

PUBLIC
LAW

THE REVISION OF THE PROCEDURAL CODE OF THE ADMINISTRATIVE COURTS

Today entered into force Decree-Law no. 214-G/2015, of October 2, which reviews the legal framework that implemented the Administrative Litigation Review.

Firstly, there are two innovations regarding **procedural forms**: the creation of a single administrative action and the adoption of a new urgent procedure intended for massive procedural litigation.

Thereby, the common and the special administrative types of action are extinguished, and **all the non-urgent processes of administrative litigation will be subject to a single type of administrative action, named “administrative action”**.

Moreover, **a new form of urgent procedure has been introduced with the aim of providing quick and comprehensive answers to massive litigation procedures** in areas such as Public Administration tenders and execution of exams with a number of participants higher than 50.

Secondly, there are several innovations with regard to **urgent proceedings**.

On the one hand, **the scope of the urgent pre-contractual litigation is expanded** in order to include new contractual types, such as concessions of public services and lease of movable goods. Also in this area, a challenge of award decisions now has an automatic suspensive effect, which can only be withdrawn in certain circumstances. Thus, **the litigation reaction against the award decision has now, in general, a stand still effect on the actions which led to the signing of the contract**.

On the other hand, **some changes have been introduced with regard to injunctions**, and a single injunction decision criterion was adopted (replacing the current three). The injunction measures may be granted when a justified fear of accomplishment of an established fact or of the production of difficult repair damage to an applicant's interests are demonstrated, as long as it is likely that the claim will be upheld.

Thirdly, **changes with regard to procedural streamlining mechanisms have been adopted**.

For example, **the regime of massive procedural litigation is now more flexible**, since it allows the suspension of processes while others proceed so that a decision is capable of being applied to all the processes which have stopped. Namely, the application of this mechanism now requires 11 instead of 21 processes.

Moreover, **the prerequisites that allow for a decision on the merits of the main legal proceeding in the injunction phase were amended**. Thereby, it is possible to

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use this speeding mechanism when the injunction includes all the necessary elements for the decision and the simplicity or urgency of the case justifies it.

Fourthly, it is worth noting **some issues about the legal representation of public entities and arbitration.**

On the one hand, **the possibility of all the public entities being represented by a lawyer or solicitor is foreseen, notwithstanding the fact that the State's representation can be conducted by the Prosecutor's Office.**

On the other hand, **the new regime extends the number of situations which can be submitted before an arbitral court** instead of an administrative court. In this respect, for example, decisions concerning pre-contractual procedures can be challenged before an arbitral court, as long as some conditions are met.

Lastly, it is important to emphasize some issues about **the scope of administrative jurisdiction and the functioning of the administrative courts.**

On the one hand, **the scope of administrative jurisdiction is expanded.** From now on it is possible to challenge the penalties imposed for urban administrative offences before the administrative courts.

On the other hand, **the kind of situations in which the judgment is directed by a single judge (and not by a panel of judges) is also expanded,** becoming now the rule with regard to administrative actions, when in the past there were a lot of important cases in which the judgment was directed by a panel of judges.

In general the amendments entered into force today, December 1, 2015. However, other amendments entered into force on October 3, 2015, and the extension of the administrative jurisdiction to the urban penalties will enter into force on September 1, 2016.

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