article 151(2) of the rules of procedure of the General Court, "the General Court may, in exceptional circumstances, of its own motion and after hearing the main parties, decide to adjudicate under an expedited procedure".

However, in the latter cases, the Court of Justice and General Court may disregard the opinion of the parties.

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

No, the decisions to deal with a case pursuant to one of the simplified proceedings (expedited procedure or urgent preliminary ruling procedure) may

not be appealed, as follows from Articles 56(1) and 57 of the Statute of the Court of Justice of the EU.

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

It is unlikely that simplified proceedings are later handled under general procedure. However, in the past, some cases dealt with under the general procedure were later handled under simplified 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.*)?

Please see question 3.2. below.

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 rules of court procedure that do not need to be followed in simplified proceedings are the following:

1. Under the simplified proceedings, the deadline to lodge written observations or pleadings may be or is shortened (see Articles 105(3) and 109(2) of the rules of procedure of the Court of Justice as well as Article 154(1) of the rules of procedure of the General Court).

2. Under the expedited procedure, the right to lodge a reply and a rejoinder may be denied (Article 134(1) of the rules of procedure of the Court of Justice and Article 154(3) of the rules of procedure of the General Court).

3. Under the urgent preliminary ruling procedure, the preliminary reference is immediately served on the parties to the main proceedings, on the Member State from which the reference is made, on the European Commission and on the institution which adopted the act the validity or interpretation of which is in dispute (Article 109(1) of the rules of procedure of the Court of Justice). Written statements or observations may only be lodged by those parties or entities (Article 109(2) of the rules of procedure of the Court of Justice), to the exclusion of other parties, which may solely take part in the hearing (Article 110(3) of the rules of procedure of the Court of Justice). Furthermore, pursuant to Article 111 of the rules of procedure of the Court of Justice, in cases of extreme urgency, the Court of Justice may decide to omit the written part of the procedure.

4. Pursuant to Article 155(1) of the rules of procedure of the General Court, the General Court, where dealing with a case pursuant to the expedited procedure, may decide to rule without an oral part of the procedure if the main parties decide not to participate in a such a hearing and if it considers that it has sufficient information available to it from the material in the file in the case.

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

Please see question 3.2. 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.).

Yes, a case that is decided by the General Court pursuant to the expedited procedure may be appealed. No specific rules apply to such an appeal.

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 Court of Justice and the General Court are bound to provide a statement of reasons in all of their judgments/reasoned orders (Article 36 of the Statute of the Court of Justice, Articles 87 and 89 of the rules of procedure of the Court of Justice and Articles 117 and 119 rules of procedure of the General Court).

- 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? (%)

Between 2012 and 2016, 8 cases had been dealt with by the Court of Justice pursuant to the expedited procedure and 23 cases under the urgent preliminary ruling procedure.

In the same period, 19 cases had been dealt with by the General Court pursuant to the expedited procedure.

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.

No

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)?

See question 3.2. above.

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

See question 1 above

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?

- 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

Thank you!