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General report

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General Report

Due process

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Supreme Court of Republic of Estonia

Responses to the corresponding questionnaire were received from rapporteurs of the following ACA members: Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom, as well as the Court of Justice of the European Union.

Contents

Introduction

The ACA questionnaire on due process, focusing on the efficiency of court proceedings at the expense of procedural guarantees (part A) and on the right to a public hearing (part B), was answered by rapporteurs of ACA members from the following countries: *Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom,* as well as the *Court of Justice of the European Union (CJEU)* (a total of 30 respondents).

The questionnaire *Due Process* focused on the limitations imposed on individuals' procedural rights for reasons of procedural economy. First and foremost, the questionnaire aimed to answer the questions of whether Member States have adopted rules that allow certain types of administrative disputes to be resolved by means of simplified procedures, and of where do they draw the line between streamlining court procedures and protecting the procedural rights of individuals.

For the purposes of this report, simplified procedure means special arrangements in administrative court procedure that allow proceedings to be carried out in a manner that is simpler or faster than usual (abridged proceedings, accelerated proceedings, simplified proceedings or any other special arrangements for judicial resolution of administrative cases). The aim of the drafters has been to give a comprehensive picture of the procedural reality in the responding countries. For this reason, instead of exclusively focusing on the formalization of simplifications as a separate set of procedural rules, the report also reflects procedural modifications reported by countries that do not have any procedures specifically labelled as 'simplified' (or other similar designation).

Like the questionnaire, the report consists of two parts. Simplified procedures, their prerequisites and nature are presented in part A, which is divided into three chapters: *Existence of simplified procedure as a separate type of procedure* (Chapter 1); *Nature of simplified procedure* (Chapter 2) and *Problems* (Chapter 3). The possibilities for dealing with administrative cases by written procedure were dealt with in part B of the Questionnaire, which also briefly touches upon the possibility of conducting hearings by means of videoconferencing. Part B is divided into four chapters: *Oral procedure* (Chapter 1), *Written procedure* (Chapter 2), *Use of videoconferencing* (Chapter 3) and *Oral proceedings outside of courtroom* (Chapter 4).

The drafters extend their sincere gratitude to all the rapporteurs for their responses to the questionnaire.

Part A of the questionnaire: efficiency of court proceedings (at the expense of procedural guarantees)

1. Existence of simplified procedure as a separate type of procedure

In 18 of the 30 ACA members that responded to the questionnaire (*Belgium*, *Estonia*, *Court of Justice of the European Union*, *France*, *Germany*, *Greece*, *Hungary*, *Italy*, *Lithuania*, *Luxembourg*,[1] *the Netherlands*, *Norway*, *Poland*, *Portugal*, *Slovenia*, *Spain*, *Switzerland* and *Turkey*), it is possible to resolve administrative cases in simplified proceedings. This makes up 60% of the respondents, as presented in *Figure 1*. In those countries where there are no specific sets of rules explicitly referred to as 'simplified procedure' (or other similar term) there are usually certain other possibilities for simplifying administrative court procedure.

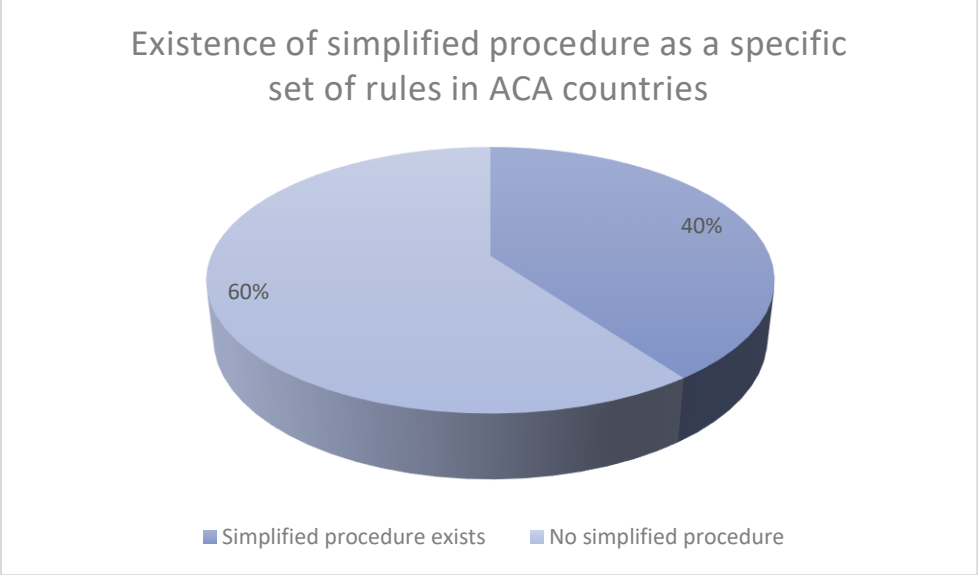

Figure 1. Existence of simplified procedure as a specific set of rules in ACA members

The 18 rapporteurs who reported the existence of simplified procedures in most cases also cited additional possibilities for streamlining regular administrative court procedure in specific situations. Such possibilities include:

- reduced time-limits;
- adjudication of the matter by a single judge instead of a panel of judges;
- the court being authorized to enter a judgment without reasons or with abridged reasons or to provide reasons only if requested by a party;
- not holding an oral hearing;
- hearing the case without a party present;
- limitations of the right to appeal;
- simplified requirements concerning records of proceedings;

[1] *Luxembourg* states that although the rules of procedure for the administrative courts do not provide any generally applicable simplified procedure, a simplified procedure is established for certain matters in special legislation.

- possibility for the court to join related matters and to refer to similar judgments in its decision, etc.

In some countries, there are several different types of simplified procedure, for example in *Belgium*, *France* and in the *Netherlands*. As a case in point, the *Netherlands* reported that there is a generally applicable simplified procedure and a more specific simplified procedure in immigration matters. Also the Council of State of *Belgium* recognizes several forms of simplified procedure. Some of these can be implemented in the context of applications for annulment, either in specific fields of law, by reason of the procedural conduct of the parties, or by reason of the straightforwardness of the case. In addition, the appeals seeking ordinary suspensive relief against administrative decisions or suspensive relief in cases of extreme urgency result in very brief proceedings with the Council of State rendering provisional rulings.

France reported that there are a number of specific types of matter that are presently dealt with by simplified procedure. Among them are disputes involving foreigners. Facing an increase in the number of cases in this field, the legislature provided for a simplification of the relevant procedures. In addition, both primary and secondary legislation have authorized the use of simplified procedures in additional types of matters. The scope of matters likely to qualify for such procedures is very vast and varied. For example, simplified procedure exists for dealing with disputes relating to benefits, allowances or rights attributed under social measures or support, to pensions, to assessments and, partly, the disciplinary sanctions imposed on public servants, to consultation and communication of administrative documents, to fiscal matters and appeals relating to contraventions *de grande voirie* [administrative sanctions for harming the public domain] or to those relating to enforceable housing rights. As a generalization, the rapporteur pointed out that most of these fields have many recurring disputes with few difficult legal questions.

In a few countries, notably *Norway* and the *United Kingdom*, there are no separate administrative courts. In both countries, the corresponding proceedings are governed by ordinary rules of civil procedure. The Norwegian Civil Procedure Act provides certain possibilities for simplifying proceedings – including a small claims procedure – yet the scope of these provisions is not limited to administrative cases.

In the *United Kingdom*, although administrative disputes are also dealt with by ordinary courts applying regular civil procedure, there exist simplifications concerning judicial review of administrative cases, challenges to certain administrative acts before specific statutory tribunals, and a variety of miscellaneous procedural modifications. The latter include, for example, differences in time-limits, format requirements, different rules for service of procedural documents, pre-trial proceedings, the format of the decision and of records of hearings, etc. The *United Kingdom* also has a set of procedural rules of general application which reflects the broad case management discretion accorded to individual judges in order to strike an appropriate balance between procedural economy and due process depending on the circumstances of the case. In addition to the above, there is a fully electronic Traffic Penalty Tribunal for England and Wales, through which motorists can appeal penalty charge notices issued by most local authorities for certain minor traffic and parking violations (including e-decisions and telephone hearings).

1.1 Statistics

As stated above, 18 ACA members of the 30 that responded to the questionnaire reported a possibility of dealing with administrative cases following simplified procedure. The proportion of cases dealt with by means of simplified procedures varies widely across these countries, ranging from about 3–4% in *Estonia* and *Turkey* to 83% in *Spain* (fast-track procedure).

In *Poland*, the figure was 9.4% in 2016, showing a significant increase due to the addition of new types of cases authorized to be dealt with by simplified procedure. In *Luxembourg* and the *Netherlands*, about 30% of all cases are dealt with by simplified procedures. In *Italy*, the proportion stands at 25%, including straightforward as well as complex cases. About half of the relevant rulings in *Belgium* (by the Council of State) were entered under an accelerated or abridged procedure. A similar statistic was reported by *France* (49% of cases dealt with by order in the Council of State, 24% dealt with by order in the asylum court (*Cour nationale du droit d'asile*)) and *Greece* (decisions by the Council of State). In *Lithuania*, the pilot judgment procedure has not been applied so far. Similarly, in *Hungary* there are no data available yet since the rules that expressly provide a possibility for simplified proceedings only entered into force on 1 January 2018. In *Germany*, the share of simplified proceedings varies considerably depending on the number of asylum cases. It follows that the statistics in European countries differ widely.

1.2 Prerequisites of simplified procedure

The prerequisites of hearing cases under a simplified procedure are established by law (as opposed to case law) in all legal systems that reported the existence of such procedures. However, the case law has some importance in countries which provide for discretionary application of simplified procedure. *France* illustrated this with the example that while the relevant law states that disputes relating to pensions may be dealt with by simplified procedure, the case law has specified the boundaries of this rule. In *Belgium*, the case law provides an interpretation of certain concepts applied by the courts (e.g. ‘urgency’ and ‘extreme urgency’ as well as ‘brief debate’). The case law of the *European Court of Justice* (ECJ) has also been instrumental in defining certain notions that trigger the initiation of simplified proceedings (e.g. ‘urgency’ and ‘case whose nature requires that it be dealt with within a short time’).

There are certain prerequisites for simplified procedures that are worth highlighting. Based on responses to the relevant item of the questionnaire, the most frequently encountered grounds for the application of simplified proceedings are presented in *Figure 2*. The figures above the bars of the chart show the number of countries (out of a total of 18 that employ simplified procedure) where the corresponding prerequisite is used. One sees that many countries use simplified procedure in certain fields of law and in cases where the solution is clear and obvious. The most specific prerequisite is that of the case belonging to a group of similar cases.

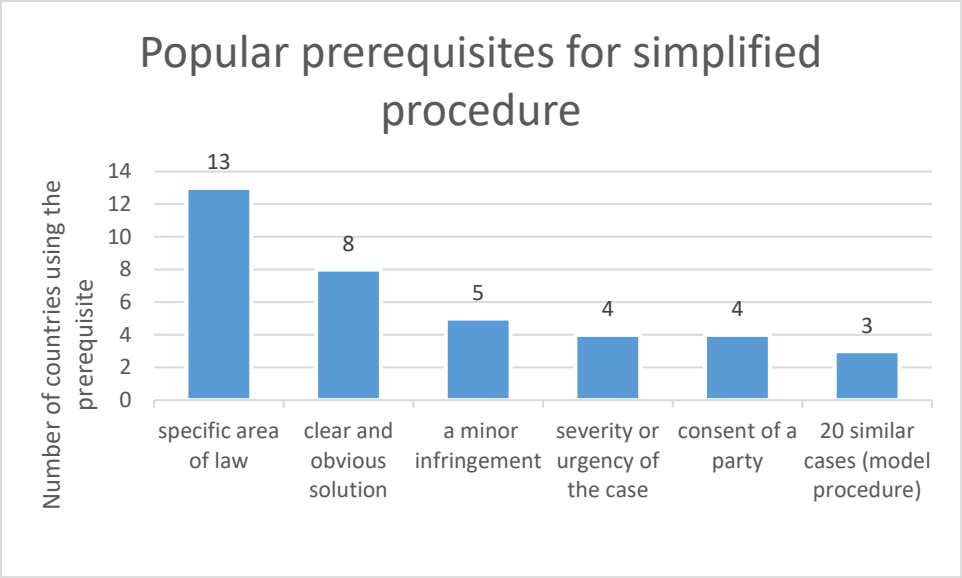

Figure 2. Popular prerequisites for simplified procedure

The following sections of the report discuss the most frequent prerequisites for simplified procedure in ACA countries.

1.2.1 Dispute pertaining to a specific area of law

In a significant number of countries the application of simplified procedure is a function of the dispute belonging to a specific area of law. The most common area in this regard is asylum and/or immigration law. Cases falling in either or both of these categories are dealt with by simplified procedure in the *ECJ*, *France*, *Germany*, *Latvia*, *Lithuania*, *Luxembourg*, *Netherlands*, *Spain* and *Switzerland*. Electoral, referendum or procurement matters trigger simplified procedures in *Belgium*, *Estonia*, *Italy*, *Latvia*, *Lithuania*, *Poland* and *Turkey*. Most countries use some degree of simplification in interim relief proceedings.

The range of contexts in which simplified procedures are used is wide. For example, in *Belgium*, disputes in the area of state supervision of financial-sector undertakings are dealt with by simplified procedure, the legislature seeking to speed up proceedings in order not to compromise the economic interests of the undertakings involved. In *Hungary*, simplified procedures are used to resolve disputes concerning official certificates, official instruments and the management of official registers, as well as disputes relating to the freedom of assembly, disputes concerning ancillary administrative acts, and disputes based exclusively on the claim of another party to the administrative proceeding. *Spain* reported using simplified procedure to adjudicate public administration staff and sports doping matters. *France*, *Italy* and *Turkey* stated that simplified procedures are applicable in numerous disputes in different areas of law.

It follows that the areas of law where simplified procedure is used tend to be those that give rise to disputes which are typically time-sensitive, requiring simplification to make court procedure quicker and more efficient. Most of the respondents reporting simplified procedures (13, *i.e* 72% of those who use simplified proceedings) make such procedures dependent on the area of law at issue.

1.2.2 Minor infringement

The fact that the alleged infringement of a right is a minor one is grounds for the application of simplified procedure in *Estonia*, *France, Hungary*, *Norway* and *Spain*, *i.e* 28% of the reports that reflected such procedures. For example, in *Estonia* an infringement is deemed to be minor primarily when the disputed legal value is not valued higher than 1000 euros, although it should be noted that the 1000-euro threshold simply creates a presumption that the infringement is a minor one, and does not automatically send the case to the simplified track. On the other hand, in *Norway*, all cases in which the disputed amount is less than NOK 125,000 (EUR 12,887) are assigned to the small claims procedure, and in *France*, the threshold is similar – 10,000 euro. In *Spain*, a 'fast-track procedure' is applied to all matters involving sums not exceeding 30,000 euro, the sum in dispute being determined by the economic value of the applicant's demand. In *Slovenia*, simplification of procedure on these grounds means that a single judge of the administrative court will decide the case. It is used if the value of the matter in dispute, in cases where the right or obligation of a party is expressed in monetary terms, does not exceed 20,000 euro and the case does not raise an important legal question.

It follows that although the idea that minor infringements of rights should be treated using simplified procedure is espoused in a number of countries, its application differs widely in terms of the operative financial threshold (from 1000 to 30,000 euro). Besides specific financial criteria, the court's discretion may also play a role. For instance, *Hungary* reports that there is no financial threshold, the application of simplified procedure being determined by the triviality of the case and the low degree of conflict between the parties' interests.

1.2.3 Clear cases and similar disputes

The clarity and obviousness of the solution to the case is cited as the ground for assigning it to simplified procedure by eight rapporteurs (*CJEU*, *France*, *Italy*, *Luxembourg*, *the Netherlands*, *Norway*, *Poland* and *Slovenia*), i.e. 44% of the rapporteurs that reported simplified procedures as separate sub-sets of rules.

In *Luxembourg*, simplified (accelerated) procedure is employed when the application for international protection is to be dismissed and the related appeal is clearly without any actual hope of success. The decision to deal with the case in simplified procedure is made by the minister competent to decide on applications for international protection, but can be overruled by the court. In the *Netherlands*, a prerequisite of the generally applicable form of simplified procedure is that the solution to the case or the appeal be clear and obvious – meaning that the application/appeal is manifestly inadmissible or manifestly unfounded or manifestly well-founded. Similarly, in *Italy* the court enters a simplified judgment in the case if it finds the corresponding application to be manifestly sound or manifestly inadmissible, unacceptable, or lacking grounds. In *Norway*, if a party so requests the court may decide the case on the merits by following simplified procedure provided it is evident that the claim cannot succeed either in whole or in part, or it is evident that the objections to the claim are manifestly ill-founded. In *Slovenia*, the court may adjudicate the case in a non-public session if the facts of the case on which the administrative act was made are not contentious between the claimant and defendant.

The *ECJ* as well as the *General Court* may decide to give a decision by reasoned order without taking any further steps in the proceedings if the court has no jurisdiction to hear and determine

the case or if the request or application is manifestly inadmissible or manifestly lacking any foundation in law. In addition, 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.

Three countries (*Lithuania*, *Slovenia* and *Montenegro*) report a similar possibility to apply simplified procedure in situations where there are many (more than 20) similar disputes. In *Slovenia*, if actions against more than 20 administrative acts concerning rights and obligations arising on the same or similar factual and legal grounds have been filed with the court, the court is authorized to carry out a model procedure based on one of the actions and stay proceedings in the other cases. When the decision entered in model proceedings becomes final, the court must, without a hearing, enter decisions in stayed proceedings, provided these are not substantially different from the model in terms of their facts and applicable law, and provided the facts of the case have been ascertained. If the court's decision is the same as in model proceedings, all stayed actions may be dealt with in a single judgment. A similar option is provided in *Montenegro's* administrative court procedure, where it is referred to as 'sample procedure'. After the judgment pronounced in the selected case has become final, the cases in which proceedings were stayed are decided without an oral hearing.

The model procedure described by *Slovenia* closely resembles the pilot judgment procedure in *Lithuania*. The latter is available when there are numerous very similar cases (in terms of both facts and law) pending in administrative courts which originate from an administrative regulatory act which has been pronounced contrary to the Constitution or laws. Once the pilot judgment procedure is initiated (one case is examined as the pilot case), proceedings in other similar cases are stayed. The administrative court arranges for the pilot case to be heard as promptly as possible. Similar cases may be dealt with under simplified procedure following the pilot judgment, provided the pilot case was heard in the Supreme Administrative Court of Lithuania. The pilot judgment procedure was established in the version of the Law on Administrative Proceedings of the Republic of Lithuania that entered into force on 1 July 2016 and has not been applied so far.

In addition, *Italy* too reported the possibility of derogating from docket order to quickly and jointly handle multiple cases that raise the same issue. Likewise, in *France* the absence of particular difficulty with the issues raised in the action constitutes grounds for initiation of simplified procedure, most often in the case of recurring disputes.

1.2.4 Consent of the parties

In all countries where simplified procedures exist as separate sub-sets of rules, the courts are authorized to apply them if the prerequisites defined by law are met, regardless of whether the parties to the proceedings agree to it.

In addition, some of the countries (*Estonia, Hungary, Norway, Poland*) allow the application of simplified procedure even without other prerequisites, provided the parties to the proceedings agree to it. In *Hungary*, the courts have the right to deal with the case under simplified procedure if the applicant requests this in their complaint and the defendant does not oppose that request

in their response. In *Estonia*, the court may also hear the matter in simplified procedure if the parties and third parties expressly consent to this. A participant of the proceedings is only allowed to withdraw their consent to the application of simplified procedure if the situation in the proceedings has changed in a significant manner.

However, none of the countries has limited the grounds for the application of simplifications exclusively to the parties' consent.

1.3 Other simplifications

Countries where simplified procedures do not exist as specific sets of rules (*Austria, Croatia, Czech Republic, Cyprus, Finland, Latvia, Montenegro, Romania, Serbia, Slovakia, Sweden, the United Kingdom*) still reported several procedural options that reflect the ideas of efficiency in administrative justice and that may be used to speed up proceedings.

For example, in *Austria*, in accordance with the principle of procedural economy, administrative courts are authorized to apply the following simplifications: certain set deadlines for filing the complaint, restrict the scope of scrutiny; dispense with the hearing (regardless of whether or not this has been requested by a party); generally decide on the merits of the case; dispense with the pronouncement of the judgment; no written copies of the judgment served; abridge decisions and bar novation. In addition, the right of appeal to the Supreme Administrative Court is in certain types of matters limited to more serious infringements (in administrative or fiscal penal matters to fines higher than 400 euros), and it is possible for the parties to waive the right of appeal.

In *Croatia*, the time-limits may be reduced, decisions concerning procedural issues may be entered without a statement of their reasons or the case may be decided by a single judge. Also in the *Czech Republic* and *Montenegro,* in certain types of matters a specialized judge may decide the case alone.

Cyprus reports that although no simplified or accelerated procedures exist in their administrative court procedure, a reform is underway to establish a fast-track appeal process, which would take into account the gravity of the matter and the amount at issue. *Latvia* pointed out that the system of appeal in specific types of cases may differ from the usual and there are certain types which must be reviewed in an expedited manner (such as cases concerning children and disputes about the dismissal of state officials).

In *Finland*, the administrative court procedure usually only takes place in writing and procedural rules are generally flexible. The reasoning of the judgment may be brief and the number of judges in the panel may differ depending on the area of law and the situation. In *Norway*, there are several provisions under which the court has the discretion to adapt the procedure to the importance of the dispute. In *Slovakia* in all administrative matters, it is possible to file applications through electronic means, to join connected matters, conduct procedural acts in another court on request. Among other things, the courts are authorized to abridge their decisions by referring to similar judgments.

In the *ECJ*, 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. Written statements or observations may only be lodged by those parties or entities. Furthermore, in cases of extreme urgency, the Court of Justice may decide to omit the written part of the procedure.

2. Nature of simplified procedure

2.1 Possible derogations from regular procedure

The nature of possible simplifications is presented in *Table 1*. The table, however, only represents a generalized view of procedural reality and the details of specific simplified procedures used in ACA countries should be looked up in the corresponding answer to the questionnaire. It seems to be universally valid though that general rules of administrative court procedure apply also to a separate ‘simplified procedure’ or other similar designation, unless there exist special provisions that state otherwise. The most frequently encountered derogations from regular procedure concern shorter procedural time-limits and the possibility of dispensing with the hearing. In the following subchapters, the findings of *Table 1* are analysed in more detail.

	BE	CH	DE	ET	CJEU	ES	FR	GR	HU	IT	LT	LU	NL	NO	PL	PT	SI	TR
General principles of court procedure	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		yes	yes		yes, case may be heard *in camera*	yes		yes
May be decided by single judge	yes, depends on type of procedure	yes, depends on type of procedure	yes, unless of fundamental significance	1 or 3			yes	5, 3 or 1			yes	yes, in some asylum cases			1 or 3			
Hearing	yes/no	no, except asylum procedures or when circumstances require	court's discretion	court's discretion	court's discretion	yes	yes/ no	on request		on request, not always public	on request	yes	no	court's discretion	yes (may be *in camera*)	yes	in general no, trial in session is not public	on request
Fewer procedural documents / mandatory templates for documents	yes	yes		yes	yes	only oral questions to witnesses			yes			yes	yes		no record of hearing	yes		yes
Abridged reasons and judgment	yes	yes	yes/no	yes	no	no	yes/ no		yes	yes	yes	no	yes	yes	yes	yes (simplified decision)	yes	no
Reduced procedural time-limits	yes	yes	yes	yes	yes		yes/ no		yes	yes		yes		yes	yes	yes		yes
No preparatory panel meeting				court's discretion			yes/ no		yes									
Use of electronic audio communication				yes					yes					yes		yes		
Different costs				no				higher	yes					lower				

Table 1. Nature of simplified procedures in ACA countries, where this type of proceedings exists.

2.1.1 Time-limits

It is quite common that in simplified procedure various time-limits are reduced compared to regular procedure: 13 members (*Belgium, Germany, Estonia, CJEU, France, Hungary, Italy, Luxembourg, Norway, Poland, Portugal, Switzerland, Turkey)* out of the 18 that reported simplified procedures stated that these include shorter procedural time-limits. In many countries simplified procedure is referred to as 'accelerated', 'urgency' or 'extreme-urgency' (or other similar appellation) procedure, which highlights the fact that simplifications are intended to reduce the time available for the participants for filing their applications and for the court for preparing its decision.

For example, in *Germany* the Asylum Act provides shorter time-limits for contesting the administrative act in court (one or two weeks instead of one month which is the general rule). The situation is similar in *Switzerland* in asylum procedures and asylum-related appeals. In *Portugal*, the time-limits are halved and, unlike in regular procedure, continue to run through holidays. The laws of *Belgium, Italy, Luxembourg, Norway, Poland* and *Turkey* also contain special provisions about time-limits in simplified proceedings. In *France*, in the proceedings on interim measures the judge enters a ruling within a period of 48 hours in the context of a *référé-liberté* [application for measures necessary to protect the applicant's fundamental freedoms].

In *Estonia*, the court may establish time-limits different from those provided by law, except for the time-limit for appealing court decisions. The Estonian provision bears close resemblance to a similar rule in *Hungary*. In the *CJEU*, the time-limit for lodging written observations or pleadings may also be reduced under simplified procedure.

2.1.2 Court hearing

A frequent derogation from regular procedure relates to court hearings: in 13 countries out of 18 it is possible to dispense with the hearing in simplified procedure. Some countries have even ruled out hearings in simplified proceedings; others leave the matter up to the courts' discretion; in some, oral proceedings are mandatory.

For example, in the *Netherlands*, in both types of simplified procedure (the generally applicable one and the one concerning immigration cases) no court hearing is held. Likewise in *Greece* applications that are clearly inadmissible or unfounded, or even clearly well-founded, can be dismissed or accepted by a decision taken without a public hearing by a court panel.

In *Slovenia*, after a decision entered under the so-called model procedure becomes final, the courts seized with similar cases must, without holding a hearing, enter decisions in the suspended proceedings related to the model, provided the cases contain no essential differences of a factual or legal nature from the model, and provided the facts of the case have been ascertained. In other types of simplified proceedings, the court may adjudicate the case without the main hearing (trial) provided the facts of the case on which the administrative decision was made are not contentious between the claimant and defendant.

In *Estonia*, the court may forgo convening a court session if it is conducive to resolving the matter in a speedier and less expensive manner. In *Italy*, the rule of hearing the parties before

the court does not need to be followed if they do not want to appear before the court, and the court finds that there is no need to hold a public hearing.

The General Court of the European Union, when dealing with a case under expedited procedure, may decide to rule without an oral part of the procedure if the main parties do not wish to participate in such a hearing and if the court considers that it has sufficient information available to it in the case file. In some countries (*Italy, Poland, Slovenia*), although the procedure mandates a hearing, it is held *in camera.*

2.1.3 Recording

There are special provisions concerning records of procedural acts in *Estonia, Hungary, Poland* and in *the United Kingdom*. In *Poland*, where a case is heard *in camera* in simplified proceedings, the requirement to prepare a written record of the hearing does not apply (unless a person summoned to appear is heard or other procedural actions are taken). In *Hungary*, by way of a record of the procedural action, the court may draw up a memorandum instead of minutes. The court may also refrain from asking the parties' opinion about requests to supplement the minutes or the memorandum. Similarly, in *Estonia*, the court is authorized to arrange for a written record of proceedings to the extent that it deems this necessary, and may forgo inviting the other participants of the proceedings to state their positions regarding any application to have the record corrected.

The *United Kingdom* reported about the judicial review in the Administrative Court that hearings in the High Court are audio recorded so that a transcript can be produced if necessary. A party may request a copy of the transcript. There is no general right of access to the audio recording itself, unless there is cogent evidence that the transcription is erroneous. With respect to the challenges to administrative acts before the Tribunals, the *United Kingdom* specified that Tribunal hearings are not always recorded either.

2.1.4 Evidence

In a few countries, there are special provisions that allow derogation from formal requirements with regard to evidence (*Estonia, the Netherlands, Spain, Hungary*). In *Spain* there are certain special rules with regard to evidence: 1) questions for interrogation are only posed orally; 2) documents containing written questions to witnesses are not admissible; 3) when the number of witnesses is excessive and, in the view of the court, those witnesses would only be able to repeat matters that have been made sufficiently clear, the court may limit the number of witnesses at its discretion; 4) no objection to witnesses is allowed – only in the closing arguments may the parties make observations with respect to witnesses' personal circumstances and the veracity of witnesses' statements; 5) in the taking of expert testimony, the general rules on the random selection of experts are not applicable.

In *Estonia*, the court may derogate from formal requirements for presenting and taking evidence, and also use as evidence information which does not appear in a format that the law foresees including explanations of participants of the proceedings not given under oath, or hear witness testimony or explanations of participants via the telephone by way of a conference call. The latter also applies in *Hungary* where the court may accept, instead of an oral statement, a statement made by way of an electronic audio communication device. In the *Netherlands*, where

simplified procedure is only applied in cases whose solution is clear and obvious, if the court decides to direct the case to the simplified track, the inquiry stage of the proceedings is closed and parties are no longer allowed to submit documents.

2.1.5 Stating the reasons of the judgment

All rapporteurs emphasized the importance of the statement of reasons as one of the fundamental requirements for ensuring the transparency of judicial decision-making. However, under certain circumstances, derogations from this requirement are allowed. Four countries, *Estonia, Germany, the Netherlands* and *Poland*, stated that there are situations in which courts are authorized to enter a judgment without reasons. In addition, nine countries (*Austria, Belgium, Hungary, Italy, Lithuania, Norway, Portugal, Slovenia, Switzerland*) allow judgments with an abridged statement of reasons. The most commonly encountered type of situation in which this is allowed is where the court decides to follow the reasoning of the administrative act contested in the action.

A similar option exists also in *Estonia*, *Germany* and *Slovenia*. In *Germany*, a judgment without reasons may be entered only if the court follows the reasoning of the contested administrative act and explicitly states this in the judgment. A very similar provision – although applicable in regular procedure – was reported by *Slovenia* where the court does not need to state the reasons for its decision if it follows the reasoning of the administrative act and sets this out in its decision. In *Estonia*, in simplified proceedings, the court may enter a judgment without the descriptive part and the reasons, provided all of the following conditions are met: 1) the action is dismissed; 2) the reasons for the court's disagreement with the applicant's assertions are set out exhaustively and clearly in the administrative act, in the review decision made upon a challenge to the original decision or in the response submitted to the action; 3) the court follows those reasons, stating its agreement with these and referring to the document in which they are set out. The condition that the relief sought in the action must be refused by the court is also applicable in *Poland*, where this principle is not specific to simplified procedure but also applies to the regular procedure. In such a case, a party can still request the reasons.

In *Germany*, there is an additional possibility for dispensing with the statement of reasons – when parties unanimously renounce the necessity of such presentation. In the *Netherlands*, a judgment without reasons may only be delivered in immigration law cases by the Council of State.

In some countries, a statement of reasons cannot be omitted completely, but may be presented in an abridged form (e.g., *Switzerland, Portugal*). For example, this might mean that certain parts of the court's reasoning (for instance, the factual background in some cases) are left out. In *Portugal*, the reasons may sometimes be limited to a reference to an earlier judgment in a similar case, with a copy of the referred judgment attached.

A judgment without reasons is out of the question in countries such as *Italy, Spain* and *Turkey* where this would not be in compliance with the constitution. For example in *Spain*, the requirement of 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 would constitute grounds for annulment. The Constitution of the Republic of

Turkey stipulates that 'All types of rulings of all courts are written with justification,' making any contrary regulation impossible. Comparably, in *France* the impossibility for the administrative judge to issue a decision exclusively limited to its operative part reflects a concern with the transparency of judicial decision-making. The latter represents an essential requirement that must be fulfilled in order to maintain the trust of individuals in the justice system, and also provides the necessary procedural guarantee for contesting the decision.

2.1.6 Other simplifications

Responding countries also reported some other rules of regular administrative court procedure that do not need to be followed in simplified proceedings. For example, in *Hungary,* the court may decide not to hold a preparatory panel meeting. In *Italy,* the participants do not have to be represented by a lawyer in proceedings concerning access to administrative documents, electoral disputes and the right to move and reside in the Member States of the EU. In *Lithuania,* if the action is dismissed in the pilot case, the parties to other similar cases are informed about the outcome of the case, and that proceedings in their cases would be terminated and no further action taken unless they request a reopening of their case. In *Germany,* simplified procedure allows more cases to be decided by a single judge (instead of a panel) than in regular procedure. A single judge deciding the case instead of a panel is also one of the aspects of simplified procedure in *France*. In *Poland,* the court hearing *in camera* may only be attended by those who have been summoned to appear, and the judgment, rather than being pronounced, is made publicly available at the registry of the court. In *Estonia*, the court may derogate from formal requirements provided in the law in respect of service of procedural documents and of any documents submitted by participants of the proceedings, except in respect of service of the action on the respondent and on any third parties. The court may also forgo conducting written preliminary proceedings.

2.2 Differences in using simplified procedure in different court instances and limitations on the right to appeal

In half of the countries there are no differences in using simplified procedure in different court instances (*Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Portugal, Spain*). In countries where certain differences exist, simplified procedure is applied mainly in first instance courts or in first and second instance courts.

In many countries (*Belgium, Estonia, France, Italy, Lithuania, Slovenia,* as well as the *CJEU*) there are no special limitations on the right to appeal a case decided in simplified procedure. For example, *France* even stressed in its response that the possibility of appeal in cassation is one of the most important procedural guarantees that remains binding in simplified procedure. The limitations that apply are the same as in cases conducted by regular procedure.

The right to appeal is limited compared to regular procedure in *Germany, Hungary, Luxembourg, the Netherlands, Portugal, Switzerland* and *Turkey*. In *Germany* in asylum cases (which, as mentioned above, are the only type of case in which simplified procedure is used) appeals are only admissible in cases of fundamental significance, in cases where there is a deviation from settled case-law of a higher court or in cases with procedural defects. In regular procedure, there are two further grounds for appeal that are not applicable in asylum cases: serious doubts as to the correctness of the judgment and special factual or legal difficulties. In

simplified procedure, the administrative court may not declare the appeal admissible as it could under regular procedure with binding effect for the court of appeal. There are no further restrictions as far as access to the court of last instance is concerned. In *Luxembourg*, there is no right to appeal in cases of international protection dealt with under accelerated procedure (i.e. presumed without hope of success).

In *Portugal*, certain decisions made in simplified procedure cannot be appealed, including, for example, interim relief measures and, in some cases, first instance judgments in urgent cases where the disputed amount is lower than a certain threshold. In some cases, only one instance of appeal is allowed in this three-level system.

In *Hungary*, no appeal may be filed against judgments rendered under simplified procedure. In the *Netherlands*, when the general form of simplified procedure is applied, the ruling of the district court may not be appealed either. However, instead, the interested party may contest the ruling of the district court and ask for a review by means of *verzetprocedure* (opposition procedure). This procedure can be applied on district as well as appellate court level. Yet, it is unavailable in immigration cases.

In *Turkey*, general appeal proceedings do not apply to disputes subject to the 'urgent trial procedure' and the 'trial procedure on central and nationwide exams'. In both of these special procedures, the rulings of the first instance court may be appealed directly to the highest instance. In addition, special rules apply to these procedures during the stage of appeal. In *Switzerland*, the decisions of the Federal Administrative Court in asylum matters are final and cannot be challenged in the Federal Supreme Court.

2.3 Possibility to appeal the implementation of simplified proceedings

It is possible to appeal the decision to apply simplified procedure separately from the final decision in *Belgium*, *Hungary*, *Lithuania, the Netherlands* and *Portugal*. A separate appeal is not possible in *Estonia*, *France*, *Germany*, *Italy*, *Luxembourg, Poland*, *Slovenia, Spain*, *Switzerland* and *Turkey*, nor in the *CJEU*.[2] However, for example in *France*, although the application of simplified procedure cannot be contested separately from the final decision, the final decision may be annulled due to the case being assigned to the simplified track and the case may be sent back to be heard by regular procedure.

2.4 Possibility to revert to regular procedure

The countries also divide quite evenly in the matter of whether or not simplified proceedings can be carried over into regular proceedings and vice versa. In most countries the answer is a clear affirmative (*Belgium, Estonia, France, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, the CJEU*) or clear negative (*Germany, Spain*), yet in a few (such as, for instance, *Turkey*) no specific provision has been made for this type of situation. There can also be one-way solutions – for example, in *Italy*, simplified proceedings cannot be transformed into regular proceedings, but regular proceedings can be finalized by a simplified judgment and, in

[2] We do not have enough data for generalisation about Greece and Norway on this issue.

France, it is the other way round – simplified proceedings can always be transformed into regular proceedings, but not *vice versa*.

Lithuania reported, in context of pilot judgments, that once a pilot judgment procedure is started (one case is examined as the pilot), other similar cases are stayed. The court's decision to stay examination in a similar case may be appealed against but only on the ground that the case does not meet the criteria of a similar case under the law. Likewise in *Slovenia*, the court may, at its discretion, conduct model proceedings or adjudicate the matter after the main hearing in a non-public session. In *Greece*, a party can demand, after it receives the decision, that the case be dealt with by regular procedure, but must pay a security three times as high as the usual amount.

3. Problems

Among other things, the questionnaire invited ACA members to report problems related to the application of simplified procedures. A number of rapporteurs used this opportunity to highlight drawbacks and shortcomings of their current system, yet none expressed the view that simplified procedures as such would infringe fundamental principles of administration of justice or would be in contradiction with the case law of the ECHR. It should, however, be pointed out that attitudes towards simplified procedures vary considerably. Some examples of most easily generalizable problems are described below.

In *Estonia*, simplified procedure has not been widely used because its prerequisites were apparently too strict and did not thus contribute to the resolving of a case in simplified proceedings. Starting 1 January 2018, the provisions on simplified procedure have been amended to extend the possibility of its application. Judges have found that the courts need more flexibility in deciding which procedure to use.

Although in *France* the use of simplified procedure has proved an excellent tool to increase the efficiency of administrative justice mainly by reducing the time-limits related to rulings and the number of pending cases, case law shows that simplified procedure does not always provide the appropriate procedural guarantees to the person seeking justice. The possibility that a case is disposed of by means of an order, without a public hearing and without the opinion of the *rapporteur public*, is likely to create concerns as regards the procedural guarantees of the applicant. This is why administrative judges attach a particular importance to the possibility of referring the case dealt with in simplified procedure back to the regular track.

In *Germany*, it has been contested that asylum cases may be allocated to a single judge who has only been in office for six months (while the generally applicable probationary period for judges is one year). Critical voices emphasize that asylum decisions are of particular importance for the applicant and see a contradiction to the general rule. The answer underlines, however, that a responsible chamber of the court will always see to it that a judge on probation is well prepared for the task. Presently there is a debate in expert circles on whether the administrative courts should be allowed to declare appeals admissible such that this is binding for the courts of appeal. Considering the large number of cases and a large number of first instance judges deciding these cases in a single-judge formation there seems to be a stronger need for uniformity in the case-law. Under current rules, the number of cases before the higher courts seems to be too small to generate the desired unifying effect.

Greece reported that in order to avoid allegations of unconstitutionality of simplified proceedings, the law gives the applicant the right to request a public hearing according to regular procedure.

In *Luxembourg*, in the accelerated procedure concerning applications for international protection, if the single judge dealing with the matter comes to the conclusion that the case should be referred to a panel, i.e. must be examined according to regular procedure as regards international protection, the relevant proceedings are rather complex. It would thus be simpler, in these cases, to start with a ministerial decision assigning the case to the regular track. However, up to now there have been relatively few examples of cases that follow this complex route.

In *the Netherlands*, immigration lawyers complain that, in some cases, they have substantially motivated in their notice of appeal the reasons for appeal, pointing up issues of interpretation of the law, a need to develop the law further or help safeguard constitutional or fundamental (human) rights, but the Administrative Law Division of the Council of State decided to resort to simplified procedure – which means that the judgment is entered without a statement of the reasons.

In *Poland*, the jurisprudence of administrative courts has touched mainly upon the subject of the autonomy of courts' decisions on directing cases to the simplified procedure track and on issues related to the possibility of directing cases to an oral hearing. It was emphasized, among other aspects, that directing an action filed against a contestable order issued by an administrative authority to the simplified track does not depend on the party's request, which means that the case is assigned to simplified procedure *ex officio*. It was also noted that the party's request to have the case dealt with by a hearing is not binding for the court. Another topic considered was the issue of whether it is lawful to direct a case already accepted under general procedure to be dealt with by simplified procedure. In one of its judgments, the Supreme Administrative Court held that if the case had already been examined at an oral hearing and was deemed not to be sufficiently clear, there was no ground to hear it *in camera* under simplified procedure. It may also be assumed that in the nearest future courts will often be called upon to adjudicate objections against administrative decisions, as many doubts are voiced in legal theory in respect of this new type of procedure (for instance, reservations are raised to the fact that it is impossible to contest a judgment granting such an objection).

In *Spain*, case law has raised, for example, the following problems: the possibility to invoke at the hearing issues which were not raised in the administrative complaint; undue delays stemming from backlogs in the scheduling of hearings, and delimitation of what constitutes 'a personal issue'.

From the many examples given above it can be concluded that the problem aspects of simplified procedure are mainly (and not surprisingly) linked to procedural guarantees, and uniformity and transparency of the law.

Part B of the questionnaire: right to a public hearing

1. Oral procedure

The right to an oral hearing as a fundamental right was emphasized in many answers. However, most respondents agree that this is not an absolute right in administrative proceedings, as confirmed in the European Court of Human Rights (ECHR) and CJEU case law referenced in the introduction to the questionnaire.

In general, administrative cases in the courts of ACA members are usually dealt with by oral hearings at first instance. Most of the responding countries reported that there are no types of administrative cases or no court instances in which oral proceedings would be mandated at the exclusion of written proceedings. The one exception here was reported by *Lithuania* who cited certain types of cases that are heard in the Supreme Administrative Court at first instance and are therefore subject to the requirement of oral proceedings. The *Dutch* government is, however, considering introducing the so-called neighbourhood judges that could deal with simple cases under a simplified procedure that only requires a hearing followed by – if necessary – an oral or written decision.

2. Written procedure

Written procedure[3] is the default option of the *Finnish, Latvian, Portuguese, Slovakian, Swedish, Swiss* and *Turkish* administrative court procedure. In *Finland*, an oral hearing may additionally be required, if necessary for purposes of establishing the facts of the case or if a private party demands it. In *Latvia*, parties are entitled to request an oral procedure at first instance.

In most of the countries, all interlocutory rulings (*i.e*. not judgments) may be rendered by means of written procedure. For example, *Montenegro* reported that in cases where the administrative court renders a ruling rejecting the action as inaccurate, or rejects the claim for procedural reasons or orders a stay of proceedings until a final decision in the selected lead case is reached, such rulings are made by a single judge without an oral hearing. In addition, cases assigned to the 'sample procedure' are decided without an oral hearing if they do not raise factual or legal issues setting them apart from the lead case. At the same time, *Croatia* cited types of cases in which according to Croatian law the first-instance administrative court is authorized to resolve the dispute by decision without holding a hearing, such as when the court follows a final judgment rendered in a model case.

As can be seen in *Figure 3*, frequent grounds for dealing with a case in written procedure are mostly the corresponding consent or request of the parties, which was mentioned in 12 answers

[3] The questionnaire did not provide a definition of 'written procedure' or ask for a definition used in the responding country. For the purposes of this report, any procedure that includes at least one oral hearing is considered oral. Because of possibly different conceptualizations of oral and written procedure, the topic may need further discussion. According to national definitions provided by some countries (*Belgium*, *France*, *Luxembourg* and *Portugal*), the procedure is considered written even when a public hearing is generally held after the exchange of written documents.

to the questionnaire (*Belgium, Estonia, Germany, Hungary, Italy, Latvia, Montenegro, Norway, Serbia, Slovenia, Switzerland, the United Kingdom*). Another widely used ground is the factual and legal clarity of the case (*Austria, Belgium, Croatia, CJEU, Estonia, Germany, Latvia, Lithuania, Montenegro, the Netherlands, Norway*). Exclusively legal or highly technical questions were cited as grounds for assigning the case to the written track in fewer answers (respectively by *Austria, Croatia, Latvia, Norway* and by *Austria, Latvia* and *Norway*).

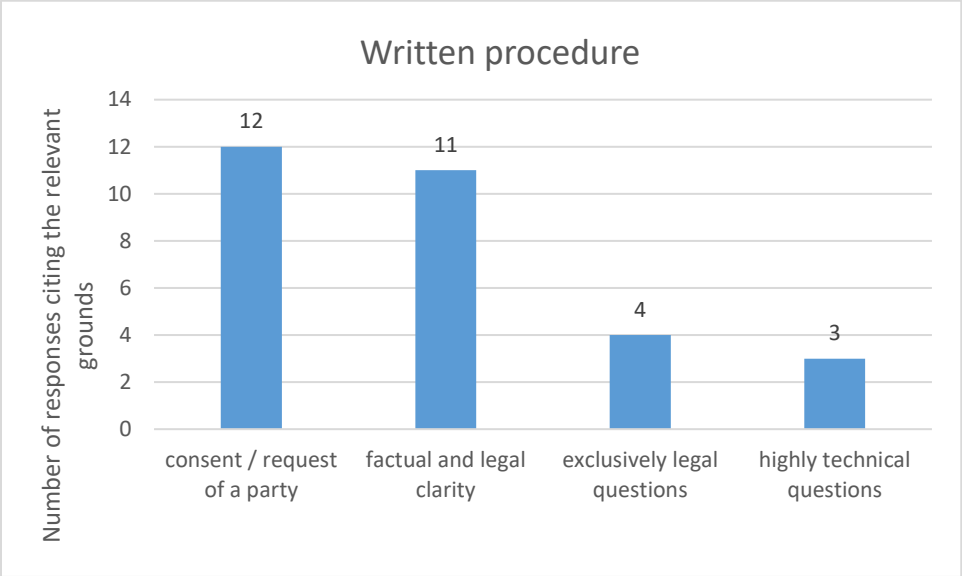

Figure 3. Frequently encountered grounds for written procedure

Cyprus pointed out in its answer that administrative court proceedings conducted only in writing would raise a constitutional point of concern since there would be no public hearing to observe. *Cyprus* refers to the case law of the ECHR in *Fischer v. Austria*[4], according to which unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6.1 of the European Convention on Human Rights implies a right to an oral hearing at least at one level of jurisdiction.

It is possible to conclude from the answers to the questionnaire that oral administrative court procedure dominates in *Belgium, Cyprus, Croatia, Czech Republic, CJEU, France, Hungary, Lithuania, Luxembourg, Norway, Poland, Portugal, Romania, Serbia, Slovenia* and *the United Kingdom*; whereas the procedure tends to have more written elements in *Estonia, Finland, Italy, Latvia, Montenegro, Slovakia, Sweden, Switzerland* and *Turkey*.

3. Use of videoconferencing

17 countries (*Austria, Czech Republic, Estonia, Finland, France, Germany, Latvia, Lithuania, Montenegro, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden* and the *United Kingdom)* out of 30 stated that the use of videoconferencing is provided for by law and/or used. There are no limitations provided in national law regarding types of cases in the

[4] 26 April, 1995, Series A, No. 312.

Czech Republic, *Estonia*, *Germany*, *Latvia*, *Lithuania*, *Montenegro*, *Norway*, *Portugal*, *Slovakia*, *Slovenia*, *Spain*, *Sweden* and the *United Kingdom.*

Videoconferencing is not provided for as a possibility in *Belgium*, *Croatia*, *Cyprus*, *Greece*, *Hungary*, *Italy*, *Luxembourg*, *Poland*, *Romania*, *Serbia*, *Switzerland* and *Turkey*, nor in *the CJEU*. *Hungary* answered that while they do not have videoconferences, in some cases telecommunications services are used. *Serbia* reported that while videoconferencing is possible in regular administrative procedure, due to technical issues it is not yet authorized in administrative disputes. *Belgium* and *Switzerland* reported that as small countries, they see no need for videoconferencing. *Luxembourg* explained that since the parties always need to be represented by advocates and do not usually have the right to represent themselves, no need for videoconferencing has arisen. The use proportion of videoconferencing is presented in *Figure 4*.

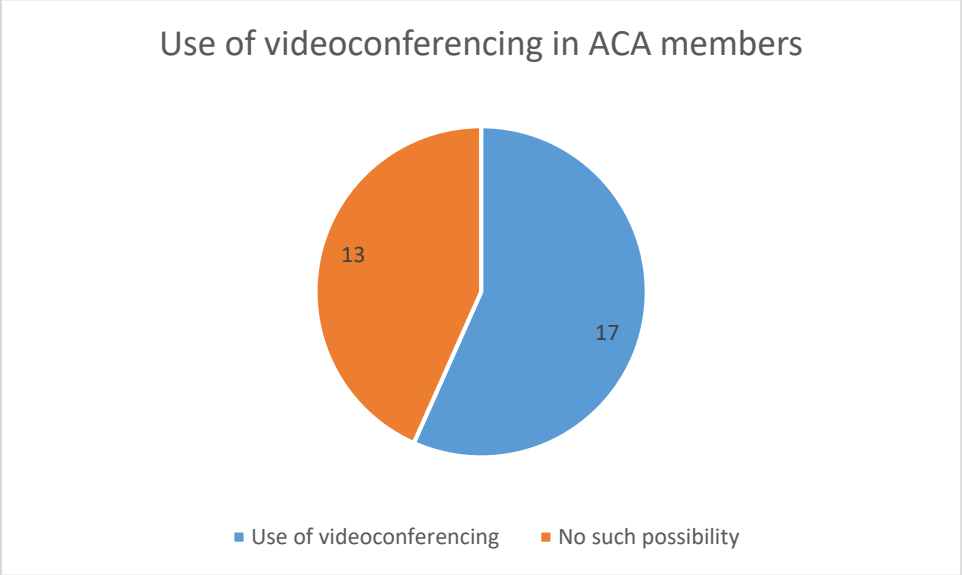

Figure 4. Use of videoconferencing by ACA members

In some countries, only certain aspects of the proceedings can be conducted by videoconferencing. For example, in *Spain* and in the *United Kingdom* the use of videoconferencing is only provided for hearing witnesses and experts, but not for the parties. In *Norway*, the court may, at the request of a party, exempt them from attendance, if the conditions for giving remote testimony are there or if there are no sufficient grounds to oblige the party to attend; nevertheless, such party must be represented by counsel who must attend in person. It is not specifically regulated whether the party may, in such a case, follow the entire proceedings through videoconferencing. Acceptance of remote testimony requires impossibility of attendance in person, or that it would be particularly burdensome or expensive, and may only be allowed if the testimony is not of particular importance.

In *French* law, the possibility of conducting a hearing using a means of audiovisual communication remains limited to two situations: where the dispute concerns an asylum matter and where the administrative court is located in the Overseas Territories. In the *Netherlands*, it is currently only possible to use videoconferencing in cases concerning aliens held in detention.

In countries where videoconferencing is an option provided by law, the decision of whether it is appropriate and beneficial to the case to hold such a hearing is often left to the court's discretion. Consent of the parties is needed for example in *Montenegro*, *Slovenia* and *Slovakia*.

The risks of videoconferencing are not yet a very widely discussed topic. They concern identification of the participants, objectiveness of testimony and evidence, and procedural guarantees. On the one hand, videoconferencing makes the procedure quick and efficient, yet, as reported by some of the countries, it may also conflict with the principle of immediacy of evidence.

For example, *Portugal* finds that the taking of evidence in this manner precludes the court from a close relationship with the participants, which prevents immediate assessment of non-verbal reactions (psychological behaviour) which trace the profile of the person who is being questioned. The immediate and direct contact between the judge and the witness is thus always preferred in *Portugal*, because it allows questioning, observing and drawing a stronger conviction about the reality of facts from the statements and reactions. In addition, *Norway* refers to the risks of remote testimony, and reports that the courts evaluate whether or not to allow videoconferencing in concrete cases. It notes that legal theory recommends particular caution in situations in which the subject matter of the testimony is wide-ranging and complex. In addition, it states that remote examination of parties and key witnesses should not be used in cases where the character of the party or witness is important, such as in cases concerning parental responsibility, care and visitation rights under the Children Act. *Estonia* also reported concerns among judges regarding the fact that videoconferencing removes the court from the participants and witnesses appearing by means of a video link.

With respect to legal limitations, *Lithuania* points out that reliable identification of the participants of the case must be ensured, as well as objectiveness of explanations, testimony, questions and requests. Similarly, *France* and *Latvia* note that since the identity of the persons needs to be verified, in practice videoconferencing is mostly used to link courtrooms in different courthouses, where officials are available to verify the identities of attendees and can, with the help of a technological solution, transfer images of the relevant documents to the court dealing with the case. *France* emphasized that the introduction of such a mechanism does not lead to the deprivation of the applicant of its guarantee to a fair trial. The technical characteristics of the audiovisual link should be such that they ensure a connection that is accurate, consistent and confidential with respect to third parties. In order to guarantee the accuracy of this broadcast, minutes are taken in each of the linked courtrooms. *German* law provides that such hearings may not be recorded.

Some answers touched upon the question of guarantees of procedural rights. In *Sweden*, discussions have focused on risks presented by proceedings in which the witness, when physically present in the same room with other persons, might be afraid to give their testimony, or is inhibited in doing so – but might be more willing (or able) to contribute via video. It is up to the court to evaluate such risks against the possible gains. *Montenegro* remarked that when evaluating the need for a trial by videoconference, the court will assess the risks of a possible violation of the person's rights in each individual case and, accordingly, order adequate protective measures (for example, protect the public identification number of a party or witness during a public oral hearing).

4. Oral proceedings outside of courtroom

In many countries (*Austria, Belgium, Estonia, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Poland, Portugal, Slovakia, Sweden, Switzerland, the United Kingdom*), oral court proceedings can partially or in their entirety take place outside the courtroom. Security reasons may require that proceedings be conducted outside the courtroom. *Norway* gave the example of the case Anders Behring Breivik v. Norway regarding the matter of lawfulness of his prison conditions, in which the first and second instance proceedings were carried out in prison. The press and the public were allowed access to the prison and were able to follow the hearings in the same manner as in an ordinary courtroom. Grounds for conducting court proceedings outside the courtroom also include increased facility of examining the case elsewhere or a reduction of court costs compared to hearing the case in the courtroom. In the *United Kingdom* as well, one of the situations where hearings may be held outside the courtroom is where the case involves a prisoner in a high-security prison.

Lithuania and *Estonia* noted that hearings may be held outside the courtroom if the number of parties to the case is so high that the courtroom cannot seat them all. Other situations where hearings may be held off-premises include those where a party to the case is unable to attend a hearing at court (*e.g.* due to health reasons) and it is impossible to hear them via videoconference, or where it is necessary to examine immovable evidence.

French law provides for the possibility of hearings outside the courtroom only in asylum cases, and then only in other courtrooms.

In *Belgium*, hearings outside the courtroom are allowed in the context of suspensive relief proceedings of extreme urgency: the Councillor of State in charge of the case may by order summon the parties to a place and at a time of his or her choosing, possibly to his/her home, even on holidays.

In some countries, hearings may be held outside the courtroom under special circumstances. For example in the *Netherlands*, such circumstances are present if a party is in custody and it is not possible for an authorized representative to represent that party. In the *United Kingdom*, in addition to cases involving inmates of high-security prisons, they also apply where detained mental patients must be heard. *Slovakia* emphasized that if the court, for important reasons, decides to carry out the hearing in another appropriate place, it must take steps to ensure appropriate dignity, publicity and smooth conduct of the hearing.

In *Luxembourg*, a public courtroom hearing must always take place but, in addition, the court may arrange a visit to the location under dispute together with the parties. Similar grounds prevail for hearings outside the courtroom in *Portugal*.

Oral proceedings off court premises are out of the question in *Croatia* and *Cyprus*: the fact that the hearing is formally open to the public may not be enough where proceedings take place outside normal court facilities.

Summary

In almost two thirds of the ACA members who provided answers to the questionnaire on due process, there exists a possibility of dealing with administrative cases by simplified procedures. However, the use proportion of simplified procedures varies considerably from country to country. Members that do not have simplified procedures as a separate type of procedure, still reported other possibilities for simplifying administrative court procedure which were quite similar to certain simplifications typically described by the others, such as shorter time-limits or a reduced number of judges in the adjudicating panel.

The prerequisites for dealing with a case under simplified procedure are defined by law (as opposed to case law) in all legal systems that reported the existence of such procedure. The most widespread grounds for the application of simplified procedure are those of the dispute arising in a certain area of law (chiefly, asylum or immigration cases) and of cases where the solution is clear and obvious. The most specific prerequisite is an elevated number (more than 20) of similar disputes.

Usually, regular rules of administrative court procedure also apply in separate simplified procedure, unless the latter contains special provisions that provide derogations. Commonly allowed derogations from regular procedure concern shorter procedural time-limits and the possibility of dispensing with the hearing. Reported simplifications also include other derogations from formal requirements concerning, for example, record of proceedings, the taking of evidence or the inclusion of reasons in the judgment.

In about a half of the countries reporting it, there are no differences in using simplified proceedings across the court instances. In countries where certain differences exist, simplified procedure is applied mainly in the first or in the first and the second instance. In many countries, there are no special limitations on the right to appeal cases decided under simplified procedure. The reports also divide quite evenly in the matter of whether or not simplified proceedings may be carried over into regular proceedings and vice versa.

Although the main problems related to simplified procedure are connected to procedural guarantees, legal uniformity and transparency, they do not appear to be of a fundamental nature. None of the respondents indicated that simplified procedure as such could constitute an infringement of fundamental principles of the administration of justice or be otherwise in contradiction with the case law of the ECHR. It should, however, be stressed that the views held by ACA members vis-à-vis simplified procedure differ widely.

The right to an oral hearing as a fundamental right was emphasized in many answers. In more than half of the countries, the procedure is predominantly oral. If the law does not already establish a presumption of written procedure, the most common justification for dealing with cases in written proceedings is the consent or request of the parties. Another widely used justification is the factual and legal clarity of the case.

Slightly more than a half of the ACA members (56%) use videoconferencing, and additionally some countries allow it with certain limitations. In many countries, oral court proceedings may

be conducted outside the courtroom for security or health reasons, because of numerous participants, immovable evidence or the extreme urgency of the case.

All in all, although the rules of administrative court procedure differ considerably in ACA members, each report presented examples of a working balance between individuals' procedural rights and the efficiency of judicial procedure in its various aspects. It can be concluded that simplification of administrative court procedure is a tool widely used in Europe.