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ACT 29/1998 OF 13 JULY REGULATING THE JURISDICTION FOR JUDICIAL REVIEW

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PREAMBLE

I. REASON FOR THE REFORM

The jurisdiction for judicial review is a key part of the organisation of the Spanish legal system under the rule of law. Since this jurisdiction was first established on Spanish soil under the acts of 2 April and 6 July 1845, it has amply proved its effectuality through many reversals of fortune. This has been especially so since the act of 27 December 1956 vested the jurisdiction with its present characteristics and attributes required to fulfil its mission of reviewing the legality of administrative activity and thus safeguarding the legitimate rights and interests of citizens should the administration overstep its bounds.

The act of 27 December 1956 was universally acclaimed for its inspiring principles and technical excellence, which combined rigour and simplicity to perfection. The act wisely made judicial review of administrative action the general norm, although it made allowance for some well-known exceptions imposed by the enacting political regime. The act of 1956 resoundingly ratified the judicial nature of proceedings under administrative law, which had already been established by earlier legislation, and addressed the need for specialised justices for this particular jurisdiction. And the act brought forth a simple, theoretically quick procedure, one consistent with the act's stated purpose of achieving effective justice of a sort not weakened and encumbered by overly formalistic interpretations and practices. In this way, the act of 1956 on the jurisdiction for judicial review opened up a necessary, albeit insufficient, means of remedying the numerous lacunae in and historic constraints on the rule of law in Spain. The opportunity thus provided was firmly seized by an innovative body of case law, encouraged by the spectacular development Spanish legal doctrine has since experienced in administrative law.

However, the four decades since the act of 1956 was passed have ushered in numerous highly important changes in legislation, in political and administrative institutions and in society. These changes necessarily require new solutions in order to reach the same institutional goals, for, despite the versatility of a good portion of the text, the act of 1956 has failed to keep abreast of the evolution of legislation and society's demands in the administration of justice.

Above all account must be taken of the impact of the Constitution of 1978. Some of the Constitution's founding principles are the same as those that either inspired the jurisdiction reform of 1956 or have been deduced from the act of 1956 by subsequent case law. Yet it is evident that the consequences of the terms of the Constitution as regards judicial review of administrative activity are of a much higher order. Only under the Constitution of 1978 does Spain fully guarantee the postulates of the rule of law, *inter alia,* the right of all persons to effective judicial protection of their legitimate rights and interests, the public administration's submission to legislation and to law and the power of the courts to review the legality of administrative action. The proclamation of these rights and principles in the Constitution and their direct legal efficacy have implicitly repealed those portions of the act that set constraints on access to or efficacy of judicial review that cannot be justified in a democratic system. But the scope of the Constitution's repealing effect on some points of the act of 1956 has continued to provide grounds for dispute, making legal clarification most advisable. In addition, constitutional case law and case law on suits under administrative law alike have drawn many other rules from the principles and precepts of the Constitution. Some of these additional rules impose certain interpretations of the act of 1956 or even uphold judicial powers and actions not expressly envisaged in its text. Lastly, the Constitution's influence on legislation concerning the jurisdiction for judicial review is not limited to the provisions of Articles 9.1, 24, 103.1 and 106.1. The organisation, the sphere and

physical breadth and the operation of the jurisdiction for judicial review are affected through the medium of many other provisions of the Constitution as well, some of which regulate substantive principles and fundamental laws, while others design the structure of our parliamentary monarchy and the organisation of the State into sub-national territories. Like other legislation, the laws concerning the jurisdiction for judicial review must be thoroughly overhauled to fit the letter and the spirit of the Constitution.

Furthermore, over the last few decades Spanish society and the Spanish administration have undergone vast transformations. Spanish society today is incomparably more highly developed, freer and more plural, more emancipated and more aware of its rights than forty years ago. Meanwhile, the small, centralised, hierarchized administration of yesteryear has burgeoned into an extensive, complex organisation endowed with multiple functions and considerable resources, decentralised territorially and functionally. In the wake of these transformations, there has been a good measure of change and diversification in the legal forms of administrative organisation, the goals, content and forms of administrative activity, the rights that individuals and social groups hold in respect of the administration and, in short, the system of relationships governed by administrative law.

All these changes have repercussions of one sort or another on the jurisdiction for judicial review. Originally conceived as a jurisdiction specialising in addressing a limited number of legal conflicts, it has been swamped by the recent extraordinary increase in litigation between citizens and administrations and litigation amongst administrations themselves. In this aspect, the problems are the same as those facing many other countries' judicial review systems. But, in addition, in Spain the legal instruments with which the jurisdiction is equipped in order to reach its goals have become relatively outdated. This is particularly so as regards the instruments designed for judicial review of material activities of and inaction by the administration, but it is also so for the instruments for promptly enforcing courts' own decisions and for taking precautionary measures to ensure process efficacy. And so, despite the increase in staff for the jurisdiction, despite the creative efforts of case law, despite the development of precautionary justice and other partial remedies, the jurisdiction for judicial review is going through a critical period. Therefore it is necessary to react through the proper reforms.

Some such reforms, certainly, have been addressed by legislators in different texts old and new. In fact, the laws, rules and regulations that have amended or after a fashion complemented the legal system governing the jurisdiction are now so numerous and so widely scattered throughout the legislative landscape that they would in themselves justify a thorough revision.

The reform undertaken herein seizes as its foundation the parliamentary work done during the last legislature, in which an estimable consensus was reached on many points. Yet the reform goes quite a bit farther. First, it addresses the aforementioned partial or indirect amendments, not only incorporating them into a single text, but also correcting those of their elements that judicial practice or doctrinal criticism has revealed as inappropriate or improvable. Second, it attempts to complete the task of reworking the legal framework for judicial review so as to abide by constitutional values and principles, taking into consideration the contributions of Constitutional Court and Supreme Court case law, the new organisation of the State and the evolution of legal doctrine. Lastly, it seeks to endow the jurisdiction for judicial review with the instruments it needs to perform its function, in view of the circumstances framing that function today.

From this latter standpoint, the reform reconciles two types of measures: measures guaranteeing real fullness of judicial protection in suits under administrative law and favouring the exercise of action, claims and the parties' defence (without any concession whatsoever to temptations to indulge in formalism) and measures aimed at deciding litigation more quickly. There is a concern for striking a balance between guarantees –guarantees of the public and private rights and interests at stake and guarantees of the wisdom and quality of judgements– and process celerity and effectiveness of *res judicata,* which constitutes one of the main thrusts of the reform. For it is evident that tardy or merely precautionary justice fails to satisfy the right acknowledged in Article 24**.**1 of the Constitution.

It is quite true that attaining fast, high-quality justice does not depend solely on one legal reform. Other channels can and should check the legality of administrative activities, to complement judicial reviews. And it is a fact that improvement is needed to forestall the proliferation of unnecessary legal proceedings and to offer low-cost, speedy formulae for settling numerous types of conflicts. But no matter what else is done, the legal system governing the jurisdiction for judicial review, whose dual function as a guarantor and creator of case law cannot be performed by any other mechanism, must be adapted to modern conditions in order to place that objective within reach.

By virtue of these premises, the reform is at the same time an adherent of continuity and an advocate of thorough renovation. It is an adherent of continuity because, under the reform, the jurisdiction still retains the strictly judicial nature conferred by previous legislation and finally consolidated by the Constitution; because, under the reform, judicial review proceedings are still trials between parties and still perform the dual role of individual guarantee and review of the administration's submission to the law; and because, under the reform, a conscious effort has been made to preserve everything that has worked well in practice, pursuant to constitutional imperatives.

Nevertheless, the institution must come to grips with transformations of such import and breadth that a general revision of its legal framework is inevitable. No such revision can be undertaken by merely sprucing up pre-existing legislation. In addition, the reform seeks not only to respond to the challenges of our time, but also, insofar as possible, and with all necessary prudence, to look to the future, and here and there to introduce some general clauses and precepts that doctrine and case law can then particularise in order to improve the operation of the jurisdiction.

II. SCOPE AND BREADTH OF THE JURISDICTION FOR JUDICIAL REVIEW

True to its determination not to alter the system established by the act of 1956 any more than necessary, the new act begins by defining the proper sphere, scope and limits of the jurisdiction for judicial review. Respecting tradition, and pursuant to Article 106.1 of the Constitution, the jurisdiction is charged with reviewing the regulatory authority and the legality of administrative action subject to administrative law. However, the act incorporates certain new features into the definition of the jurisdiction's sphere, some of which are included by necessity and all of which are extremely important.

In the first place, in view of the organisational changes that have been made over time and the provisions of other laws, the concept of "valid public administration" needed to be updated for the intents and purposes of the act. It was also indispensable for the act to confirm that acts and provisions of public agencies not belonging to the administration *per se* are subject to judicial review when those acts and provisions are actually administrative in nature due to their contents and effects. Here the act completely ignores all possible points of debate over dogma, which it is not the task of legislators to discuss, and addresses a practical problem. The problem consists in ensuring judicial protection for persons and organisations whose rights or interests are affected by such acts and provisions, which are in almost all respects similar to acts and provisions issued by the administration itself.

In the second place, in these historical times the realm of implementation of judicial review would obviously be quite incomplete if it were limited to action presented in connection with legislation of lesser rank than the act or administrative acts and contracts in the strict sense. What is really important, and what justifies the very existence of the jurisdiction for judicial review, is to ensure, to the benefit of the parties concerned and the general interest, that the administration is held strictly accountable to the law in all actions it performs in its capacity as a public authority and in its use of the prerogatives that it holds as such. It is well known that not all administrative actions are expressed through regulations, administrative acts or public contracts. There are also benefits paid by the administration, many kinds of negotiable activities, material actions (i.e., actions physically manifested by the administration), instances of inaction and omissions of due action. These too express the administration's will, and the administration's will must be subject always to the authority of the act. For some time there has been criticism of the legal impossibility of calling to account such embodiments of administrative action through judicial review. This is no longer a justifiable impossibility, in the light of constitutional principles and by virtue of the augmented quantitative and qualitative importance of such embodiments. For that reason, the new act empowers the jurisdiction to review any sort of activity by the administration that is subject to administrative law and coordinates the correct procedures for doing so.

On this particular, the act specifies that the jurisdiction for judicial review is competent to hear questions arising in connection with not only administrative contracts, but also separable acts whereby other contracts subject to administrative contracting legislation are prepared and awarded. The point, in short, is to adjust court proceedings under administrative law to contracting legislation and, in proceedings directly connected with issues of public interest, to keep private law from simply being applied straightaway, reasons notwithstanding, in violation of the general principles that must govern the contractual behaviour of public parties by imperative of the Constitution and European Community law. Such principles are very different from those that govern purely private contracting, and the task of guaranteeing their necessary observance must fall, naturally, to the jurisdiction for judicial review.

Something similar ought to be said of issues arising in connection with the administration's financial liability. The principles of the idiosyncratic legal rules applicable to the administration's financial liability (which have constitutional coverage) are public principles; and today the act states that liability is always to be demanded through a single type

of administrative procedure. For that reason it appears quite advisable to unify the competence for hearing affairs of this type under the jurisdiction for judicial review. Doing so would prevent suits from being dispersed far and wide, as they are at present, and would guarantee uniformity of case law, save, of course, in those cases where the liability stems from the commission of a criminal act.

Setting firm boundaries on the jurisdiction's material sphere also means leaving some things outside. The new act respects the fact that certain competences related with administrative activity are assigned to other jurisdictions established by other laws, mostly for pragmatic reasons. The new act also takes into account the terms of the most recent legislation on conflicts of jurisdiction and attributes. On the other hand, the act no longer counts what the act of 1956 termed "political acts of the administration" amongst the things beyond the pale.

Some specifics ought to be established on this latter point. The act is based upon the principle that the public authorities submit fully to legislation. This is the truly paramount clause of the rule of law. A principle such as this is incompatible with the acknowledgement of any generic category of acts of authority –whether termed "political acts", "acts of the administration" or "acts of political management"– as being excluded *per se* from judicial review. It would certainly be a contradiction for a law intended to align the legal framework governing judicial review with the letter and the spirit of the Constitution to introduce an entire sphere of government action that stands immune to the law. In reality, the very concept of "political act" is openly in retreat in European public law. Any attempts to maintain it, whether by generically staking out a realm in the action of the administration's executive branch that is governed solely by constitutional law and exempt from judicial review, or by establishing a list of instances that are excluded from judicial review, are inadmissible under the rule of law.

Just in case any doubts might linger, the act casts in positive terms a series of items for which judicial review will always be possible, no matter how broad the discretionary field of the government decision: fundamental rights, regulated elements of the act and the establishment of the proper indemnities.

III. REVIEWING BODIES AND THEIR COMPETENCES

As stated before, the jurisdiction for judicial review faces a pressing problem due to the mounting avalanche of applications for judicial review. Therefore, reforming the organisational aspects of the jurisdiction must obviously be considered to take priority.

The most important new feature in this chapter is the regulation of the competences of administrative courts presided by a single judge. The creation of single-judge administrative courts under the Constitutional Act on the Judiciary met with divided opinion at the time. While, on the one hand, it seemed vital to find a way to decongest the existing administrative courts, each headed by a panel of judges, on the other hand doubts arose as to the fitness of single-judge courts to handle the competences that would be theirs under the general clause established in the Constitutional Act on the Judiciary.

Indeed, the technical complexity of many of the cases and the political significance of others that would have to be tried under the clause in question fuelled lengthy controversy, which had to be settled before single-judge courts could be finally introduced.

This reform addresses the problem resolutely and cautiously at the same time. It defines the competences of single-judge courts by establishing a considered list. In the preparation of this list, account was taken of the advisability of assigning these single-judge courts a set of relatively uniform competences that have less economic and social importance but cover a large percentage of the applications filed daily for judicial review. In this way, it becomes possible to remedy the load saturating the superior courts, which will be lightened by a good number of lawsuits, although the superior courts will retain the competence to try in first instance the most important cases *a priori* and the full variety of the cases included in the residual clause, which is now shifted to the superior courts' sphere of competence. Single-judge courts, in turn, obtain a set of competences that they can reasonably exercise and that seem sufficient for gaining experience. There is nothing preventing the list of competences from being revised after a breaking-in period; quite the contrary. At all events, it is obvious that the reform's success depends more than anything on the prompt, suitable selection and training of the judges who are to sit in single-judge administrative courts.

The reform does not end here as regards single-judge courts. The act also regulates the competences of single-judge central administrative courts, which have jurisdiction throughout Spain, in order to help palliate the current court work overload.

IV. PARTIES

The act of 27 December 1956 regulated the parties to judicial review according to an underlying stance that was largely individualistic and smacked of corporatism. That approach became old-fashioned a long time ago and has since been corrected by legislation. In addition, the original provisions have been reinterpreted by case law in a sense very different from their original meaning. The new act is restricted to collecting the successive modifications, clarifying some still-obscure points and systematising the precepts as simply as possible. The goal is for no-one, be it individual or legal person, private or public, to be deprived of access to justice when they have sufficient legal capacity and hold a legitimate right to protect (a concept that embraces civil rights but is wider).

On these foundations, which can easily be deduced from the Constitution, the new features the act contributes are essentially technical in character. The most significant new features are the precepts regulating *locus standi*. All the general or special rules on applicant standing that can be regarded as in force and in line with the chosen criterion have been streamlined into a system. The list of persons eligible gives an idea, at any rate, of the evolution that judicial review has experienced. Today judicial review is a useful instrument for a great many purposes: *inter alia,* defence of one's personal interest, defence of collective interests and any other legitimate interests, including political interests; it is a mechanism for reviewing the legality of lower levels of the administration, an instrument for defending the autonomy of those same levels of the administration, a channel for the defence of rights and liberties entrusted to certain public institutions and a tool for the defence of the objective interest of the law in public interest claims.

The substance of the criterion regarding the defendant's standing is the same and leads to a simplification of earlier rules. It is particularly pointless to maintain the idea of the coadjutor now that there is no longer any difference between standing through civil rights and standing through legitimate interest. Furthermore, it has been seen as necessary to particularise further which level of the administration is the defendant in cases where the acts challenged have already been subjected to oversight. Above all it has also been seen as necessary, in cases where a general provision is indirectly challenged, to place in the dock as defendant the administration that authored the provision, even if that administration is not the author of the particular action at issue in the judicial review proceeding. This precaution is intended to furnish a procedural channel for each administration's interest in defending the legality of the legislation it has passed, and it constitutes one of the special features of judicial review of the lawfulness of general provisions, which are threaded throughout the act.

A distinction is made between multi- and single-judge courts in matters of representation and defence. In proceedings in multi-judge courts, a barrister and solicitor are compulsory; in action in single-judge courts, a barrister is optional, and a solicitor, compulsory. Civil servants may appear on their own behalf in personnel issues not involving the dismissal of irremovable public employees.

As concerns the representation and defence of the public administration and constitutional bodies, the act refers to the provisions of the Constitutional Act on the Judiciary, the Act on Legal Aid for the State and Public Institutions for all kinds of proceedings and the pertinent legislation handed down by autonomous communities within their own competences. Judicial review involves no special features pertaining to this subject that need be addressed in the form of an act.

V. OBJECT OF JUDICIAL REVIEW

The few precepts included in the first two chapters of Title III contain some of the act's more important innovations in the Spanish judicial review system. They concern nothing less than putting away the traditional, hidebound conception of judicial review as a judicial inspection of previous administrative acts, i.e., as a review of an act alone, and finally opening the doors to obtaining justice with regard to any illicit administrative behaviour. Yet, at the same time it is necessary to differentiate amongst the claims that may be filed in each case, for obviously there is so wide a range of actions and omissions that may be targeted for review that the review procedure cannot continue to be envisioned as a single uniform action. Without detracting from the characteristics shared by all proceedings for judicial review, beginning with the *nomen juris,* some differences in profile are possible depending on the object of review. Reconciling the common elements and the differentiating elements in a simple, flexible outline is another of the objectives of the reform.

Four types of judicial reviews are established, according to object: the traditional review of express or presumptive administrative acts; the review that directly or indirectly concerns the legality of a general provision of legislation, which requires special rules; the review of administrative inaction; and the review of *ultra vires* material actions.

The judicial review of acts is the type that has been best described hitherto. It requires little renovation. The act does, however, prune certain unjustified restrictive rules from earlier legislation, although it maintains the inadmissibility of reviewing acts that confirm other final, consented acts. This latter rule is based on elementary reasons of legal certainty that must be taken into account not only in favour of the party aggrieved by an administrative act, but also in favour of the general interest and all persons who derive individual or collective benefit or support from an administrative act. The relative loss of access to judicial protection for that cause is less of a sacrifice now than it once would have been, taking into account the recent extension of deadlines for filing for ordinary judicial review, the lack of efficacy of defective notice under current legislation (without any time limit whatsoever) and even the expansion of competence for conducting *ex officio* reviews. Keeping that exception is a reasonable, well-balanced option.

On the other hand, it has been found necessary for the act to underscore the unique features of judicial reviews concerning the lawfulness of general provisions of legislation. General provisions have been insufficiently considered hitherto. In reality, the effects of these types of review (particularly when a general provision is declared illegal, whether *ultra* or *intra vires*) generally cannot be compared with the effects of judicial reviews of acts. The difference gains even more stature in practice, if account is taken of the breadth and significance that the production of regulations has acquired in the many-faceted modern State.

The new act ensures the amplest possibilities of submitting the legality of general provisions to judicial review. It preserves what has been termed “direct judicial review” of legislation itself and “indirect judicial review” of the application of legislation on the grounds that the underlying legislation is faulty. The act eliminates all traces of earlier legislation’s limitations on judicial review. At the same time, however, the act intends for challenges to general provisions to be processed speedily and to lead always to a single, clear judgement having general effects. The goal in so doing is to avoid creating needless legislative loopholes and situations of uncertain or temporary legislative validity and force. This stance is embodied in many rules dictating details, including rules on the procedural handling of the “indirect judicial review”.

Legal theory and judicial practice have hitherto been characterised by some confusion around the effects of this sort of review when the legislation applied by the challenged act is found to be unlawful. And, on an even more serious note, the cloudiness caused by this type of review has led to situations of manifest inequality and legal uncertainty: Depending on each court’s outlook, when there is no unifying instance (and there is not always one), certain provisions are applied in some cases or realms and not applied in others. The solution is for judgement on the legality of general provisions to be unified in a single court, the court that is competent to conduct a direct judicial review of the general provisions in question, thus making that court’s decision always effective *erga omnes.* So, when it is that same court that conducts an indirect judicial review, the act states that the court will declare the general provision valid or quashed. When the competent court for proceedings of this type is other than the correct court to conduct a direct judicial review of the provision in question, the act introduces questions of illegality.

The procedure for questions of illegality has been regulated in a fashion that factors in the experience gained in questions of unconstitutionality (addressed in Article 163 of the Constitution), and it is partially inspired by the mechanism used for questions of unconstitutionality. But there the analogies end. Questions of illegality have no significance beyond that of a technical remedy aimed at reinforcing legal certainty. They do not hinder the competent judge or multi-judge court from examining legislation in order to decide on the legality of an act that applies a regulation whose illegality is adduced; rather, they attempt to produce a decision that will unify all potential indirect pronouncements about the legislation’s validity.

The act creates the judicial review of administrative inaction, a thing long clamoured for by legal doctrine and foreshadowed by other European legislations. Here the claimant asks the court to sentence the administration to provide some due material performance or to adopt some express act in procedures initiated on an *ex officio* basis, where the mechanism of administrative silence is disallowed. Thus, citizens are girded with a legal instrument for combating administrative passiveness and delay. Clearly this remedy does not enable the courts to take the administration’s place in aspects of its activity that are not prearranged by law (including discretionary leeway as to the *quando* of a decision or a material activity). Nor does it empower the courts to translate generic, fuzzy decisions or legal obligations to create services or perform activities into precise mandates, for in that case the courts would be invading the administration’s province. So, the act always refers to specific performances and acts that must be decided upon by a legal deadline, and so any ruling finding for the claimant must strictly order the administration to discharge its obligations exactly as established. Judicial review by nature cannot furnish a remedy for all cases of administrative indolence, foot-dragging and ineffectualness. It can but guarantee exact compliance with the law.

Another new feature that bears emphasis is the judicial review of *ultra vires* material actions. Material actions taken by the administration without the necessary legal coverage and injuring legitimate rights and interests of any sort can be combated by means of this judicial review. This particular sort of proceeding is by nature declaratory and prosecutory. At the same time, it might be said to seek an injunction, for which purpose the proceeding is of necessity related with the way in which precautionary measures are regulated. The competence of courts in the jurisdiction for judicial review to hear such claims is explained well enough by reason of the subject.

For judicial review of administrative inaction, the act requires that a complaint first be filed at the administration's offices; in judicial review of *ultra vires* action, the act allows an optional demand to be filed, also at the administration's offices. But even when the aforementioned complaints and demands are dismissed, through silence or otherwise, subsequent claims for judicial review of administrative inaction are not proceedings against the dismissal of earlier complaints and demands. Nor, as stated before, do these new actions (the complaint and the demand) partake of the traditional nature of the claim for judicial review as an instrument of examination. Nor can it be held that any failure to uphold all or part of a complaint or a demand constitutes an authentic express or presumptive administrative act. What is sought is simply to give the administration the opportunity to settle the conflict and avoid the court's taking a hand. Otherwise, a challenge is straightaway issued directly against the inaction or material action at issue, whose circumstances define the limits of the material object of the proceedings.

The rest of the precepts in Title III are confined to introducing a number of technical improvements. The issue of greatest concern is to speed up case processing. This particularly explains the rule allowing the single- or multi-judge bench to suspend the processing of mass claims that all share the same object and to decide instead upon one or more preferred claims selected from the mass. In this way, many other identical proceedings can be avoided, because the effects of the first ruling or rulings may be applied to all the other cases in execution. Alternatively, the first ruling or rulings might cause other, similar claims to be abandoned.

VI. PROCEDURE

1. The ordinary judicial review procedure is regulated according to the outline set in previous legislation. Nonetheless, there are a great many modifications. Great account has been taken of practical experience and doctrinal contributions; also, special rules have been set for different types of claims that require no special procedure. Based on common principles and the same procedural outline, the act constructs a ductile procedure that offers partly differing responses for each set of circumstances. At all times reconciliation has been sought between guaranteeing procedural efficacy and speediness and ensuring the parties' ability to defend themselves.

One important new feature is the introduction of a short procedure for certain matters valued at a defined sum beneath a certain cap. In this procedure the spoken word predominates over its written counterpart.

The guarantees the act establishes for the prompt dispatch of the complete administrative file to the court have been revised with the intention of putting a definitive stop to unjustifiable, too-widely used administrative practices that prolong the processing of many cases. Such practices, being incompatible with the administration's duties toward citizens and its duty to cooperate in the administration of justice, need to be banished forever.

To settle proceedings quickly, the act places several powers in the hands of the parties or the judicial authority, *inter alia,* the possibility of initiating a claim by filing suit in court in some cases, the possibility of petitioning for judgement without the need for evidence, a hearing or closing arguments and the possibility of attempting conciliation. Whether these measures work will depend on the nice judgement of judges and justices and cooperation by the parties.

On the topic of rulings, the act dogs the tracks of previous legislation. It particularly maintains the reference to the generic lawfulness or unlawfulness of a provision, action or act, because –to borrow a phrase from the preamble to the act of 1956– simply reinstating lawfulness is tantamount to overlooking the fact that the juridical is not contained and circumscribed within the letter of the law, but instead reaches out to touch upon the principles and the normativeness indwelling in the nature of institutions. The new act does add some stipulations about the contents and effects of certain judgements in the claimant's favour, to wit: judgements sentencing the administration to do something, judgements upholding demands for damages, judgements quashing general provisions and judgements concerning discretionary action. In connection with the latter, the act recalls that judicial review is by nature an examination according to law, and therefore it specifies that judges cannot rule upon the discretionary contents of the acts they quash. Logically, this rule is in no way meant to curb the courts' authority to extend their review of

discretionary acts as far as they must in order for the administration to submit to law, i.e., by means of sitting in judgement on the regulated elements of the administration's acts and safeguarding the legal limits on discretionary latitude.

2. On the topic of appeals against judgements, the act generally adheres to the provisions of the recently passed Act 10/1992 of 30 April on Urgent Procedural Reform Measures. But it does introduce some necessary changes. Some are motivated by the creation of single-judge administrative courts, which leads to the reintroduction of appeals against such courts' judgements; others are motivated by the short but significant experience garnered from the procedural reform carried out under Act 10/1992 of 30 April.

The new ordinary appeal against the judgements of single-judge administrative courts before execution is not, however, universal. Whereas the double instance is not a constitutional requisite in all kinds of proceedings, it has seemed advisable to relieve the superior courts from hearing matters of lesser impact in second instance as well, in order to lighten their current load. However, when the heart of the matter has not been addressed, appeals are in order as safeguards of the normal content of the right to effective judicial protection. Appeals are also in order in the procedure for the protection of fundamental rights, in litigation between administrations and when indirect challenges to general provisions are settled, due to the greater significance all such matters have *a priori.*

The act substantially raises the sum that may be requested in suits seeking to appeal to the Supreme Court in second and last instance and, to a lesser degree, in suits seeking to appeal to the Supreme Court for doctrine unification. Although the measure is strict, it is necessary in view of recent years' experience; the sums set in Act 10/1992 have not reduced the crushing workload of the Administrative Division of the Supreme Court. While the new rules do eliminate the possibility of double instance in many cases, the alternative would be to consent to the gradual worsening of the load, which is already far beyond reasonable today. The effects of an even heavier workload would be pernicious for an additional reason: The Supreme Court would be likely to take so long to decide upon pending appeals as to reach extremes entirely incompatible with the right to effective justice. Furthermore, the number of superior court sections and justices cannot be substantially increased, and they must be able to establish jurisprudential doctrine, an objective function of paramount importance.

Two types of appeals for doctrine unification are regulated. They are to be heard respectively by the Supreme Court and the superior courts.

It has been considered best to maintain appeals to the Supreme Court in the interest of the act. Such appeals are adapted to the creation of the single-judge administrative courts and, together with the traditional appeal for review, they close the system of appeals in this jurisdiction.

3. The act has made a concerted effort to provide a firmer guarantee of execution of judgement. This has always been one of the grey areas of our judicial review system. The place to begin is the imperious obligation to comply with judgements and to cooperate in the enforcement of the court's decision (an obligation set forth in the Constitution) and the power of the courts to have their decisions enforced (which power the Constitution itself gives them). These stipulations are directly linked to the right to effective judicial protection, inasmuch as, as case law points out, the right to effective judicial protection is not satisfied by merely theoretical justice. Rather, the right to effective judicial protection entails the right to prompt enforcement of the court's decision, in the terms of that decision. A refusal, whether express or implicit, to comply with a judgement constitutes an attack on the Constitution for which there can be no excuse.

The Constitutional Act on the Judiciary eliminated the government's power to suspend and ignore the enforcement of rulings. On the other hand, it also opened the door to the expropriation of rights recognised by rulings against the administration. It did not, however, specify the causes of public and social interest that would make exercise of this power to expropriate rights legitimate. The act covers this need by specifying three very well-defined sets of circumstances, the foremost of which is the preservation of the free exercise of fundamental rights and public liberties.

Except as set forth above, the act regulates the form of enforcement for rulings that sentence the administration to effect some payment. The act does not eliminate the prerogative under which the assets and rights of the Exchequer are immune from attachment. No such modification could be undertaken in the act on jurisdiction alone; if at all, such a change would have to be addressed through a fresh, full, systematic regulation of the legal status of public assets. But the act does accord the party concerned economic compensation for any unjustified delay; it provides

against execution in outward appearance only, declaring acts contrary to court pronouncements null and void and establishing a rapid way of quashing them; it specifies the possible ways of enforcing rulings that sentence the administration to conduct some activity or order the performance of some act; and it grants the courts the authority to exact penalties in order to enforce orders, apart from the consequences of any criminal charges.

Two important new features complete this chapter of the act. The first refers to the possibility of extending the effects of final rulings on personnel matters and tax matters to non-party persons in an identical situation. Even though this feature is regulated with the necessary caution, it could forestall the repetition of multiple unnecessary proceedings against what are termed "acts *en masse".* The second new feature consists in granting a judicial conciliation agreement the same force as a ruling for purposes of enforcement of judgement. This strengthens the act's interest in this way of putting an end to procedures.

4. One of the special types of judicial review, judicial review of personnel matters, has been eliminated, although some related special features do remain at spots throughout the act. The regulation of the special proceeding in matters of fundamental rights is brought into the Act on the Jurisdiction for Judicial Review. Here it enjoys the same preferred, urgent nature as before, plus major variations with respect to current legislation, whose restrictive nature has led to a serious decline of the procedure in practice. The most important new feature is the handling of the object of review –and therefore the object of the ruling– in accordance with the common foundation of proceedings for judicial review, i.e., the injury to the rights eligible for protection is examined from the perspective of the lawfulness of the administrative action. The act therefore endeavours to wipe out the rigid distinction between ordinary legality and fundamental rights, because its stance is that protection of fundamental rights or public liberties will in many cases not be feasible without taking account of how those rights and those liberties are implemented in the law.

The procedure for questions of illegality, which is initiated *ex officio,* allies the guarantee of defence of the parties with the procedure's inherent celerity.

Lastly, the procedure for cases of prior administrative suspension of resolutions is adapted to suit the legal cases of suspension provided for in current legislation, while rules are established for fast processing of the procedure.

5. The terms regulating precautionary measures stand out from amongst the common provisions. The spectacular development of precautionary measures in case law and procedural practice in recent years has drawn far ahead of earlier legislation and underscored legislative aging. The new act considerably updates the terms regulating the matter of precautionary measures, increases the types of precautionary measures possible and determines the criteria that are to guide the taking of precautionary measures.

The starting point is the basic idea that precautionary justice forms part of the right to effective protection, as declared by the latest case law. Therefore, taking provisional measures to ensure a procedure's result ought not to be envisaged as an exception, but as competence the court may exercise whenever need be.

The act approaches this issue by first establishing of a common set of terms regulating all precautionary measures, regardless of nature. The rule is to take precautionary measures whenever execution of the act or application of the provision may render the judicial review moot, but to do so always on sufficient grounds, after weighing all the conflicting interests.

In addition, taking account of recent years' experience and the greater breadth now afforded to the object of judicial review, suspension of the provision or act at issue is no longer the only precautionary measure possible. The act introduces the possibility of taking any precautionary measure, including positive measures. There are no special restrictions, given the common foundation shared by all precautionary measures. It will fall to the single- or multi-judge bench to determine what measures are necessary, depending on the circumstances. Measures *inaudita parte debitoris* are regulated (the party to appear in court at a later time concerning the lifting, maintenance or modification of the measure taken), as are measures prior to filing for judicial review of inaction or *ultra vires* acts.

TITLE ONE

Jurisdiction for judicial review

CHAPTER ONE

Scope

Section 1. **1.** Single- and multi-judge administrative courts shall hear demands entered in connection with the action of the public administration subject to administrative law, in connection with general provisions of a rank below that of act, and in connection with legislative decrees that overstep the limits of sub-delegation.

2. For the intents and purposes of this act, public administrations shall be understood to be:

a) The national state administration.

b) The administrations of the autonomous communities.

c) The entities belonging to local administrations.

d) The entities organised under public law that are dependent on or linked to the state, autonomous communities or local entities.

3. Single- and multi-judge administrative courts shall also hear demands entered in connection with:

a) Acts and provisions in matters of personnel, administration and asset management subject to public law adopted by the competent authorities of the Congress of Deputies, the Senate, the Constitutional Court, the Court of Auditors and the Ombudsman, likewise by the legislative assemblies of autonomous communities and the autonomous community institutions analogous to the Court of Auditors and the Ombudsman.

b) Acts and provisions by the General Council of the Judiciary and administrative activity by governing bodies of single- and multi-judge courts, in the terms of the Constitutional Act on the Judiciary.

c) Action by the election administration, in the terms of the Constitutional Act on General Election Procedure.

Section 2. The jurisdiction for judicial review shall hear questions arising in connection with:

a) Judicial protection of fundamental rights, regulated elements and the fixing of such indemnities as prove to be in order, in connection with acts of the government or the governing councils of autonomous communities, regardless of the nature of the said acts.

b) Administrative contracts and acts preparing and awarding other contracts subject to legislation on public administration contracting.

c) Acts and provisions decided in the exercise of public functions by corporations organised under public law.

d) Administrative acts of review or oversight ordered by the concession-granting administration with respect to acts ordered by the holders of public service concessions that involve the exercise of administrative powers granted to the said concession holders, likewise acts of the concession holders themselves when such acts are amenable to direct judicial review pursuant to the proper sector-specific legislation.

e) Financial liability of public administrations, regardless of the nature of the activity or type of relationship from which the liability stems. Public administrations cannot be sued on these grounds in the civil or labour

jurisdictions, even when they are concurrent with private persons in inflicting the damage or hold liability insurance.

f) All other matters expressly assigned to this jurisdiction by an act.

Section 3. The following are not proper matters for the jurisdiction for judicial review:

a) Issues expressly assigned to the civil, criminal and labour jurisdictions, even when related with public administration activity.

b) Judicial review of military discipline.

c) Conflicts of jurisdiction between the courts and the administration and conflicts of attributes amongst bodies belonging to the same administration.

d) Direct or indirect appeals challenging tax legislation enacted under special regional jurisdiction by the General Assemblies of the Historic Territories of Álava, Guipúzcoa and Vizcaya, which will be incumbent upon the Constitutional Court exclusively, under the terms established by additional provision five of its Constitutional Act.

Section 4. 1. The competence of the jurisdiction for judicial review extends to the hearing and deciding of references for preliminary rulings and incidental issues not belonging to the jurisdiction for judicial review but directly related with a claim for judicial review, save for references and issues of a constitutional or criminal nature and the terms of international treaties.

2. The decision given shall have no effect outside the process in which it is handed down and shall not be binding on the jurisdiction involved.

Section 5. 1. The jurisdiction for judicial review cannot be postponed.

2. Bodies belonging to this jurisdiction shall conduct an *ex officio* assessment to determine whether jurisdiction is lacking and shall decide accordingly, following a ten-day period in which the parties and the Prosecution Service may petition to be heard by the court.

3. At all events, such declarations shall be grounded and shall always indicate the particular jurisdiction that is held to be competent. If the applicant duly appears in that jurisdiction within one month of notice of the resolution declaring lack of jurisdiction, the applicant shall be regarded as having duly appeared on the date when the period for lodging applications for judicial review began, if the applicant lodged the application according to the instructions in the document giving notice of the act or the said document was defective.

CHAPTER II

Bodies and competences

Section 6. The jurisdiction for judicial review is made up of the following bodies:

a) Single-judge administrative courts.

b) Single-judge central administrative courts.

c) Administrative divisions of superior courts.

d) The Administrative Division of the National Court.

e) The Administrative Division of the Supreme Court.

Section 7. 1. The bodies of the jurisdiction for judicial review competent to hear a matter shall also be competent for all connected incidental proceedings and competent to enforce rulings handed down as indicated in Section 103.1.

2. The competence of single-judge administrative courts and administrative divisions cannot be postponed and must be observed by them to exist, albeit an *ex officio* basis, following a ten-day period in which the parties and the Prosecution Service may petition to be heard by the court
3. A declaration of lack of competence shall take the form of an order and must be issued before a ruling is given. The proceedings shall be forwarded to the competent body in the jurisdiction, where they shall take their course. If competence is held by a court of a higher rank, a grounded statement shall be appended and the decision of the higher court shall be observed.

Section 8. 1. Single-judge administrative courts shall hear, in single or first instance, under the terms of this act, claims for judicial review of acts of local entities or entities and corporations dependent upon or linked to local entities. This does not include challenges to development planning instruments.

2. Single-judge administrative courts shall moreover hear, in single or first instance, claims for judicial review of administrative acts of autonomous community administrations, save when the acts at issue come from the autonomous community's governing council and the object is:

a) Personnel issues, save where the issues refer to the creation or termination of the service relationship of career civil servants.

b) Administrative penalties consisting in fines not in excess of 60,000 euros and discontinuation of activities or stripping of rights for a time not exceeding six months.

c) Financial liability claims for a sum not exceeding 30,050 euros.

3. Single-judge administrative courts shall hear, in single or first instance, claims for judicial review of provisions and acts of the peripheral state and autonomous community administrations, against acts of organisations, bodies, entities or corporations organised under public law whose competence is not nationwide and against the decisions of higher bodies when they confirm in every particular decisions handed down by said bodies in appeal, oversight or protection proceedings.

Exceptions shall be made for acts of a sum in excess of 60,000 euros ordered by the peripheral state administration and national public organisations whose competence is not nationwide, or when the acts are ordered in the exercise of competences over public property, national public works, condemnation under sovereign right of eminent domain or special properties.

4. Single-judge administrative courts shall, moreover, hear all decisions on matters of foreign citizens handed down by the peripheral state administration.

5. It falls to single-judge courts to hear challenges to acts of district election boards and challenges concerning the proclamation of candidacies and candidates by any election boards, in the terms set in election legislation.

6. Single-judge administrative courts shall also hear authorisations to enter homes and other places whose access requires the owner's consent, provided that the situation is due to the enforcement of acts of the public administration.

Likewise, it shall fall to single-judge administrative courts to authorise or give judicial ratification of measures that the health authorities consider urgent and necessary for public health and that imply the deprivation or restriction of freedom or some other fundamental right.

In addition, single-judge administrative courts shall hear authorisations for entering and inspecting homes, business venues, land and means of transport ordered by the National Competition Commission when said access and inspection require the owner's consent and the owner refuses or there is a risk of refusal.

Section 9. Single-judge central administrative courts shall hear claims for judicial review of administrative acts whose object is:

a) In first or single instance, acts ordered in personnel matters by ministers and secretaries of state, save where the acts confirm in appeal, oversight or protection proceedings acts dictated by lower bodies, or where the acts refer to the creation or termination of the service relationship of career civil servants, or in the matters included in Section 11.1.a) on military personnel.

b) In first or single instance, acts of the central bodies of the general state administration in the events provided for in subparagraph 2.b) of Section 8.

c) In first or single instance, general provisions and acts issued by public organisations having their own legal personality and entities belonging to the state public sector with nationwide competence, the provisions of Section 10.1.*i)* notwithstanding.

d) In first or single instance, decisions handed down by ministers and secretaries of state in matters of financial liability when the claim is for a sum not exceeding 30,050 euros.

e) In first instance, decisions declaring applications for political asylum inadmissible.

f) In single or first instance, decisions in oversight proceedings handed down by the Spanish Committee on Discipline in Sport.

Section 10. Competences of the administrative divisions of superior courts.

1. The administrative divisions of superior courts shall hear in single instance claims for judicial review in connection with:

a) Acts of local entities and autonomous community administrations that are not assigned to single-judge administrative courts.

b) General provisions issued by autonomous communities and local entities.

c) The acts and provisions of the governing bodies of the legislative assemblies of autonomous communities and autonomous community institutions analogous to the Court of Auditors and the Ombudsman in matters of personnel, administration and asset management.

d) Acts and decisions ordered by regional and local economic administrative courts ending the economic administrative procedure.

e) Decisions handed down by the Central Economic Administrative Court in matters of devolved taxes.

f) Acts and provisions of provincial and autonomous community election boards, likewise appeals made under election law against election board resolutions about the proclamation of elections and election winners and the proclamation of the presidents of local corporations, in the terms of election legislation.

g) Accords between public administrations whose competences are exercised within the territory of the autonomous community in question.

h) Prohibitions of assembly or proposed modifications of gatherings as provided for in Constitutional Act 9/1983 of 15 July Regulating the Right to Freedom of Assembly.

i) Acts and decisions ordered by bodies of the general state administration whose competence is nationwide and whose institutional level is lower than that of a minister or secretary of state, in matters of personnel, special properties and condemnation under sovereign right of eminent domain.

j) Acts and decisions of the autonomous community bodies competent to apply the Act on Competition Defence.

k) Decisions handed down by the competent body settling appeals in matters of contracting as provided for in Section 311 of Act 30/2007 of 30 October on Public Sector Contracts, in connection with contracts included within the sphere of competence of autonomous communities or local corporations.

l) Decisions handed down by sub-national multi-judge administrative courts for contract appeals.

m) Any other administrative actions not expressly assigned to the competence of other bodies in this jurisdiction.

2. They shall hear in second instance appeals against rulings and orders handed down by single-judge administrative courts and the corresponding motions for admission of denied appeals.

3. It is also theirs, under the terms established in this act, to hear appeals for review of final judgements given by single-judge administrative courts.

4. They shall hear issues of competence between single-judge administrative courts sharing the same autonomous community.

5. They shall hear appeals to the Supreme Court for doctrine unification as provided for in Section 99.

6. They shall hear appeals to the Supreme Court in the interest of the law as provided for in Section 101.

Section 11. 1. The Administrative Division of the National Court shall hear in single instance:

a) Claims for judicial review in connection with general provisions and acts of ministers and secretaries of state in general and in personnel matters referring to the creation or termination of the service relationship of career civil servants. Likewise, it shall hear claims for judicial review of acts of any central bodies of the Ministry of Defence referring to promotions, order and seniority in the promotion list and postings.

b) Claims for judicial review of acts of ministers and secretaries of state when they rectify in appeal proceedings or in oversight or protection procedures acts dictated by different bodies with nationwide competence.

c) Claims for judicial review in connection with accords between public administrations not assigned to superior courts.

d) Acts of an economic administrative nature dictated by the Ministry of Finance and the Exchequer and by the Central Economic Administrative Court, with the exception provided for in Section 10.1.e).

e) Claims for judicial review of acts dictated by the Commission Monitoring for Terrorist Financing Activities and judicial review of authorisations to extend the deadlines applicable to the measures taken by said Commission, pursuant to the Act on the Prevention and Freezing of Terrorist Financing.

f) Decisions handed down by the Multi-judge Central Administrative Court for Contract Appeals, with the exception of the provisions in Section 10.1.k).

2. It shall hear in second instance appeals against orders and rulings handed down by single-judge central administrative courts and the corresponding motions for admission of denied appeals.

3. It shall hear appeals for review of final judgements given by single-judge central administrative courts.

4. It shall also hear issues of competence between single-judge central administrative courts.

Section 12. 1. The Administrative Division of the Supreme Court shall hear in single instance claims for judicial review in connection with:

a) Acts and provisions of the Council of Ministers and Delegated Government Committees.

b) Acts and provisions of the General Council of the Judiciary.

c) Acts and provisions in matters of personnel, administration and asset management adopted by the competent authorities of the Congress of Deputies, the Senate, the Constitutional Court, the Court of Auditors and the Ombudsman.

2. It shall also hear:

a) All types of appeals to the Supreme Court, in the terms established herein, and the corresponding motions for admission of denied appeals.

b) Appeals to the Supreme Court and appeals for review filed against decisions handed down by the Court of Auditors, under the terms of the Act on the Operation of the Court of Auditors.

c) Appeals for review of final judgements handed down by the administrative divisions of superior courts, of the National Court and of the Supreme Court, save as provided for in Section 61.1.1. of the Constitutional Act on the Judiciary.

3. Likewise it shall hear:

a) Claims presented in connection with acts and provisions of the Central Election Board, likewise claims for judicial review of decisions on the proclamation of election winners in the terms set in election legislation.

b) Claims presented against acts of election boards taken in the procedure for the election of members of the governing chambers of multi-judge courts, in the terms of the Constitutional Act on the Judiciary.

Section 13. In applying the competence distribution rules contained in the preceding sections, account shall be taken of the following criteria:

a) References made to the administration of the State, autonomous communities and local entities encompass entities and corporations dependent upon or linked to each such administration.

b) Competence assigned to single- and multi-judge courts for judicial review of administrative acts includes competence concerning inaction and actions performed *ultra vires*.

c) Save where expressly stated otherwise, the assignment of competence by reason of subject matter prevails over the assignment of competence by reason of the administrative body committing the act.

CHAPTER III

Territorial competence of single- and multi-judge courts

Section 14. 1. Territorial competence of single-judge courts and superior courts shall be found pursuant to the following rules:

First. Generally the court whose judicial district contains the central offices of the body that issued the original provision or act challenged shall be the competent court.

Second. For judicial review of acts of public administrations relating to responsibility for public assets, personnel, special properties or penalisations, either the court serving the judicial district that bounds the applicant's domicile or the court serving the domicile of the body authoring the act challenged, at the applicant's discretion.

For judicial review relating to acts performed by autonomous community or local administrations, the choice to which this second rule refers shall be held to be limited to the superior court serving the judicial district that bounds the central office of the body ordering the original act challenged.

Third. When city zoning plans and development operations, expropriation proceedings and generally proceedings entailing administration intervention in private property are challenged, competence shall fall to the court whose judicial district contains the properties at issue.

2. When the original act challenged affects a number of recipients and the competent courts are various under the above rules, competence shall be assigned to the court whose judicial district contains the central offices of the body that ordered the original act challenged.

CHAPTER IV

Components and operation of administrative divisions

Section 15. 1. The Administrative Division of the Supreme Court shall be divided into sections. The chief justice of each section shall be the chief justice of the division or the most senior justice in the section, save in the event provided for in Section 96.6, where the chief justice of the section shall be the Chief Justice of the Supreme Court.

2. To hear or deliberate and pass judgement, the attendance of the chief justice and the following justices shall be necessary:

a) All justices in the section in appeals to the Supreme Court and appeals for review.

b) Four justices in all other cases.

3. For ordinary business, the attendance of the chief justice and two other justices shall be sufficient.

Section 16. 1. The Administrative Division of the National Court shall be made up of as many sections as advisable in view of the number of cases. The chief justice of each section shall be the chief justice of the division or the most senior justice in the section.

2. Administrative divisions of Superior Courts whose members number in excess of five shall be divided into sections. The chief justice of each section shall be the chief justice of the division or the most senior justice in the section.

3. To hear or deliberate and pass judgement and to conduct ordinary business, the attendance of the chief justice and two other justices shall be sufficient.

4. The deciding of appeals to the Supreme Court in the interest of the law, appeals to the Supreme Court for doctrine unification and appeals for review shall be entrusted to a section of the administrative division whose seat is at the superior court. That section shall be made up of the chief justice of the said division, who shall preside, the chief justice or chief justices of the other administrative divisions and of any sections thereof (not to exceed two in number), and any justices of the aforesaid division or divisions needed to make up a total of five members.

If the administrative division or divisions have more than one section, the Governing Chamber of the Superior Court shall make up the roster for each judicial year, under which the chief justices of sections shall sit on the section regulated in this paragraph. It shall do likewise for all justices assigned to the division or divisions.

CHAPTER V

Case distribution

Section 17. 1. The distribution of cases amongst the various divisions of a multi-judge court or amongst the various sections of a division shall be decided upon by the governing chamber of the multi-judge court in question, taking account of the nature and homogeneity of the subject matter to which the cases refer.

2. The same criterion shall be taken into account for the distribution of cases amongst the various single-judge administrative courts of a single city. Approval must be given by the governing chamber of the superior court, on a motion by the Board of Judges of this jurisdiction.

3. Case distribution resolutions shall be made every two years and reported to the General Council of the Judiciary for the exclusive purpose of publication in the *Boletín Oficial del Estado* or in the official journal of the autonomous community, as appropriate, before the opening of courts.

Where there is a change in the competence of the different single-judge courts sharing the same judicial district, the different divisions in the same multi-judge court or the different sections of a division by reason of a new case distribution, the single-judge court, division or section that was competent when the action was lodged, according to the resolutions in force at that time, shall continue hearing proceedings under way and shall deliver judgement thereon.

TITLE II

The Parties

CHAPTER ONE

Capacity to file proceedings

Section 18. Capacity to file proceedings in the jurisdiction for judicial review belongs to the persons who hold such capacity under the Code of Civil Procedure. Capacity also belongs to minors acting to defend legitimate rights and interests for which legislation permits them to bring suit without the need for assistance by their parent, guardian or custodian.

Groups of affected parties, unions having no legal personality or having no independent or autonomous property, all of which are entities fit to hold rights and obligations regardless of whether they fall into the formal structures of legal persons, shall also have capacity to file proceedings in the jurisdiction for judicial review when the act expressly so declares.

CHAPTER II

Locus standi

Section 19. 1. The following have legal standing in the jurisdiction for judicial review:

a) Natural or legal persons holding a legitimate right or interest.

b) Corporations, associations, trade unions and groups and entities to which Section 18 refers that are affected or are legally empowered to defend legitimate collective rights and interests.

c) The State Administration, when it holds a legitimate right or interest, to challenge acts and provisions of the administrations of autonomous communities and public organisations linked to autonomous communities, likewise those of local entities, pursuant to legislation on local government, and acts and provisions of any other public entity not subjected to oversight.

d) The administration of autonomous communities, to challenge acts and provisions affecting the sphere of their autonomy and issued by the state administration or any other administration or public organisation, likewise acts and provisions of local entities, pursuant to legislation on local government.

e) Local sub-national entities, to challenge acts and provisions affecting the sphere of their autonomy and issued by the state administration or autonomous community administrations, likewise acts and provisions of public organisations having their own legal personality and linked to the state administration or autonomous community administrations or acts and provisions of other local entities.

f) The Prosecution Service, to be party to the proceedings determined by the act.

g) Entities organised under public law and having legal personality of their own and linked to or dependent upon any of the public administrations, to challenge acts and provisions affecting the sphere of their purposes.

h) Any citizen, in a public interest claim, in the cases expressly provided for by law.

i) The parties affected, for defence of the right to equal treatment for women and men. In addition trade unions and legally organised associations whose primordial purpose is to defend equal treatment for their female and male members shall also hold legal standing provided they hold authorisation from the affected parties.

When the affected parties are a group of persons whose number is undefined or difficult to define, legal standing to file proceedings for the defence of these misty interests shall be held exclusively by the public organisations that have competence in the matter, the most representative trade unions and the nationwide associations whose primordial purpose is equality for women and men. This shall be notwithstanding the parties' own legal standing to file proceedings, if the parties affected are not undefined.

The harassed person shall be the only person with legal standing in litigation over sexual harassment and harassment for reason of sex.

2. The administration committing an act holds legal standing to challenge that act in this jurisdiction, subject to its declaration that the act is injurious to the public interest in the terms established by the act.

3. Prosecution of action by local citizens in the name and interest of local entities is governed by the legislation on local government.

4. Public administrations and private persons may file for judicial review of decisions made by the administrative bodies whose task it is to decide upon special appeals and complaints in matters of contracting referred to by public sector contract legislation without the need for any declaration of injuriousness in the former case.

Section 20. The following may not file for judicial review of public administration activity:

a) Bodies of that same public administration and members of its collegial bodies, save where expressly authorised by legislation with the rank of act.

b) Private persons when they act on behalf or as mere agents or proxies of that same public administration.

c) Entities organised under public law that are dependent upon or linked to the state, autonomous communities or local entities, with respect to the activity of the administration on which they depend. Exceptions are made for those entities that are endowed by law with a specific statute of autonomy with respect to the said administration.

Section 21. 1. The following shall be considered the defendant:

a) Public administrations or any of the bodies mentioned in Section **1.**3 against whose activity the judicial review is directed.

b) Persons or entities whose legitimate rights or interests may be affected should the claimant's demands be upheld.

c) The insurers of public administrations, which shall always be co-defendants together with the administration they insure.

2. For the purposes of subparagraph *a)* of the paragraph above, in the case of public corporations or organisations subject to oversight by a sub-national administration, the defendant administration is understood to be:

a) The organisation or corporation committing the overseen act or provision, if the result of the oversight is approval.

b) The administration exercising oversight, if the act or provision is not fully approved in oversight.

3. In judicial reviews of decisions taken by the administrative bodies whose task it is to decide upon special appeals and complaints in matters of contracting referred to by public sector contract legislation, the aforesaid bodies shall not be regarded as the defendant. The persons or administrations favoured by the act under judicial review or appearing in that capacity pursuant to Section 49 shall be regarded as the defendants.

4. If the applicant for judicial review bases the cause of action on the illegality of a general provision, the administration that authored the general provision shall also be considered a defendant, even if the administrative action under judicial review was does issued by that administration.

Section 22. If the legal standing of the parties stems from a transferable legal relationship, the transferee may succeed to the position of the initial party at any stage of proceedings.

CHAPTER III

Representation and defence of the parties

Section 23. 1. In proceedings in single-judge courts, the parties may retain a barrister to represent them and shall always be assisted by a solicitor. When the parties retain a solicitor to represent them, it shall be the solicitor who shall be served notice of proceedings.

2. In proceedings in multi-judge courts, the parties must retain a barrister to represent them and be assisted by a solicitor.

3. Civil servants, however, may appear on their own behalf in defence of their statutory rights in reference to personnel questions not involving the dismissal of irremovable public employees.

Section 24. The representation and defence of public administrations and constitutional bodies are governed by the Constitutional Act on the Judiciary and the Act on Legal Aid for the State and Public Institutions, likewise rules handed down on the subject by autonomous communities within the framework of their competences.

TITLE III

Object of Judicial review

CHAPTER ONE

Challengeable administrative activity

Section 25. 1. Applications for judicial review are admissible in connection with provisions of a general nature and express and alleged acts of the public administration ending the administrative procedure, be they final or non-final, provided the non-final provisions or acts in question decide directly or indirectly on the merits of the case, find it impossible to continue the procedure, place legitimate rights or interests in a defenceless position or do irreparable injury to legitimate rights or interests.

2. Applications for judicial review of administrative inaction and material action taken by the administration *ultra vires* are also admissible in the terms established herein.

Section 26. 1. In addition to direct challenges to provisions of a general nature, challenges may also be admitted against acts performed in application of provisions of a general nature, claiming that such provisions are not lawful.

2. Failure to mount a direct challenge to a general provision or dismissal of a claim for judicial review of a general provision does not prevent challenges to acts of application grounded on the terms of the paragraph above.

Section 27. 1. When an administrative court has handed down a final ruling finding the contents of the applied general provision illegal, the question of illegality must be put to the court competent to conduct the direct judicial review of the provision, save as provided for in the two paragraphs below.

2. When the single- or multi-judge bench competent to conduct the judicial review of an act grounded on the invalidity of a general provision is also competent to conduct the judicial review of the general provision, the ruling shall declare the general provision valid or quash it.

3. Without the need to pose a question of illegality, the Supreme Court shall quash any general provision when, at any stage in proceedings, it hears a claim against an act on the grounds of the illegality of the general provision in question.

Section 28. Petitions for judicial review shall not be admitted against acts that are a reproduction of other, previous, definitive, final acts or against acts confirming acts that have gained consent through not having been challenged in due time and fashion.

Section 29. 1. When the administration has a particular obligation it must perform vis-à-vis one or more particular persons under a general provision requiring no acts of application or under an administrative act, contract or agreement, the persons entitled to the performance of the obligation may file a protest with the administration demanding discharge of the said obligation. If within three months of the date of the protest the administration has not done as requested and has not reached an agreement with the parties concerned, the said parties may file for judicial review of administration inaction.

2. When the administration fails to execute its own final acts, the parties affected may request execution, and should execution not be forthcoming within one month of the request, the applicants may file a petition for judicial review, which shall be processed by the short procedure regulated in Section 78.

Section 30. In cases of *ultra vires* action, the party concerned may file a demand for cessation of said action with the acting administration. If the demand is not lodged or is not heeded within ten days of submission, a claim for judicial review may be presented directly.

CHAPTER II

Demands of the parties

Section 31. 1. The applicant may seek to have acts and provisions amenable to challenge under the preceding chapter declared unlawful and rendered void or quashed, as applicable.

2. The applicant may also seek acknowledgement of a legal situation specific to an individual and appropriate measures for full reinstatement of that situation, *inter alia,* payment for damages.

Section 32. 1. When an application is made for judicial review of administrative inaction under Section 29, the applicant may seek to have the court sentence the administration to discharge its obligations pursuant to the specific terms in which those obligations are established.

2. If the object of the petition is a material action constituting *ultra vires* action, the applicant may seek to have the action declared unlawful and quashed and may seek the other measures provided for in Section 31.2 where appropriate.

Section 33. 1. Courts in the administrative jurisdiction shall pass judgement within the limit of the demands submitted to them by the parties and the grounds of the claim and the opposition.

2. The single- or multi-judge bench shall notify the parties if, in handing down their ruling, they feel that the question brought before them may have been incorrectly described by the parties due to the apparent existence of other potential grounds on which the claim or the opposition could have been based. The single- or multi-judge bench shall so notify the parties in the form of an order advising the parties that final judgement is pending, stating the potential grounds the court feels have been overlooked and granting the parties a shared ten-day period in which to submit such arguments as they see fit. The period for giving judgement shall be suspended meanwhile. No appeal may be made against the aforesaid order.

3. This same sequence shall be observed where certain precepts of a general provision are directly challenged and the court feels it necessary to extend the procedure to other connected or consequential precepts of the same provision.

CHAPTER III

Joinder

Section 34. 1. Claims presented in connection with the same act, provision or action may be joined.

2. Claims referring to several acts, provisions or actions shall also be joined when some claims are a reproduction, confirmation or execution of others or some other direct connection exists between the claims.

Section 35. 1. The plaintiff may include in the suit as many demands as meet the requirements indicated in the preceding section.

2. If the court clerk finds joinder inappropriate, the clerk shall so inform the court, which, if appropriate, shall order the party to file the claims separately within thirty days. Should the party fail to do so, the judge shall deem that claim in whose respect orders were not followed to have lapsed.

Section 36. 1. If, before sentencing, an act, provision or action related with the object of the judicial review in progress under Section 34 is ordered or the applicant gains knowledge of some such act, provision or action, the applicant shall have the period indicated in Section 46 in which to extend the claim to include that administrative act, provision or action.

2. Notice of this petition, which shall cause the procedure to be suspended, shall be served by the court clerk on the parties, who shall have a shared five-day period in which to submit arguments.

3. If the court agrees to the extension, the suspension of proceedings shall continue until the extension has reached the same stage as the initial proceedings.

4. The terms of paragraph 1 of this section shall be applicable also when a claim for judicial review is lodged against alleged acts and, during application processing, the administration issues an express decision with respect to the cause of action initially presented. In that case the applicant may abandon the claim on the grounds of acceptance of the express decision or petition to extend the claim to include the express decision. Once the initially lodged claim has been abandoned, the period for applying for judicial review of the express decision, which shall be two months long, shall be counted from the day following the date of service of notice of the express decision.

Section 37. 1. When several claims for judicial review are lodged vis-à-vis acts, provisions or actions in which any of the circumstances indicated in Section 34 are attendant, the court may at any point in procedure, following a five-day period in which pleadings may be entered by any party, rule for joinder on an *ex officio* basis or at the request of any party.

2. When a number of claims with the same object are on the docket of the same court and there is no joinder of action amongst them, the court must process one or more as preferred claims, following a five-day period in which pleadings may be entered by any party, suspending the course of the remainder until a ruling has been handed down on the first.

3. A certified copy of the final ruling shall be attached to the suspended claims by the court clerk, who shall notify the claimants involved that they have five days in which to apply for extension of its effects in the terms set in Section 111 or resumption of proceedings or to abandon their claims.

Section 38. 1. When the administration dispatches its administrative file to the court, it shall notify the court if it has any knowledge of other claims for judicial review that may meet the requirements for joinder set in this chapter.

2. The court clerk shall bring to the knowledge of the court any proceedings under way at the Judicial Office that may meet the requirements for joinder set in this chapter.

Section 39. The only means of appeal to which decisions on joinder, extension and preferential processing are amenable are petitions for reconsideration filed with the court that delivered the decision.

CHAPTER IV

Amount claimed

Section 40. 1. The court clerk shall set the amount of claims for judicial review once the written claim and written reply have been made, in which the parties may state their opinion as to amount in the form of petitions after the principal petition.

2. Otherwise the court clerk shall instruct the applicant to set the amount, granting a period not in excess of ten days in which to do so. After this period, should the applicant have failed to do as instructed, the court clerk shall hear the applicant and thereafter decide accordingly.

3. When the defendant disagrees with the sum set by the applicant, the defendant shall so state in writing within ten days. The court clerk shall decide accordingly. In this case the court shall definitively settle the question in its ruling.

4. The party aggrieved by the decision stipulated in the paragraph above may submit a motion for admission of a denied appeal on the grounds that the amount was not properly set, if the amount was cause for finding the party's appeal to the Supreme Court not properly prepared or not admitting the party's appeal to the Supreme Court for doctrine unification or the party's appeal to the next higher court.

Section 41. 1. The amount of the claim for judicial review shall be determined by the economic value of the applicant's demand.

2. When there are several applicants, the economic value of the demand presented by each shall be heeded instead of the sum of all applicants' demands.

3. In joinders or extensions, the amount shall be determined by the sum of the economic value of the demands of the claims joined or extended. However, this shall not entitle demands for a lesser amount to the possibility of appeal to the next higher court or to the Supreme Court.

Section 42. 1. To find the economic value of a demand, account shall be taken of the rules of legislation on civil procedure, with the following special features:

a) When the applicant petitions only for quashing of the act, the economic content of the act shall be heeded. For that purpose account shall be taken of the principal debit but not any surcharges, costs or any other kind of liability, save where the surcharges, costs or other liability are of a greater amount than the principal debit.

b) When the applicant petitions for quashing and moreover acknowledgement of a legal situation specific to an individual or for enforcement of an administrative obligation, the amount shall be found:

First. According to the full economic value of the object of the protest, if the public administration has turned down all the applicant's demands in administrative proceedings.

Second. As the difference in amount between the object of the protest and the act grounding the claim for judicial review, if the administration has partially acknowledged the applicant's demands in administrative proceedings.

2. Claims aimed at directly challenging general provisions, including development planning instruments, claims referring to civil servants but not concerning rights or penalisations amenable to economic assessment, and claims in which economically appraisable demands are joined with demands not amenable to economic appraisal shall be held to be of unspecified amount.

Claims lodged against acts in Social Security matters whose object is the registration of enterprises, the formalisation of protection from occupational risks, rate structures, coverage of temporary disability benefits, affiliation and worker registration, cancellation and data variations shall also be held to be of unspecified amount.

TITLE IV

Judicial Review Procedure

CHAPTER ONE

Procedure in first or single instance

SUB-CHAPTER 1. PRELIMINARY PROCEEDINGS

Section 43. When the administration that authored an act petitions for judicial review to quash that act, it must have first declared the act injurious to the public interest.

Section 44. 1. In litigation between public administrations, claims for judicial review may not be filed in administrative proceedings. Nevertheless, when one administration files for judicial review against another, the former may first instruct the latter to repeal the provision, annul or revoke the act, cease or modify the material action or initiate the activity it is obligated to perform.

When the contracting administration, the contractor or third parties endeavour file for judicial review of decisions taken by the administrative bodies whose task it is to decide upon special appeals and complaints in matters of contracting to which public sector contract legislation refers, they shall file the claim directly and without the need for any demand or administrative appeal.

2. The instructions must be addressed to the competent authority in writing, giving grounds, specifying the provision, act, action or inaction. The instructions must be issued within two months of the publication of the rule or the time when the instructing administration gained or could have gained knowledge of the act, action or inaction.

3. The instructions shall be held to have been rejected if the recipient fails to reply within one month of receipt.

4. An exception is made for provisions of legislation on local government concerning these matters.

SUB-CHAPTER 2. FILING PROCESS AND PETITIONS FOR FILES

Section 45. 1. Claims for judicial review shall be initiated in a written application that merely cites the provision, act, inaction or action constituting the challenged *ultra vires* operation and petitions that the claim be held to have been filed, save when this act provides otherwise.

2. This application shall be accompanied by:

a) The credentials of the person appearing on behalf of the party, save where said credentials are attached to the proceedings for another claim pending before the same court, in which case a certificate may be requested, to be attached to the case records.

b) The document or documents accrediting the legal standing of the plaintiff when that standing has been gained by inheritance or by any other title.

c) The copy or transcript of the provision or express act at issue in the application, or identification of the file to which the act belongs or the official periodical in which the provision was published. If the object of the

application is administrative inaction or operation *ultra vires,* mention shall be made of the authority or office to which the object is attributed, the file in which the object originated and any other particulars that might aid in sufficiently identifying the object of the requested judicial review.

d) The document or documents accrediting compliance with the requisites for taking legal action for legal persons under the applicable rules or statutes, save where such accreditation is incorporated or inserted as pertinent within the body of the application mentioned in subparagraph *a)* above.

3. The court clerk shall examine *ex officio* the validity of the party's appearance as soon as the application has been submitted. If the court clerk deems it valid, the clerk shall admit the claim. If the documents stated in the paragraph above are not enclosed or the documents submitted are incomplete, and generally whenever the court clerk deems that the requisites set by this act for the party's valid appearance are not met, the clerk shall immediately instruct the claimant to remedy the failure, giving the claimant a ten-day period in which to do so, failing which the court shall declare the proceedings closed.

4. Claims against action harmful to the public interest shall be initiated in the form of a suit lodged as per Section 56.1, which shall precisely stipulate the person or persons sued and their central offices or domicile if known. This suit shall be accompanied by all events by the declaration confirming that the act is harmful to the public interest, the administrative file and, if applicable, the documents in subparagraphs 2.*a)* and 2.*d)* of this section.

5. Claims for judicial review of a general provision, act, inaction or *ultra vires* operation in which there are no interested third parties may also be initiated by means of a suit in which the challenged provision, act or conduct shall be specified and the grounds for its unlawfulness shall be given. The suit shall be accompanied by the appropriate documents from amongst those provided for in paragraph 2 of this section.

Section 46. 1. The period for filing for judicial review shall be two months long, counting from the day following the date of publication of the challenged provision or notification or publication of the express act ending administrative proceedings, if any. Otherwise the period shall be six months long and shall be counted, for the applicant and other possible parties concerned, as of the day following the date when the alleged act occurred according to the rules specific to the alleged act.

2. In the events provided for in Section 29, the two months shall be counted as of the day following the expiration of the periods indicated in the said section.

3. The period for filing for judicial review of an *ultra vires* action shall be ten days long, counting as of the day following the date when the period established in Section 30 ends. Where there is no demand for cessation, the period shall be twenty days long as of the date when the administrative *ultra vires* action began.

4. The period for filing for judicial review shall be counted as of the day following the date when notice is served of the express decision on the optional appeal for administrative reversal or when the said appeal must be held to have been presumed dismissed.

5. The period for filing for judicial review of action harmful to the public interest shall be two months long, counting from the day following the date of the declaration confirming that the act is harmful to the public interest.

6. In litigation amongst administrations, the period for filing for judicial review shall be two months long, save where otherwise established by law. When preceded by the instructions regulated in the first three paragraphs of Section 44, the period shall be counted from the day following the date when notice of an express resolution is received or the instructions are presumed to be rejected.

Section 47. 1. Once the provisions of Section 45.3 have been complied with, on the following working day, if requested by the claimant, the court clerk shall call for the filing of the claim to be announced and shall forward the official communication for publication by the competent authority (notwithstanding payment of costs by the claimant) in the appropriate official periodical for the territorial scope of competence of the authority committing the administrative activity at issue in the claim. The court clerk may also call for publication on an *ex officio* basis, should the clerk see fit.

2. If the claim is initiated by means of a suit under Section 45.5 and the suit is filed against a general provision, the announcement of the filing of the suit must be published. The announcement shall give fifteen days for anyone having a legitimate interest in upholding the lawfulness of the challenged provision, act or conduct to appear. After this period, the court clerk shall serve notice of the suit and the documents thereto attached, that a reply may be given first by the administration and subsequently by any other defendants who have appeared.

Section 48. 1. When issuing orders as provided for in paragraph 1 of the preceding section, or by means of proceedings if publication is not necessary, the court clerk shall instruct the administration to dispatch the administrative file and order the administration to serve the summonses provided for in Section 49. The file shall be demanded from the body that authored the challenged provision or act or the body to which the inaction or *ultra vires* operation is attributed. An authenticated copy of files processed in earlier stages or phases of proceedings shall always be made before returning the files to their office of origin.

2. The file shall not be requested in the case in paragraph 2 of the preceding section, the competence granted in paragraph 5 of this section notwithstanding.

3. The file must be dispatched within the non-extendable period of twenty days, counting from the date when the letter from the court is entered in the general register of the recipient authority. The judicial authority shall be informed of the letter's entry in the general register.

4. The original file or a copy thereof shall be sent in full, with its pages numbered, authenticated where appropriate, accompanied by a table of contents (likewise authenticated) listing the documents therein contained. The administration shall always keep the original or an authenticated copy of the files it sends. If the file is requested by several courts, the administration shall dispatch authenticated copies of the original or of the copy it has kept.

5. Where judicial review of the provision is initiated by means of a suit, the court may call for the preparatory file, on an *ex officio* basis or at the request of the plaintiff. Having received the file, the court clerk shall display the file to the parties for five days, to enable them to formulate their arguments.

6. Classified documents under official secrets legislation shall be removed from the file under a grounded decision, and it shall be so stated on the table of contents and at the spot in the file once held by the removed documents.

7. Should the file submission period expire and the full file not have been received, the instructions shall be reissued. If the file is not dispatched within ten days counted as provided for in paragraph 3, responsibility shall be traced and the court clerk shall serve an admonition personally giving a period for entering arguments, after which the court shall fine the responsible authority or employee a periodic penalty payment of between three hundred and one thousand two hundred euros. The fine shall be repeated every twenty days until instructions have been complied with.

Should there be good reason for it to be impossible to determine which individual authority or employee is responsible, the administration shall be held responsible, without prejudice to the possibility of passing the fine on to the responsible party.

8. Court orders concerning files referred to in the paragraph above are amenable to petitions for reconsideration in the terms set in Section 79.

9. Definitive fines not voluntarily paid shall be enforced by judicial means of collection.

10. Should the first three periodic penalty payments be fined and the full file not yet have been dispatched, the court shall so inform the Prosecution Service, without prejudice of the possibility of continued fining. The instructions whose neglect could give rise to the third periodic penalty payment shall contain the appropriate admonition.

SUB-CHAPTER 3. SUMMONSING OF THE DEFENDANTS AND ADMISSION OF THE CLAIM

Section 49. 1. Within five days of being taken, the decision to dispatch the file shall be reported to all parties appearing as parties concerned in the file, citing them to appear as defendants within the period of nine days. Service shall be conducted under the provisions of the act regulating common administrative procedure.

In applications for judicial review of decisions taken by the administrative bodies whose task it is to decide upon special appeals and complaints in matters of contracting to which public sector contract legislation refers, any persons other than the applicant who appeared in the administrative appeal shall be summonsed as defendants and instructed to appear as defendants within nine days.

2. When all notifications have been served, the file shall be sent to the court, including proof of the summons or summonses served, save where they could not be served within the period set for dispatching the file, in which case the file shall be dispatched without delay and proof of summons shall be dispatched when all summonses have been completed.

3. On receipt of the file, the court clerk shall ascertain whether all due notices for service of summons have been given, in view of the result of the administrative actions and the contents of the application and attached documents. Should the clerk find the summonses incomplete, the clerk shall order the administration to serve the summonses necessary to ensure the defence of the interested parties who can be identified.

4. When it has proved impossible to serve a summons on an interested party at the address of record, the court clerk shall order the appropriate edict inserted into the official periodical for the territorial sphere of competence of the authority that committed the administrative activity at issue in the application. The persons summonsed through edicts may appear up to the time when they must be officially notified to reply to the suit.

5. In the event provided for in Section 47.2, the terms of the said section shall be observed.

6. Summonses of defendants in judicial review of action harmful to the public interest shall be served in person within a nine-day period.

Section 50. 1. The summons of the administration shall be deemed served through the court's petition for the file.

2. Public administrations shall be held to have appeared in proceedings when they dispatch the file.

3. Legally summonsed defendants may appear in the proceedings within the period granted. Should they do so later, they shall be deemed a party to the unprecluded proceedings. Should they fail to appear correctly, the procedure shall continue and it shall be out of order to serve any notifications of any sort on them, in the courtroom or elsewhere.

Section 51. 1. After examining the administrative file, the single-judge court or division shall declare the application inadmissible when it unequivocally and manifestly observes that:

a) The court holds no jurisdiction or competence.

b) The applicant holds no legal standing.

c) The application has been filed against an activity not amenable to challenge.

d) The period for filing applications has expired.

2. The single-judge court or division may refuse to admit the application when other, substantially identical claims have been dismissed in final ruling. In this latter case the refusal shall mention the dismissal decision or decisions.

3. When an *ultra vires* action is challenged, the single-judge court or division may also refuse to admit the application if it were evident that the administrative action was taken within the competence of and in conformity with the rules of procedure established by law.

Likewise, when failure by the administration to discharge the obligations referred to in Section 29 is challenged, the application shall not be admitted if it is evident the administration has no specific obligations with respect to the applicants.

4. Before pronouncing judgement on nonadmission, the single-judge court or division shall inform the parties of its grounds, whereupon the parties shall have a shared ten-day period to argue as they see fit, enclosing any documents that are in order.

5. The appeals provided for in this act may be filed against a nonadmission order. An admission order is not amenable to appeal, but this shall not preclude the presentation of any other grounds of inadmissibility at a later time in proceedings.

6. When nonadmission is declared under paragraph **1.**a) of this section, the terms of Sections 5.3 and 7.3 shall be observed.

SUB-CHAPTER 4. CLAIM AND REPLY

Section 52. 1. When the administrative file has been received by the court and the summonses have been checked and where necessary completed, the court clerk shall have the file delivered to the claimant for presentation of the suit within twenty days, save in any of the events in Section 51, in which case the clerk shall report to the court, which shall decide accordingly. When the claimants are several, even if not acting under a single director, the suit shall be lodged simultaneously by them all. The file delivered shall be the original or a copy.

2. If the suit is not submitted in due time, the single-judge court or division, acting *ex officio,* shall declare the suit lapsed. Nevertheless, the statement of claim shall be admitted and shall have the proper legal effects if submitted before the end of the day when notice of the order was served.

Section 53. 1. Should the term for dispatching the administrative file end and the file not have been sent, the claimant may ask, at the claimant's own initiative or that of the court clerk, to be granted a period in which to file suit.

2. If the file is received after the claimant has used the right established in the paragraph above, the court clerk shall place the file on display to the claimants and, as appropriate, the defendants for a shared ten-day period during which the parties may enter any complementary arguments they see fit.

Section 54. 1. When the suit has been filed, the court clerk shall serve the suit, including delivery of the administrative file, on the defendant parties who have appeared, giving them twenty days to reply. If the suit was filed without the administrative file's having been received, the court clerk shall summons the defendant administration to reply, admonishing it that the reply shall not be admitted unless accompanied by the said file.

2. If counsel for the defendant administration deems that the provision or administrative action under judicial review may be unlawful, counsel for the defence may petition for twenty days' suspension of proceedings in order to inform the defendant administration of counsel's considered opinion. The court clerk shall issue orders accordingly after hearing the defendant.

3. The defendant administration shall be the first defendant to lodge its reply. When other defendants apart from the administration are to reply, they shall all lodge their replies simultaneously, even if not acting under a single director. In this case it shall not be in order to deliver the administrative file, which shall be put on display at the Judicial Office, but to deliver instead a copy of the administrative file at these defendants' expense.

4. If the defendant administration is a local entity and has failed to appear in proceedings despite having been summonsed, the defendant administration shall nevertheless be served with the suit and given a period of twenty days in which to appoint a representative in court proceedings or to inform the judicial authority in writing of the grounds on which it deems the plaintiff's demand undeserving.

Section 55. 1. If the parties deem that the administrative file is incomplete, they may, within the period for filing their suit or reply, petition for the missing items to be demanded.

2. The petition to which the paragraph above refers shall cause the period at issue to be suspended.

3. The court clerk shall take the pertinent decision within three days. When the administration re-dispatches the file, it must flag the added documents in the table of contents to which Section 48.4 refers.

Section 56. 1. In the statement of claim and the defendant's reply, the findings of fact, considerations of law and arguments presented shall be duly separated. Such grounds as in order may be put forth to support the arguments presented, regardless of whether such grounds have been laid before the administration.

2. The court clerk shall conduct an *ex officio* examination of the suit and instruct the claimant to correct any defects within a period not in excess of ten days. After correction, the court clerk shall admit the suit. Otherwise the court clerk shall report to the judge, who shall decide as to its admission.

3. The parties shall enclose with their statement of claim or reply the documents on which their right is directly grounded. If such documents are not in the parties' power, the parties shall name the file, office, records or person in whose power the documents lie.

4. After the statement of claim and reply, the parties shall be allowed no additional documents beyond those found in cases of civil action. Nevertheless, before the parties are called to appear before the court or to submit closing arguments the plaintiff may additionally submit documents whose object is to upset arguments contained in the replies to the suit and that highlight disagreement over the facts.

Section 57. The court clerk shall declare the lawsuit ready for judgement forthwith save where the single- or multi-judge bench exercises the competence conferred in Section 61 in the following events:

1st If, after the principal petition, the plaintiff petitions also for judgement to be given without the need to admit evidence or to hold a hearing or to submit closing arguments and the defendant does not oppose this petition.

2nd If in the statement of claim and the defendant's reply there is no petition to admit evidence or to hold a hearing or to submit closing arguments, save where the single- or multi-judge bench, under exceptional circumstances, in view of the nature of the case, decides in favour of a hearing or written closing arguments.

In the two events above, if the defendant petitions for nonadmission of the claim, the plaintiff shall be served notice and given a five-day period in which to lodge any arguments the plaintiff deems appropriate on the possible cause of nonadmission, and the lawsuit shall be declared concluded forthwith.

SUB-CHAPTER 5. PRELIMINARY PLEAS

Section 58. 1. Within the first five days of the period for replying to the suit, the defendants may plead such grounds as may show the court to lack competence or the claim to be inadmissible under Section **69.** Such grounds, save that of lack of competence, may nonetheless be argued in the reply, even if dismissed as a preliminary plea.

2. To make use of this proceeding, the defendant administration must attach the administrative file if it has not forwarded the file already.

Section 59. 1. The court clerk shall serve the prior pleas to the plaintiff, who shall have five days in which to correct any defects.

2. When the service period has been completed, any incidental proceedings scheduled shall follow.

3. A ruling dismissing preliminary pleas shall not be amenable to appeal and shall order the defendant to reply to the suit within the period remaining.

4. A ruling upholding preliminary pleas shall declare the claim for judicial review inadmissible. Once the ruling is final, the court clerk shall order the administrative file returned to its office of origin. If lack of jurisdiction or competence is declared, the term set in Sections 5.3 and 7.3 shall be observed.

SUB-CHAPTER 6. EVIDENCE

Section 60. 1. Petitions for admission of evidence may be made only in the principal petition, the defendant's reply or complementary pleas. Such documents must contain an orderly account of the points of fact to which the evidence refers and the means of proof proposed.

2. If new facts of material relevance to the ruling on the case are revealed by the defendant's reply, the claimant may petition for the admission of evidence and specify the means of proof proposed within five days of service thereon of the defendant's reply, without prejudice to the claimant's entitlement to exercise the right to furnish documents under paragraph 4 of Section 56

3. Evidence shall be admitted when there is disagreement upon facts that are of importance for deciding the lawsuit in the court's opinion. If the object of judicial review is an administrative or disciplinary penalty, evidence shall always be admitted where there is disagreement over the facts.

4. Evidence shall be handled under the general rules established for civil proceedings, and shall be examined within thirty days. Nevertheless, evidence examined after that deadline for reasons not attributable to the party submitting it may be considered.

5. Divisions may delegate all or any of the evidence presentation proceedings to one of their justices or to a single-judge administrative court, and the administration's representative in the proceedings may in turn delegate the authority to be party to the submission of evidence to a civil servant of the administration.

6. At the giving of expert testimony, the judge shall, at the petition of any of the parties, grant a period not in excess of five days for the parties to request clarifications of the expert's opinion.

7. In accordance with procedural laws, in those procedures in which the plaintiff's arguments claim the existence of actions that were discriminatory by reason of sex, it shall fall to the defendant to prove that the measures taken were non-discriminatory and proportional.

For the purposes of the provisions of the paragraph above, the court may, at the request of a party, call for a report or opinion from the competent public authorities, should the court feel it to be useful and pertinent.

Section 61. 1. The single- or multi-judge bench may rule *ex officio* to admit evidence and may order the submission of such evidence as the court deems pertinent to ensure the wisdom of its decision.

2. When the evidence period has ended, until the lawsuit is declared ready for judgement, the court may also rule to have any evidence proceedings submitted that it deems necessary.

3. The parties shall be party to any evidence submitted under the two paragraphs above.

4. If the single- or multi-judge bench makes use of the court's authority to call for evidence submission *ex officio* and the parties have no opportunity to argue the point at the hearing or in their written closing arguments, the court clerk shall inform the parties of the result of evidence submission. The parties shall then have five days in which to argue as they see fit about the scope and importance of the evidence.

5. The judge may decide *ex officio,* after hearing the parties, or else at the request of the parties, to extend the effects of expert testimony to connected procedures. For the application of the rules on court costs in connection with the cost of

such testimony, all parties to the action to which it has been decided to extend the effects of the testimony shall be held to be parties, and the cost of the testimony shall be prorated amongst the persons awarded the costs of the said action.

SUB-CHAPTER 7. HEARING AND CLOSING ARGUMENTS

Section 62. 1. Save where provided otherwise in this act, the parties may petition for a hearing, for the submission of closing arguments or for the lawsuit to be declared ready for judgement forthwith.

2. Said petition must be formulated after the principal petition in the statement of claim or the defendant's reply or made in writing and submitted within five days of the date of notice of the ruling proceedings declaring the evidence period concluded.

3. The court clerk shall issue orders accordingly when both parties submit the same petition. Otherwise the court clerk shall only order a hearing or the submission of closing arguments when the petition is made by the plaintiff or, after the submission of evidence, when the petition is made by either party. This shall be without prejudice to the provisions of paragraph 4 of Section 61.

4. If the parties have not lodged any petitions whatsoever, the judge or court may, in exceptional circumstances, in view of the nature of the case, rule to hold a hearing or to receive closing arguments.

Section 63. 1. If a hearing is ordered, the court clerk shall schedule the hearing in strict order of case seniority, with the exception of cases referring to matters that must take preference due to lapse of offence or a grounded decision by the court based on exceptional circumstances. When ready for judgement, such preferential cases may be placed before those that have not yet been scheduled. In scheduling hearings, the court clerk shall likewise heed the criteria established in Section 182 of the Code of Civil Procedure.

2. At the hearing the parties shall be recognised in the proper order and allowed to state their case succinctly. The judge or chief justice of the division, in person or through the reporting justice, may invite counsel for the defence of the parties, before or after the oral reports, to specify the facts and to descend to particulars or to enter clarifications or rectifications in order to define the object of debate.

3. The hearing shall be recorded on a medium fit for recording and reproducing both sound and picture. The court clerk must take the electronic document in which the recording is embodied into safekeeping. The parties may request copies of the original recordings at their own cost.

4. Provided that the necessary technological means are available, the court clerk shall guarantee the authenticity and completeness of anything recorded or reproduced by applying thereto a recognised electronic signature or other security system that offers similar guarantees under the law. In this case the court clerk need not be present at the hearing, save where the parties have so requested at least two days prior to the hearing, or where the court clerk considers it necessary make an exception and attend in view of the complexity of the case, the number and nature of the items of evidence to be submitted, the number of parties, the possibility of the occurrence of unrecordable incidents or the attendance of other equally exceptional circumstances justifying the court clerk's presence. In that event the court clerk shall draw up a brief record pursuant to the paragraph below.

5. If the mechanisms of guarantee provided for in the paragraph above cannot be used, the court clerk must set down the following particulars in the record: number and class of procedure; place and date; duration, persons in attendance; pleas and arguments of the parties; decisions made by the single- or multi-judge bench; likewise any circumstances and incidents that could not be recorded on the regular medium. The recordings of the sessions shall be attached to this record.

6. When the recording media provided for in this section cannot be used for any reason, the court clerk shall draw up a record of each session, stating therein with the necessary breadth and detail the pleas and arguments of the parties, any incidents and complaints and the decisions taken.

7. The record provided for in paragraphs 5 and 6 of this section shall be drawn up in computerised form. It may not be handwritten save on those occasions when the courtroom where the proceedings are held has no computer facilities. In these cases, at the conclusion of the session, the court clerk shall read out the record, making therein

such corrections as demanded by the parties and considered fit by the clerk. This record shall be signed by the court clerk after the judge or chief justice, the parties, their representatives or counsel and any experts.

Section 64. 1. When the court calls for closing arguments, the parties shall present succinct arguments about the facts, the evidence submitted and the considerations of law on which their demands are based.

2. The submission period shall be ten successive days for plaintiffs and defendants, being simultaneous for each of these groups of parties if in either group more than one person has appeared not acting together under a single representative.

3. The day for voting and sentencing shall be scheduled in the order stated in paragraph 1 of the preceding section.

4. When the hearing has been held or the closing arguments have been submitted, the single- or multi-judge bench shall declare that the lawsuit is ready for judgement, save where the single- or multi-judge bench makes use of the authority referred to in paragraph 2 of Section 61, in which case said declaration shall be made immediately after the conclusion of evidence submission as ordered.

Section 65. 1. Questions not brought up in the statement of claim or the defendant's reply cannot be introduced at the hearing or in the closing arguments.

2. When the single- or multi-judge bench sees fit to allow grounds relevant for the judgement yet different from the grounds pleaded to be discussed at the hearing or in the closing arguments, the single- or multi-judge bench shall notify the parties by means of an order, giving them ten days to be heard on this respect. This order shall not be amenable to appeal.

3. The plaintiff may petition at the hearing or in the closing arguments for the ruling to contain a particular pronouncement upon the existence and amount of damages for which compensation is sought, if the proved damages are already a matter of record in the case.

Section 66. Direct claims for judicial review of general provisions shall take preference, and once concluded they shall be voted upon and judged before any other claims for judicial review, regardless of instance or stage, save for the special process for the protection of fundamental rights.

SUB-CHAPTER 8. RULING

Section 67. 1. The ruling shall be handed down within the period of ten days of the lawsuit's being declared ready for judgement and shall decide upon all questions disputed in the proceedings.

2. When the single- or multi-judge bench observes that the ruling cannot be handed down within the set period, the single- or multi-judge bench shall cite due grounds and shall schedule a specific later date on which to give judgement, notifying the parties accordingly.

Section 68. 1. The ruling shall give one of the following judgements:

a) Nonadmission of the claim for judicial review.

b) Upholding or dismissal of the claim for judicial review.

2. The ruling shall moreover contain the appropriate award of costs.

Section 69. The ruling shall declare the claim or any of the causes of action inadmissible in the following cases:

a) Where the administrative court has no jurisdiction.

b) Where the claim has been filed by a person who is incapable, not duly represented or without legal standing.

c) Where the object is provisions, acts or actions not amenable to challenge.

d) Where the claim concerns *res judicata* or the same case is pending in another court.

e) Where the initial statement of claim is submitted in untimely fashion.

Section 70. 1. The ruling shall dismiss the claim when the challenged provision, act or action is lawful.

2. The ruling shall uphold the claim for judicial review when the provision, action or act commits any legislative infraction, including *détournement du pouvoir*.

"*Détournement du pouvoir*" is understood to be the exercise of administrative powers for purposes other than those set by legislation.

Section 71. 1. When the ruling upholds the claim for judicial review:

a) It shall declare the protested provision or act unlawful and quashed in full or in part or shall order the challenged action stopped or modified.

b) If the claimant sought acknowledgement and reinstatement of a legal situation specific to an individual, the ruling shall acknowledge the said legal situation and take such measures as necessary for the full reinstatement of the said legal situation.

c) If the measure consists in issuance of an act or performance of a legally binding action, the ruling may set a period for compliance with judgement.

d) If a demand for damages is upheld, the right to redress shall at all events be declared, indicating likewise who is obligated to pay compensation. The ruling shall also set the amount of the compensation when asked expressly by the claimant to do so and sufficient proof is a matter of case record. Otherwise the bases for determining the amount shall be established and the definitive specification of the amount shall be deferred until the judgement execution period.

2. Judicial authorities may not determine how the precepts of a provision must be worded to replace quashed general provisions and may not determine the discretionary contents of quashed acts.

Section 72. 1. A ruling declaring a claim for judicial review inadmissible or dismissed shall have effects amongst the parties only.

2. Quashing of a provision or act shall have effects for all persons affected. Final rulings quashing a general provision shall have general effects as of the date of publication of the judgement and the quashed precepts in the same official periodical where the quashed provision was published. Final rulings quashing an administrative act affecting an indeterminate multiple number of persons shall also be published.

3. Upholding of claims for acknowledgement and reinstatement of a legal situation specific to an individual shall have effects amongst the parties only. Nevertheless, such effects may be expanded to third parties in the terms set in Sections 110 and 111.

Section 73. Final rulings quashing a precept of a general provision shall not by themselves affect the efficacy of final administrative acts or rulings applying that precept before the quashing order takes general effect, save in the case where the quashing of the precept means the exclusion or reduction of penalties not yet fully executed.

SUB-CHAPTER 9. OTHER MODES OF PROCEDURE TERMINATION

Section 74. 1. The claimant may abandon the claim at any time prior to issuance of judgement.

2. In order for abandonment by the representative in court to take effect, it shall be necessary for the claimant to confirm abandonment or for the representative to be authorised to abandon the claim. Should the public administration abandon the proceedings, a certified copy of the resolution made by the competent authority pursuant to the requirements set by the pertinent laws or regulations must be submitted.

3. The court clerk shall notify the other parties, and in public interest claims the clerk shall also notify the Prosecution Service. If after a five-day period the parties and, where applicable, the Prosecution Service approve of the abandonment or fail to oppose it, the court clerk shall hand down a decree declaring the procedure terminated and ordering the case dismissed and the administrative file returned to its office of origin.

4. In other events, or when damage to the public interest is observed, the clerk shall report to the judge or court, which shall decide accordingly.

5. If the claimants are several, the procedure shall continue with respect to those who have not abandoned the claim.

6. Abandonment shall not necessarily earn an award of costs.

7. When the claimant abandons the claim because the defendant administration has fully recognised the claimant's demands in administrative proceedings, and afterwards the administration dictates a new act fully or partially revoking the recognition, the plaintiff may ask that the procedure be resumed as of its former state and extended to include the act of revocation. If the single- or multi-judge bench sees fit, it shall grant the parties a shared period of ten days in which to enter complementary pleas concerning the revocation.

8. When a claim under appeal to the next higher court or to the Supreme Court has been abandoned, the court clerk shall forthwith declare the procedure terminated by decree, ordering the case dismissed and the proceedings received from the court of origin returned.

Section 75. 1. The defendants may accept the claimant's demands, complying with the requirements set in paragraph 2 of the preceding section.

2. When the defendants have accepted the claimant's demands, the single- or multi-judge bench shall forthwith hand down a ruling in agreement with the claimant's demands, save where that would be a clear violation of law. In this latter case the judicial authority shall notify the parties of the reasons why the parties may oppose the upholding of the demands and give the parties a shared ten-day period in which they may petition to be heard by the judicial authority. Subsequently the judicial authority shall rule as it deems lawful.

3. If the defendants are several, the procedure shall continue with respect to those that have not accepted the claimant's demands.

Section 76. 1. If, after a claim for judicial review is filed, the defendant administration fully recognises the claimant's demands in administrative proceedings, any of the parties may so inform the single- or multi-judge bench when the administration fails to do so.

2. The court clerk shall order a shared five-day period in which the parties may petition to be heard by the court. After checking the parties' allegations, the single- or multi-judge bench shall hand down an order declaring the procedure terminated and shall order the case dismissed and the administrative file returned, if the recognition does not clearly violate the law. Otherwise the court shall hand down a ruling according to law.

Section 77. 1. When the trial deals with matters amenable to compromise, and particularly when the trial concerns the estimating of sums, in proceedings in first or single instance, after the suit and the reply thereto have been

lodged, the single- or multi-judge bench may, acting *ex officio* or at the request of a party, submit to the parties for their consideration the opportunity to acknowledge facts or documents, likewise the possibility of reaching an agreement ending the controversy.

The representatives of the defendant public administrations shall need the correct authorisation to engage in such transactions, under the rules regulating the resolution of action by them.

2. Proceedings shall not be suspended during the conciliation attempt save where all parties so request. The conciliation attempt may be made at any time prior to the day when the lawsuit is declared ready for judgement.

3. If the parties reach an agreement implying the disappearance of the controversy, the single- or multi-judge bench shall hand down an order declaring the procedure finished, provided that the agreement terms are not manifestly unlawful or injurious to the public interest or third-party interests.

CHAPTER II

Short procedure

Section 78. 1. Single-judge administrative courts and single-judge central administrative courts for judicial review utilise the short procedure to hear cases within their competence arising over public administration personnel, foreign citizens, non-admission of applications for political asylum, doping in sport, and all matters involving sums of 30,000 euros or less.

2. Judicial review shall be initiated by filing suit, enclosing the document or documents on which the plaintiff grounds his or her right and the documents provided for in Section 45.2.

3. After the suit is submitted, where the court clerk finds the court to hold jurisdiction and objective competence, the clerk shall admit the claim. Otherwise the clerk shall report to the court, which shall decide accordingly.

After the suit is admitted, the court clerk shall order notice served on the defendant, summons the parties to a hearing at a fixed date and time and instruct the defendant administration to dispatch the administrative file at least fifteen days prior to the date for which the hearing is scheduled. In scheduling hearings the clerk shall heed the criteria established in Section 182 of the Code of Civil Procedure.

That notwithstanding, if in the claim the claimant requests a ruling with no need for evidence or hearing, the court clerk shall serve notice thereof on the defendants to enable them to reply within twenty days, including therein the admonishment referred to in Section 54, paragraph one. The defendants may request a hearing within the first ten days of the term allowed for responding to the claim. In such case, the court clerk shall summons the parties to the hearing as laid down in the preceding paragraph. Otherwise, the court clerk shall proceed as stipulated in Section 57, closing the case with no further formalities once a ruling has been delivered, unless the judge exercises the powers attributed thereto under Section 61.

4. After the administrative file is received, the court clerk shall send it to the plaintiff and the interested parties who have appeared, to enable them to submit arguments at the hearing.

5. After all or some of the parties have appeared, the judge shall declare the hearing in session.

If the parties fail to appear or if only the defendant appears, the single- or multi-judge bench shall deem the plaintiff to have abandoned the claim for judicial review and shall award costs to the plaintiff. If only the plaintiff appears, the single- or multi-judge bench shall order the hearing to proceed in the defendant's absence.

6. The hearing shall begin with the claimant's statement of the fundamental points of the claimant's requests or ratification of the statements made in the statement of claim.

7. Forthwith the defendant may put to the court such arguments as in the defendant's best interest, commencing with any questions concerning jurisdiction, objective and territorial competence and any other fact or circumstance

that may hinder the valid prosecution and conclusion of the proceedings by means of a ruling on the merits of the case.

8. After the defendant has been heard on these questions, the judge shall issue a decision. If the judge orders the trial to continue, the defendant may ask to have the defence's disagreement made a matter of record. The claimant may do the same if the judge, in deciding upon any of the said questions, should decline to allow the case to be heard by another single- or multi-judge court or deem that the claim for judicial review should be declared inadmissible.

9. If in the arguments the defendant has challenged the suitability of the procedure due to the amount at issue, the judge shall, before the submission of evidence or the closing arguments, as the case may be, urge the parties to reach an agreement on the point. If no agreement is forthcoming, the judge shall decide and shall apply the appropriate procedure for the amount that the judge has determined. The judge's decision shall not be amenable to appeal.

10. If the procedural questions to which the paragraphs above refer do not arise, or if such questions arise and the judge decides to proceed with the trial, the parties shall be allowed to speak in order to establish clearly the facts on which their demands are based. If there is no agreement on the facts, evidence shall be proposed. Once the evidence that is not impertinent or pointless has been admitted, such evidence shall be submitted forthwith.

11. When it is gathered from the parties' arguments that all defendants agree to the plaintiff's demands, that the controversy is purely legal, that no evidence is proposed or that all evidence proposed is inadmissible, and that the parties do not wish to submit closing arguments, the judge shall issue a formal observation in that sense, and if no party offers opposition the judge shall hand down a ruling without further delay.

When opposition is offered, the judge shall decide. Where the judge upholds the opposition, the hearing shall proceed as regulated in the paragraphs below. Where the judge dismisses the opposition, this shall be stated in the ruling handed down as provided for in the paragraph above as a special pronouncement, before the judge decides upon the merits of the case.

12. In short trials evidence shall be submitted in the same fashion as in ordinary trials, insofar as not incompatible with the steps of the short trial.

13. Questions to be put when examining the parties shall be proposed orally, without admitting written interrogatories.

14. Documents containing written questions and cross-questions shall not be admitted for securing oral evidence. When the number of witnesses is excessive and, in the view of the judicial authority, the witnesses' statements may constitute pointless repetition of testimony concerning matters that have been made sufficiently clear, the judicial authority may limit the number of witnesses at its discretion.

15. There shall be no objection to witnesses. Only in the closing arguments may the parties make observations with respect to witnesses' personal circumstances and the veracity of witnesses' statements.

16. In the taking of expert testimony, the general rules on the selection of experts by random drawing shall not be applicable.

17. Parties may appeal against the judge's decisions to refuse evidence or to admit evidence denounced as obtained in violation of fundamental rights by filing a petition for reconsideration at once, to be substantiated and decided upon forthwith.

18. Should the judge deem that there is some relevant evidence that cannot be submitted at the hearing and no *mala fides* on the part of the person burdened with furnishing the evidence is involved, the judge shall suspend the hearing. The competent court clerk shall immediately schedule the place, date and time for resuming the hearing without the need to give further notice.

19. After the submission of any evidence and any closing arguments, and after hearing legal counsel, the persons who are party to the case may, if the judge pleases, give any oral statements they feel advisable for their defence at the conclusion of the hearing, before the hearing is terminated.

20. The judge shall hand down a ruling within ten days of the hearing.

21. The hearing shall be documented as established in paragraphs 3 and 4 of Section **63.**

22. If the mechanisms of guarantee provided for in the paragraph above cannot be used, the following points must be set down in the record: number and class of procedure; place and date; duration, persons in attendance; pleas and arguments of the parties; decisions made by the single- or multi-judge bench; likewise any circumstances and incidents that could not be recorded on the regular medium. The recordings of the sessions shall be attached to this record.

When the recording media cannot be used for any reason, the court clerk shall draw up a record of each session, stating therein:

a) Place, date, judge presiding, parties appearing, representatives, if any, and counsel.

b) Brief summary of the pleas and arguments of the parties, means of evidence proposed by them, express declaration of pertinence or impertinence, reasons for refusal and protest, if any.

c) As for the evidence admitted and submitted:

1st Sufficient summary of the questions put to the parties and expert testimony.

2nd Circumstantiated list of the documents submitted, or sufficient particulars for identifying the documents where an exceedingly large number of documents makes a list inadvisable.

3rd List of the incidents entered in the trial with respect to the documentary evidence.

4th Sufficient summary of experts' reports, likewise the judge's decision on proposals to challenge expert witnesses.

5th Summary of the statements made at the hearing.

d) Closing arguments and specific petitions submitted by the parties. Where there is a petition for the court to sentence a party to pay a certain sum, the sum must be stated in the record.

e) Judge's declaration of conclusion of the records, ordering the records brought to the hearing for issuance of the ruling.

The records provided for in this paragraph shall be drawn up in computerised form. They may not be handwritten save on those occasions when the courtroom where the proceedings are held has no computer facilities. In these cases, at the conclusion of the session, the court clerk shall read out the record, making therein such corrections as demanded by the parties and considered fit by the clerk. This record shall be signed by the court clerk after the judge or chief justice, the parties, their representatives or counsel and any experts.

23. In all things not provided for in this chapter, the short procedure shall be governed by the general rules of this act.

CHAPTER III

Appeals against procedural decisions

SUB-CHAPTER 1. APPEALS AGAINST WRITS AND ORDERS

Section 79. 1. Petitions for reconsideration may be filed against writs and orders not amenable to appeal to a higher court or to the Supreme Court. Nevertheless the challenged decision shall be put into effect save where the judicial authority decides otherwise *ex officio* or at the request of a party.

2. Appeals for reversal are not admitted against decisions expressly excepted from such appeals herein, nor against orders deciding upon appeals for reversal or petitions for clarification of certain points.

3. Petitions for reconsideration shall be filed within five days counting from the day following the date of notification of the challenged decision.

4. When the petition is filed in due time and fashion, the court clerk shall serve copies of the document on the other parties, who shall have a shared period of five days in which to challenge the petition should they see fit. After the said period, the judicial authority shall decide by an order within the third day.

Section 80. 1. Orders handed down by single-judge administrative courts and single-judge central administrative courts in proceedings heard in first instance in the following cases are open to appeal with devolutive effects:

a) Orders ending separate proceedings for precautionary measures.

b) Orders given in execution of judgement.

c) Orders declaring nonadmission of the claim for judicial review or making the claim impossible to continue.

d) Orders given on the authorisations provided for in Section 8.5.

e) Orders given in application of Sections 83 and 84.

2. Appeals to the next higher court filed against orders handed down by single-judge administrative courts and single-judge central administrative courts in the events stated in Sections 110 and 111 shall be governed by the same appeal admission rules as the ruling whose extension is sought.

3. Appeals to the next higher court concerning orders of single-judge administrative courts and single-judge central administrative courts shall be processed as established in section 2 of this chapter.

SUB-CHAPTER 2. ORDINARY APPEALS TO THE NEXT HIGHER COURT

Section 81. 1. The rulings of single-judge administrative courts and single-judge central administrative courts shall be amenable to appeals to the next higher court, save where the following cases are concerned:

a) Cases involving sums of 30,000 euros or less.

b) Cases concerning election matters included in Section 8.4.

2. The following rulings shall always be amenable:

a) Rulings declaring the appeal inadmissible in the case in subparagraph *a)* of the paragraph above.

b) Rulings handed down in the procedure for the protection of fundamental personal rights.

c) Rulings deciding upon litigation amongst public administrations.

d) Rulings deciding upon indirect challenges to general provisions.

Section 82. Appeals to the next higher court may be filed by the persons who hold legal standing under this act as plaintiff or defendant.

Section 83. 1. Appeals to the next higher court are admissible with both devolutive and suspensive effects, save where this act provides otherwise.

2. Notwithstanding the provisions of the paragraph above, the judge may at any time, at the request of the interested party, take the pertinent precautionary measures to ensure execution of the ruling, heeding the criteria established in Chapter II of Title VI.

Section 84. 1. The filing of an appeal to the next higher court shall not forestall provisional execution of the challenged ruling.

The parties favoured by the ruling may request provisional execution. When injury of any nature may stem from provisional execution, the appropriate measures to avoid or palliate such injury may be taken. Likewise a bond or some security may be demanded to cover liability. In that event provisional execution may not take place until the bond or measure is complete and accredited in the case records.

2. The bond shall be furnished as established in Section 133.2.

3. Provisional execution shall not be ordered when it may cause irreversible situations or damage impossible to redress.

4. The parties shall have a shared five-day period in which they may petition to be heard by the court. The judge shall decide on provisional execution at the end of the following five days.

5. When the party requesting provisional execution is a public administration, it shall be exempt from furnishing a bond.

Section 85. 1. The notice of appeal shall be filed with the court that handed down the ruling at issue, within fifteen days of the date of notice, in a well-reasoned document that must contain the arguments on which the appeal is based. If at the end of fifteen days no notice of appeal has been filed, the court clerk shall declare the ruling final.

2. If the submitted notice meets the requirements set in the paragraph above and refers to a ruling amenable to appeal, the court clerk shall hand down a decision admitting the appeal, against which decision there can be no appeal, and shall notify the other parties accordingly. The other parties shall have the shared period of fifteen days in which to mount an opposition. Otherwise, the court clerk shall inform the judge, who may, should the judge see fit, deny admission by means of an order. Motions for admission of the appeal thus denied may be filed and must be substantiated as established in the Code of Civil Procedure.

3. In the notice of appeal and opposition thereto, the parties may ask for the admission of evidence refused or not duly submitted in first instance for reasons not attributable to the parties. In the proceedings to which Section **23.**3 refers, civil servants shall give in the said documents an address for notifications in the venue of the competent administrative division.

4. Where the defendant deems the appeal to have been unduly admitted, the defendant must so state in the opposition. In that case the court clerk shall notify the appellant of this argument, giving the appellant five days. The defendant may also, in the same document, concur in the appeal, reasoning the points on which the defendant believes the ruling is injurious to the defendant. In that case the court clerk shall give notice of the opposition to the appellant, allotting a ten-day period for the sole purpose of opposing the defendant's concurrence in the appeal.

5. After the periods to which paragraphs 2 and 4 above refer have ended, the court shall refer the case records and the administrative file, in the company of the documents filed, to the higher court, ordering the parties to be summonsed to appear within thirty days before the competent administrative division. That division shall decide on the disputed admission of the appeal or evidence.

6. When the division deems the evidence to be in order, the parties shall be summonsed to the submission of the evidence.

7. In the notice of appeal and opposition, the parties may ask the judicial authority to schedule a hearing, to receive closing arguments or to declare the lawsuit ready for judgement forthwith.

8. The court clerk shall decide if a hearing is to be held. If so, the court clerk shall schedule the hearing or shall schedule the presentation of closing arguments, if requested by all the parties or if evidence has been submitted. The division may also decide to hold a hearing, which shall be scheduled by the clerk, or to accept written closing arguments when deemed necessary by the division in view of the nature of the affair. The terms of Sections 63 to 65 shall be applicable to these steps.

When the hearing has been held or the closing arguments have been submitted, the court clerk shall declare that the lawsuit is ready for judgement.

9. The division shall hand down a ruling within ten days of the declaration that the lawsuit is ready for judgement.

10. When the division revokes on appeal a challenged ruling declaring a claim for judicial review inadmissible, the division shall rule upon the merits of the case of judicial review at the same time.

SUB-CHAPTER 3. APPEALS TO THE SUPREME COURT

Section 86. 1. Rulings handed down in single instance by the Administrative Division of the National Court and the administrative divisions of superior courts shall be amenable to appeal to the Administrative Division of the Supreme Court.

2. Exceptions from the above paragraph are made for:

a) Rulings referring to questions of public administration personnel, save where they affect the creation or termination of the service relationships of career civil servants.

b) Rulings, regardless of the matters at issue, in cases involving sums of 600,000 euros or less, except for the special procedure for the defence of fundamental rights, in which case appeals shall be in order regardless of the sum involved.

c) Rulings handed down in the procedure for the protection of the fundamental right to freedom of assembly to which Section 122 refers.

d) Rulings on election matters.

3. Appeals to the Supreme Court may at all events be filed against rulings of the National Court and superior courts declaring a general provision quashed or lawful.

4. Rulings amenable to appeal to the Supreme Court under the paragraphs above and handed down by the administrative divisions of superior courts shall be open to appeal only if the appeal is based on some violation of nationwide or European Community legislation that is relevant and telling for the challenged judgement, provided that such legislation is correctly invoked in the proceedings or considered by the ruling division.

5. Decisions by the Court of Auditors in matters of accounting liability shall be amenable to appeals to the Supreme Court in the cases established by the Act on the Operation of the Court of Auditors.

Section 87. 1. The following orders are also amenable to appeal to the Supreme Court, in the same events provided for in the preceding section:

a) Orders declaring the claim for judicial review inadmissible or making it impossible to continue.

b) Orders ending separate proceedings for suspension or other precautionary measures.

c) Orders given in execution of the ruling, whenever the orders settle issues not directly or indirectly decided upon by the ruling or the orders contradict the terms of the judgement being executed.

d) Orders handed down in the case provided for in Section 91.

2. Orders handed down in application of Sections 110 and 111 shall at all events be amenable to appeals to the Supreme Court.

3. In order to prepare an appeal to the Supreme Court in the cases provided for in the paragraphs above, it is a necessary requirement to have filed a petition for reconsideration beforehand.

Section 88. 1. An appeal to the Supreme Court must be founded on one or more of the following grounds:

a) Abuse, excess or defect in the exercise of jurisdiction.

b) Incompetence or improper procedure.

c) Nonobservance of the essential forms of the trial due to violation of the rules regulating judgement or governing procedural acts and guarantees, provided that, in this latter case, the party has been rendered defenceless.

d) Violation of the rules of the legislation or jurisprudence applicable in the settling of the debated issues.

2. Violation of the rules concerning procedural acts and guarantees, thus producing a defenceless position, may be alleged only when a request for correction of the failure or transgression was made in the instance, if there was an appropriate time in procedure for doing so.

3. When the appeal is grounded on the reason in subparagraph 1.d) of this section, the Supreme Court may add to the findings of fact admitted as proved by the court of instance those findings of fact omitted by the court of instance and sufficiently justified according to the proceedings and whose consideration proves necessary in order to appreciate the alleged violation of the rules of legislation or jurisprudence, including *détournement du pouvoir.*

Section 89. 1. Appeals to the Supreme Court shall be prepared via notice of appeal entered at the division that handed down the challenged decision, within ten days counting from the day following the date of notice of the said decision. The notice of appeal must contain a statement of the intention to appeal, with a succinct explanation of how the necessary requirements of form are met.

2. In the event provided for in Section 86.4, proof must be shown that the violation of nationwide or European Community legislation was relevant and telling for the judgement.

3. The appeal to the Supreme Court may be filed by the persons who were party to the proceedings to which the appealed ruling or decision is limited.

4. Should the ten-day period expire and no appeal have been prepared, the ruling or decision shall become final and the court clerk shall so declare by means of a decree.

Section 90. 1. If the preparatory document meets the requirements set in the preceding section and refers to a decision amenable to appeal to the Supreme Court, the court clerk shall deem the appeal prepared. Otherwise the clerk shall report to the division, which shall decide accordingly.

If the appeal is held to be prepared, the clerk of court shall summons the parties to appear and file the appeal within the period of thirty days before the Administrative Division of the Supreme Court. After the summonses have been served, the clerk shall forward the original case records and the administrative file within the following five days.

2. If no appeal is held to have been prepared, the division shall hand down a grounded order refusing to summons the parties and to refer the proceedings to the Supreme Court. Only motions for admission may be filed against this order denying appeal. Such motions shall be substantiated as established by the Code of Civil Procedure.

3. The defendant may not file any appeals against the decision holding the appeal to the Supreme Court to be prepared. Nevertheless the defendant may oppose admission of the appeal when the defendant appears before the Supreme Court, if the defendant does so within the time given in the summons.

Section 91. 1. The filing of an appeal to the Supreme Court shall not forestall provisional execution of the challenged ruling.

The parties favoured by the ruling may request provisional execution. When injury of any nature may stem from provisional execution, the appropriate measures to avoid or palliate such injury may be taken. Likewise a bond or some security may be demanded to cover liability. Provisional execution may not take place until the bond or measure is complete and accredited in the case records.

2. The bond shall be furnished as established in Section 133.2.

3. The single- or multi-judge bench shall refuse provisional execution when it may cause irreversible situations or damage impossible to redress.

4. When an appeal to the Supreme Court is held to be prepared, the court clerk shall make a certified copy of the case records and the decision appealed against, for the purposes provided for in this section.

Section 92. 1. The appellant must appear before the Administrative Division of the Supreme Court by the deadline given in the summons and there lodge the notice of appeal stating the well-reasoned grounds on which the appeal rests and citing the legislation or jurisprudence the appellant considers violated.

2. Should the said deadline expire and the notice of appeal not be submitted, the court clerk shall declare the appeal lapsed and order the proceedings returned to their division of origin.

3. If the appellant is counsel for the administration or the Prosecution Service, as soon as the proceedings are received, ruling proceedings shall be issued serving the proceedings and giving the appellant a thirty-day period in which to state whether or not the appeal is maintained and if so to file notice revised to conform with the terms of paragraph 1 of this section.

4. If the appeal is not maintained or the notice is not filed in the period indicated above, the appeal shall be declared lapsed by the court clerk.

Section 93. 1. After the appeal to the Supreme Court has been filed, the court clerk shall forward the proceedings to the reporting justice. The decision to admit or not to admit the appeal shall then be examined and submitted to the division for deliberation.

2. The division shall hand down an order of nonadmission in the following cases:

a) If the appeal is held to have been prepared and yet it should be found in this step that the requirements have not been observed or the challenged decision is not amenable to appeal to the Supreme Court. For this purpose the division may make grounded corrections to the amount initially set, on an *ex officio* basis or at the defendant's request, if the defendant so requests within the time given in the summons.

b) If the ground or grounds invoked in the notice of appeal are not included amongst those listed in Section 88; if the legislation or jurisprudence supposedly violated is not cited; if the cited legislation or jurisprudence bears no relationship whatsoever to the debated issues; or if it was necessary to have requested correction of the failure and there is no record of any such request having been made.

c) If other substantially identical appeals have been dismissed on the basis of merits.

d) If the appeal is manifestly ungrounded.

e) In cases of an unidentified amount not referring to direct or indirect judicial review of a general provision, if the appeal is grounded on the reason in Section 88.1.*d)* and the case is regarded as lacking Supreme Court interest whereas it does not affect a large number of situations or is not sufficiently general in content.

3. Before taking its decision, the division shall succinctly state the possible cause of nonadmission of appeal to the parties appearing, giving them a ten-day period in which to lodge such arguments as they deem in order.

4. If the division feels that any of the causes of nonadmission are met, it shall hand down a grounded order declaring the appeal inadmissible and the appealed decision final. If not all grounds adduced are inadmissible, the division shall also hand down a grounded order, continuing the processing of the appeal with respect to the grounds not affected by the partial nonadmission order. To declare appeal nonadmission for any of the causes in subparagraphs *c), d)* and *e)* of paragraph 2, the order shall have to be unanimous.

5. Total nonadmission of the appeal shall entail the award of costs to the appellant, save where nonadmission is exclusively due to the cause provided for in subparagraph 2.*e).*

6. No appeal may be made against the orders to which this section refers.

Section 94. 1. Where the appeal is admitted on all or any of its grounds, the court clerk shall deliver a copy of the appeal to the defendant or defendants who have appeared and give them a shared thirty-day period in which to lodge their opposition in writing. During the said period the proceedings shall be displayed at the Judicial Office.

In their opposition defendants may allege any causes of nonadmission of appeal not rejected by the court in the step established in Section 93.

2. When the period has expired, whether opposition has been submitted or not, the court clerk shall schedule a date and time for the hearing should the division so decide, or otherwise shall declare that the lawsuit is ready for judgement.

3. A hearing shall be in order when requested by all parties or deemed necessary by the division in view of the nature of the case. The hearing request shall be made in a petition after the principal petition in the notice of appeal or opposition to appeal.

4. The division shall hand down a ruling within ten days of the hearing or the declaration that the lawsuit is ready for judgement.

Section 95. 1. The ruling deciding the appeal to the Supreme Court may refuse to admit the appeal if any of the grounds provided for in Section 93.2 are attendant.

2. If the appeal is upheld on all or any of the adduced grounds, the division, in a single ruling overturning the appealed ruling, shall decide pursuant to law, taking account of the following:

a) Where the appeal is upheld on the grounds in Section 88.1.a), the challenged ruling or decision shall be annulled. The division shall name the jurisdiction that is deemed competent or shall decide the case, as appropriate. In the first event, the provisions of Section 5.3 shall be applicable.

b) Where the appeal is upheld on the grounds in Section 88.1.b), the proceedings shall be remanded to the competent judicial authority, which shall decide, or shall be returned to the status and point in time demanded by the correct procedure for the substantiation of the proceedings, save where, under the rules specific thereto, the said correct procedure cannot be followed.

c) Where it is found that there were procedural violations mentioned in the grounds in Section 88.1.c), the proceedings shall be ordered returned to the status and point in time where the failure occurred, save where the violation consisted in infringement of the rules regulating the ruling, in which case the provisions of letter *d)* below shall be observed.

d) In all other cases the division shall decide as proper within the terms in which the debate is cast.

3. In the ruling declaring the appeal in order, the division shall decide the costs of the instance pursuant to Section 139.

SUB-CHAPTER 4. APPEALS TO THE SUPREME COURT FOR DOCTRINE UNIFICATION

Section 96. 1. Appeals to the Supreme Court for doctrine unification may be filed against rulings handed down in single instance by the administrative divisions of the Supreme Court, the National Court and superior courts when different pronouncements are reached with respect to the same litigants or different litigants in an identical situation on the merit of largely the same findings of fact, considerations of law and demands.

2. Rulings given in single instance by the National Court and superior courts are also subject to this same appeal when they contradict Supreme Court rulings given under the same circumstances as indicated in the paragraph above.

3. Rulings not open to appeals to the Supreme Court pursuant to Section 86.2.b) are amenable to appeal to the Supreme Court only when the sum at dispute is in excess of 30,000 euros.

4. In no case shall the rulings to which subparagraphs *a), c)* and *d)* of Section 86.2. refer be open to appeal, nor shall the rulings excluded from appeals under Section 86.4.

5. Appeals to the Supreme Court for doctrine unification provided for in this section shall be heard by the appropriate section of the Supreme Court's Administrative Division according to the Division's general organisational rules.

6. Nevertheless, appeals against rulings handed down in single instance by the Supreme Court shall be heard by a section made up of the Chief Justice of the Supreme Court, the Chief Justice of the Administrative Division and five justices of the Administrative Division, who shall be the two most senior and the three most junior.

7. These appeals shall be heard by the section to which the paragraph above refers when the Supreme Court ruling cited as infringed comes from a section other than that which ought to hear the appeal under paragraph 5 of this section and the appellant so states in the preparatory document.

Section 97. 1. Appeals to the Supreme Court for doctrine unification shall be filed directly with the ruling division within thirty days, counting from the day following notification of the ruling, by means of a well-reasoned notice of appeal containing a precise, circumstantiated list of the vital points of the alleged contradiction and the legal violation with which the challenged ruling is charged.

2. This notice shall be accompanied by a certificate of the alleged ruling or rulings and finality or otherwise or, in lieu thereof, an uncertified copy of the ruling's text and documentary proof of having requested the certificate, in which case the court clerk shall demand the certificate *ex officio.* If the ruling was published under Section 72.2, it shall suffice to state the official periodical that published the ruling.

3. If the notice of appeal meets the requirements stated in the paragraphs above and refers to a ruling amenable to appeal for doctrine unification, the court clerk shall admit the appeal. Otherwise the clerk shall report to the division, which shall decide accordingly.

After the appeal is admitted, the court clerk shall serve notice of appeal on the defendant party or parties, with delivery of a copy of the appeal. The defendant or defendants shall have thirty days in which to lodge opposition in writing. In the meantime the proceedings shall be on display in the Judicial Office. Where a certificate has been demanded, service of notice of the appeal on the defendant or defendants shall require the demanded certificate.

4. If the appeal is not admitted, a grounded order shall be handed down, but before deciding the division shall succinctly inform the parties of the possible cause of nonadmission. The parties shall have a shared period of five days in which to lodge such arguments as they see fit. Motions for admission of the denied appeal may be lodged, to be substantiated pursuant to the Code of Civil Procedure.

5. In the notice of appeal and the objection to the appeal, the parties may apply for a hearing.

6. When the opposition document or documents have been submitted or the period for doing so has expired, the ruling division shall refer the proceedings and the administrative file to the Administrative Division of the Supreme Court, ordering the parties to be summonsed to appear within the term of thirty days.

7. In all things not provided for in the preceding sections, the substantiation and deciding of the appeal to the Supreme Court for doctrine unification shall adhere to the terms of the previous section of this act insofar as applicable.

Section 98. 1. Supreme Court pronouncements settling appeals for doctrine unification shall in no case affect the legal situations created by rulings preceding the challenged ruling.

2. If the ruling declares the appeal in order, it shall overturn the challenged ruling and settle the debate with lawful pronouncements, modifying the declarations made and the situations created by the challenged sentence.

Section 99. 1. Appeals to the Supreme Court for doctrine unification may be filed against rulings of the administrative divisions of superior courts, if there are several such divisions or the division or divisions have several sections, when different pronouncements are reached with respect to the same litigants or different litigants in an identical situation on the merit of largely the same findings of fact, considerations of law and demands. Such appeals may be grounded only on a violation of autonomous community legislation.

2. Such appeals shall be in order only against rulings not amenable to appeal to the Supreme Court or appeal to the Supreme Court for doctrine unification by exclusive application of the provisions of Section 86.4 and when the sum at dispute is in excess of 30,000 euros.

3. Appeals to the Supreme Court for doctrine unification shall be heard by a section of the administrative division whose seat is at the superior court, made up of the chief justice of the said division, who shall preside, the chief justice or chief justices of the other administrative divisions and of any sections thereof, not to exceed two in number, and any justices of the aforesaid division or divisions needed to make up a total of five members.

If the administrative division or divisions have more than one section, the Governing Chamber of the superior court shall set for each judicial year the roster under which the chief justices of sections shall sit on the section regulated in this paragraph. It shall do likewise for all justices assigned to the division or divisions.

4. As regards deadlines, the procedure for the substantiation of this appeal and the effects of the ruling, the terms of Sections 97 and 98 shall govern with the necessary adaptations.

SUB-CHAPTER 5. APPEALS TO THE SUPREME COURT IN THE INTEREST OF THE LAW

Section 100. 1. Rulings handed down in single instance by administrative judges and rulings pronounced by administrative divisions of superior courts and of the National Court that are not amenable to the appeals to which the two Sub-chapters above refer may be challenged by the sub-national public administration holding a legitimate interest in the case and by the entities or corporations representing and defending interests of a general or corporate nature and holding a legitimate interest in the case, by the Prosecution Service and by the General State Administration, in the interest of the law, by means of an appeal to the Supreme Court when the decision is deemed seriously injurious to the general interest and wrong.

2. Only the correct interpretation and application of legislation issued by the State and having a telling effect on the challenged judgement may be tested through this appeal procedure.

3. Appeals shall be filed within three months, directly with the Administrative Division of the Supreme Court, by means of a well-reasoned notice of appeal establishing the legal doctrine postulated and enclosing a certified copy of the challenged ruling, on which the date of service of notice must appear. If these requisites are not met or the appeal is untimely, the division shall order it closed forthwith.

4. When the appeal is filed in due time and fashion, the clerk of the Supreme Court shall demand the original case records from the ruling judicial authority and shall order any parties thereto summonsed, to appear in the appeal proceedings within fifteen days.

5. The court clerk shall serve the notice of appeal, including delivery of a copy thereof, on the parties who have appeared. The said parties shall have thirty days in which to lodge any arguments they see fit. In the meantime the proceedings shall be on display in the Judicial Office. This notice shall always be served on the counsel for the administration when the administration is not the appellant.

6. When the period for arguments has expired, regardless of whether any documents have been submitted, and following a ten-day period in which the Prosecution Service may petition to be heard, the Supreme Court shall hand down its ruling. The processing and deciding of these appeals shall be regarded as preferred.

7. The ruling shall at all events respect the particular legal situation stemming from the challenged ruling. When the challenged ruling is upheld, the upholding ruling shall establish the legal doctrine. In this case, it shall be published in the *Boletín Oficial del Estado* and shall thenceforth be binding for all judges and courts of lesser degree in this jurisdiction.

Section 101. 1. Rulings handed down in single instance by administrative judges against which appeals under the preceding section cannot be filed may be challenged by the sub-national public administration holding a legitimate interest in the case and by the entities or corporations representing and defending interests of a general or corporate nature and holding a legitimate interest in the case, by the Prosecution Service and by the autonomous community administration, in the interest of the law, by means of an appeal to the Supreme Court when they deem the decision seriously injurious to the general interest and wrong.

2. Only the correct interpretation and application of legislation issued by an autonomous community and having a telling effect on the challenged judgement may be tried through this appeal

3. This appeal to the Supreme Court in the interest of the law shall be heard by the administrative division of the superior court or, when there is more than one division, by the section of the division whose seat is at the court to which Section 99.3 refers.

4. As regards deadlines, the procedure for the substantiation of this appeal and the effects of the ruling, the terms of the preceding section shall be observed with the necessary adaptations. The publication of the ruling, if in order, shall be in the official journal of the autonomous community. As of its appearance there the ruling shall be binding for all administrative judges having their seat in the territory over which the superior court has jurisdiction.

SUB-CHAPTER 6. MODIFICATION OF RULINGS

Section 102. 1. It shall be in order to modify a final ruling:

a) If, after pronouncement, decisive documents are recovered that were not furnished earlier for reasons of force majeure or because of the party in whose favour the ruling found.

b) If the ruling was given by virtue of certain documents and, at the time of the ruling, one of the parties was unaware the said documents had been acknowledged as and declared false, or the falseness of the said documents was acknowledged or declared afterwards.

c) If the ruling was handed down by virtue of oral evidence and later the witnesses were found guilty of giving false testimony in the declarations that formed the basis for the ruling.

d) If the ruling was handed down by virtue of bribery, breach of official duty, violence or some other fraudulent machination.

2. As regards deadlines, procedure and the effects of rulings handed down in this modification procedure, the provisions of the Code of Civil Procedure shall govern. Nevertheless, a hearing shall be in order only when requested by all parties or deemed necessary by the division.

3. Modification in matters of accounting liability shall be in order in the cases established in the Act on the Operation of the Court of Auditors.

SUB-CHAPTER 7. APPEALS AGAINST DECISIONS OF THE COURT CLERK

Section 102 bis. 1. Appeals for administrative reversal may be filed against ruling proceedings and non-final decrees issued by the court clerk. Filing is to be done with the clerk who handed down the decision at issue, except in cases where the act provides for a direct appeal for review.

Appeals for administrative reversal shall be filed within five days, counting from the day following the date of notice of the challenged decision.

If the requirements established in the paragraph above are not met, the appeal shall be decreed inadmissible. This decree shall be open to direct appeals for review.

When the appeal is filed in due time and fashion, the court clerk shall serve copies of the notice of appeal on the other parties, who shall have a shared period of three days to challenge it should they see fit. After the said period, the court clerk shall decide by means of a decree within the third day.

2. There may be no appeal against the decree deciding on the appeal for administrative reversal. Nevertheless the question may be brought up again in an appeal against the final decision.

Direct appeals for review may be filed against decrees ending the procedure or preventing it from continuing. Such appeals shall not be suspensive, yet under no circumstances shall it be in order to act contrary to the terms decided.

Direct appeals for review may likewise be filed against decrees in those cases where such appeals are expressly provided for.

3. Appeals for review must be filed within five days, in a notice of appeal that must cite the violation the decision committed.

When the above requirements have been met, the court clerk shall issue a ruling proceeding admitting the appeal and granting the other parties appearing a shared five-day period in which to challenge the appeal should they see fit.

If the appeal admissibility requirements are not met, the court shall issue an order declaring the appeal inadmissible.

When the period for challenge has expired, regardless of whether any documents have been submitted, the court shall issue its decision in an order within a five-day period.

No appeal may be made against decisions on admission or nonadmission.

4. The order settling the appeal for review is amenable only to appeals to the next higher court under Section 80 hereof or appeals to the Supreme Court under Section 87 hereof.

CHAPTER IV

Execution of rulings

Section 103. 1. The power to have rulings and other judicial decisions executed belongs exclusively to the courts of this jurisdiction. It falls to the single- or multi-judge court that heard the case in first or single instance to exercise that power.

2. The parties are obligated to comply with rulings in the fashion and terms therein set down.

3. All persons and public and private entities are obligated to cooperate as required by administrative judges for due and full execution of judicial decisions.

4. Acts and provisions contrary to the pronouncements of rulings and dictated with the end of evading compliance shall be null and void.

5. The judicial authority to which it falls to execute the ruling shall, at the request of a party, declare the acts and provisions to which the paragraph above refers null, through the steps provided for in paragraphs 2 and 3 of Section 109, save where it lacks competence so to do under the provisions of this act.

Section 104. 1 Once a ruling is final, the court clerk shall report it within ten days to the authority that performed the activity at issue in the claim. The recipient is to put the ruling into full and due effect and to do as required to comply with the terms of the sentence, and in that same period to specify the body responsible for compliance therewith.

2. Two months after service of the sentence or the period set therein for compliance with the ruling pursuant to Section 71.1.c), any of the parties or persons concerned may file for enforcement of judgement.

3. In view of the nature of the claim and the effectiveness of the ruling, a shorter period for compliance may be set when the provisions of the preceding paragraph render compliance ineffective or severely detrimental**.**

Section 105. 1. Compliance cannot be suspended, nor can failure of execution of all or part of the judgement be declared.

2. Where there are attendant causes making it physically or legally impossible to execute a ruling, the body obligated to comply shall so inform the judicial authority through the administration's representative for legal proceedings, within the period provided for in paragraph two of the preceding section. The single- or multi-judge bench, after hearing the parties and anyone the court considers concerned, may then observe whether or not the said causes are attendant and take the necessary measures to ensure the utmost effectiveness of the enforcement order, setting any damages due for the portion whose full compliance could not be attained.

3. There are causes of public or social interest for expropriating legitimate rights or interests *vis-à-vis* the administration that have been acknowledged in a final ruling, to wit: sure danger of serious alteration of the free exercise of citizens' rights and liberties, founded fear of war and breakdown of the integrity of national territory. Declarations stating any of the aforesaid causes to be attendant shall be made by the government of the nation. Such declarations may also be released by the governing council of the autonomous community if the cause is sure danger of serious alteration of the free exercise of citizens' rights and liberties and the act, activity or provision challenged was issued by the bodies of the administration of the said community or local entities in its territory, likewise entities organised under public law and corporations dependent on the former or the latter.

Any declaration of any of the causes mentioned in the paragraph above must be made within two months of notification of the ruling. The single- or multi-judge bench holding competence for execution shall indicate the appropriate damages in incidental proceedings and, if the alleged cause is sure danger of serious alteration of the free exercise of citizens' rights and liberties, the single- or multi-judge bench shall also officially note that the said grounds are attendant.

Section 106. 1. When the administration is sentenced to pay liquid damages, the body in charge of compliance shall order payment charged to the appropriate credit item on its budget, which shall always be regarded as expandable. If a budgetary modification is necessary in order to make payment, the appropriate procedure must be concluded within three months of the date of service of the judicial decision.

2. The legal interest rate, calculated as of the date of notification of the ruling handed down in single or first instance, shall be added to the sum referred to in the paragraph above.

3. Notwithstanding the provisions of Section 104.2, three months after the final ruling is served on the body that must comply, a request for enforcement of judgement may be filed. In this event, the judicial authority may, after hearing the body in charge of compliance, increase by two points the legal interest rate accruing, provided that the judicial authority observes lack of due diligence in compliance.

4. If the administration sentenced to make payment deems that compliance with the ruling shall seriously upset its funds, it shall bring this observation to the knowledge of the single- or multi-judge bench, enclosing a well-reasoned proposal. After hearing the parties, the single- or multi-judge bench shall decide how to execute the ruling in the fashion least burdensome for the administration.

5. The provisions of the paragraphs above shall likewise be applicable to events wherein rulings are provisionally executed pursuant to this act.

6. Any of the parties may request to have the payable sum offset by credit held by the administration against the claimant.

Section 107. 1. If the final ruling quashes all or part of the act challenged, the court clerk shall, at a party's request, order the judgement entered in the public registers where the quashed act was recorded, and shall likewise order the judgement published in official or private periodicals if there is sufficient cause, at the cost of the party on whom judgement is enforced. When publication is in privately owned periodicals, proof of public interest must be shown to the judicial authority.

2. If the ruling quashes all or part of a general provision or an administrative act affecting a group of persons of undefined number, the clerk shall order its publication in the official journal within ten days counting of the ruling's being declared final.

Section 108. 1. If the ruling sentences the administration to perform a certain activity or order an act, the single- or multi-judge bench may, in the event of non-compliance:

a) Execute the ruling by the court's own means or demand cooperation from the authorities and agents of the administration in question or, in lieu thereof, from other public administrations, observing the procedures established for that purpose.

b) Take the necessary measures to endow the judgement with any efficacy that would be inherent in the omitted act. Such measures may include subsidiary execution at the cost of the administration in question.

2. If the administration performs any activity contravening the pronouncements of the judgement, the single- or multi-judge bench shall, at the request of those concerned, proceed to reinstate the situation to the state required by the judgement and shall find the damages caused by non-compliance.

Section 109. 1. Until and unless the ruling appears in the case records as fully executed, the public administration, the other parties to the proceedings and the persons affected by the judgement may enter incidental pleas not contradicting the contents of the judgement in order to request a decision on questions arising in execution, especially the following:

a) The administrative body that is to take responsibility for performing the action.

b) The deadline for compliance in view of the attendant circumstances.

c) Means with which the ruling is to be put into effect and procedure to follow.

2. The court clerk shall serve the parties with notice of the incidental question, giving them a shared period not exceeding twenty days in which to submit such allegations as they see fit.

3. After service of notice or expiration of the period to which the paragraph above refers, the single- or multi-judge bench shall hand down an order deciding on the question within ten days.

Section 110. 1. In matters of taxes and public administration personnel, the effects of a final ruling acknowledging a legal situation specific to one or more persons may be extended to other situations in ruling execution, under the following attendant circumstances:

a) The persons concerned are in a legal situation identical to that of the persons favoured by the judgement.

b) The ruling single- or multi-judge bench was also competent by reason of venue to hear their demands for acknowledgement of the said situation specific to an individual.

c) They request extension of the ruling's effects within one year of last service of the ruling on the persons who were party to the proceedings. If an appeal in the interest of the law or an appeal for review was filed, this period shall be calculated as of the last notice of the decision ending the appeal.

2. The request must be addressed directly to the competent judicial authority that handed down the decision whose effects the applicants wish to have extended.

3. The petition to the judicial body shall be lodged in a well-reasoned document that must enclose the document or documents accrediting that the situations are identical and that none of the circumstances in paragraph 5 of this section are attendant.

4. Before deciding, the court clerk shall have the following twenty days to gather from the administration such background information as the clerk deems advisable and at all events a detailed report on the feasibility of the requested extension. The clerk shall notify the parties of the result of these proceedings, giving them the shared period of five days in which to submit arguments. Any persons directly affected by the effects of the extension shall be summonsed. Once this step in proceedings is concluded, the single- or multi-judge bench shall decide forthwith by means of an order, in which no legal situation other than that defined in the final ruling in question may be acknowledged.

5. The incidental plea shall be dismissed at all events under the following attendant circumstances:

a) If there is *res judicata.*

b) When the legal doctrine determining the judgement whose extension is postulated is contrary to Supreme Court case law or the doctrine established by superior courts in the appeals to which Section 99 refers.

c) If for the person concerned a decision has been handed down in administrative proceedings and received consent and become final due to failure to file for judicial review.

6. If an appeal for review or an appeal to the Supreme Court in the interest of the law is pending, the decision of the incidental plea shall be suspended until the aforesaid appeal is decided.

7. The system for appealing against the order shall abide by the general rules provided for in Section 80.

Section 111. When it is decided to suspend the processing of one or more claims under Section 37.2, once the ruling handed down on the preferred lawsuit has been declared final, the court clerk shall instruct the claimants affected by the suspension to apply within five days for extension of the effects of the ruling or continuation of the suspended lawsuit, or else to state whether they abandon the claim.

If extension of the effects of the ruling is requested, the single- or multi-judge bench shall so rule, save where the circumstance provided for in Section 110.5.b) or any of the causes of nonadmission envisioned in Section 69 of this act are attendant.

Section 112. When the periods indicated for total compliance with judgement have expired, the single- or multi-judge bench shall hear the parties and then take the necessary measures to enforce what has been ordered.

Under singular circumstances, on accredited responsibility, after the court clerk has issued a personally served admonition for the lodging of arguments, the single- or multi-judge bench may:

a) Fine the authorities, civil servants or agents who fail to comply with the instructions of the court or division periodic penalty payments of one hundred fifty to one thousand five hundred euros, and repeat these fines until full execution of the judgement, notwithstanding other financial liability. The provisions of Section 48 shall be applicable to such fining.

b) Take the proper testimony from private persons in order to exact appropriate criminal liability.

Section 113. 1. When the execution period set in the agreement to which Section 77.3 refers has expired, either of the parties may file for enforcement.

2. If no period is set for compliance with obligations under the agreement, the aggrieved party may instruct the other to comply and after two months may file for enforcement.

TITLE V

Special Procedures

CHAPTER I

Procedure for the protection of fundamental personal rights

Section 114. 1. The procedure for judicial protection of rights and liberties provided for in Section 53.2 of the Spanish Constitution shall be governed in the administrative jurisdiction by the provisions of this chapter and, in anything not provided for herein, by the general rules of this act.

2. The causes of action to which Sections 31 and 32 refer may be pleaded provided that they seek to re-establish or preserve the rights or liberties on whose account claim was lodged.

3. These claims shall always be processed as preferred claims.

Section 115. 1. The period for filing such a claim shall be ten days long, to be calculated, depending on the case, from the day following the date of notification of the act, publication of the challenged provision, demand for discontinuation of the *ultra vires* action or expiration of the period set for deciding, forthwith. When the origin of the injury to the fundamental right lies in administrative inaction or an administrative appeal has been optionally filed, or, concerning *ultra vires* action, when no demand has been lodged, the ten-day period shall begin twenty days after the complaint, the submission of the appeal or the commencement of the *ultra vires* administrative action, respectively.

2. The application for judicial review shall clearly and precisely state the right or rights whose protection is sought and concisely state the basic arguments on which the application is founded.

Section 116. 1. On the day of application submission or the following day, the court clerk shall urgently instruct the appropriate administrative body to dispatch the file accompanied by any reports and data it deems in order, within the maximum of five days counting from receipt of instructions. These instructions shall enclose a copy of the application and admonition of the terms of Section 48.

2. Upon dispatching the file, the administrative body shall notify all who appear as concerned in the file. Such notice shall enclose a copy of the application and summons the parties to appear at the court or division as defendants within five days' time.

3. The administration upon dispatching the file and the other defendants upon appearing may submit a well-reasoned petition for nonadmission of the application and petition for the hearing referred to in Section 117.2.

4. Failure to forward the administrative file within the period provided for in the paragraph above shall not suspend the course of proceedings.

5. When the administrative file is received at the court or division after the period established in paragraph 1 of this section, the court clerk shall so notify the parties, giving them a forty-eight-hour period in which to submit arguments. The course of the procedure shall not be altered by this.

Section 117. 1. After receipt of the file or expiration of the period for file dispatch and summonsing of any other persons concerned, the court clerk shall, within the following day, issue a decree ordering proceedings continued. If the clerk deems that admission is not in order, the clerk shall report to the court, which shall inform the parties of any grounds on which nonadmission of the procedure may be founded.

2. Where there are possible grounds for nonadmission, the court clerk shall call the parties and the Prosecution Service to a hearing, which must take place before the end of five days. There they shall be heard about the propriety of processing the application as provided for in this chapter.

3. On the following day the judicial authority shall hand down an order to continue proceedings by this process or an order declaring proceedings inadmissible due to inappropriate procedure.

Section 118. When it is decided to carry on with the special procedure in this chapter, the court clerk shall lay before the claimant the file and other proceedings, giving the claimant the unextendable period of eight days in which to lodge the suit and enclose the documents.

Section 119. When the suit is lodged, the court clerk shall serve notice thereof on the Prosecution Service and the defendant parties, giving them a shared, unextendable period of eight days in which to submit their pleas in view of the file and to enclose such documents as they see fit.

Section 120. When the pleading step has been followed or the period for entering pleas has expired, the following day the judicial authority shall decide on the admission of evidence pursuant to the general rules established in this act, without prejudice to the provisions of Section 57. The shared period for evidence proposal and submission shall in no case be longer than twenty days.

Section 121. 1. The judicial authority shall hand down a ruling within five days of the conclusion of proceedings.

2.The ruling shall uphold the claim when the provision, action or act is found to have committed any infringement of legislation, including *détournement du pouvoir,* and consequently to have violated a right eligible for protection.

3.Devolutive appeal to the next higher court shall always be in order against rulings of single-judge administrative courts.

Section 122. 1. In cases of prohibitions of assembly or proposed modifications of gatherings provided for in the Constitutional Act Regulating Freedom of Assembly that are not accepted by the organisers, the organisers may file for judicial review with the competent multi-judge court. The organisers must file within forty-eight hours of notification of the prohibition or modification. The organisers shall serve a duly registered copy of the application for judicial review on the government authority, which is to dispatch the file immediately.

2.Within the unextendable period of four days, the court clerk shall hold the file on display if it has arrived and shall call the legal representative of the administration, the Prosecution Service and the claimants or the person the

claimants designate as their representative to a hearing. There the multi-judge court shall, in the presence of both parties, hear all parties who have appeared and decide without subsequent appeal.

The provisions contained in Section 63 shall be applicable to the recording and documentation of the hearing.

3.The decision made may only maintain or revoke the prohibition or modification proposal.

CHAPTER II

Questions of illegality

Section 123. 1. The single- or multi-judge court shall by means of an order pose a question of illegality under Section 27.1 within the five days following the day when the case records show the ruling to be final. The question must be restricted exclusively to that precept or those precepts of regulation whose declaration of illegality served as the basis for upholding the suit. No appeal may be entered against the order posing the question.

2. This order shall summons the parties, enabling them to appear within fifteen days and lodge arguments with the multi-judge court competent to judge the question. When this period is over, no further parties shall be admitted to the proceedings.

Section 124. 1. When the question has been raised, the court clerk shall urgently forward a certified copy of the main case records, the administrative file and a certificate of the order raising the question.

2. The clerk shall likewise order publication of the order raising the question in the same official periodical where the questioned provision was published.

Section 125. 1. Any documents deemed advisable for trying the legality of the questioned provision may be enclosed with the document in which the parties formally appear as such and enter their arguments.

2. At the end of the period for appearing and entering arguments, the court clerk shall declare the procedure concluded. The ruling shall be handed down within ten days of the said declaration. Nevertheless, the multi-judge court may, by means of an order and without the need to hear the parties, reject the question of illegality in the admission step when the procedural conditions are not met.

3. The period for ruling shall be interrupted should the multi-judge court decide to demand the file on the questioned provision's preparation or have any evidence submitted *ex officio* for the sake of clarification. In these cases the court clerk shall give the parties the shared period of five days in which to be heard concerning the file or the result of the evidence.

Section 126. 1. The ruling shall partly or entirely uphold or dismiss the question, save where some procedural requirement is missing and cannot be corrected, in which case the question shall be declared inadmissible.

2. The provisions made for direct judicial review of general provisions in Sections 33.3, 66, 70, 71.1.*a)* 71.2, 72.2 and 73 shall be applied to questions of illegality. Final rulings dismissing questions of illegality shall also be published.

3. When the ruling settling the question of illegality has become final, the court clerk shall notify the judge or multi-judge court that raised the question.

4. When a question of illegality is of special importance for the course of other procedures, its processing and deciding shall take precedence.

5. The ruling deciding a question of illegality shall not affect the particular legal situation stemming from the ruling handed down by the single- or multi-judge bench that raised the question.

CHAPTER III

Procedure in cases of prior administrative suspension of resolutions

Section 127. 1. In cases where by law the administrative suspension of acts or resolutions of public entities or corporations must be followed by the judicial review of such acts or resolutions or referral of such acts or resolutions to the administrative jurisdiction, the procedure shall be as provided for in this precept.

2. Within ten days of the date on which the suspension order is given or in the period established by law, the claim for judicial review must be filed by means of grounded application or, where there is no claim, the judicial authority must be notified directly of the suspended resolution. At all events a copy of the aforesaid suspension order must be enclosed.

3. When the application has been filed or the suspended resolution has been reported, the court clerk shall give the issuing corporation or entity ten days in which to dispatch the administrative file, enter such arguments as it deems advisable in defence of the resolution and notify anyone having a legitimate interest in the resolution's maintenance or annulment of the existence of the procedure, so they may in turn appear before the judicial body within ten days.

4. When the administrative file has been received, the court clerk shall place it on display together with the proceedings for the persons appearing in the procedure and call the said persons to a hearing, which shall be held a minimum of ten days after the file is placed on display.

5. The judicial authority may, on due grounds, replace the hearing with written pleas submitted within ten days of service of the replacement order. The judicial body may also open an evidence period lasting no more than fifteen days for the sake of clarification.

6. When the hearing or the pleas to which the paragraphs above refer have been held or entered, a ruling shall be handed down quashing or confirming the act or resolution at issue and issuing the appropriate provisions as regards the suspension of the act or resolution.

TITLE VI

Provisions common to Titles IV and V

CHAPTER ONE

Deadlines

Section 128. 1. Deadlines may not be extended. Once they have expired, the appropriate court clerk shall hold the right to have expired and the step in proceedings not used to have been forfeited. Nevertheless, the appropriate document shall be admitted and shall have its legal effects if it is submitted within the day when notice of the decision is served, save where deadlines for preparing or filing claims are concerned.

2. During the month of August, the deadline for filing for judicial review and all other deadlines provided for in this act shall be prorogued, save for the procedure for the protection of fundamental rights, wherein the month of August shall be a working month.

3. In urgent cases or when the circumstances of the case make it necessary, the parties may petition the judicial authority to declare non-working days working days in the procedure for the protection of fundamental rights or in incidental proceedings for suspension or other precautionary measures. The single- or multi-judge bench shall hear

the other parties and decide via court order within three days. The judicial authority shall at all events declare as requested when refusal to do so may cause irreversible injury.

CHAPTER II

Precautionary measures

Section 129. 1. The persons concerned may petition for precautionary measures to be taken to ensure ruling efficacy at any stage in the process.

2. If a general provision is challenged and suspension of the legal force of the challenged precepts is requested, the petition must be made in the application for judicial review or the statement of claim.

Section 130. 1. After a circumstantiated evaluation of all the conflicting interests, the precautionary measure may be ordered only when execution of the act or application of the provision may render judicial review moot.

2. The precautionary measure may be refused when serious disturbance of general or third-party interests may ensue, which disturbance the single- or multi-judge bench shall weigh considering the circumstances.

Section 131. Incidental proceedings for precautionary measures shall be separate proceedings. Hearing of the opposing party shall be ordered by the court clerk within a period not exceeding ten days. A deciding order shall be given within the following five days. If the defendant administration has not yet appeared, the hearing shall be held with the agency that committed the activity challenged.

Section 132. 1. Precautionary measures shall remain in force until a final ruling is given ending the procedure in which the measures were set, or until the said procedure is terminated for any of the causes provided for in this act. Nevertheless, precautionary measures may be modified or revoked during the course of the procedure should the circumstances under which they were taken change.

2. Precautionary measures may not be modified or revoked because of progress made during the proceedings towards analysing the questions of form or legal merits of the case being debated, nor because of modification of the criteria the single- or multi-judge bench applied to evaluate the facts in deciding upon the incidental proceedings for precautionary measures.

Section 133. 1. When any injury of any nature may stem from a precautionary measure, the appropriate measures to avoid or palliate the said injuries may be taken. Likewise a bond or some security may be demanded to cover liability.

2. The bond or security may be furnished in any fashion admitted by law. The precautionary measure shall not be put into effect until the bond or security is furnished and accredited in the case records or until there is a record of compliance with the measures ordered to avoid or palliate the injuries to which the paragraph above refers.

3. When the measure has been lifted by a ruling or for any other reason, the administration, or the person claiming the right to redress for damages, may apply for such redress to the same judicial authority through incidental proceedings within the year following the date when the measure is lifted. If no such petition is lodged within the said period, such petitions are waived or the right is not proved, the security shall be released.

Section 134. 1. The proper administrative body shall be notified of the order containing the measure and shall issue orders for immediate compliance. The provisions of Chapter IV of Title IV shall be applicable with the exception of Section 104.2.

2. Any suspension of the validity of general provisions shall be published pursuant to the provisions of Section 107.2. The same terms shall be observed when the suspension refers to an administrative act affecting an indeterminate number of different persons.

Section 135. 1. When the parties allege the existence of especially urgent circumstances, the single- or multi-judge bench may resolve as follows, without hearing the opposing party.

a) The judicial authority may perceive the existence of especially urgent circumstances and adopt or deny the measure, pursuant to Section 130. No appeal may be entered against this ruling. In the same decision, the single- or multi-judge bench shall grant the opposing party a hearing within three days to make such allegations as it deems suitable or hold a hearing with the parties within three days of adoption of the measure. Once the allegations have been received, the deadline therefor has lapsed or the hearing has been held, the single- or multi-judge bench shall decide to lift, maintain or modify the measure adopted. That decision may be appealed in keeping with the general rules.

The provisions contained in Section 63 shall be applicable to the recording and documentation of the hearing.

b) The judicial authority may perceive no especially urgent circumstances and rule that the request for precautionary measures shall be processed as laid down in Section 131, during which the parties concerned may request no new measure via application of the present section.

2. In cases relating to actions performed by the administration involving foreign citizens, political asylum or refugee status entailing the return of minors to their country of origin, the judicial authority shall hear the public prosecutor prior to delivering a ruling referring to the first paragraph of this section.

Section 136. 1. In the events in Sections 29 and 30, the precautionary measure shall be taken save where evidence is observed that the situation is not one of those provided for in the said sections or that the measure causes grave disturbance to general or third-party interests, which the judge shall weigh considering the circumstances.

2. In the events in the paragraph above, the measure may also be requested before the claim is filed and processed pursuant to the preceding section. In that case the person concerned must petition for ratification upon filing for judicial review, which must be done inexcusably within ten days of notification that the precautionary measure has been taken. In the following three days the court clerk shall call the hearing to which the preceding section refers.

Where no claim for judicial review is filed, the measure shall automatically become void and the party requesting the measure must pay for any damages caused by the precautionary measure.

CHAPTER III

Incidental proceedings and invalidity of procedural acts

Section 137. All incidental questions arising in proceedings shall be handled in separate proceedings without suspending the course of the case.

Section 138. 1. When it is alleged that any of the parties' acts fail to meet the requirements established in this act, such party shall have ten days following notification of the document containing the allegation to correct the defect or enter such opposition as the party deems pertinent.

2. When the court observes any correctable defects *ex officio,* the court clerk shall hand down ruling proceedings summarising the defect, grant the aforementioned correction period and, where appropriate, suspend the period for handing down the ruling.

3. Only when the defect is incorrigible or not duly corrected in a timely manner may the claim be decided on the grounds of such defect.

CHAPTER IV

Court costs

Section 139. 1. In first or single instance, upon issuing a ruling or decision on judicial review or incidental proceedings brought before it, the judicial authority shall impose costs on the party whose claims are rejected, unless it perceives, and gives a reasoned account of, the existence in the case of serious doubts of fact or legal principle.

Where claims are partially allowed or rejected, each party shall pay the costs associated with its action plus one half of the costs of any common actions, unless the judicial authority imposes costs on only one, on duly reasoned grounds that its actions or claims were lodged recklessly or in bad faith.

2. In all other instances or tiers of the judiciary system, costs shall be awarded to the claimant if the claim is completely dismissed, save where the judicial authority observes and duly reasons attendant circumstances justifying failure to make such an award.

3. Costs may be awarded in full, in part or up to a ceiling.

4. To exact costs awarded to private persons, the administration to which costs are owed shall use the forced collection procedure unless voluntary payment is forthcoming.

5. In no case shall costs be awarded to the Prosecution Service.

6. Costs of proceedings shall be regulated and their rates set according to the provisions of the Code of Civil Procedure.

ADDITIONAL PROVISIONS

One. Historical Territories and the Basque Country Arbitration Commission.1. In the Autonomous Community of the Basque Country, the reference in Section 1, paragraph 2 of this act also includes provincial governments and the institutional administration dependent thereupon. Likewise the reference in Section 1, paragraph 3, subparagraph *a)* includes acts and provisions in matters of personnel and asset management subject to public law made by the competent bodies of the general assemblies of the historic territories.

2. It is not for the administrative jurisdiction to hear decisions or resolutions made by the Arbitration Commission to which Section 39 of the Statute of Autonomy of the Basque Country refers.

Two. Updating of amounts. The government is authorised to update the amounts indicated in this act every five years, subsequent to a report by the General Council of the Judiciary and the Council of State.

Three. Registration of rulings. 1. Administrative divisions of superior courts, of the National Court and of the Supreme Court shall forward a certified copy of rulings handed down in the proceedings they hear to the General Council of the Judiciary within ten days of signing.

2. The General Council of the Judiciary shall create with such rulings a registry whose certificates shall constitute unshakeable evidence in all manner of proceedings.

Four. Judicial review of certain acts, decisions and provisions. The following shall be reviewable:

1. Administrative acts ordered by the Bank of Spain and not amenable to ordinary appeal and decisions by the Ministry of Finance and the Exchequer on ordinary appeals against acts ordered by the Bank of Spain, likewise

provisions by the aforesaid entity, directly, in single instance, before the Administrative Division of the National Court under Act 13/1994 of 1 June on the Autonomy of the Bank of Spain.

2. Administrative acts ordered by the National Securities Market Commission and not amenable to ordinary appeal, decisions by the Ministry of Finance and the Exchequer on ordinary appeal against acts ordered by the National Securities Market Commission, likewise provisions by the aforesaid entity, directly, in first instance, before the Administrative Division of the National Court.

3. Decisions and acts of the Chairman and the Board of the National Competition Commission, directly, in single instance, before the Administrative Division of the National Court.

4. Decisions of the Arbitration Board regulated under Constitutional Act 3/1996 of 27 December partially amending Constitutional Act 8/1980 of 22 September on Autonomous Community Financing, directly, in single instance, before the Administrative Division of the National Court.

5. Administrative acts ordered by the Spanish Data Protection Agency, the National Energy Commission, the Telecommunications Market Commission, the Economic and Social Council, the Cervantes Institute, the Nuclear Security Council and the Council of Universities, directly, in single instance, before the Administrative Division of the National Court.

6. Administrative acts ordered by the National Energy Commission and not amenable to ordinary appeal, decisions by the Ministry of Industry and Energy on ordinary appeals against acts ordered by the National Energy Commission, likewise provisions dictated by the aforesaid entity, directly, in single instance, before the Administrative Division of the National Court.

7. Administrative decisions by the Ministry of Industry, Tourism and Trade on appeals against acts ordered by the National Energy Commission, likewise provisions dictated by the aforesaid entity, directly, in single instance, before the Administrative Division of the National Court.

Five. Amendment of the revised Labour Procedure Act. Article 3 of the revised Labour Procedure Act approved by means of Royal Legislative Decree 2/1995 of 7 April shall be worded henceforth as follows:

1. The judicial authorities of the corporate jurisdiction shall not hear cases concerning:

a) Protection of rights of freedom of association and the right to go on strike regarding civil servants and the personnel to which Section 1.3.a) of the revised Act on the Workers' Statute refers.

b) Decisions handed down by the National Social Security Treasury in matters of collection management or, where applicable, decisions by pension fund management companies in the event of joint collection payments, likewise decisions concerning settlement and infringement reports.

c) Allegations concerning the challenging of public administrations' general provisions and acts that are subject to administrative law in labour-related matters, save those listed in the following paragraph.

2. Following filing of a complaint with the appropriate administration as established in Sections 69 to 73 of this revised text, judicial authorities in the corporate jurisdiction shall hear allegations about:

a) Administrative decisions concerning the issuance of any penalties for infringement of corporate legislation, with the exception provided for in paragraph **1.**b) of this section.

b) Administrative decisions concerning labour force adjustments and administrative action in matters of group transfers.

Six. Amendment of the sections of the Act establishing the foundations of the economic administrative procedure. Article 40 of *Act 39/1980 of 5 July* establishing the foundations of the economic administrative procedure approved by *Royal Legislative Decree 2795/1980 of 12 December* is worded henceforth as follows:

1. *Decisions by the Ministry of the Economy and the Exchequer and the Central Economic Administrative Court shall be open to judicial review by the National Court, save for decisions handed down by the Central Economic Administrative Court in matters of devolved taxes, which shall be open to judicial review by the competent superior court.*

2. Decisions handed down by regional and local economic administrative courts ending economic administrative proceedings shall be open to judicial review by the competent superior court.

Seven. Single- and multi-judge administrative courts shall also hear questions between Sociedad Estatal Correos y Telégrafos, S.A., and its employees who remain civil servants and are assigned to said company, in the same terms in which such courts hear questions between public organisations and their civil servant staff, in view of the specific nature of this relationship.

Eight. References to petitions for reconsideration. References in sections of this act to petitions for reconsideration shall be held to refer to appeals for administrative reversal.

TRANSITIONAL PROVISIONS

One. Affairs within the competence of single-judge administrative courts. 1. Proceedings pending in the administrative divisions of superior courts whose competence belongs under this act to single-judge administrative courts shall continue to be heard by the said divisions until their conclusion.

2. Until the single-judge administrative courts begin functioning, the administrative divisions of superior courts shall exercise competence to hear proceedings assigned under this act to single-judge courts. In these cases, the system of appeals shall be that established herein for rulings handed down in second instance by administrative divisions of superior courts.

Two. Ordinary procedure. 1. Judicial review proceedings filed prior to the entry in force of this act shall continue to be tried under the rules governing on the date of their initiation.

2. Nevertheless, when the period for ruling on such proceedings begins subsequently to the entry in force of this act, the provisions of Title IV, Chapter I, Section 8 shall be applied in the ruling. Where some precept involving innovation must be applied, the parties shall be granted an extraordinary shared period of ten days in which to be heard on the point.

3. The rules of Title IV, Chapter I, Section 9 shall likewise be applicable to all judicial review proceedings in which no ruling has been given as of the entry in force of this act.

Three. Appeals to the Supreme Court. 1. The system of rules for the different appeals to the Supreme Court regulated herein shall be fully applicable to decisions of the administrative divisions of the national court and superior courts handed down subsequently to the entry in force of this act and earlier decisions when, at the issuance of the decision, the periods established in previous legislation for preparing or filing the pertinent appeal to the Supreme Court had not expired. In this latter case, the period for preparing or filing the appropriate appeal to the Supreme Court pursuant to this act shall be counted as of the date of this act's entry in force.

2. Appeals to the Supreme Court prepared prior to the entry in force of this act shall be governed by previous legislation.

Four. Execution of rulings. The execution of final rulings handed down after the entry in force of this act shall be conducted according to the provisions of this act. Those handed down prior to rulings whose full execution is not yet a matter of case records shall be executed pursuant to the same in all things pending.

Five. Special procedure for the protection of fundamental personal rights. Judicial review proceedings concerning the protection of fundamental personal rights prior to the entry in force of this act shall continue to be tried under the rules governing on the date of their initiation.

Six. Questions of illegality. Questions of illegality may only be entered in all procedures whose ruling becomes final as of the entry in force of this act.

Seven. Special procedure in matters of administrative suspension of resolutions. The system of rules for the special procedure in cases of administrative suspension of resolutions regulated in Section 127 shall be applicable to challenges and notifications of suspended acts that take place subsequently to its entry in force, even where the said acts were ordered prior to that date.

Eight. Precautionary measures. In procedures pending as of the entry in force of this act, the precautionary measures provided for in Title VI, Chapter II may be petitioned for and ordered.

Nine. Court costs. The system of court cost rules established in this act shall be applicable to proceedings and claims initiated or lodged subsequently to the entry in force of this act.

PROVISIONS ON REPEAL

One. General clause on repeal. All terms of legislation of the same or lesser rank opposing this act are hereby repealed.

Two. Repeal of legislation. The following provisions are hereby repealed:

a) The Act of 27 December 1956 Regulating the Administrative Jurisdiction.

b) Articles 114 and 249 of Act 118/1973 of 12 January, the revised Act on Agricultural Development and Reform.

c) Articles 6, 7, 8, 9 and 10 of Act 62/1978 of 26 December on Judicial Protection of Fundamental Personal Rights.

d) Article 110, paragraph 3, of Act 30/1992 of 26 November on the Legal Framework for Public Administrations and the Common Administrative Procedure.

FINAL PROVISIONS

One. Supplementary nature of the Code of Civil Procedure. In all things not provided for herein, the Code of Civil Procedure shall govern on a supplementary basis.

Two. Implementation of the act. The government is authorised to lay down such provisions applying and implementing this act as necessary. Particularly, within one year of the entry in force of this act, the government, acting on a proposal by the General Council of the Judiciary, shall regulate the organisation of and rules of access to the registry provided for in additional provision three. At the same time, the government shall prepare the necessary programmes for the institution of single-judge administrative courts in the period between 1998 and 2000. The General Council of the Judiciary and the Ministry of Justice or competent bodies of the autonomous communities shall be responsible for implementation and execution within the spheres of their respective competences.

Three. Entry in force. This act shall enter into force five months after its publication in the *Boletín Oficial del Estado,* the terms of additional provision five notwithstanding.


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