Report 1 "THE PROBLEMS OF ADMINISTRATIVE JUSTICE IN SPAIN"

Summary document

I. THE ADMINISTRATIVE JUSTICE CRISIS

The Spanish Constitution, in Articles 24, 103 and 106, includes a complete system of guarantees and mechanisms for controlling the performance of public administrations. This system has been specified in ordinary legislation through instruments of internal control (administrative appeals) and external control (contentious-administrative appeals). In the former, the administration has control over its own activity; however, in the latter, it is the courts that have control.

Nevertheless, the current situation is far from satisfactory and there are many problems with both the system of administrative appeals and the judicial control, through contentious-administrative jurisdiction, over administrative activity and inactivity. This classic model of guarantees does not meet the needs of today's society and should be reformed to effectively protect citizens' rights in their relations with public administrations. In this context, the crisis of administrative justice is yet another manifestation of the crisis of justice, as well as the need to reform the juridical system.

II. THE PROBLEMS OF ADMINISTRATIVE JUSTICE

1. The main problems of ordinary administrative appeals

The current regulation of ordinary administrative appeals (contained in Arts. 112 to 124 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations, hereinafter, LPACAP) has large problems and deficits. The most important are the following: the lack of independence and specialization of the resolution bodies; the burden of requiring the administrative channel to be exhausted in order to access the contentious-administrative jurisdiction; the general rule of the enforceability of the appealed administrative act; the establishment of limits to the extension of the object of the dispute in the resolution under appeal; and the lack of transparency and information on the appeal's impact on justice through administrative channels.

2. Study of the strengths and weaknesses of special administrative resources

LPACAP (Art. 112.2) provides that, in specific sectoral areas, and where the specificity of the matter so warrants, the legislator may replace ordinary appeals (the right to appeal and the option of reconsideration) with other challenge procedures carried out before collegiate bodies or specific commissions not subject to hierarchical instructions, respecting the principles, guarantees and deadlines that are granted to persons and interested parties in any administrative procedure. As a result of this possibility, there has been a proliferation of special administrative appeals. The emergence of variants of the appeal system has led to the survival of a general model that is increasingly exceptional in most sectors. This does not mean that the generalization of special appeals is the most desirable legislative option. Indeed, the regulatory dispersion involved and the general lack of knowledge of the operation of each of the different appeals introduces legal uncertainty and makes it difficult for legal operators to apply them in general and for the persons concerned in particular. Rather, this development of special administrative appeals responds to a conscious departure from the general regime of ordinary appeals, considered unsatisfactory due to the deficits of their articulation.

This report examines in detail the functioning of different special appeals and highlights their strengths and weaknesses. In particular, the report analyses economic and administrative appeals, the special appeal in the field of procurement, the claim for access to public information, the claims for market unity, the special appeal in the field of sport and university claims.

3. The feasibility of other pre-trial challenge, claim, conciliation, mediation and arbitration procedures as an alternative to traditional administrative appeals

In addition to the possibility of regulating special appeals or claims to replace ordinary appeals, Article 112.2 of LPACAP provides the possibility of establishing other dispute resolution mechanisms, in a broad sense, in a pre-trial setting. In

particular, this report refers to mediation, conciliation and arbitration as tools for resolving conflicts between the administration and citizens.

Specifically, the Provincial Jury of Forced Expropriation is analysed as a body with arbitration possibilities, the successful experience of the Barcelona Council and university experts as a possible model to be extrapolated to other areas of the administration are also examined.

III. THE PROBLEMS OF JUSTICE IN CONTENTIOUS-ADMINISTRATIVE PROCEEDINGS

1. Current legal framework

The constitutional framework in which the contentious-administrative jurisdictional order is inserted is shaped by a series of principles that have inspired the current regulation of this jurisdiction. Of the constitutional provisions, the following three articles stand out in particular: Article 103.1 according to which public administrations serve the general interests objectively and act with full submission to the law; Article 106.1, which subjects all administrative action to judicial control, determining that the courts control the regulatory power and the legality of administrative action, as well as its submission to the purposes that justify it; and Article 24.1, which recognizes the right of all persons "to obtain the effective protection of judges and courts in the exercise of their rights and legitimate interests, without, in any case, being defenceless".

The current legal framework of the contentious-administrative jurisdictional order, framed in the EC, is contained in a specific law (Law 29/1998, of 13 July, regulating the contentious-administrative jurisdiction, hereinafter, LJCA), as well as in the general rules and principles of administrative law, although the supplementary regulations governing the civil jurisdictional order (Law 1/2000, of 7 January, on civil proceedings), due to their common nature, are applicable.

2. Characteristics of the current model of judicial control of the administration included in the Law of Contentious-Administrative Jurisdiction

Contentious-administrative jurisdiction constitutes a specific jurisdictional order that is inserted into the single and general jurisdiction of the State (Art. 117 EC). The most noteworthy aspects of the current model of control of the public administration included in LJCA are the following: judicial system of control of the public administration; full judicial control, carried out by a specialized jurisdictional order, which is inserted in the single and general jurisdiction of the State; control with a dual purpose, guaranteeing the submission of the public administration to the law in accordance with Article 103.1 EC, and safeguarding the rights and legitimate interests of citizens who may be harmed as a result of an administrative action (or omission) that does not comply with the legal system; and control carried out through a process with full guarantees, without prejudice to the public administration having certain privileges and procedural specialties.

3. Some facts about Contentious-Administrative Jurisdiction

The statistical data analysed in this report show an unfavourable situation of the contentious-administrative jurisdiction. Firstly, there has been a progressive increase in litigation, as there is a clear upward trend in the number of cases filed. However, the number of cases resolved has been progressively decreasing in recent years, consolidating at a resolution rate of less than 1. These data, together with the increase in pendency and congestion, demonstrate the unfavourable evolution of the entire contentious-administrative jurisdiction. Secondly, the average duration of completed cases is still very high, and following an upward trend; however, this trend is reversed in the proceedings before the Supreme Court, which proves the effectiveness of the new appeal regulations. In terms of the other courts, the contentious-administrative chambers of the Superior Courts of Justice have the highest average duration. The situation is particularly serious in more complex areas such as the environment, forced expropriation and the public domain. Thirdly, we note the limited appealability of the judgments and the low percentage of appeals filed against them. The data

analysed show that there are serious problems of effectiveness of this jurisdictional order.

Looking at the contentious-administrative jurisdiction from a gender perspective, two salient points can be concluded. First, despite the upward trend in the presence of women in the contentious-administrative courts, the minimum parity of 40-60% of women and men is still a goal to be achieved. Women are also losing representation as they climb the ranks of the judicial ladder. Second, it has been found that few cases relating to gender equality or discrimination come before the administrative courts. This may be due to several non-excluding reasons: a) that they are matters known to other jurisdictions, such as the criminal or social jurisdictions; b) that discrimination based on sex/gender is not a widespread problem in administrative matters; and/or c) that this problem is not yet visible.

4. Some current problems of Contentious-Administrative Jurisdiction

Despite the advances that the LJCA has made compared to its predecessor (the 1956 Law on Contentious-Administrative Jurisdiction), its application over the years shows the presence of some important problems that have a negative impact on the effectiveness of this jurisdictional order. Among these, the following problems have been analysed in particular: the structural and institutional problems related to the design of the judicial organisation and the composition of the courts and tribunals; problems related to the extension from a subjective and objective aspect of the contentious-administrative jurisdiction and its lack of adaptation to a changing social reality; the problems related to determining the object of the contentious-administrative appeal; those related to the contentious-administrative procedure and, in particular, the abbreviated procedure; those that refer to the ineffectiveness of this jurisdictional order, due to the presence of problems related to the very long time spent in obtaining a judicial response to a problem with key institutions for the effectiveness of precautionary judicial protection measures and enforcement of judgements; those that refer to the current appeal system; and the problems related to the current regime of procedural costs.

The current configuration in the contentious-administrative jurisdictional order of the judicial structure and the system of dividing competences between jurisdictional bodies deserves a negative assessment. The judicial organisation designed by the LOPJ does not respond to rational logic. The limited powers of the contentious-administrative courts and the absence, unlike what happens in the civil or criminal jurisdictional order, of provincial hearings lead to very limited possibilities of using the appeal in the contentious-administrative order, and thus to the *de facto* transformation of the contentious-administrative system into a single instance jurisdictional system. The current system of distributing jurisdiction between the courts within the LJCA, which is highly complex, also does not meet the criteria of rationality and consistency, since it can place litigants who are in a similar situation in completely different procedural positions and establish significant discrimination in terms of access to appeals in the context of the contentious-administrative jurisdiction itself, according to the public administration that adopted the contested act.

Moreover, the lack of specialization in the contentious-administrative field in the composition of the courts and tribunals should be noted. On one hand, the current configuration of access to the law degree does not in itself guarantee adequate training in matters related to public law in general and administrative law in particular. On the other hand, there are few specialized judges despite the fact that there is a Scale of Specialist Judges in contentious-administrative matters whose existence is justified by the need for those who occupy a place in this jurisdictional order to have a broad knowledge of administrative law and tax law, so that administrative justice is not exclusively in the hands of generalist judges.

From the point of view of its extent and limits, the current regulation of contentious-administrative jurisdiction does not allow adequate control of all legal-administrative relations. From a subjective point of view, the current wording of the LJCA does not provide a sufficient response to today's complex reality, in which many public functions are carried out by entities personified under forms of private law, linked or dependent on public administrations, as well as by private entities. Moreover, it does not guarantee the judicial protection by this jurisdictional order of all possible conflicts arising from the exercise of public functions within the framework of legal-administrative relations. From an objective

point of view, the LJCA also has notable shortcomings. First, despite the explicit will expressed in the law itself to overcome the traditional reviewing character of the contentious-administrative jurisdiction, the contested procedural scheme continues to dominate the body of the Law and only the specific cases contemplated in Articles 29 and 30 introduce the possibility of real executive actions or convictions. Second, the regulation of the object of the contentious-administrative appeal is also insufficient, since it leaves legal-public relations that are not substantiated in an administrative act out of the control of the contentious-administrative jurisdiction.

The current definition of the purpose of the contentious-administrative appeal in the LJCA does not respond either to the current reality of administrative law and public administrations, which have both been subject to significant changes in recent years, or to the needs of citizens who aspire to effective judicial protection. Therefore, the configuration of the object of the appeal is insufficient. Although the LJCA includes, as a novelty, the inactivity of the administration and the material actions constituting a deed, the definition of the object of the appeal focuses on the general provisions and the express and presumed acts of the public administration and does not take into account other forms of administrative action that do not translate into administrative acts but that may affect citizens' rights.

The abbreviated procedure in the contentious-administrative field currently has serious problems. Initially designed for simple cases, it has become an increasingly used procedure and the powers of the litigation judges have been expanded by the successive reforms of the procedural laws. However, the progressive extension of its scope has not been complemented by other measures capable of compensating for the increase in this procedure. In the accelerated procedure, the disadvantages outweigh the advantages and there have been significant losses of guarantees for the parties, necessary for the proper exercise of the right to effective judicial protection. The negative aspects that should be highlighted include: the delay in the processing and resolution of cases; the initiation of the procedure by lawsuit without having the administrative file; the concentration of procedures within the hearing; the omission of the processing of conclusions and the final intervention of the party; and the limitation

of access to the second instance. This situation leads to a significant reduction in the guarantees for both parties and inequality between them, thus violating the exercise of the right to effective judicial protection.

The contentious-administrative jurisdiction has large problems that compromise its effectiveness. The effectiveness of administrative justice depends, firstly, on it being exercised on time, and this is where one of its main problems lies. Secondly, administrative justice can only be effective if the judgments handed down are complied with and produce their useful effects in time for the appellants, and here other important problems are detected, given the low application of precautionary measures and the inadequate enforcement of judgments in the contentious-administrative field.

Contentious-administrative proceedings take too long. Although it is true that, with the exception of 2020, there has been a tendency towards a reduction in the estimated average duration of contentious-administrative proceedings both in the first instance and in the second instance, the average duration continues to be long, especially in the contentious-administrative chambers of the Superior Courts of Justice. The situation is particularly serious in certain areas of high complexity, where the duration remains well above average (environment, administrative and sanctioning activity, forced expropriation and public domain and special properties, among others).

Precautionary protection, based on the right to effective judicial protection proclaimed in Article 24.1 EC and as established by the Constitutional Court, acts as a limit or counterweight to the exorbitant prerogatives of public administrations. Despite its relevance, precautionary protection is not effective in the contentious-administrative field and the difficulty of obtaining precautionary measures is noted, especially in the highest jurisdictional instances. This reluctance of the contentious-administrative courts to grant precautionary measures can be explained by the inadequacy of the current regulation and an excessive jurisprudential rigorism.

The enforcement of judgements, also included in the right to effective judicial protection, is of fundamental importance for achieving effective protection of the legal positions of citizens. However, there are many problems that compromise its effectiveness, including the privileged situation of public administrations

compared to administrators, despite the fact that, unlike in the 1956 Law, in the LJCA, it is the judicial body that has the power to execute the judgement; and also the absence of an executive procedure itself.

The current model of appeals in the contentious-administrative jurisdictional order is clearly unsatisfactory. The regulatory evolution in this area shows a clear restrictive tendency, with a gradual narrowing of possible appeals and the establishment of powerful barriers against accessing them. The successive reforms, justified by the need to speed up administrative justice and to curb the collapse of this jurisdiction, have led to large areas of irrevocability and that a very high percentage of contentious-administrative procedures, more than 80%, are resolved in a single instance without the judicial decision being subject to review by a higher court.

The absence of a second general instance in the contentious-administrative area is worrying from the point of view of the right to effective judicial protection, due to the decrease in the guarantees for citizens that it entails. Restrictions on the possibility to appeal severely limit the chances of obtaining a second court decision. This situation makes uniformity in the interpretation and application of the legal system extremely difficult. It also poses serious risks to the principles of legal certainty and equality in the application of the law due to the impossibility of correcting the application of differing interpretative criteria between single-member jurisdictional bodies and avoiding the disparate resolution of identical cases.

The Judgment of the European Court of Human Rights of 30 June 2020, *Saquetti Iglesias v. Spain*, which acknowledges that Spain has violated Article 2 of Protocol No. 7 of the European Convention on Human Rights by not guaranteeing a re-examination by a superior judicial body to the persons indicted for administrative sanctions derived from the commission of administrative infractions that are not minor, has a significant impact on the Spanish legal system. Following this judgment, the Supreme Court and the Constitutional Court made it possible for a review by a higher court in the case of criminal sanctions to be effected through an appeal. However, the problem is far from being resolved since the appeal is difficult to access, and is based on the concurrence in the matter under litigation of the objective appeal for the formation of jurisprudence,

an assessment in which the Supreme Court has broad discretion, as an effective means to guarantee the double instance.

The new appeal model in the contentious-administrative field introduced after the reform of the LJCA by Organic Law 7/2015 radically transforms the previous model and is based on the objective appeal interest for the formation of jurisprudence as the cornerstone of the system. Although the evaluation of the new model is positive, it has some deficit aspects. An appeal model like the one established with the 2015 reform can only have full meaning with a generalization of the second instance in the contentious-administrative jurisdictional order. It is perfectly understandable and justifiable to have an appeal model based on the concurrence of the objective appeal interest as a determining criterion for the admission of an appeal, in order to ensure that the Supreme Court can exercise the function of establishing jurisprudence entrusted to it. However, this model is restrictive since only cases that, in the opinion of the Supreme Court, have a special legal and social relevance and in which the ruling of the court is useful for society and the legal community, will be able to access the appeal process (the percentage of admission is below 20%, around 16% on average). Moreover, it can only make sense in a model in which the second instance is guaranteed. It is worrying that the new appeal model operates mostly on single instance decisions that do not have the opportunity to appeal. Undoubtedly, the reform of the appeal model should have been preceded by the generalization of the second instance. In addition, there are other problems with the appeal process, particularly in repetitive cases and the risk involved in mass litigation. Currently, the Supreme Court is obliged to rule on numerous appeals similar to others that have already been resolved and in which jurisprudence has already been established, without the current regulations providing any measures against mass litigation in appeals.

The current regulation of the regional appeal, although it has received the endorsement of the Constitutional Court in Judgment 128/2018, of 29 November, is totally insufficient and unsatisfactory and has serious defects. This appeal shows large dysfunctions: poor regulation, uncertainty, asymmetry, and lack of uniform application in the different contentious-administrative chambers of the Superior Courts of Justice. It obtains very different results in terms of the

appealable decisions and the configuration of the objective appeal interest for the formation of jurisprudence. It should be criticized that guarantees for citizens differ according to the territory in which the appeal is lodged.

The current regulation of procedural costs in the contentious-administrative field raises some important problems, since it restricts access to effective judicial protection. On one hand, the application of the expiry criterion, both in the first and only instance (since 2011) and as an appeal, constitutes a problem of access to justice and access to appeals, due to its deterrent force on the person promoting the appeal. On the other hand, the legal uncertainty that derives from the current regulation, as a result of the use of open clauses in Article 139 of the LJCA that grant a wide margin of manoeuvre to the judge, should also be criticized.

IV. PROPOSED IMPROVEMENTS

1. In relation to administrative justice

In relation to administrative justice, there are various proposals for improvement, among which the following stand out:

1. Given the lack of statistical information on administrative resources, it is proposed to reform Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance. The proposal is to include in Article 7, which incorporates the information of legal relevance to be actively published by the public administrations, information relating to administrative appeals, including: the number of appeals filed, material sector affected, number of inadmissible appeals, number of resolutions, number of resolutions totally or partially estimated, number of decisions rejected, number of resolutions challenged before the contentious-administrative jurisdiction and meaning of the corresponding judgments. The aim is to correct in this way the current situation of the absence of information and statistical data on administrative appeals. In addition, it is considered that establishing the obligation to actively report the

information on administrative appeals may influence administrative bodies to take much more care in resolving appeals scrupulously and conforming to the applicable laws, thus avoiding that the statistics and numbers show the negative situation.

2. It is considered desirable to reformulate the configuration of ordinary administrative appeals based on the revealing lessons learned from the operation of certain special appeals and their statistical data. A new regulation on appeals should have the following characteristics:

- One of the issues that this report reveals is the authority and confidence inspired in all legal operators, the fact that, in administrative decisions in general and in appeal procedures in particular, a collegiate body (a commission, a court, a jury, a council, a committee, a network) made up of prestigious experts or a single person intervenes by issuing a report or resolution on the matter in question.
- A fundamental attribute that this expert body must have if its decisions are to generate confidence, security and prestige is complete independence. For this reason, it is considered essential to establish guarantees of tenure for its members and their non-submission to any order, instruction, mandate or hierarchy.
- As the appeal process is currently designed, the need to exhaust the administrative channel has become a burden and a loss of guarantees for the person concerned. Only if the body (hierarchical superior) that must resolve the appeal is formed by independent experts (not subject to hierarchical instructions) and the general rule is the suspension of the enforceability of the administrative act appealed, then this requirement to exhaust the administrative channel would not be a burden for the person concerned and could be assessed as a provision that allows a review of the resolution in the administrative channel with all the guarantees for the affected party. As long as these changes do not take place, at the very least this requirement to exhaust the administrative procedure and make the appeal optional should be abolished.
- Despite the fact that, under the changes advocated, the obligation to exhaust the administrative channel to access the contentious-

administrative jurisdiction does not seem to be an absurdity, it is considered that it is preferable to configure the appeal as an optional resource, leaving the decision of its use or access to the jurisdiction directly in the hands of the interested person.

- The general rule of the non-suspension of the enforceability of the administrative act should also be amended. It is considered that the establishment of the general rule of suspension would favour its use as an optional appeal. In the event that the decision-making body decides otherwise, it should justify its decision based on damages that are difficult or impossible to repair that may cause the suspension of the act for third parties and/or be against public interest.

3. The mediation work carried out by the different university defence offices, as an activity performed by an independent administrative body, whose head is a person of recognized prestige who has a neutral position within the university community, can serve as an inspiring model that can be transferred to other areas of administrative action.

4. Mediation can be considered to be an instrument to be used and enhanced in areas related to the determination of amounts, replacing, in certain cases, a unilateral resolution with a conventional termination that is reached using mediation.

2. In relation to contentious-administrative justice

Different proposals for improvement are formulated In relation to contentious-administrative justice, among which the following stand out:

1. From a gender perspective, it is considered essential to continue working for the reconciliation of family-personal and professional life in the field of contentious-administrative jurisdiction, so that women have the same real opportunities to move up the judicial ladder. The possibility of imposing parity quotas at all levels of contentious-administrative jurisdiction should be considered, as well as penalties in the case of non-compliance. Paternity leave and leave for childcare with reduced working hours in the male sector of the courts needs to be encouraged. Training adapted to contentious-administrative

jurisdiction on gender issues needs to be provided so that gender issues can be recognized and resolved more easily.

2. With regard to the judicial system and the division of competences between courts, a regulatory reform is considered necessary, which is essential to guarantee double jurisdiction in the contentious-administrative field. From this perspective, a new design of the contentious-administrative organisation is proposed, similar to that of civil jurisdiction.

3. In relation to the extent and limits of contentious-administrative jurisdiction, it is essential to adapt this jurisdictional order to a changing social reality, both from a subjective and objective perspective. From a subjective perspective, it is proposed to open the contentious-administrative jurisdiction to any dispute arising in the development of legal-administrative relations, even if a public administration does not intervene in the subjective sense. From an objective perspective, it is also proposed to broaden the scope, in order not to leave legal-public relations that are not substantiated in an administrative act (for example, private acts with legal-public effects) out of the control of the contentious-administrative jurisdictional order.

4. The current definition of the purpose of the contentious-administrative appeal in the LJCA does not respond either to the current reality of administrative law and public administrations (both subject to significant changes in recent years) or to the needs of citizens who require effective judicial protection. Therefore, the configuration of the object of the appeal is insufficient. Although the LJCA includes, as a novelty, the inactivity of the administration and the material actions constituting a deed, the definition of the appeal object focuses on the general provisions and the express and presumed acts of the public administration and does not take into account other forms of administrative action that do not translate into administrative acts, but that may affect citizens' rights.

5. It is considered appropriate to reformulate the configuration of the abbreviated procedure so that it responds to the purpose for which it was created. It needs to be properly regulated. The new regulation should have the following characteristics: it should establish the opportunity for the administration to respond in writing to the complaint before the hearing; there should be the possibility to request the evidence before the hearing, which could be used in it;

and the appeals that are processed by the abbreviated procedure should be able to be expanded to access the appeal process.

6. It is essential to introduce improvements in the current regulation of precautionary protection, both from a procedural and substantive perspective, in order to enhance it and increase the effectiveness of contentious-administrative processes. From a procedural perspective, it is proposed that the LJCA consider in the incident of precautionary measures, not only the hearing of the opposing party, but also that of interested third parties and also carry out a hearing procedure. From a substantive perspective, it is considered desirable to adopt more favourable regulations for applying precautionary measures, which reinterpret the prerogative of the enforceability of administrative acts in the light of constitutional postulates.

7. With regard to the enforcement of judgments, in order to improve their effectiveness, it is proposed to improve the regulation that puts an end to the privileged situation of public administrations compared to administrators, which is difficult to justify if the aim is to guarantee effective judicial protection of citizens. It is also proposed to organize a real executive process, which is currently non-existent, so that the judicial bodies play an active role and not just the role of mere passive vigilance.

8. To improve the effectiveness of the contentious-administrative jurisdiction, the following measures are also proposed:

- Transform the current system of administrative appeals so that it can act as a preliminary filter for avoiding contentious-administrative disputes (see, in this sense, the proposals made in relation to administrative justice).
- Enhance the complementary use of intra-judicial mediation as an appropriate conflict resolution mechanism.
- Adopt some procedural measures to avoid delays in the processes. Beyond the procedural streamlining measures contained in the Draft Law on Procedural Efficiency Measures of the Public Justice Service (in process in the General Courts), from a procedural perspective, it is necessary to provide an adequate response to the phenomenon of mass litigation and introduce improvements in the current regulation of the

mechanisms of mass litigation (the extension of the effects of a final judgment that would recognize an individualized legal situation and the witness lawsuit) in order to resolve their dysfunctions and enhance these instruments, which would avoid the unnecessary processing of lawsuits.

9. It is necessary to modify the current system of appeals in the contentious-administrative jurisdictional order, especially with regard to the second instance. The appeal model that is established must provide sufficient guarantees to administrators. Likewise, any reform of the appeals model must also take into account the system of administrative appeals, which should serve as a true filter of access to jurisdiction and avoidance of contentious-administrative litigation.

10. The solution to the problems posed by the current system of appeals in the Spanish jurisdictional-administrative order, as recently established by the Supreme Court, can only come from the hand of the legislator, with a modification of the LJCA, which, among other things, should generalize the dual instance and, in accordance with Protocol 7 of the ECHR, the right to review by a higher court of administrative sanctions for serious administrative infractions.

11. Although it is not a constitutional requirement, it is necessary to generalize the second instance in the contentious-administrative jurisdictional order. There are, however, significant difficulties in considering its generalization or universalization, which, among other things, would require significant changes in the judicial system and in the distribution of jurisdiction between courts. In any case, there should be at least an urgent extension of the dual instance in order to guarantee a second judicial decision to all persons indicated of administrative sanctions resulting from the commission of serious administrative infractions.

12. The assessment of the new appeal model in the contentious-administrative field is positive. However, some adjustments are needed in order to improve some aspects of the current regulation and to make this appeal model more effective. In particular, three proposals for improvement are made:

- In relation to admission, it should be made an obligation to publicize the orders of inadmissibility and eliminate the imposition of costs in the case of inadmissibility.

- Generalize the second instance as a previous step, so that the new appeal model can have full significance and, thus, avoid that the appeal operates mostly on decisions issued in a single instance, which have not had the opportunity to appeal.
- Take steps to address mass litigation. Two types of measures are proposed that are included by the Supreme Court's Governing Chamber in the Proposed Action Plan for the Third Chamber in the year 2022:
    - Suspend the proceedings in the instance once the Supreme Court has admitted an appeal in which the issue is raised in the series of appeals concerned, the suspension being maintained until the Supreme Court's opinion is known.
    - In the event that a large number of cases involving the same problem have arrived to appeal, enable a channel that allows the Supreme Court to process "witness" appeals, paralyzing the others until the decision is made.

13. The intervention of the legislator and the introduction of a complete and adequate regulation of the regional appeal is essential and urgent, through a legal reform of the LJCA that includes the appropriate regulatory development of the essential aspects of this appeal (competent body, object, conditions, requirements and procedure).

14. The current legal regime for procedural costs needs to be amended in order to introduce greater legal certainty in this area. The reform would involve eliminating the numerous open clauses contained in the current regulations due to the doubts and lack of definition that they raise; as well as establishing objective elements that allow the appellants to anticipate the cost amount and put an end to the disparity of criteria between courts.