



ADMINISTRATIVE LITIGATION

OCTOBER 2015

THE REVISION OF THE CODE OF PROCEDURE IN ADMINISTRATIVE COURTS

Decree-Law 214-G/2015 of 2 October introduces a substantial revision of the Code of Procedure in Administrative Courts (CPAC).

Decree-Law 214-G/2015 of 2 October (the “Decree”) introduces a substantial revision of the Code of Procedure in Administrative Courts (CPAC)¹. The Decree also makes changes to various separate pieces of legislation that regulate or are connected with administrative procedure in order to bring them into line with the amendments to the CPAC. These include the Statute of the Administrative and Tax Courts, the Public Procurement Code, the Legal Framework of Planning and Construction, the Law of Procedural Participation and Popular Action, the Legal Framework of Administrative Supervision, the Law of Access to Administrative Documents and, finally, the Law of Access to Information on the Environment.

This revision of the CPAC “completes” the very recent reform of the structuring legislation corresponding to the Code of Administrative Procedure carried out in January 2015. It also brings the CPAC into line with the sweeping reform of the Code of Civil Procedure carried out in 2013.

Among the many changes made to the CPAC², we may refer to the following significant changes:

- **The creation of a new model for dealing with non-urgent cases:** submission of all non-urgent administrative litigation cases to a single procedural model, which corresponds to the previous special administrative action with certain changes. The new model is named “administrative action” and the previous common administrative action has been eliminated. This is a break with the most recent trend in Portuguese administrative litigation, but its aim is to bring greater simplification.
- **Simplification and a new legal framework for litigation to challenge rules:** simplification and clarification, particularly in respect of actions claiming the invalidity of regulatory rules when the main claim does not relate to those rules.
- **Creation of a new urgent procedure for multi-party actions:** introduction of a new form of urgent procedure for multi-party actions (with more than 50 parties), in the areas of competitive hiring/promotion, testing of staff/candidates and recruitment processes. Besides creating this new form of urgent process, the CPAC has maintained the “classic” urgent procedures corresponding to litigation about administrative acts related to electoral matters, as well as the procedure relating to the formation of contracts.

¹ The first version of the CPAC came into force on 1 January 2004 and has been subject to amendments from time to time.

² For a study of the reform of the CPAC, see CARLA AMADO GOMES, ANA FERNANDA NEVES and TIAGO SERRÃO (Coordinator), O Anteprojecto de Revisão do Código nos Tribunais Administrativos e Fiscais em Debate, AAFDL, Lisbon, 2014.

■ **Changes to urgent pre-contractual litigation:** firstly, the scope of application of urgent pre-contractual litigation is broadened to cover litigation relating to the formation of all types of contracts covered by the application of the European Union directives on public procurement. Secondly, in order to finally implement the “remedies” directives in Portugal, the Decree provides that if a contract award is challenged, this will cause the automatic suspension of the procurement process until the court takes its decision. The decree also introduces an innovative scheme for adopting interim measures.

■ **Streamlining injunctive proceedings:** judges are given greater powers to decide on the production of evidence, in order to avoid delays. The Decree also introduces a single criterion for deciding on interim injunctions, which can be ordered when there is a well-founded fear of creating a *fait accompli* – or of damage being caused that is difficult to remedy – and it is probable that the claim in the main action will succeed.

■ **Extending the publication of administrative proceedings:** changes have been made to what judgments must be published electronically in case law databases. In the past, judgments of the Supreme Administrative Court and of the Central Administrative Courts were published. The Decree now provides that not only these judgments, but also the final and unappealable judgments of the district administrative courts must be published. Judgments were published in the past (www.dgsi.pt), but this publication was not mandatory and did not cover the district administrative courts.

With reference to the other pieces of legislation connected with the CPAC, of particular importance are the amendments made to the Statute of Administrative and Tax Courts in order to widen administrative and tax jurisdiction. This now includes, on the one hand, actions seeking an order to reverse situations created by the administrative authorities without a legal basis to do so and, on the other, challenges against decisions that apply fines for mere administrative offences involving administrative law rules on town planning matters.

The Decree will come into force 60 days from the date of its publication and the amendments to the CPAC will only apply to administrative proceedings issued after the date it comes into force. The Decree also includes specific, small provisions on the applicability of the provisions that refer to the other connected legislation that it amended.

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Iberian Law Firm of the Year
Who's Who Legal, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

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Financial Times - Innovative Lawyers Awards, 2014-2011