GUIDE TO THE PORTUGUESE ADMINISTRATIVE JUSTICE REFORM

INDEX

1 – THE CONTEXT OF THE REFORM

2 – WHAT IS THE SCOPE OF THE ADMINISTRATIVE JURISDICTION?

3 – HOW IS THE TAX AND ADMINISTRATIVE JURISDICTION ORGANIZED AND HOW DOES IT WORK?

4 – HOW SHALL THE POWERS BE DIVIDED AMONG THE DIFFERENT COURTS?

5 – WHAT PROCEDURAL MEANS ARE THERE NOW?

6 - WHICH ARE THE MAIN PROCEDURAL INNOVATIONS?

7 – WHAT CHANGES IN THE OBJECTION TO ADMINISTRATIVE ACTS?
1 – THE CONTEXT OF THE REFORM

The reform of the Portuguese administrative justice is essential to the insurance of the citizen’s fundamental rights, for it falls on the guaranty of such rights before the Public Administration. It is, therefore, an indispensable reform to fully consecrate the democratic State of law in Portugal.

As it is well known, the Portuguese administrative justice hasn’t yet had the profound reform long needed and long demanded throughout the different revisions of the Constitution. Increasingly awaited but successively postponed, the necessary reform has been replaced by limited range measures, which haven’t changed the system’s framework although having perfected it.

Between 1992 and 2001, the statistical data concerning the administrative jurisdiction shows that the number of new cases, per year, in all the administrative courts, has increased to over the double. This progressive increase of the disputes within the scope of the juridical-administrative relationship has produced an increase on the number of courts and judges. However, such measures were not sufficient to an adequate reply of the system to its effective needs.

It is true that, over the last few years, although the number of completed cases has grown progressively, it is still inferior to the number of new cases. Consequently, the number of pending cases has increased systematically, which produced an accumulation of pending cases at the courts as well as an increase in the average duration of the cases.

The justice statistics show that the procedural delay in the administrative cases is one of the causes for the system’s inefficiency insofar as they reveal a tendency of growth of the cases with duration between 2 and 5 years, in

1 To further statistical studies, Dados estatísticos 2001, available in www.gov.pt/ca/
detriment of those with an average duration of up to 2 years. We can, therefore, verify that, in this lapse of time, the cases tend to take more time to be concluded.

On the other hand, we observe a high rate of concluded cases without the trial stage (61% in the administrative courts, in 1999). Considering that a significant part of these concluded cases occur mainly during the beginning of the procedural stage, we may infer that the concluded cases have, in fact, an average duration superior to the one shown by the global average.

In view of this frame of general increase of the demand for administrative justice and of the system’s incapacity to adequately reply to this evolution, a profound reform of the administrative justice system was in order. This reform comprises the redefinition of the organization, structure and division of powers of all the administrative courts as well as the definition of rules for its internal functioning. Both these aspects are developed in the new Statute of the Administrative and Tax Courts (ETAF), approved by the Law nº 13/2002, of 19 February, that came into force on 1 January 2004.

This reform is also based on a complete reformulation of the procedure in the administrative courts in order to bring it closer to the civil procedure and to reinforce the guarantees of access to the justice and of procedural equality inter pares, which was granted in the new Administrative Courts Procedure Code (CPTA), approved by the Law nº 15/2002, of 22 February, and which coming into force coincided with the one of the ETAF.
2 – WHAT IS THE SCOPE OF THE ADMINISTRATIVE JURISDICTION?

The new ETAF redefines the scope of the jurisdiction of the administrative courts, which alters considerably the current system.

This (re)definition aims at facilitating the effective access of the claimant to his administrative jurisdiction avoiding conflicts of interests only resulting in further delays in the functioning of Justice.

The scope of the administrative jurisdiction is defined by the criteria laid out in articles 1º and 4º of the ETAF, which empowers the administrative courts to acknowledge and judge all the disputes resulting from administrative and tax legal relationships, such as:

a) Pre-contractual acts and contracts, practised or celebrated under the rules of public law (ETAF, art. 4º, nº1 e) and f)

The ETAF empowers the administrative courts to pass judgement upon questions concerning the interpretation, validity and execution of contracts, whenever:

i) the object of the contract is subject to an administrative act; ii) there are rules of public law ruling specific aspects of the respective substantive law; iii) one of the parties is a public entity or a concessionaire and the contractual parties submit the contract to a system of public law; iv) the pre-contractual procedure is ruled by the public law.

Therefore, the power of the administrative courts upholds in view of the nature of the contract, but with the added criteria of the nature of the pre-contractual procedure, thus covering contracts made between legal entities of public law
and between these and legal entities of private law, or even between several legal entities of private law.

The power of the administrative courts is still extended to the cases of objection to the pre-contractual acts included in the pre-contractual proceedings ruled by the public law, thus safeguarding the possibility of cumulating the objection to one of these acts with requests concerning the contract latter celebrated (Administrative Courts Procedure Code - CPTA -, art. 47º, nº 2 c)).

b) Questions regarding the civil extra-contractual liability of the State or of its bodies, staff, agents or servers (ETAF, art. 4º, nº 1, g), h) and i).

This way the administrative courts are empowered to pass judgement upon requests for indemnity based on acts practised during the exercise of the administrative, jurisdictional and legislative functions, although these courts are not competent to judge the cases of objection of the acts that caused the damages (art. 4º, nº 2 a)).

Still in what concerns the liability based on the exercise of the jurisdictional function, it was chosen to include within the same scope the liability that derives from the functioning of the justice administration itself (ETAF, art. 4º, nº 1 f)). Thus, the liability of the State and the corresponding return action based on a judicial error only falls within the scope of the justice administration if it concerns an activity of an administrative court (ETAF, art. 4º, nº3 a)).

On the other hand, the ETAF also empowers the administrative courts to evaluate all the requests for indemnity based on the extra-contractual liability of the legal entities, which causes great uncertainty in the determination of the competent court. The administrative courts are also empowered, in the exercise of an administrative function, to judge actions of civil liability based on acts
practised by private persons, whenever they are constrained to the civil extra-contractual liability of the State.

c) Disputes between legal entities of public law and between public bodies (ETAF, art. 4º, nº 1 j)

The ETAF clearly and unequivocally foresees the power of the administrative courts to settle disputes between legal entities of public law and between public bodies, within the scope of the interests they must prosecute. This is an important innovation, in the pursuit of new guidelines for the relationship between public entities, since the disputes among them are increasingly frequent due to the fact that they not always pursue coinciding interests.

d) Execution of administrative courts decisions (ETAF, art.4º, nº 2 n)

The administrative courts now have the full and exclusive power to execute their own decisions, thus ending a dubious and time-consuming system. This innovation implies the configuration of truly executive procedural means in the new model of the administrative justice.

Nevertheless, the ETAF excludes from the scope of the administrative jurisdiction: the evaluation of disputes resulting from work contracts that do no confer the quality of administrative agent, even if one of the parties is a public legal person (ETAF, art. 4º, nº 3 d)); the supervision of material administrative acts practised by the Presiding Judge of the Supreme Court of Justice (ETAF, art. 4º, nº 3 b)); the supervision of material administrative acts practised by the Magistrates’ High Council or by its Presiding Judge (ETAF, art. 4º, nº 3 c)).
3 – HOW IS THE TAX AND ADMINISTRATIVE JURISDICTION ORGANIZED AND HOW DOES IT WORK?

The new ETAF currently foresees the existence of a Supreme Administrative Court, of the Central Administrative Court and of other administrative courts (ETAF, art. 11º, 31º and 39º).

However, the Government has chosen to create, based on the possibility of dividing the Central Administrative Court into regional administrative courts (ETAF, art. 9º, nº 1), the Northern Administrative Central Court, in Oporto, and the Southern Administrative Central Court that shall be empowered to judge the cases pending at the current Administrative Central Court.

On the other hand, the administrative courts were aggregated to the tax courts, as it was already the case of the administrative and tax courts of Funchal and Ponta Delgada (ETAF, art. 9º, nº 2). Based on this legal prevision, and considering the transfer into the Ministry of Justice of the State powers on the administrative organization of the tax courts, given by the Law nº 15/2001, of June 5th, the Government has chosen to create 14 new aggregated courts – to be called "administrative and tax courts" – at the starting stage of the new model for the working of the administrative courts, to which we must add the administrative and tax courts of Funchal and of Ponta Delgada, already functioning.

Therefore, this reform is settled upon 16 administrative and tax courts of first instance in the mainland, Madeira and Azores, 2 central administrative courts in Oporto and in Lisbon and on one Supreme Administrative Court, located in Lisbon.

This enlargement of the administrative and tax courts network entails the recruiting and training of new judges. In this sense, 93 new judges initiated
functions last January 2004, after having had specific professional training and a period of practical training.

Lastly, we point out some important changes in the computerization of the administrative and tax courts, settled upon the creation of the Computer System for the Administrative and Tax Courts (SITAF), application that has the following objectives:

i) To allow the sending and reception of procedural documents by electronic means, to take procedural steps by computer and to make the digital treatment of the cases, as well as to allow access to them by the Internet;

ii) To create case management workflow applications;

iii) To develop methods for the planning and prevision in the global management of the Administrative and Tax Courts workflow;

iv) To create a website for each court.

The development of the Computer System for the Administrative and Tax Courts (SITAF), an innovating project in the field of Justice, shall eliminate “time lags” during the procedural steps, shall foresee with greater reliability the duration of the proceedings and it shall also contribute with data to help manage an accessible, safe and efficient administrative justice system that, in the long term, shall support an objective evaluation of the reform and the rational and well based adoption of the required measures.

RETURN TO INDEX

4 – HOW SHALL THE POWERS BE DIVIDED AMONG THE DIFFERENT COURTS?

In what concerns the division of powers among the superior courts and the courts of first instance, in the previous system, the superior administrative courts frequently judged cases in the first instance, the subjects in appreciation being attributed according to the sued party and not regarding its importance or legal relevance. Consequently, the Supreme Administrative Court and the Central Administrative Court did not act as real courts of appeal. On the other hand, the need of appealing to the Supreme Administrative Court and to the Central Administrative Court, both in Lisbon, was a very poor solution in view of the need to ensure the proximity of the citizens to the Justice.

In order to prevent these inconveniences, a new model was chosen in which the administrative courts are now administrative courts of first instance in the majority of cases (ETAF, art. 44º, nº 1). The Supreme Court of Justice and the Central Administrative Courts no longer function as first instance courts but now have the powers proper to the higher courts, similar to the courts of appeal, in the common jurisdiction. In this sense, the Central Administrative Courts are now, as a rule, courts of appeal for the decisions taken by the administrative courts, thus eliminating the powers of first instance traditionally attributed to the Central Administrative Court (ETAF, art. 37º). The Supreme Administrative Court takes on the role of ruler of the system, with the power to appreciate, as a rule, questions of legal or social relevance, namely:

a) Appeals for the uniformity of court decisions (CPTA, art. 152º, ETAF, art. 25º, n.º 1, b));

b) Appeals of review of Central Administrative Courts decisions pronounced at second instance, whenever the subject at stake is, by its legal or social relevance, fundamental or if the admission of the appeal is required to a better application of the Law;
c) *Per saltum* appeal of review of administrative courts, whenever the value of the cause is over three million euros and if only questions of law arise during the allegations (CPTA, art. 151º, and ETAF, art. 24º, nº 2);

d) Preliminary ruling of pending cases at administrative courts whenever a new question of law is put before these courts that may arise serious difficulties (CPTA, art. 93º and ETAF, art. 25º, nº 2) and appear in future disputes;

e) Conflicts of jurisdiction between administrative and tax courts (CPTA, art. 135º and forth and ETAF, art. 24º, nº 1 h)).

In what concerns new cases at the first instance, the CPTA establishes, in article 16º and fourth, the criteria of jurisdiction that, clearly and objectively, ascertains which is the competent court.

The new system also introduces innovations namely the introduction of thresholds for the administrative courts, relevant to the admissibility of jurisdictional appeals (ETAF, art. 6º and CPTA, art.142º, nº 1) as well as rules for the determination of the value of the cases (CPTA, art. 31º to 34º). These rules are relevant to the admissibility of appeals, to determine the form of common procedure (ordinary or summary; CPTA, art. 31º, 35º and 43º) but also to determine the value of the cause, once the new Judicial Costs Code remits to the criteria established by the administrative procedure law.

These rules are also important to determine whether, in the special administrative action, the case shall be judged by one single judge or by a group of three (CPTA, art. 31º). Actually, the new rules for the division of powers among administrative courts resulted in a very significant broadening of the powers of the district administrative courts, which led to changes in the number of judges required to perform trials in such courts. Thus, the rule is changed so as to perform trials with a group of three judges, instead of a single judge, whenever the case consists of a special administrative action and if it has
a value above the threshold for the administrative courts (CPTA, art. 31º, nº 2 b) and ETAF, art. 40º, nº 3). In administrative actions, the group of three judges only acts in cases of common procedure, when one of the parties so requires it (ETAF, art. 40º) and none requires the recording of the proof.

Furthermore, in the administrative courts, trials may occur with the intervention of all the judges of the court whenever the respective Presiding Judge so wishes, when faced with a new question of law that may appear in future disputes (CPTA, art. 93º).

5 – WHAT PROCEDURAL MEANS ARE THERE NOW?

The new system is based on the merger of several procedural means that already exist.

a) There are, now, two main procedural means: the common administrative action, which object corresponds to all the disputes within the scope of the administrative jurisdiction that do not follow the special administrative action (CPTA, art. 37º and forth), and the special administrative action, which object consists of objecting to administrative acts, condemnation for the practise of the due administrative acts, and requests for the declaration of unlawfulness or omission of rulings (CPTA, art. 46º and forth).

The common administrative action follows the terms of the civil procedure, with some adaptations contained in the CPTA (art. 35º, nº 1), and the special administrative action follows its own procedure established by the CPTA.
On the other hand, it is now admissible to present before the administrative courts all sorts of requests aiming at the protection of the legal rights and interests of the claimant, as is adopted in the civil procedure (CPTA, art. 2º).

The enumeration of the type of requests admissible in the common administrative action is merely an example, given the need of assuring an effective jurisdictional protection to all kinds of legal standings that do not fit the objective scope of the special administrative action (CPTA, art. 37º, nºs 1 and 2).

This opening and flexibility of the case’s object implies a great permeability between these two procedural means. Thus, the possibility of accumulation between requests is very wide, being admissible the accumulation of requests concerning both the common and the special administrative actions. In this case, in which the accumulated requests correspond to different forms of procedure, the rule is to follow the terms of the special administrative action (CPTA, art. 4º, 5º and 47º).

The accumulation of requests creates a very important change vis-à-vis the current Administrative Courts Procedure Law, the reason why the CPTA now enumerates, thoroughly, a series of possible accumulations (CPTA, art. 4º, nº 2 and art. 47º, nº 2).

b) Besides the two main procedural means, the CPTA also consecrates a number of urgent and autonomous procedural means. Here, we find included the cases regarding litigious matters related with elections or with pre-contractual aspects of some types of contracts, as well as judicial notice for information, examination of documents or issuing of certificates, judicial notice for the defence of rights, freedoms and guarantees and provisional remedies (CPTA, art. 36º).
c) The system ruling pre-contractual litigious matters, CPTA, article 100º and forth, corresponds, in essence, to the contents of Decree-Law nº 134/98, 15 March, with the adaptations long claimed by the Communitarian Law, namely the extension of this system to the objection to pre-contractual acts concerning contracts of public works (CPTA, art. 100º, nº 1). The time limit to the objection to such acts is extended from 15 days to a month (CPTA, artº 101º). Lastly, it is now possible to have a public hearing, with oral allegations and at the end of which the sentence is pronounced (CPTA, art. 103º).

d) As to the summons, we observe that the judicial summon for information, for the examination of documents or for the issuing of certificates is now seen as a main procedural means, overcoming its traditional configuration under the previous Administrative Courts Procedure Law, that referred to it as an accessory means (CPTA, art. 104º and forth). Furthermore, a new procedural means is created, in order to protect the exercise, on time, of a right, freedom or guarantee called “notice for the protection of rights, freedoms or guarantees” (CPTA, art. 109º).

The notice for the protection of rights, freedoms or guarantees can be used to impose to the Administration or to the private parties a positive or negative conduct required to insure the exercise of a right, freedom or guarantee (CPTA, art. 109º). By strengthening the protection of rights, freedoms or guarantees, it is determined that, whenever a private party requests the issuing of an administrative act legally bound by this procedural means, the sentence shall produce the same effects as that act (CPTA, art. 109º, nº 3).

The special urgency applied to the case can determine the adoption of measures to resolve the situation. Thus, the procedural deadline can be shortened, or, in alternative, a hearing can be held within forty-eight hours, at the end of which the decision will be immediately adopted (CPTA, art. 111º, nº 1). An audition of the sued party can also be made, using any adequate means
of communication whenever the circumstances so demand it (CPTA, art. 111º, n°2).

e) One of the subjects where the changes are most felt, concerns the provisional remedies (CPTA, art. 112º), which are different from the other urgent means once they correspond to accessory procedural means, depending on a main cause.

The CPTA establishes the possibility to adopt any provisional remedies, even those not specified by the law, and the parties can request, or the court can determine, any measures considered adequate to insure the utility of the sentence to be pronounced. However, the CPTA enumerates a set of measures that surpass, by far, those previously foreseen in the Administrative Courts Procedure Law (CPTA, art. 112º, nº2).

There is also an extensive list of innovations regarding the provisional remedies, the most important being:

i) The adoption of a sole procedural means for the different provisional measures, without prejudice to the existence of disciplinarian rules, specific for certain types of requests (CPTA, art. 112º and forth and art. 128º and forth);

ii) The presumption of the veracity of the facts evoked by the claimant whenever the sued person does not contest them;

iii) The most important criteria for the appreciation of the possibility of decreeing a provisional measure are, now, mainly, the *fumus boni iuris* and the *periculum in mora*, although the prevalence of one or the other in the judge’s decision may vary according to the clearness of the issue or the nature of the requested measure (CPTA, art. 120º);
iv) The possibility to anticipate the judgement, whenever the court has all the necessary documents and whenever there is an obvious urgency and the interests involved so require it (CPTA, art. 121º).

f) One other procedural means available in the new administrative justice system concerns the proceedings for enforcement, which, under the new model, can have three aims: enforcement for the rendering of facts or things (CPTA, art. 162º and forth), enforcement for the payment of the right amount (art. 170º and forth) or enforcement of annulment sentences for administrative acts (art. 173º and forth).

In this domain we can observe a complete change in the existing system once, and for the first time, real mechanisms of enforcement that can be used by the courts against public entities, are foreseen.

Article 157º of the CPTA determines that the enforcement proceedings can not only be applied to the sentences pronounced by administrative courts but also to any other enforcement title-deeds, which underlying juridical relation, falls within the scope of the administrative courts.

The CPTA foresees three main types of enforcement provisions: the delivery of the thing that is due, the possibility of the rendering to be made by a third person, if the fact is fungible, and the pronouncing of the sentence that produces the same effects as the act, whenever its contents are bounded (CPTA, art. 164º, nº 4).

Especially important concerning the enforcement of annulment sentences for administrative acts is the specific prevision of the contents of the duty to enforce, whenever a civil servant has obtained the annulment of an administrative act that damages the position of a third party, whose positions are incompatible with his and have been constituted over a year ago. It is a very
frequent situation in the administrative justice, which occurs when an individual obtains the annulment of an act that, for instance, nominated a set of candidates to an external public application to the Public Administration. The problem is, therefore, to know which vacancy will he occupy once the other candidates already fill all the vacancies. According to the CPTA, someone who has had a favourable decision is entitled to be promoted to a similar place to that in which he would have been placed or, if that is not possible, in the first available place, meanwhile occupying a place outside the service’s staff board (CPTA, art. 173º, nº 4).

The CPTA foresees, as a main novelty, the possibility to enlarge the effects of one sentence to similar cases, regarding which there was no trial, whenever the judicial decision refers to the annulment of an administrative act or to the recognition of a juridical situation (CPTA, art. 161º). This means that any interested person can request the Public Administration the extension of the effects of this kind of sentence as long as the cases are exactly identical and there are, at least, five jurisdictional decisions in the sense referred by the extension. Should the Administration disallow the claim aiming the extension of the effects of a sentence, the individual may request it to the court that has issued such decision.

It is equally wordy of reference the fact that the individual may request the court, regarding the enforcement proceedings, the compensation of a credit that has been recognised by a sentence that wasn’t enforced in due time, by means of debts that impose upon him an obligation towards the same public entity or the ministry responsible for the non enforcement of the sentence (CPTA, art. 170º, nº2).

Other important innovations occur in the field of the so-called legitimate causes for non-enforcement.
Both in the common and in the special administrative actions, it is admitted that, concerning the declaratory sentence, the court verifies the existence of any situation causing the impossibility or serious damage to the public interest that doesn’t fulfil the interests of the claimant (CPTA, art. 45\textsuperscript{a} and 49\textsuperscript{a}). This means that the present “legitimate causes for non-enforcement” may be appreciated, under the new system, at the time of the sentence of the declaratory proceedings, thus avoiding postponing until the stage of the enforcement proceedings the knowledge of a question eminently declaratory.

\textbf{g) Lastly, it can also be referred, as a foreseen procedural means, the \textit{jurisdictional appeal}, which restructuring shows a clear approach to the civil procedure.}

The appeal allegations must now accompany the request for the appeal, thus avoiding the existence of two different timings for presenting the appeal and for presenting the allegations (CPTA, art. 144\textsuperscript{a}, n\textsuperscript{o} 2).

The court of appeal at second instance shall pronounce itself on the object of the cause and not only on the maintenance or elimination of the appeal, subsequently the case is send to the court of appeal to reverse the judgement (CPTA, art\textsuperscript{a} 149\textsuperscript{a}), this way, avoiding this procedural step.

Although the appeals may, as a rule, interrupt the effects, the possibility of conceding devolution effects is foreseen whenever the interruption may entail situations of consumed fact or damages of difficult reparation for public or private interests. Even so, whenever the conceding of the devolution effect may cause damages, the court may adopt measures to lessen them (CPTA, art. 143\textsuperscript{a}).

One of the most important innovations regarding the appeals is the foreseeing of appeals of review and the system of preliminary rulings.
The appeal of review, foreseen in article 150° of the CPTA, aims at allowing the intervention of the Supreme Administrative Court in cases it would otherwise be unable to analyse, once the Central Administrative Courts would have already tried the case at second instance. Ultimately, it is the consecration of a third instance whenever the matter deserves the appreciation of the Supreme due to its importance or relevance to the application of the Law, as is the case of a set of other supreme courts. The confirmation of the admissibility of this appeal is made summarily, by a group of three judges of the Supreme Administrative Court (CPTA, art. 150°, nº 5).

The appeal of review per saltum allows the direct appeal, at second instance, on cases in which the value of the cause is so high that the amount of the request is justified a priori. However, in this way only questions of law can be raised, the judge having the obligation to confirm the terms of the appeal and, should he find it necessary, to send the case to the Central Administrative Court, to be judged as appellate review (CPTA, art. 151°, nº 3).

The preliminary ruling aims at allowing the intervention of the Supreme Administrative Court in cases of controversial circumstances that may, predictably, appear in numerous future requests, thus allowing the establishment of adequately based case-law, within the shortest delay possible (CPTA, art. 93°). The Supreme Court shall issue a decision on the preliminary ruling within three months.
6 - WHICH ARE THE MAIN PROCEDURAL INNOVATIONS?

The procedural innovations introduced by the CPTA focus, in every way, on the approach to the Civil Procedure Code in all those aspects that do not require a specific treatment which may come naturally from the administrative nature of the cause.

In addition, the new system seeks not only to avoid the formal reasons that prevent the effective material appreciation of the cause, but also to enable that all the questions, concerning what the individual finds necessary for the follow up of his claim, may occur on only one proceeding. Inherent to the administrative justice reform are the speed, simplification and procedural flexibility as well as the equal *inter partes* guarantee in the proceedings.

In order to attain these aims, new procedural rulings and a new configuration of the list of procedural means and steps that are at disposal of the individual have been reviewed.

a) Judicial costs

The administrative justice reform alters deeply the system of the judicial costs in the administrative jurisdiction. Accordingly, the CPTA establishes the general principle of both the State and other public entities' subordination to the payment of judicial costs, within the terms of the new Judicial Costs Code (CPTA, art. 189º).

This principle, which was approved unanimously through a poll by the parties with a seat in the Assembly, is a major responsibility for the State and for other public entities due to the consequences that may follow its procedural behaviour, thus contributing to lessen the tendency towards the unnecessary use of appeals or of other procedural means which are in most cases unfounded and dilatory and encourages alternative forms dispute resolutions.

This change does not obviously harm the activity of the Public Prosecutor who still enjoys from exemption in the actions and proceedings towards which it
has legitimacy. This does not apply to their defendants who are subjected to the payment of costs.

Thereupon, the system of the administrative jurisdiction costs is now part of the Judicial Costs Code, with its own and independent chapter.

b) Procedural legitimacy

The innovations concerning the passive legitimacy derive mostly from the new system of adopted procedural means and from the considerable accumulation of requests (CPTA, art. 10º). On the whole, the CPTA allows the accumulation of requests that concern the same disputable material relation. In the previous system, as it is well known, a request against an administrative act had, as an adverse party, the entity responsible for that act. On the contrary, in an indemnity request that depended on the withdrawal of the act, the legitimate party was the legal public entity or the department or ministry to which that entity belonged. It meant that, from the moment in which it was admissible the accumulation of requests of this nature – impossible in the past – it was necessary to find reliable criteria in order to gauge the passive legitimacy.

Hence, when the request has, as an object, an action or an omission on the part of the public entity, the new code has adopted a rule by which the sued party is the legal public entity or, in the case of the State, the ministry whose department has adopted or may have to adopt the act or the behaviours in question (CPTA, art. 10º, n. 1). However, if the claimant has appointed as a sued party any legal public entity or ministry, the action will be considered against that person or ministry without the need to correct the petition or even without a summary rejection being possible (CPTA, art. 10º, n. 4).

If the request has, as an object, an action or an omission on the part of an independent administrative entity without legal statute, then it has the passive legitimacy the legal public entity or the ministry to which that independent entity belongs (CPTA, art. 10º, n. 3).

Regarding the active legitimacy, the CPTA determines, as a general principle, that “a claimant is considered a legitimate party when he asserts
himself to be part of the “disputable material relation” (art. 9º, n.1). The criterion of the disputable material relation replaces the administrative act as a reference point, which, in the previous model, marked out the boundaries of the legal positions to which the notion of “part” was affected.

Despite the fact that the general principle of active legitimacy is determined, and even though it breaks itself from the traditional treatment of this matter, the CPTA, by reference to other special foreseen procedural means, maintains the specific legitimacy rules for the special administrative action (CPTA, art. 55º).

On the other hand, the new rulings that determine the active legitimacy in those requests related to contracts stand out, and a considerable widening towards those who play no part in the contractual relation was also taken into consideration (CPTA, art. 40º, n. 1, b), c), d) and f) and n. 2, b), c), d) and e)).

c) Equal *inter partes* guarantee in the procedure

The CPTA sets new and very important solutions regarding the equal treatment between all the public and private entities involved in the procedure. Besides the above mentioned subordination of the public entities to the payment of judicial costs, the CPTA has also foreseen, whenever the judicial orders are not carried out within a time limit, a compulsory pecuniary sanction to those in charge of the enforcement of the sentence or in charge of forwarding the case (CPTA, arts. 44º, 84º, n. 4 and 169º). The sanction applied by the judge may vary between 5 to 10% of the highest minimum salary actually in force, for each day in the delay of the enforcement of the sentence or in the forwarding of the judicial case (CPTA, art. 169º, n. 1 and n. 2).

In spite of this moralising factor, the feasible condemnation of both the State and the legal entities for acting in bad faith is also foreseen (CPTA, art. 6º).

d) Means of proof

The new CPTA excludes the restriction of admissible means of proof in the administrative justice reform, allowing nowadays not just the documentary proof but also the use of all the means admitted in the civil procedure (CPTA, art. 90º,
n. 1). This means that in any first instance case, whichever the procedural means to be used, the presentation of proof through any other way is allowed.

7 – WHAT CHANGES IN THE OBJECTION TO ADMINISTRATIVE ACTS?

The changes concerning the objection to administrative acts go very deep and are very important. Besides the change in the procedural means designation from “litigious appeal” to “special administrative action” (foreseen and regulated in the art. 46º and forth of the CPTA), there are other relevant features, such as:

a) Deadline for the objection to administrative acts

The general deadline for the objection to administrative acts is extended from two to three months (CPTA, art. 58º, n. 2, b)). However, it is also possible to object after this deadline, and up to a year time, in such special cases as:

- the claimant has been led in error by the Administration;
- the error may be excusable due to ambiguities in the statutory framework;
- a situation of lawful impediment was verified (CPTA, art. 58º, n. 4).

Moreover, the administrative objection to the act may suspend the deadline of judicial objection but it does not stop or hinder the interested party to carry on with it during the pending administrative objection (CPTA, art. 59º, n. 4 and 5).

The Public Prosecutor may also object to the administrative act within a year time (CPTA, art. 58º, n. 2, a)).
b) Administrative acts object to appeal

The CPTA leaves clearly behind the traditional concept of definitiveness; it allows the objection to any act with external efficacy even if it finds itself within an administrative proceeding (CPTA, art. 51º, n. 1).

Notwithstanding this fact and even without the administrative appeal as a necessary condition for the judicial objection, the suspension of a deadline for that purpose is foreseen when, despite its nature and as it was previously said, it has been set up an administrative objection. (CPTA, art. 59º, n. 4). The individual will have the advantage of being the first to make an appeal or an administrative complaint and will never lose the opportunity of, afterwards and whenever the answer is not favourable, judiciously objecting to the act.

c) Widening the object of the action

As previously said, the object of the administrative procedure is foreseen in the new CPTA as an open reality, either by allowing the accumulation of requests, either by widening the scope of the action throughout the procedure. Concerning the objection to administrative acts within the special administrative action, the widening of the scope of the action may be extended to other new acts practised in the same administrative procedure or, if it is a pre-contractual act, to the final contract that may be made during the pending of the procedure (CPTA, art. 63º).

d) Officious refusal of the petition by the judicial department

Within the special administrative action and just as it happens in the civil procedure, the judicial department may always officiously refuse the initial petition when certain requirements are not fulfilled (CPTA, art. 80º).

e) Summons and notifications

The CPTA foresees that the summons of the public entity and all the other interested parties in the special administrative action may occur simultaneously, being the judicial department officiously in charge of the
summons (CPTA, art. 81º). Besides, it foresees that the summons of all the interested parties, when in a number superior to 20, be made through public announcement (CPTA, art. 80º).

The sued entity and the claimant parties may also be simultaneously notified of their right to claim, within the special administrative action (CPTA, art. 91º, n. 4).

**f) Jurisdictional powers**

One of the most important innovations has to do with the considerable widening of jurisdictional powers in all that concerns the cognition and condemnation of the State by the courts, particularly in the special administrative action.

Regarding the cognitive powers, the court has now the **power/duty** of pronouncement about any concrete cause that might lead to the invalidation of the act, even though the claimant may not have mentioned them (CPTA, art. 95º, n. 2).

Concerning the powers of condemnation and bearing in mind that the request is addressed to the practise of the due administrative act, the court has the power to condemn the State of practising such an act and to make it adopt the additional behaviours that are not, in their essence, administrative acts. These powers do not only concern a general condemnation of the practise of the act itself; the court may also decide, whenever possible, about the claimant’s material intentions and choose the actual contents of the State’s action. When that is not possible owing to the involvement of administrative tasks, the court must point out all those aspects inherent to the practise of the action that should be observed in the new administrative act (CPTA, art. 71º).

**g) Principle of officious amendment of procedural documents**

Regarding the deficiencies in the procedural documents, the art. 88º of the CPTA establishes the principle of officious amendment by the court. The
parties are called to rectify the act itself, whenever it may not be amended informally or the solution found is not at all satisfactory.

h) Ameliorative order

It is introduced into the special administrative action the opportunity of being pronounced an ameliorative order when the groundings invoked hamper the course of the cause or when the actual state of the procedure allows one to know the merit of the cause (CPTA, art. 87º, n. 1 and 89º).

Those questions that hinder the course of the procedure and which are not considered in the ameliorative order cannot be raised afterwards (CPTA, art. 89º, n. 2).

i) Procedural intercession of the Public Prosecutor

It is conferred to the Public Prosecutor the opportunity of procedural intercession on one single moment of the special administrative action, in order to pronounce on the merit of the cause and to request the findings of facts until 10 days after the joint of the administrative proceeding to the records (CPTA, art. 85º). However, this pronouncement can only occur in the defence of the citizen’s fundamental rights, the public interest, the identification of inexistent and void evidence in those administrative objected acts and the values contained in the CPTA, art. 9º, n. 2.

The Public Prosecutor may also pursue the claim whenever the claimant’s withdrawal occurs (CPTA, art. 62º).

j) Trial public hearing

Although all the evidence and final allegations in the special administrative action may be dispensed with (CPTA, art. 78º, n. 4 and art. 83º, n. 2), the opportunity of having a trial public hearing to discuss the facts in issue, officiously ordered by the judge or upon request of the parties involved, is granted (CPTA, art. 91º). When that happens, the final allegations are also here orally produced.
I) Decision by remission to previous case law

When the case does not portray any particularities with previous cases or if the claim is clearly without fundament, a summary decision by remission to previous case law is acceptable (CPTA, art. 94º, n. 3).