Remedies against administrative acts and procedural safeguards. Some reflections on the 11th Conference of the Spanish Association of Administrative Law Professors

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The procedural safeguards against the activity or inactivity of public administrations that generally come to mind are three: administrative remedies, administrative justice understood as judicial review and administrative responsibility.

But are they really effective? Do they allow all citizens to seek redress for the activity or inactivity of public administrations upon filing a claim? Leaving aside administrative responsibility, administrative justice allows for a thorough control over all acts, regulations, inactivity and unlawful conduct. However, such control is usually not effective due to delays in the process and, in addition, there is actually no control whatsoever when it comes to low value claims given the high cost of the judicial process. Who is ready to assume the costs, delays and uncertainty of a judicial process for claims under 3000€?

What about administrative remedies? They have been conceived as a mechanism to protect public administrations (administrative appeal for review by the same body) or as an internal control system (administrative appeal for review by a higher authority) rather than to serve the citizenship. Either they are not resolved, or they are resolved but after several delays, and only in few cases they are allowed.

All these topics were covered during the 11th Conference of the Spanish Association of Administrative Law Professors held in Zaragoza on 5 and 6 February. The current system of administrative remedies was widely criticized while new alternatives were considered aimed at the establishment of efficient administrative remedies within a broader concept of administrative justice. This concept should also include all stages prior to resort to the court and offer a broader sense to the concept of material justice.

The participants shared current experiences of administrative remedies filed before administrative bodies that are not subject to the control or guidelines of the public administration whose activities they control. These experiences can be found in the field of public procurement, in economic and administrative matters, in transparency and with respect to market unity. Experiences from France, the United Kingdom, Switzerland and the European Union were also brought to the table.

The recent experiences in Spain were evaluated differently by the participants. Some successful cases were highlighted such as remedies in public procurement or in economic and administrative matters in big cities.

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Participants also defended the idea that new administrative remedies need to be set up, especially in terms of low value claims and mass claims as they affect the everyday lives of the citizens: staff matters, traffic tickets, immigration matters, social benefits, school issues…

And which criteria should define these new remedies? From an organizational point of view, they should be attributed to specialized independent bodies composed of both lawyers and experts with other specializations. The proceedings should be swift, streamlined and free of charge (or with fees that do not act as a deterrent). A lawyer should not be necessary. The body should be able to be proactive and even mediate during the dispute. The resolution should be well-founded and have unlimited jurisdiction, while the body should be able to modify the content of the act concerned and impose specific conducts on the public administration to be fulfilled within a given timeframe.

The body should also be able to suspend the effect of the act concerned or impose positive preservation measures. Its optional or compulsory character should however be discussed, although it could depend on the specific remedy. Since these remedies would not a burden for the citizen anymore but a real system for the protection of their rights and interests, they could be compulsory. Finally, the decisions should have direct enforceability.

During the Conference participants also mentioned that this set of proposals should have been included in the new Spanish Law 39/2015 on the common administrative procedure of public administrations, developing Article 107.2 of the Spanish Law 30/1992 on the legal system of public administrations and common administrative procedure. Nevertheless, the new Law, which received a bunch of critics, remains blatantly silent.