

# International Association of Tax Judges



IATJ 7<sup>th</sup> Assembly

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Madrid, Spain

**Tax Procedures in Spain**

**Tax litigation in the spanish contentious-administrative  
jurisdiction (2015)**

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## I. Introduction

In Spain, the judicial activity relating to taxation is attributed to the organs of the administrative jurisdiction unlike what happens in countries where there is a court order that specifically handles tax matters, as in the Germany of our dear Friederike. In

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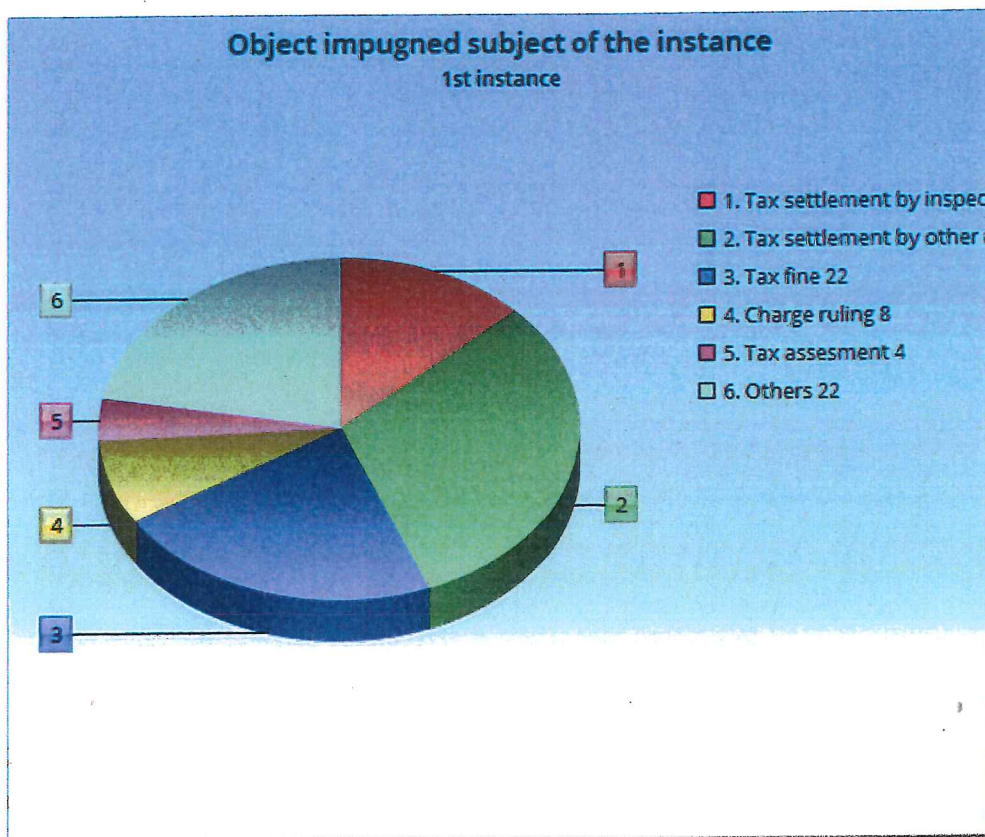
our country, this judicial control is integrated into the administrative litigation order and this despite the Draft Law on Reform of the Organic Law of the Judiciary introduced in 2014 envisaged in Articles 100.5 and 113.7, the possibility of forming specialized sections who knew exclusively the resources to stand in tax matters before the National High Court (AN) and the High Courts of Justice (TSJ), respectively. Finally proposals were not incorporated in the Organic Law 7/2015 of 21 July, the Organic Law 6/1985 of 1 July, the Judiciary is modified. The operation of the contentious justice in tax matters in court in the latter judicial period can be analyzed from different points of view. Let's see.

## **II. Purpose contested**

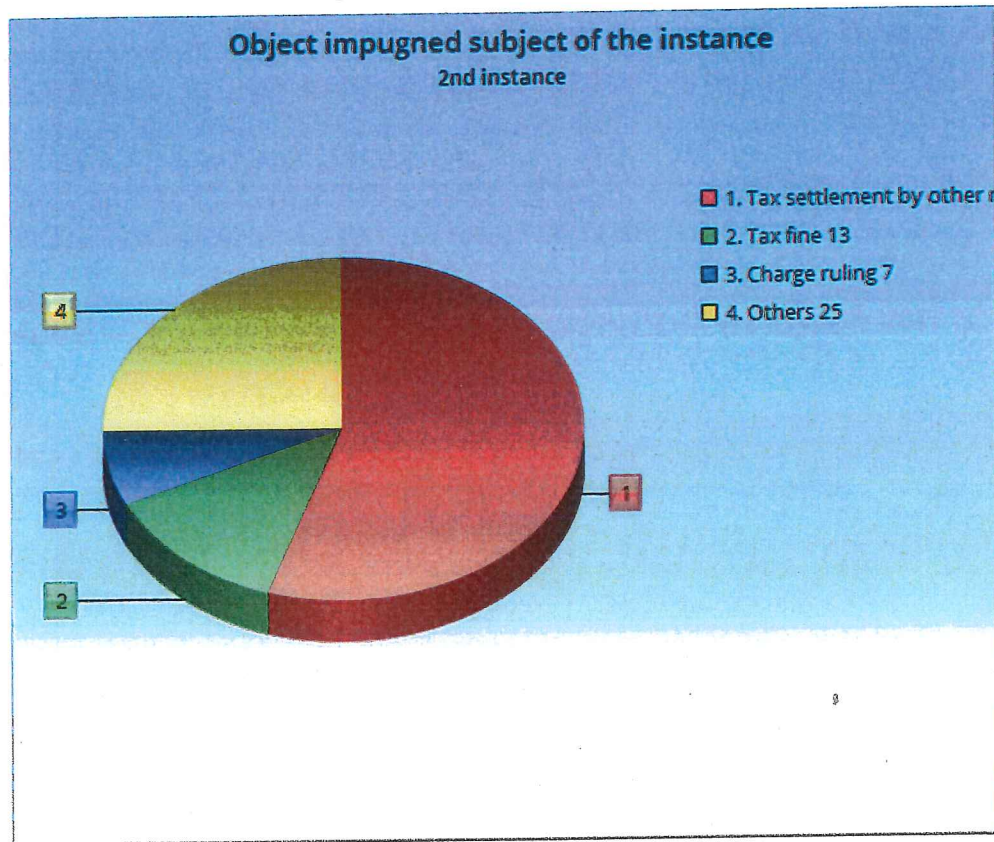
### *II.1 Object impugned subject of the instance*

The object of litigation clearly varies with the instance that the case. Thus, most of the issues are resolved in the first instance relate mainly to assessments made by different inspection procedures and, to a lesser extent, to sanctions. As to the second instance, substantiated by the High Courts of Justice on the judgments of the Courts of Administrative Litigation, liquidations derived from different inspection procedures represent more than 55% of the cases, while settlements arising from the inspection are statistically insignificant, which is not surprising when you consider that in the second instance being studied cases arising from the application of local taxes, matter which is not the existence of normal inspection procedures.

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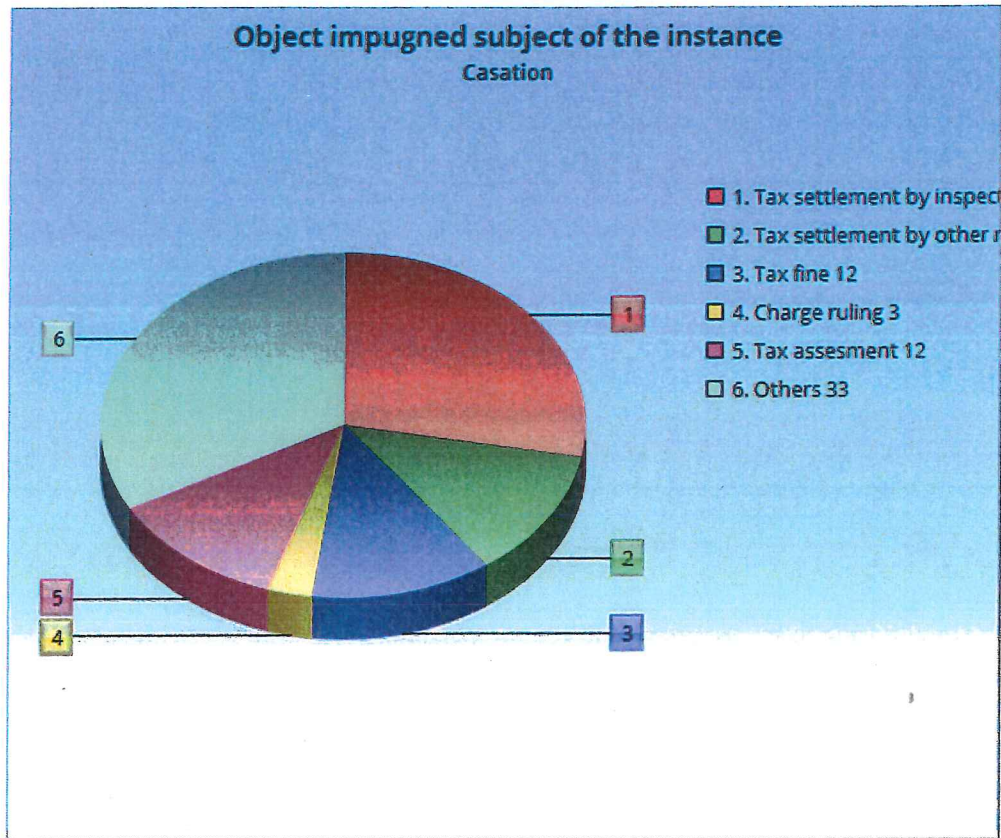


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On the contrary, the settlements that were the result of an inspection loom large in the scope of cassation, which represent 27% of all litigation against 11% referred to other settlements, as in the other instances they were the majority. This investment in the percentages reflects the fact that the settlements resulting from an inspection procedure usually higher amount than other settlements, leading to their greater access to appeal.

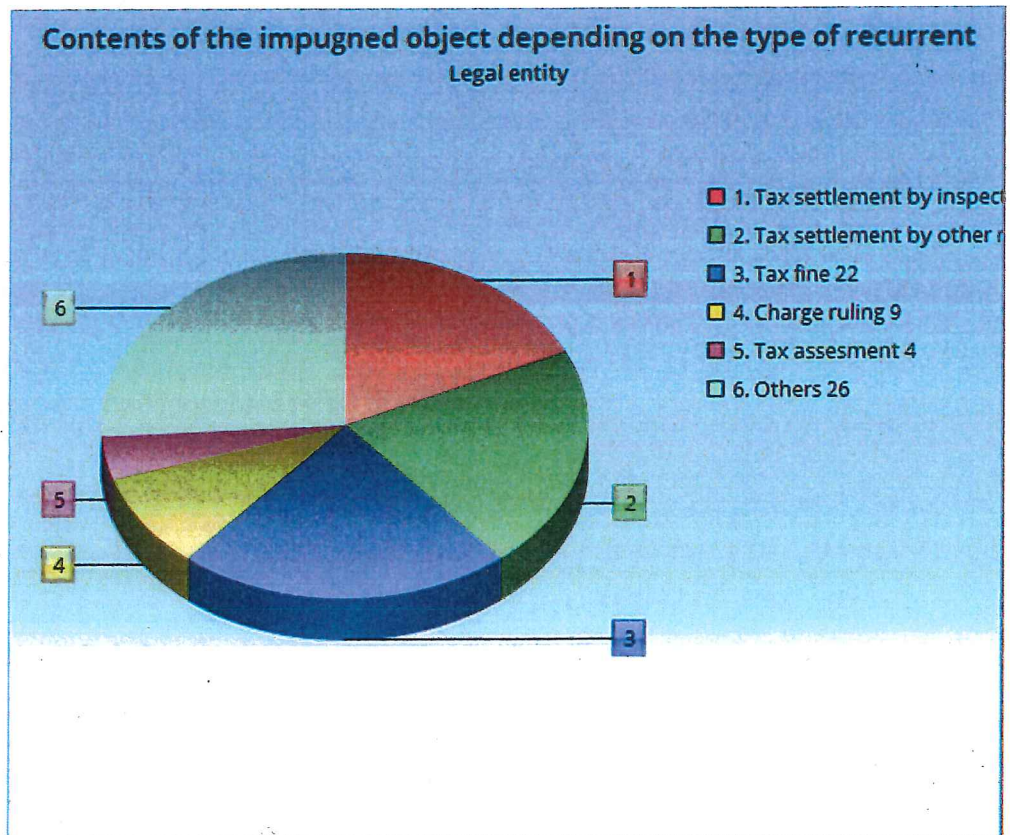
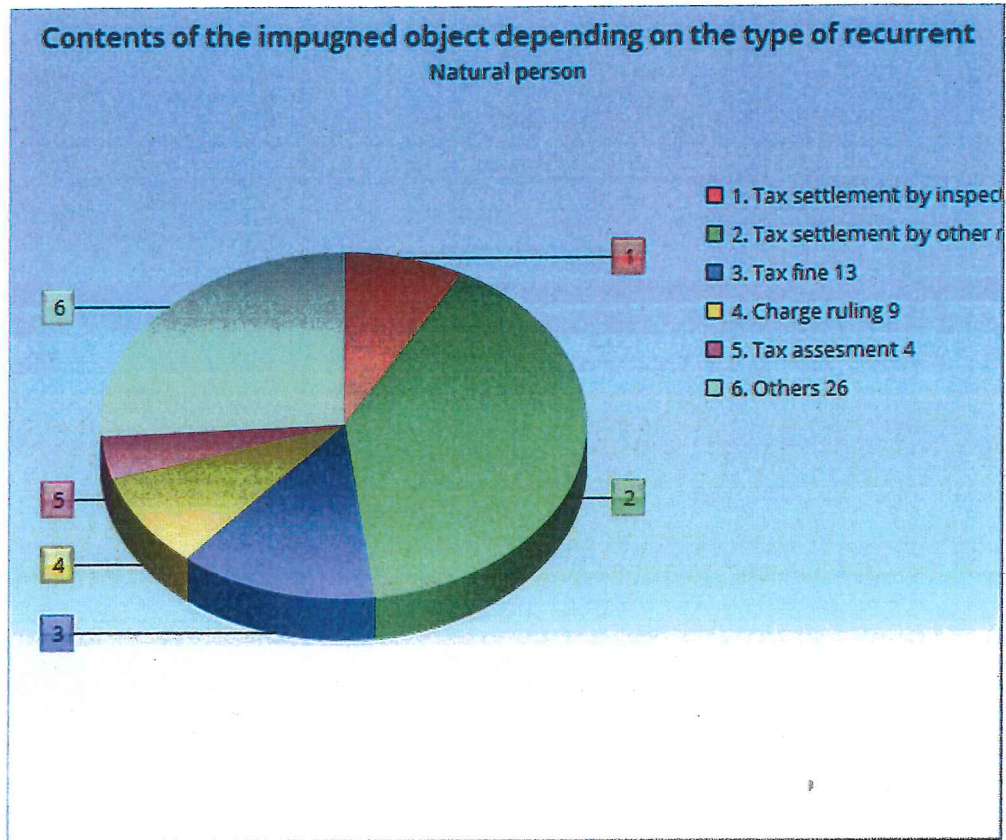
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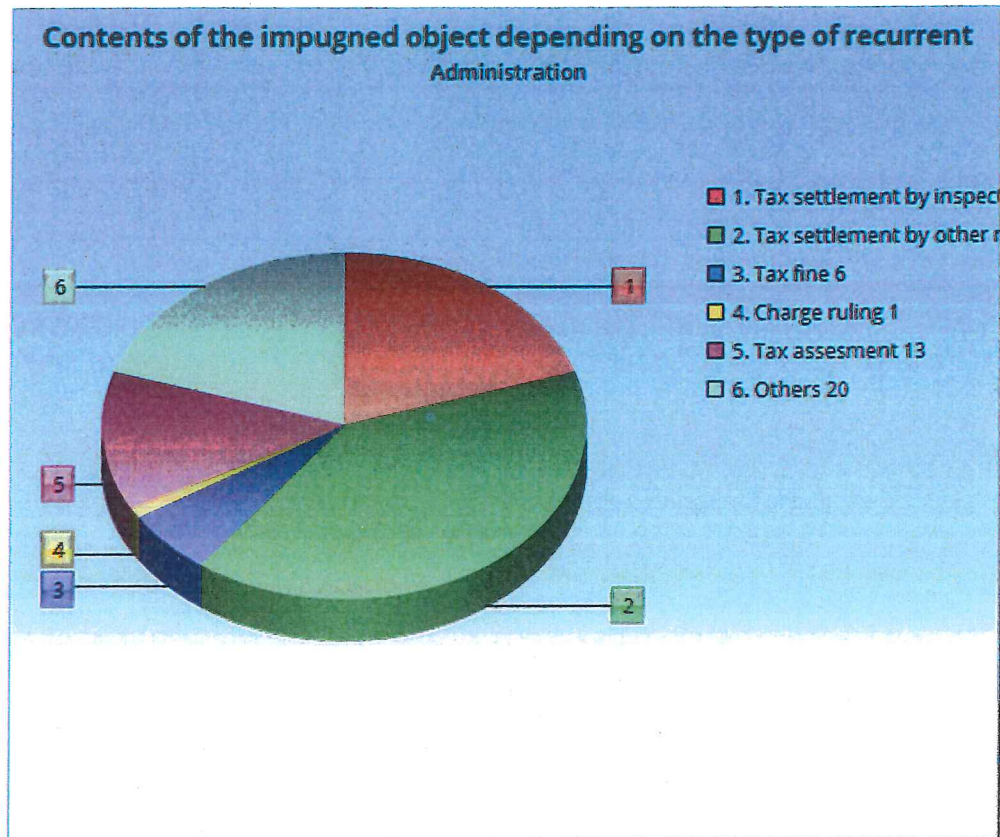


## II.1. Contents of the impugned object depending on the type of recurrent

In response to this criterion, it is legal persons which most resort resolutions related to settlements resulting from an inspection procedure, resulting reverse the situation as regards the challenge of settlements from different inspection procedures

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(check data, limited verification, etc.), which corroborates that there is a higher concentration of inspections in legal entities in the physical, so that the latter are controlled mainly by the verification procedures carried out by the management bodies. There is also a striking difference in what refers to the frequency with which sanctions challenging legal and natural persons. Thus, appeals against sanctions represent 24.30% of total resources driven by legal persons, whereas in the case of individuals this object represents only 11,60% of all actions brought by these people.

### III. Type of recurrent

#### III.1. Type of recurrent because of the instance

The analysis of the type of recurrent in tax lawsuits identifies the nature of the subject to the jurisdiction provides protection in these procedures. In the case of the first instance, the appellants who are legal persons clearly outweigh those who are

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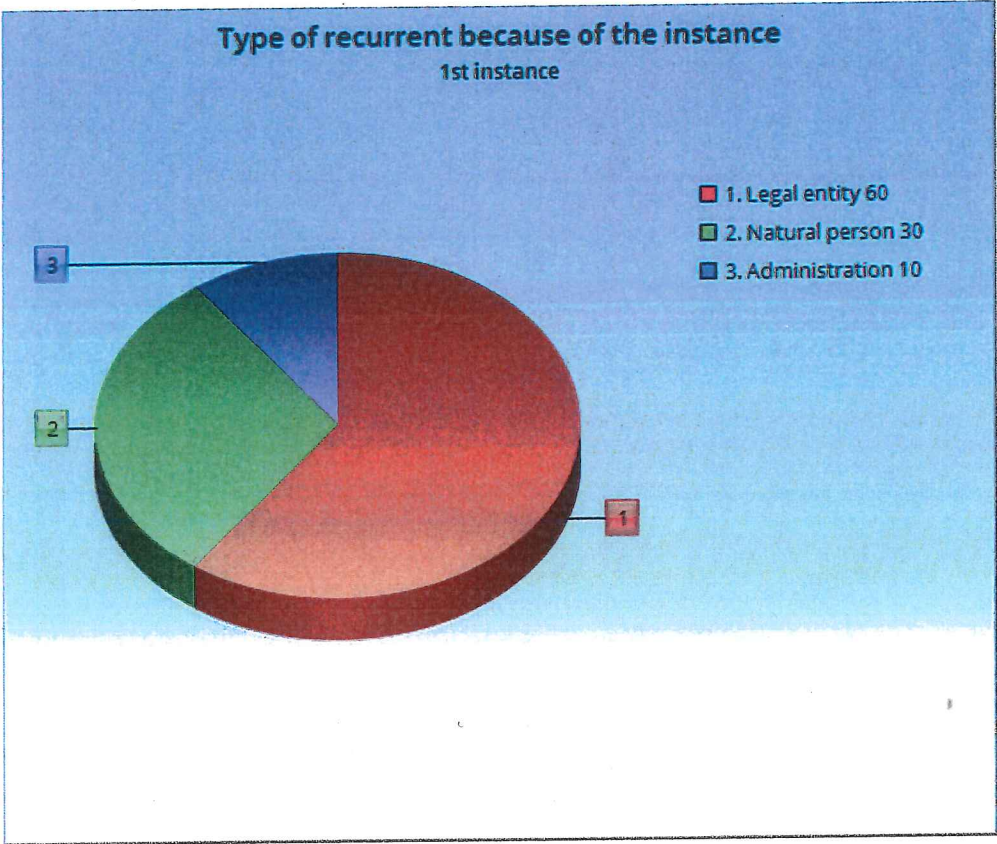
individuals (60% vs. 32%). This clear difference between natural and legal persons comes to reflect a greater incentive for the latter at the time of going to court.

The results of the second instance are very similar to those of the first instance, which could also mean the "discouragement effect" on individuals in terms of their willingness to litigate. This change in trend may be partially explained by the court fees exemption enjoyed by natural persons since February 2015, tentatively what could have been an incentive for these people would come to this second instance.

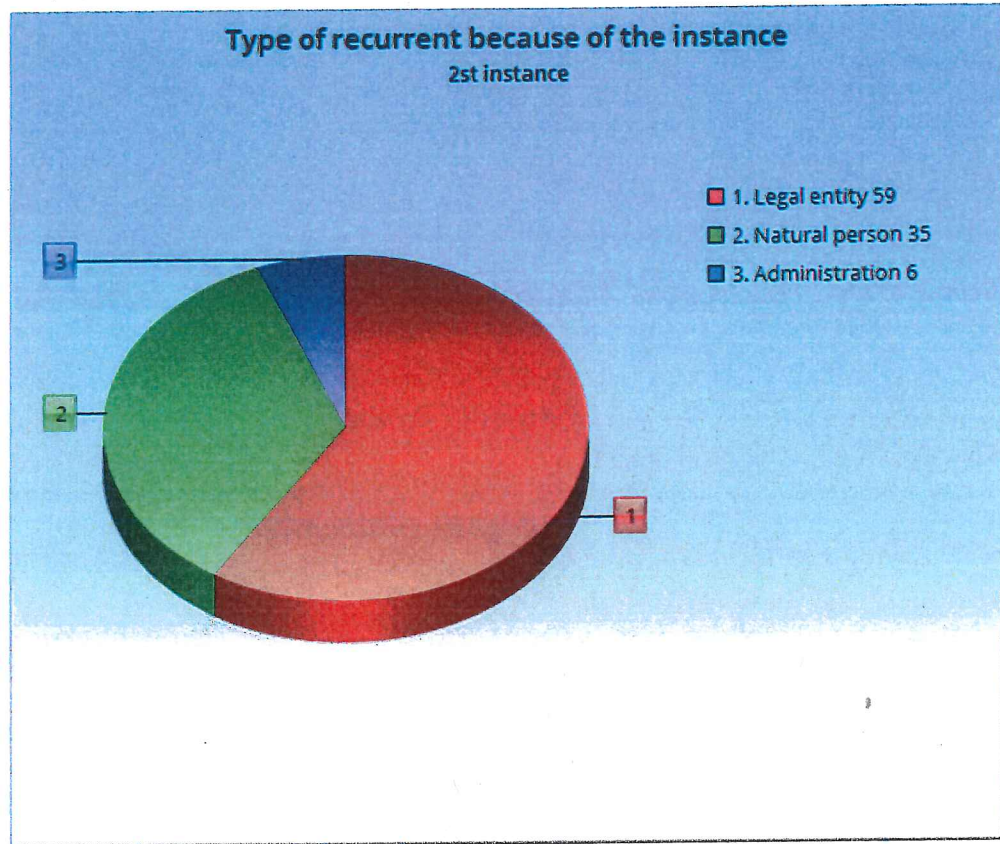
As it regards the appeals, both the percentage of recurring who are natural as the Administration people are remarkably low, so that in 76% of cases the appellant is a legal person, the relative decline natural persons as recurrent can be explained by the higher cost of chaining courts. Also, the high amount required to access the appeal explains perhaps more decisive way the reduced presence of natural persons in this instance.



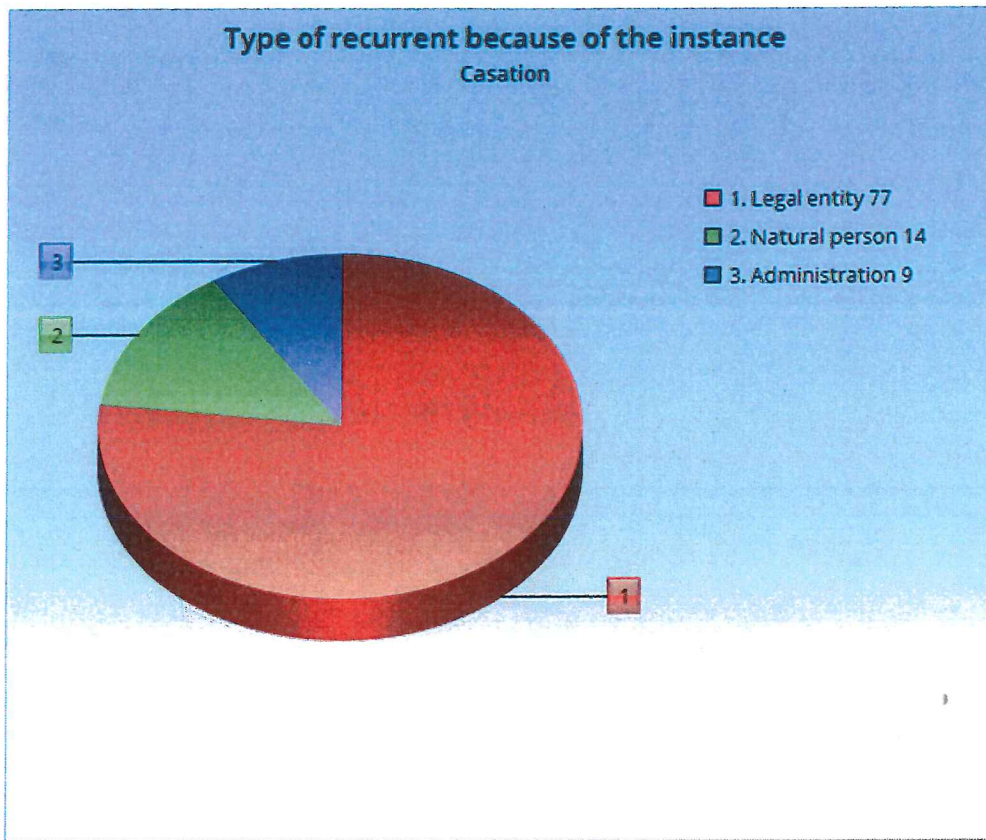
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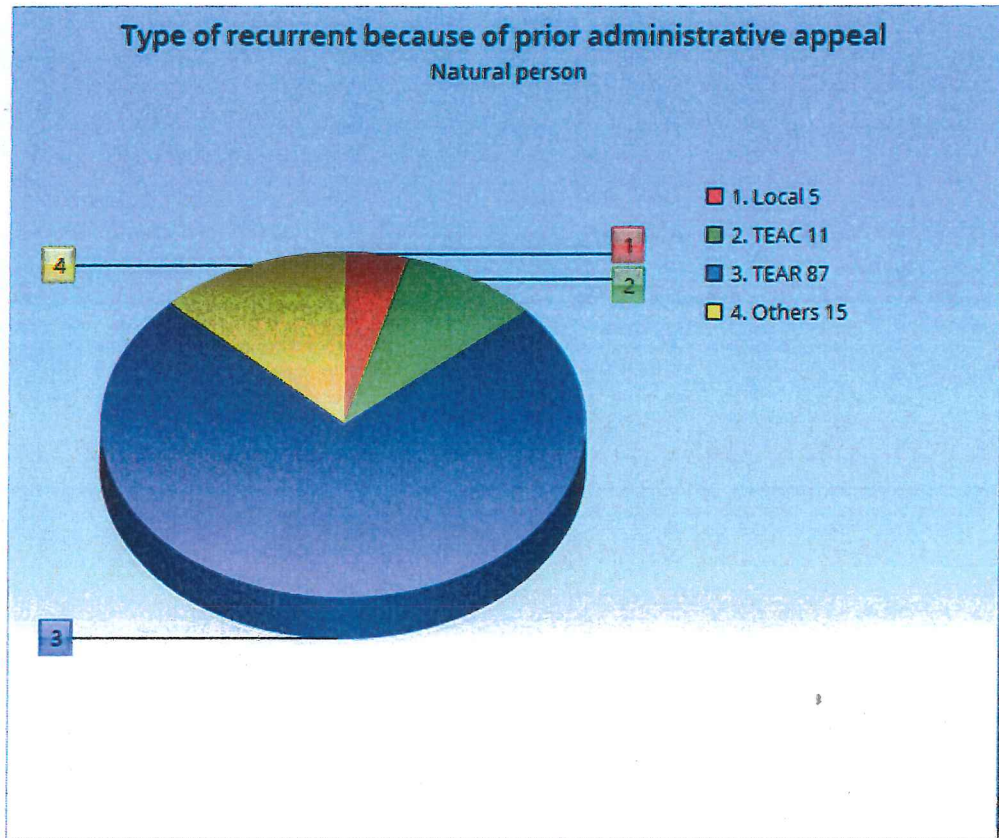
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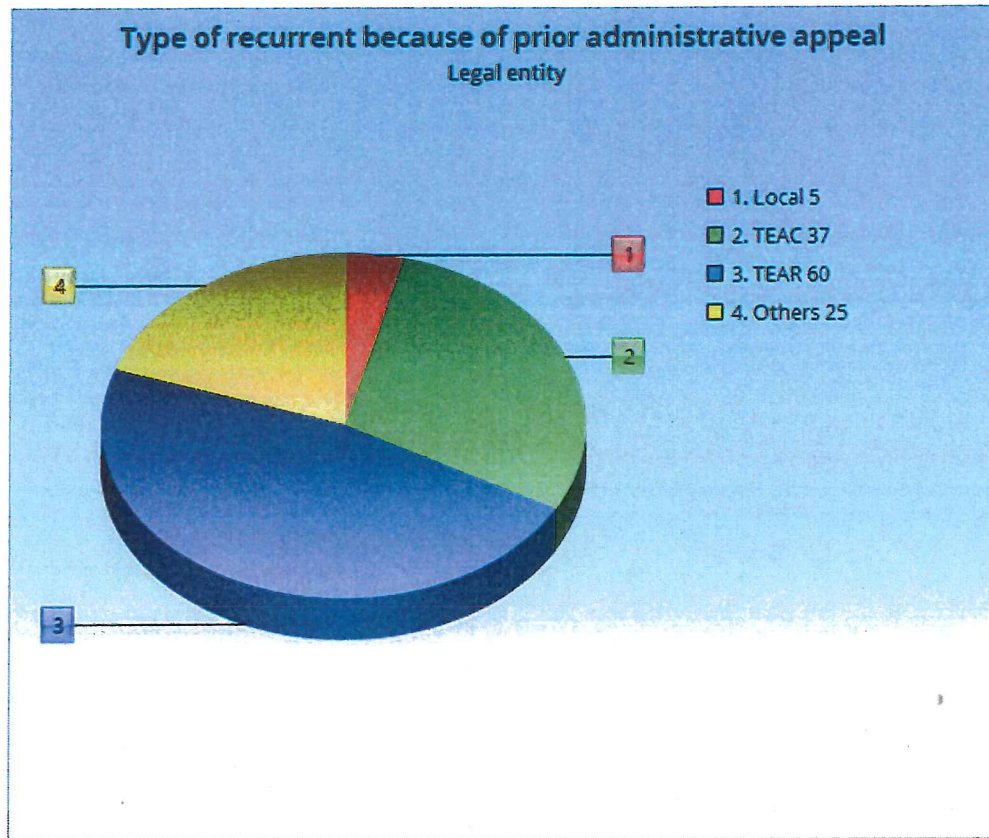
## *III.2. Type of recurrent because of prior administrative appeal*

The percentage of lawsuits of legal persons who come from TEAC is much higher than natural persons (37% vs. 12%). Correspondingly, the higher the percentage of cases brought by individuals who come from TEAR (84%) than that for the cases in which legal persons are recurrent (60%). In an indirect way, this allows ratify a general insight into the sector: TEAC is dedicated, en gran medida, to solving material related to legal persons yoritariamente affairs.

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### III.3. Type of recurrent and amount of litigation

Of the total number of appeals by natural persons, more than 39% of the cases had a less than € 23,000 amounts, while only 14% of all actions brought by legal persons were in that section. On the contrary, if 13% of all actions brought by natural persons reflected an amount exceeding € 685,000, this rate almost tripled in the case of legal persons (32%). With this it confirms that the issues are clearly legal persons that are higher than those made by individuals. Also, the finding of this data could be used to.

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justify the exemptions provided exclusively for natural persons, as, for example, in the field of court fees since the reform operated by Royal Decree-Law 1/2015, of 27 February.

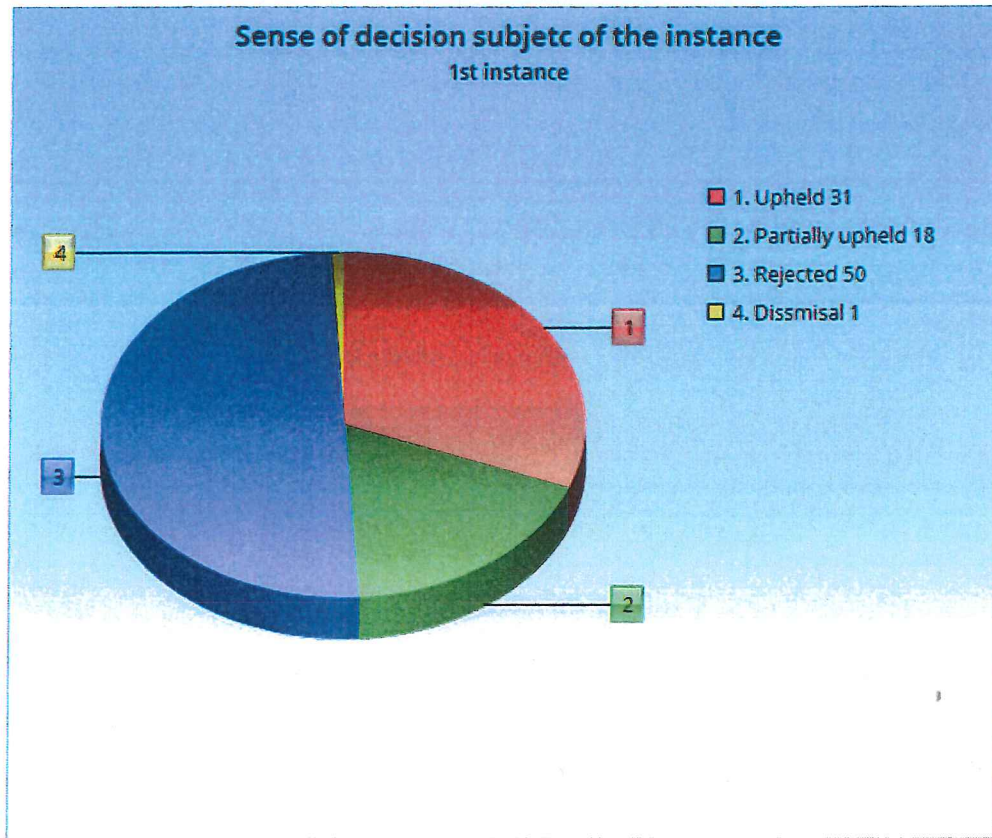
## **IV. Sense of the decision**

### *IV.1. Sense of decision subject of the instance*

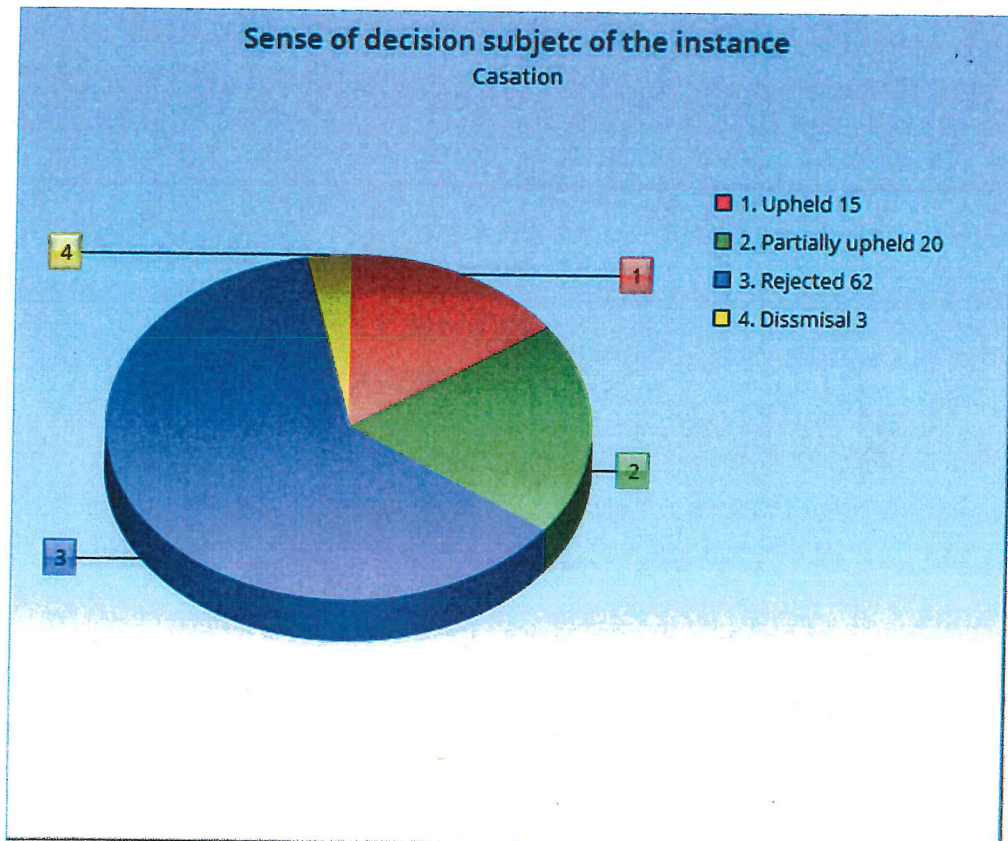
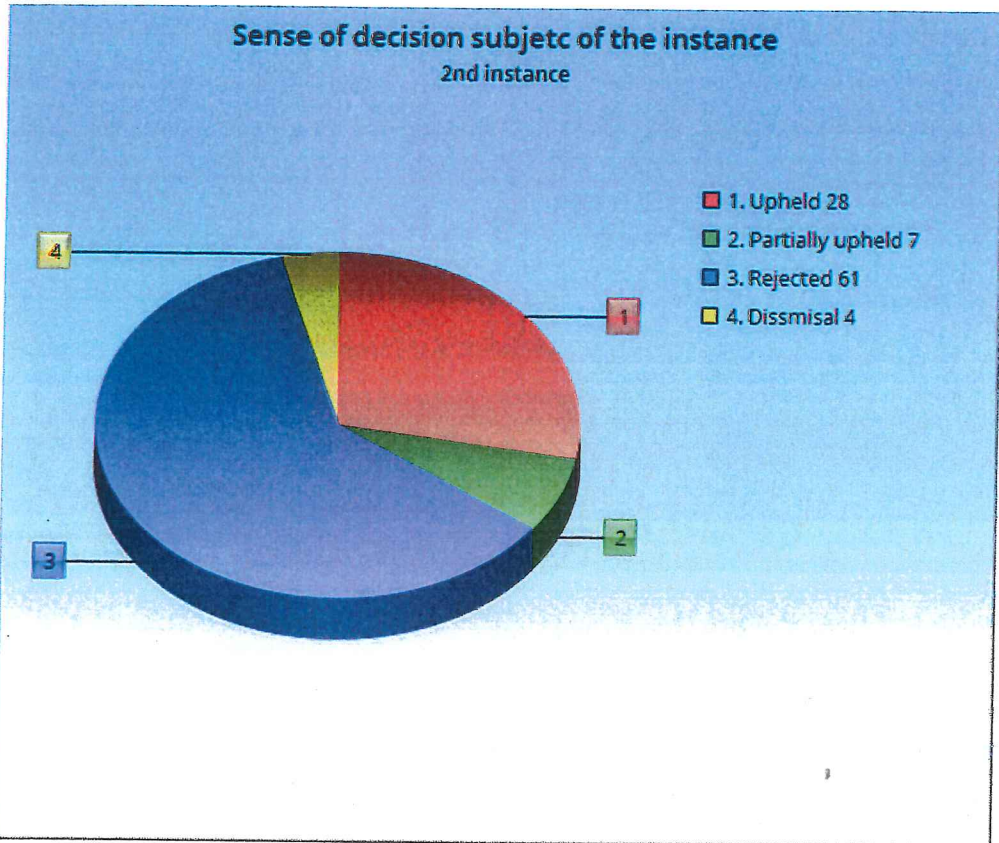
The volume of rejections increases steadily, although not very sharp, as it passes through the higher courts. While in the first instance is rejected by 50.2% of cases, that percentage rises to 62.5% in cassation. Considering the rising percentage of rejections, one can say that the system resources are doing their job, while higher levels are debugged the success of resolutions, correcting errors that could have incurred the lower courts.

Is also notes that a high number of upheld in the first instance, which could reflect a quality problem in administrative activity, incurring violations of the law and require an active attitude of the appellant to achieve effective protection.

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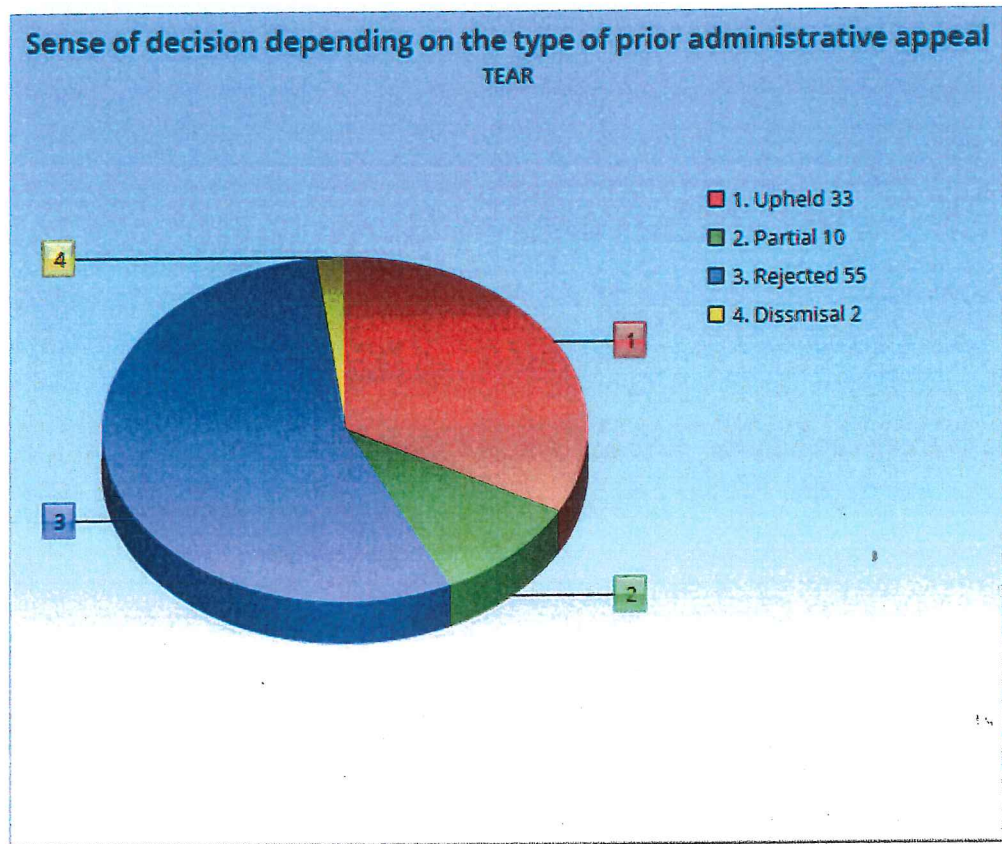


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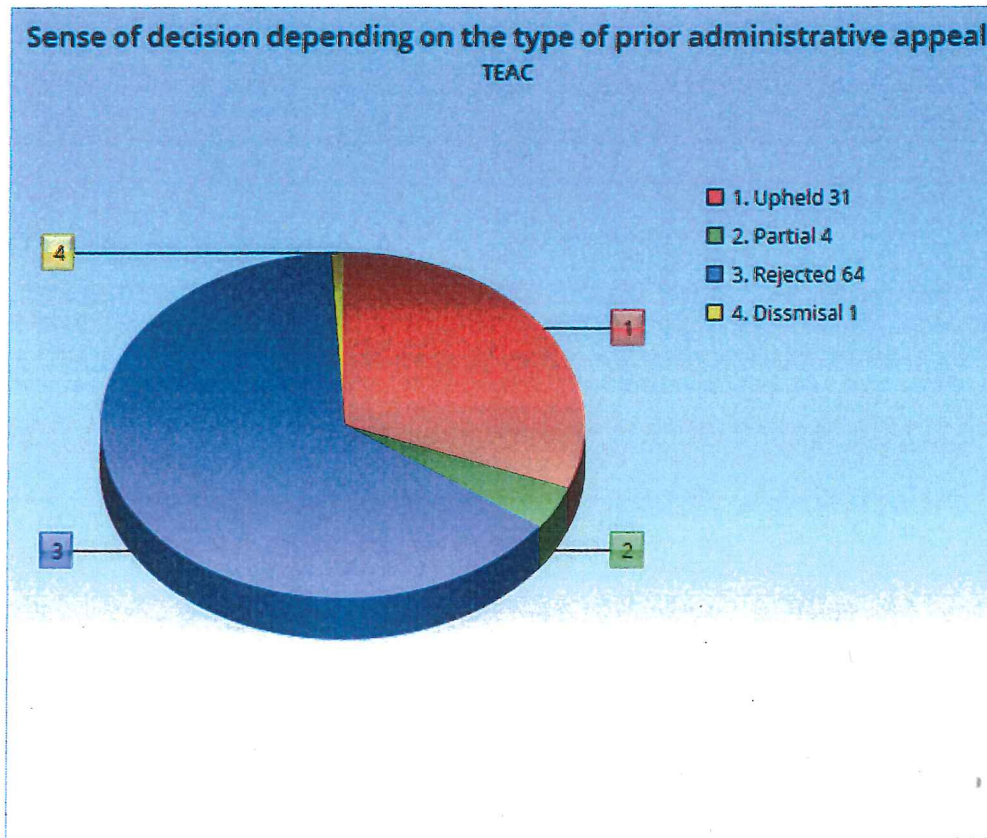
## *IV.2. Sense of decision depending on the type of prior administrative appeal*

Both challenges of the issues that come from TEAR as those on which they have been dictated by the TEAC are estimated at 30%, the percentage slightly higher in case of the previously solved by TEAR. However, other differences are more pronounced in what refers to the percentage of rejections, which is almost ten points higher in relation to the challenges of the resolutions of TEAC. Again, it must be noted that these data could be a clear indication of the quality of decisions of each of the administrative review bodies if what percentage of decisions are challenged before the jurisdiction was known. Whenever lacks the relevant data, conclusions are necessarily less strong.

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## IV.3. Sense of decision depending of the type of impugned administrative act

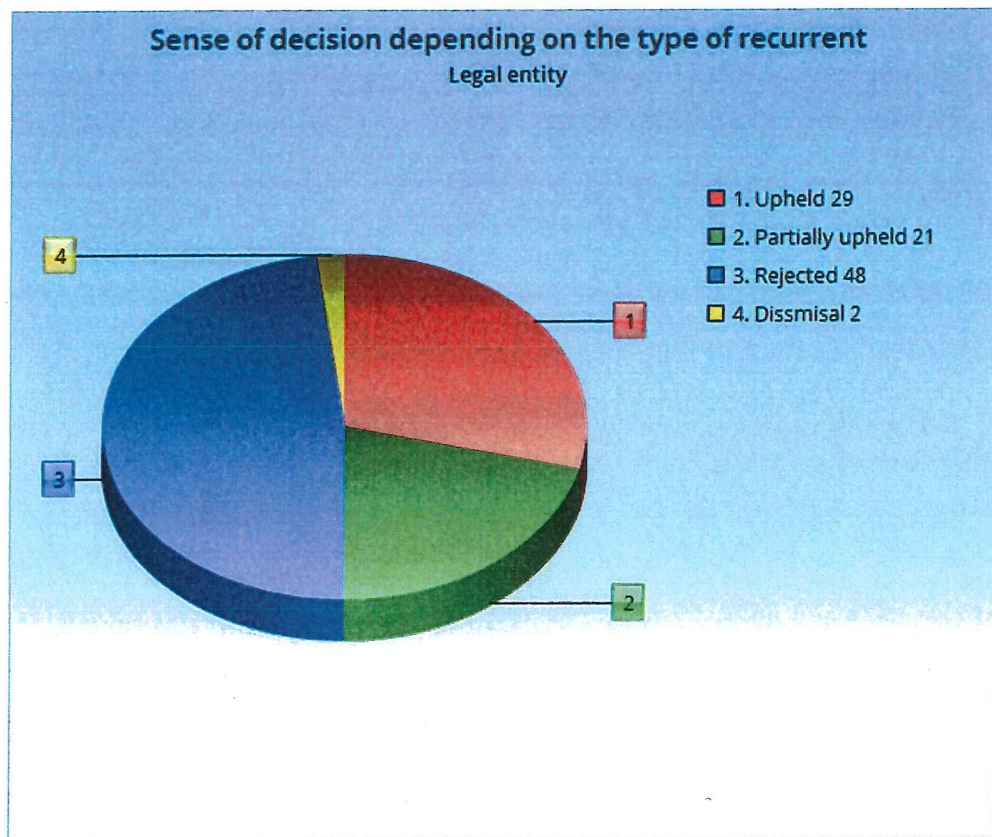
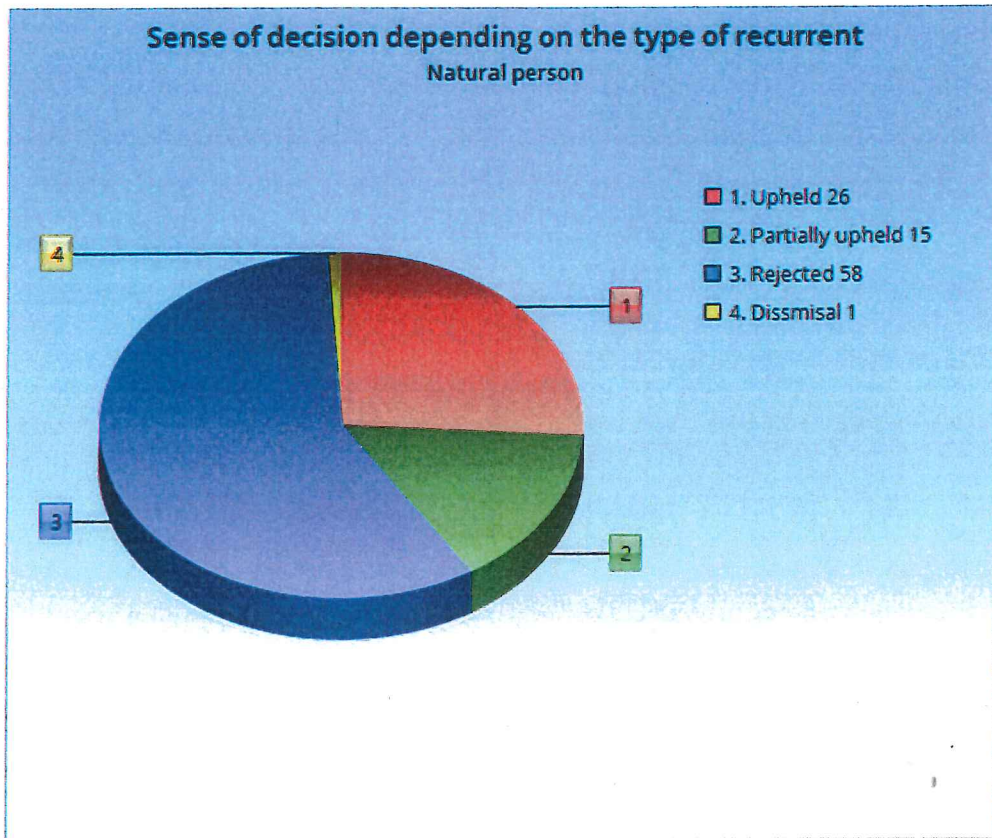
The sense of decision also varies significantly depending on the act which has been challenged, either a settlement resulting from an inspection, any other type of settlement, a penalty, a recovery notice or an act of valuation. So are the issues challenge a settlement by any means other than inspection which have a higher percentage of estimate, close to 40%. On the contrary, are the challenges of valuation acts which show a lower percentage of estimates, which barely exceeds 15%. Also, if the results of total and partial estimates are added, they draw attention to data on the challenge of sanctions, since such disputes end with a (total or partial) estimatorio failure by more than 50% of the time.

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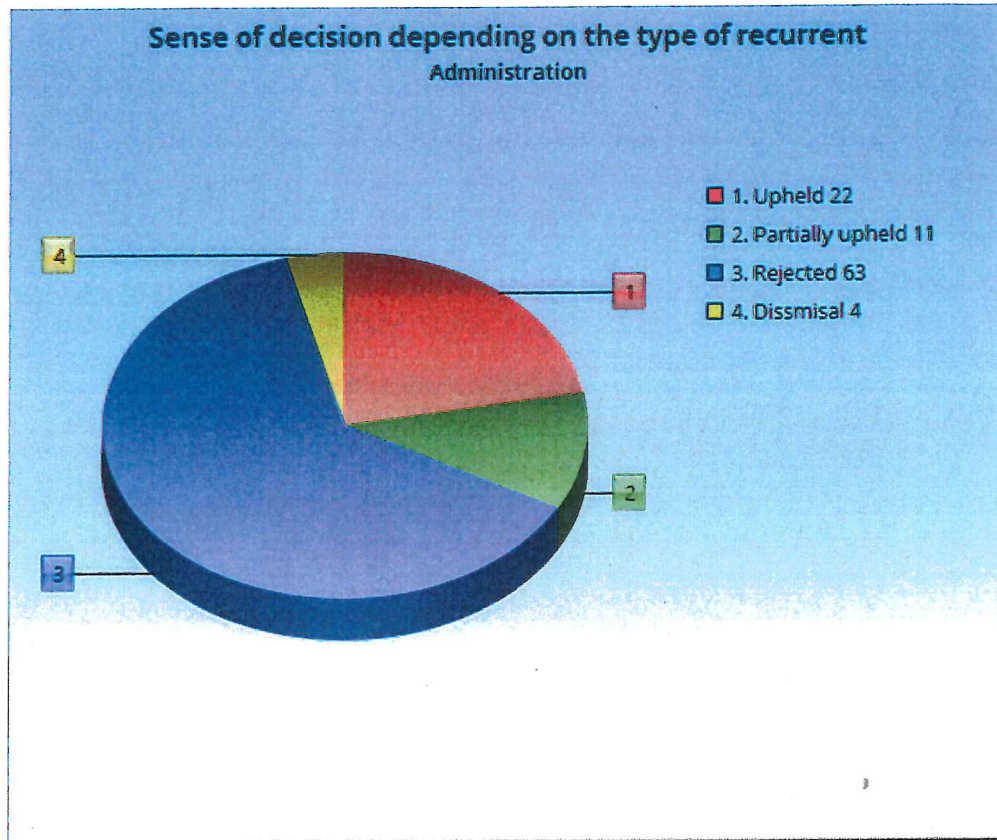
## *IV.4. Sense of decision depending on the type of recurrent*

The analysis culminates sense of decision, observing whether there are differences in the sense of failure depending on the type of recurrent. That is, if the fact that the appellant is physical, legal person or an Administration makes it more likely a favorable court decision or not. Individuals get a (fully or partially) judgment admitting to a lesser extent than legal persons. This finding is striking when it is remembered that there are recurring legal persons who are natural persons, which leads us to the conclusion that the latter rely less and also less successful than legal persons. A plausible explanation may be that the defenses techniques have access to which natural persons are of lower quality, because of the cost involved, advising that legal entities. Not surprisingly, in a sector of high technical complexity as the tax, it is very important to have a sufficiently specialized legal defense. Meanwhile, the clearly less successful Directors is explained by the fact that it is only recurring in the proceedings of second instance or appeal in which, as already seen, the level of estimates is less than First instance.

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## V. Reasoning of the judgment

### V.1. Jurisprudence invoked by object

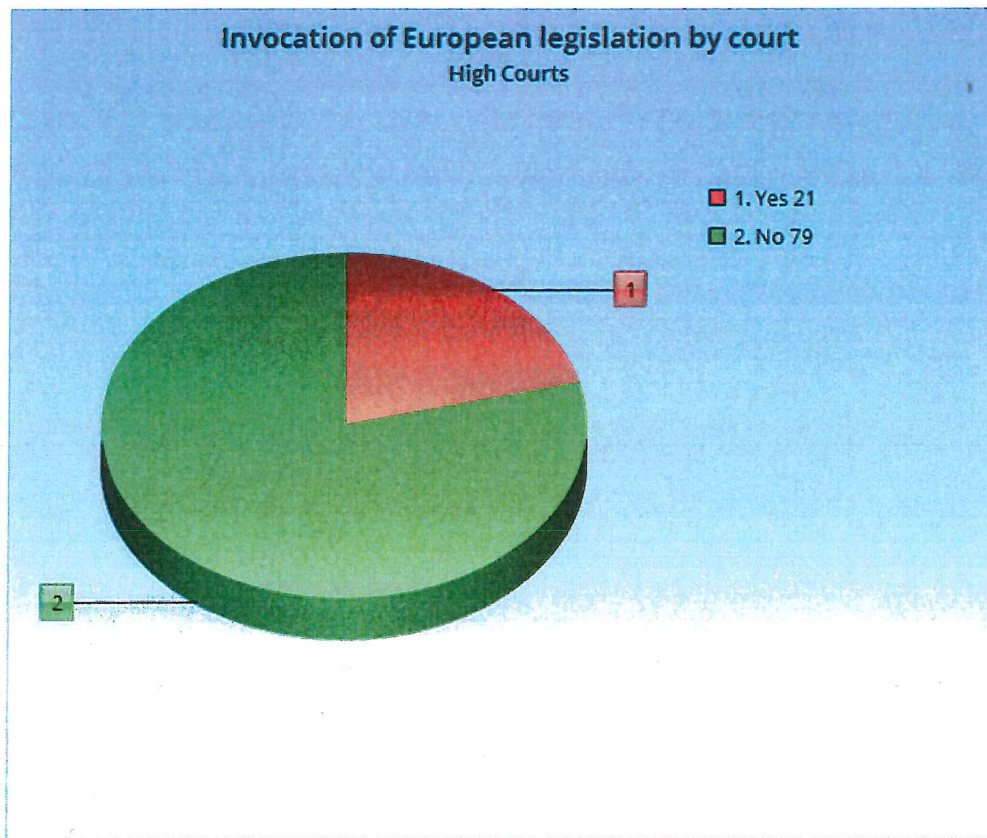
In most resolutions are based on precedents, the court brings up a history of judgments by himself. As expected, leaving aside that resolves itself, the organ most cited in all objects is the Supreme Court, which sympathizes with his work of creation and unification of doctrine. For its part, the jurisprudence of the Constitutional Court is cited unequally because on some objects their presence is very significant (eg in valuations and liquidations by means other than inspection), whereas on of sanctions enforcement order and their appearance it is significant, probably because of the usual argument relating to the infringement of fundamental rights in this type of litigation. The appointment of the ECJ rulings is also very uneven, depending on the subject of the appeal. So, it's just nonexistent in relation to the challenge of pro- clairvoyance of

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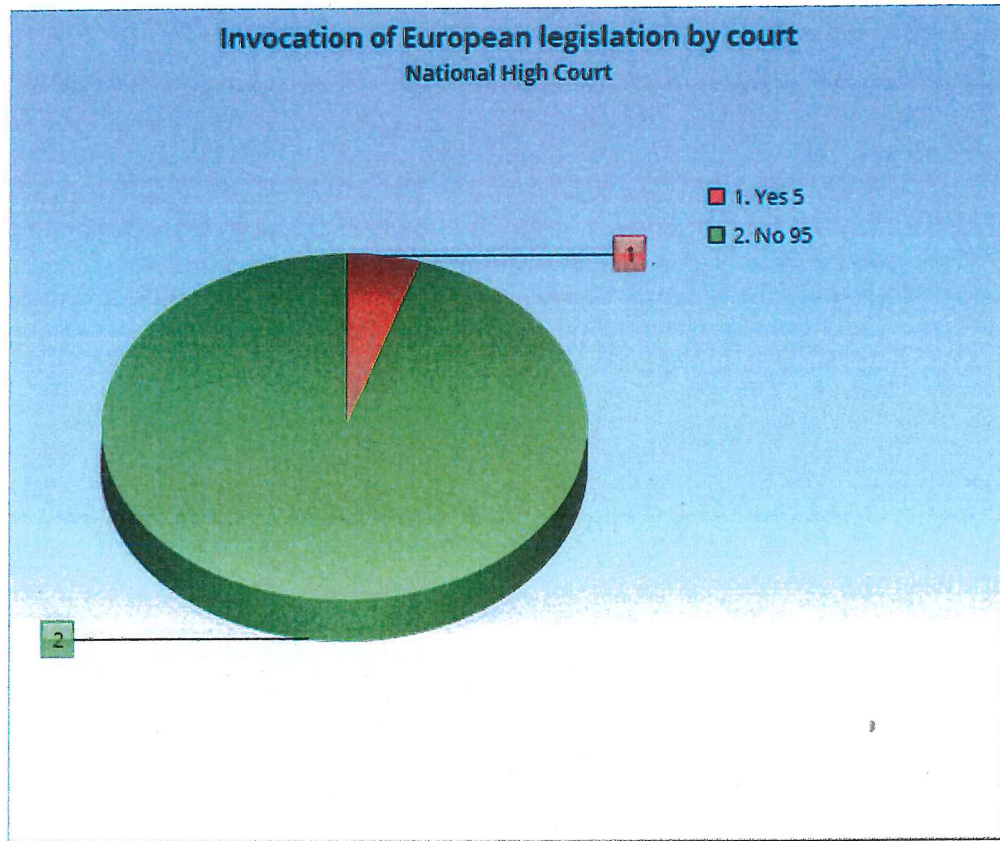
urgency as it appears with some frequency in the resolutions of challenges to acts of valuation.

## *V.2. Invocation of European legislation by court*

The relevance of European law in the resolution of tax disputes is relatively low, which can be explained by the sparseness of European legislation on direct taxation. In terms of indirect taxation, where they are relevant competences of the EU, nor is it common direct quotation of the Directive (eg VAT), but referred to the national standard transposing done.

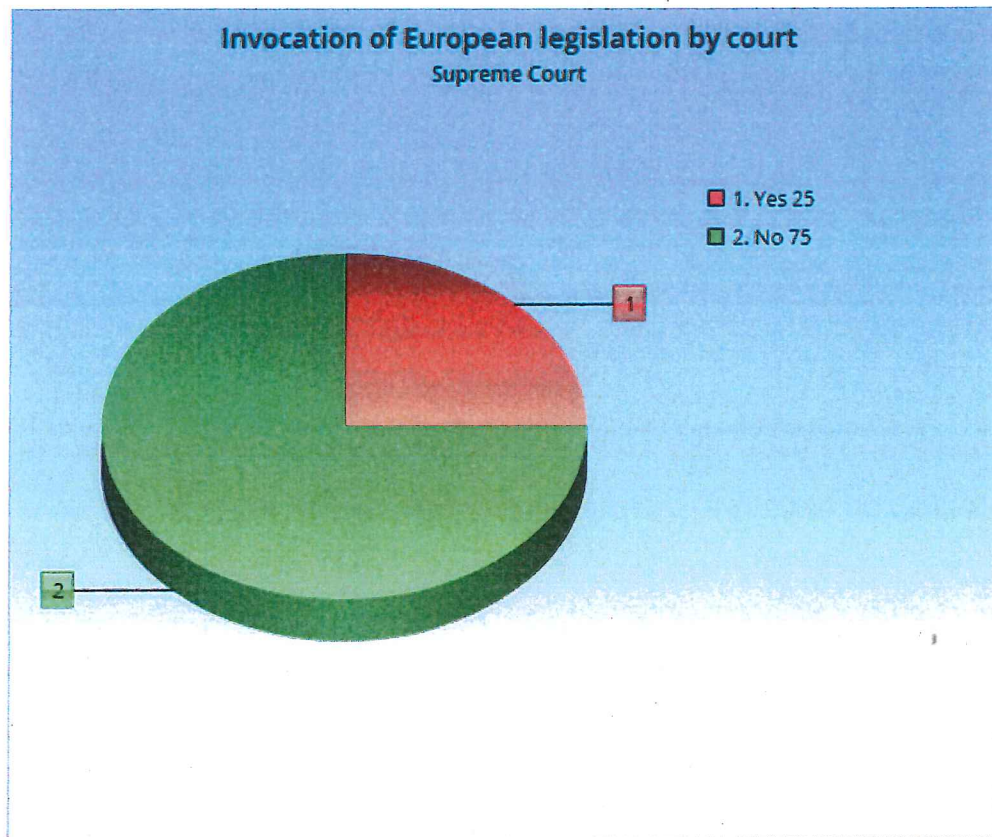


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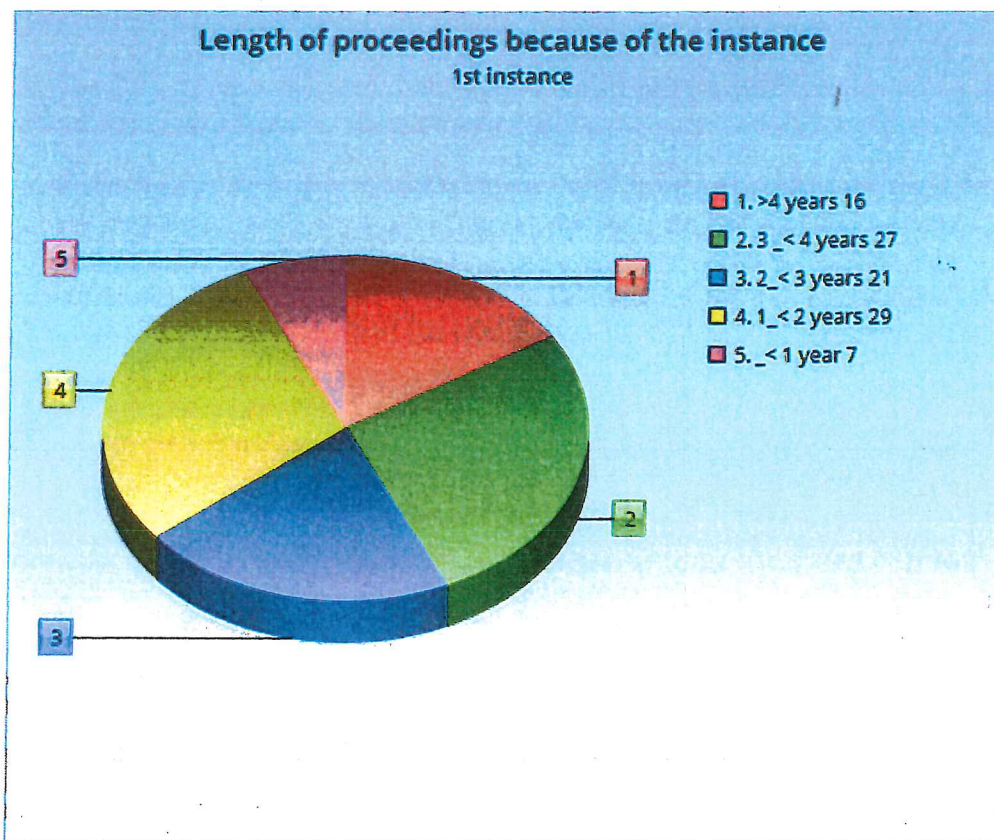
## VI. Duration of process

The duration of court proceedings is one of the fundamental parameters of quality analysis of the functioning of justice. For that reason, this parameter is discussed in detail below in conjunction with other factors may identify some distortions in the processing of administrative disputes.

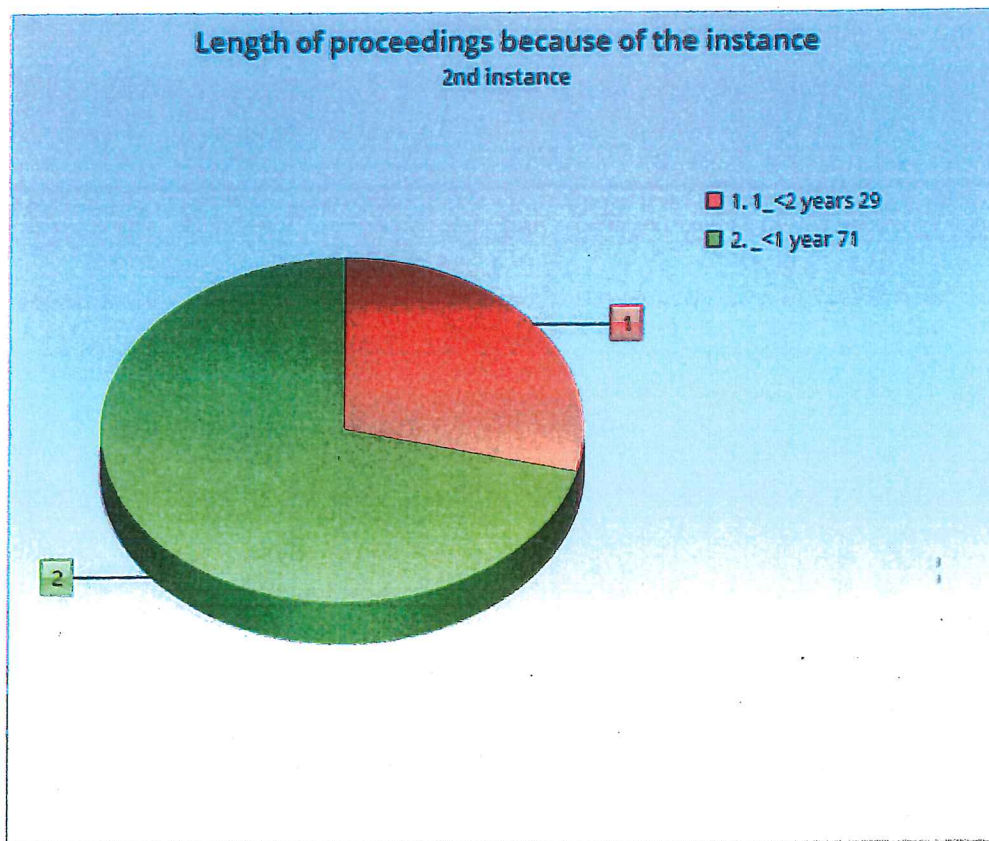
### VI.1. Length of proceedings because of the instance

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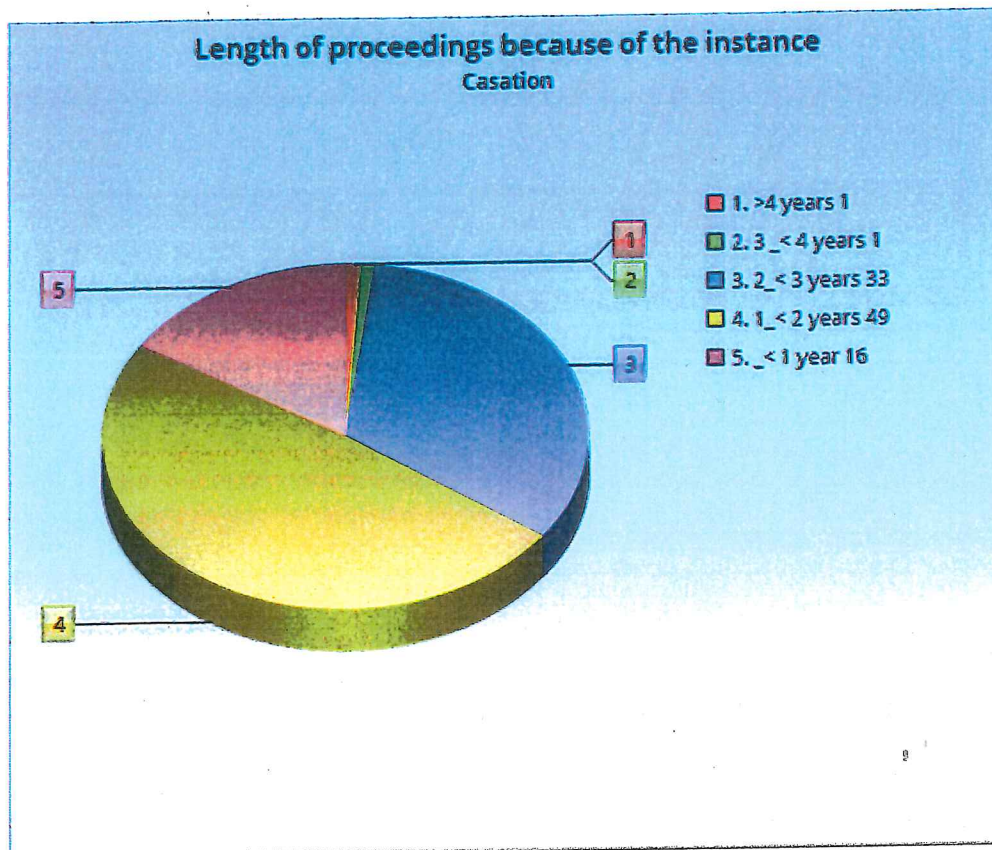
While in the first instance only 16.6% of cases are heard in less than one year, in the second instance this percentage rises to 71.4%. This difference is partly explained by the fact that the work of the court of second instance is simpler times, while it is limited to review what happened in the first place. Cognition of the issues in the first instance is not as agile and, in fact, more than half of them need more than two years to be resolved, while one third of total needs more than three years for sentence is pronounced. However, in view of the clear improvement in terms of resolution in 5CA, it can be said that progress is being made towards effective implementation of the fundamental right to trial without undue delay (art. 24.2 CE).



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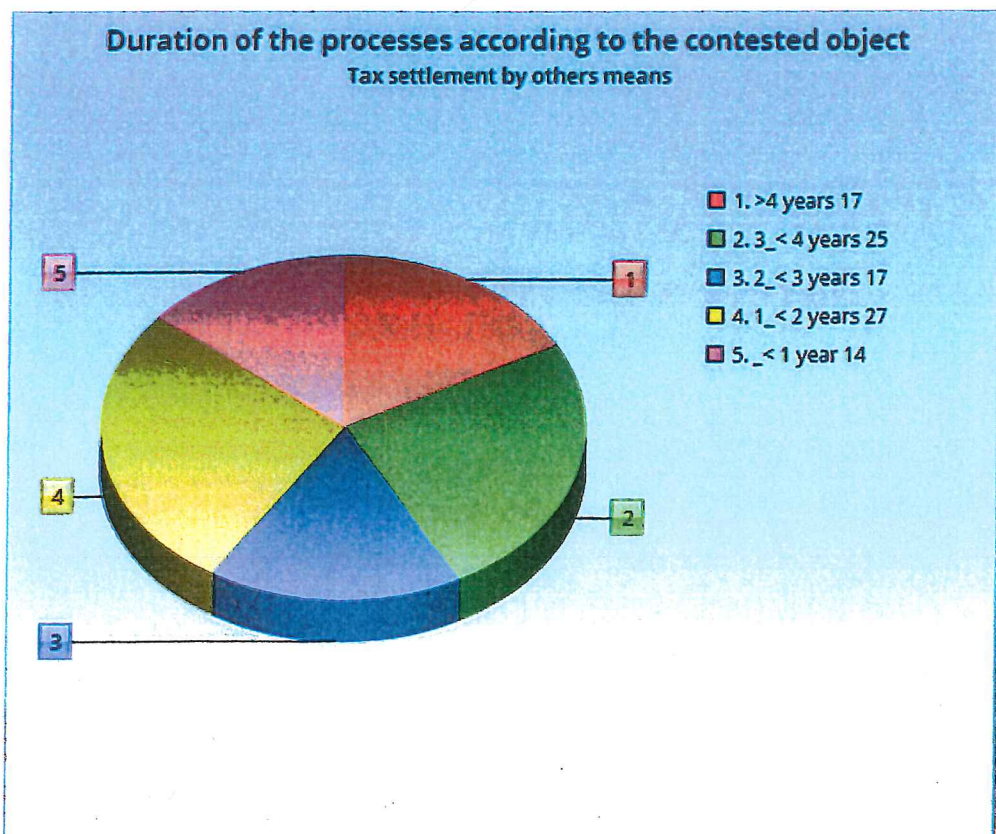
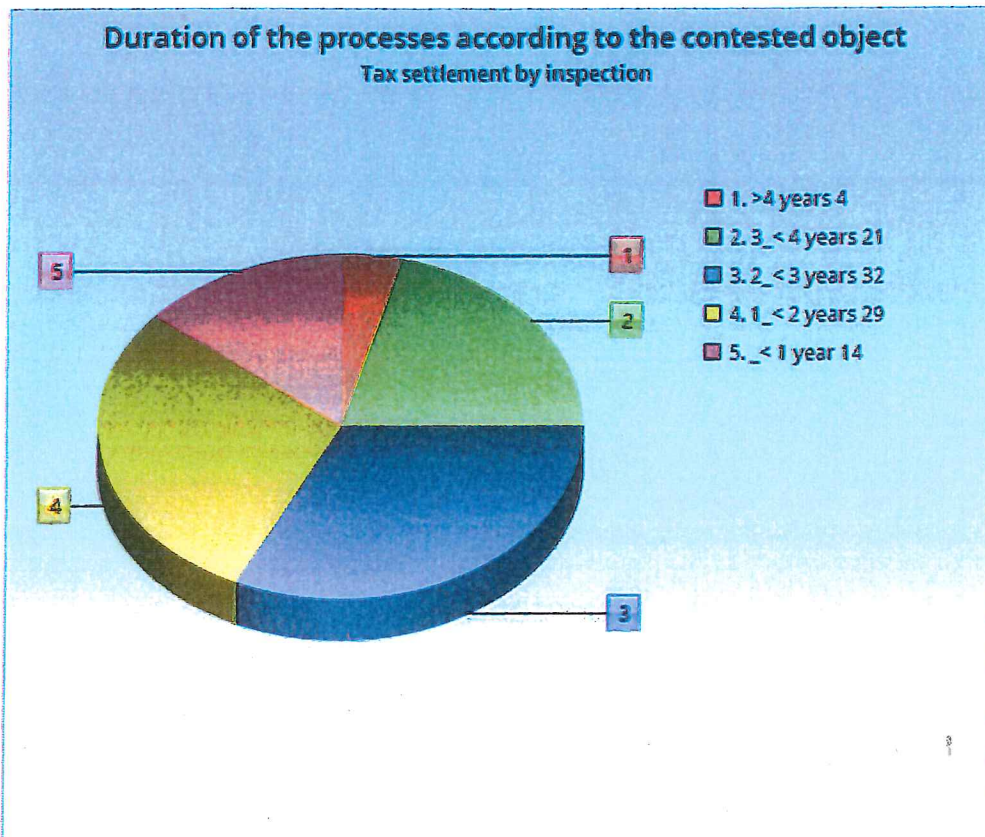
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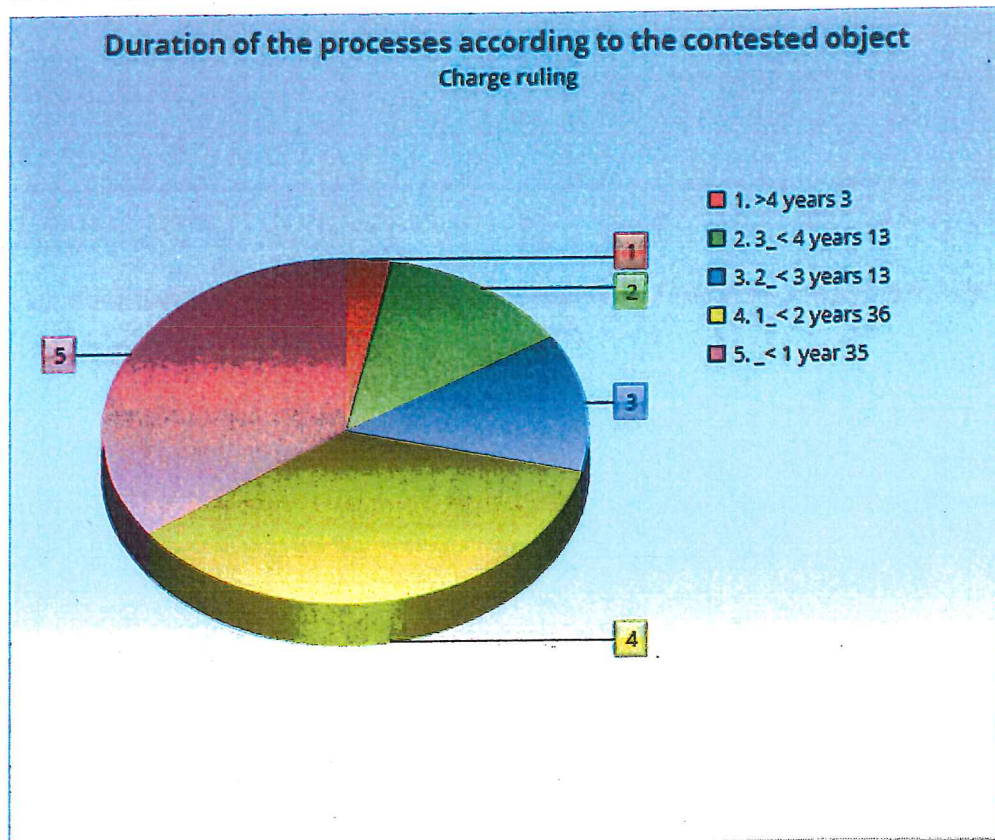
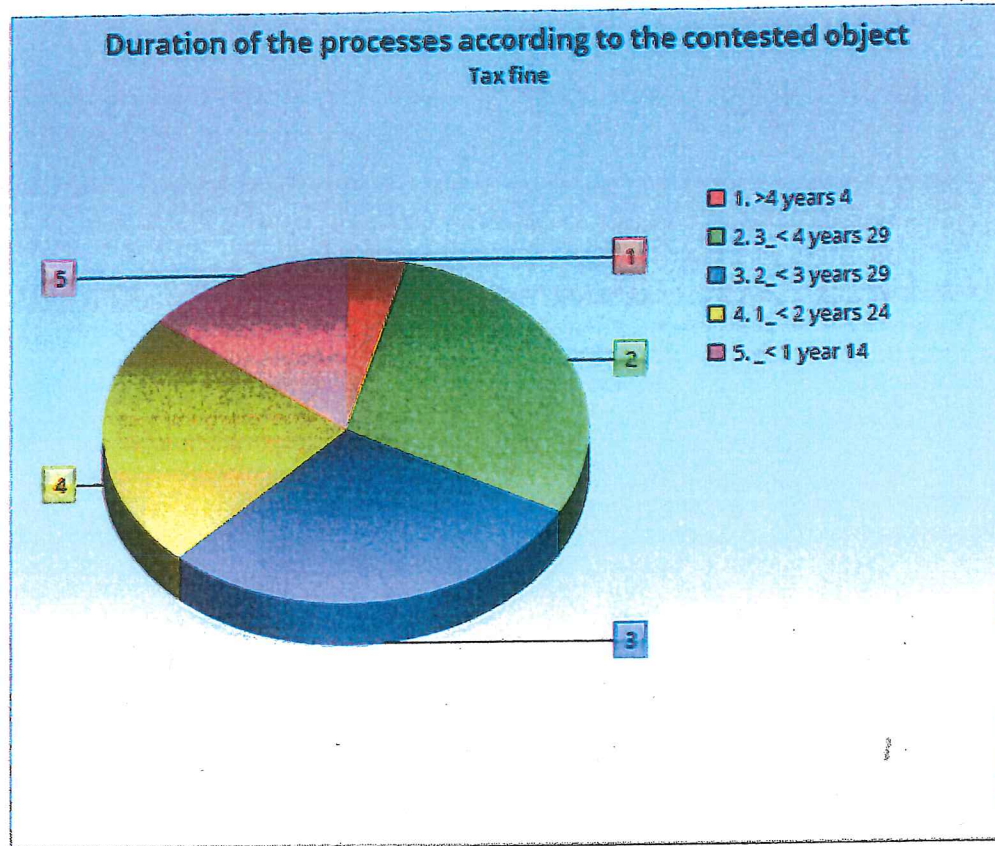
## VI.2. Duration of the processes according to the contested object

There is a clear tendency for procedures in which orders distraint or valuations are resolved in less time than the rest are challenged. On the contrary, matters less complicated technically, as are the challenges for limited grounds of the measures of urgency are resolved more quickly than those involving legal issues more difficult (settlements and penalties).

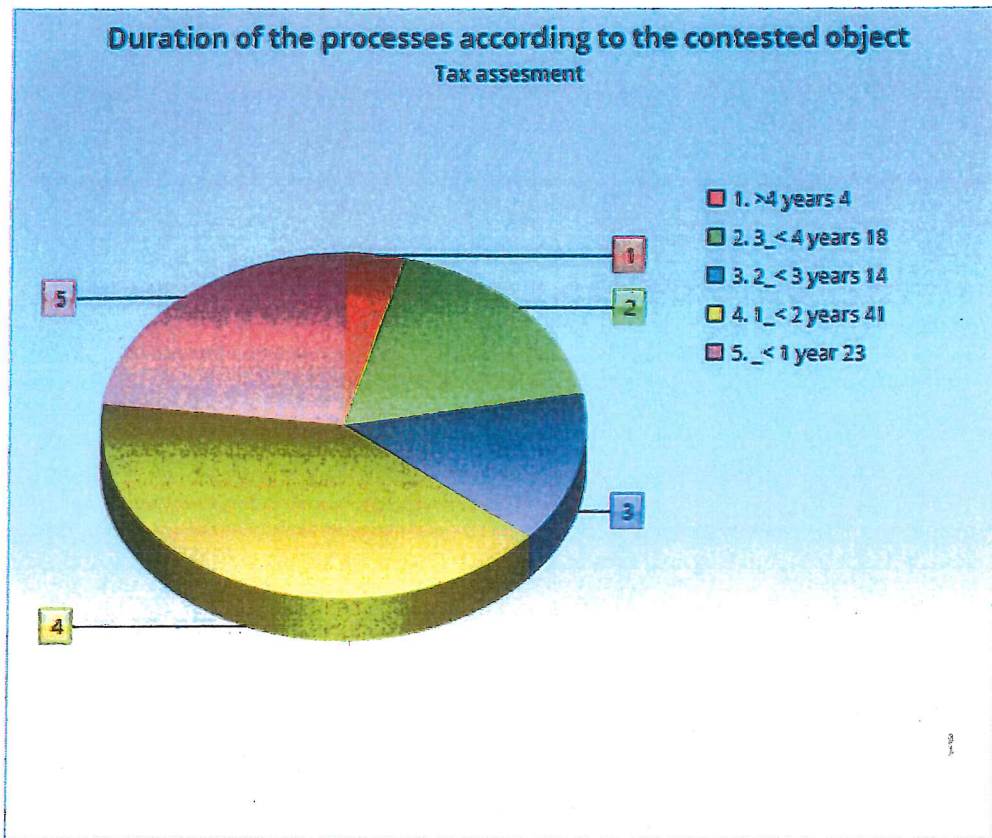
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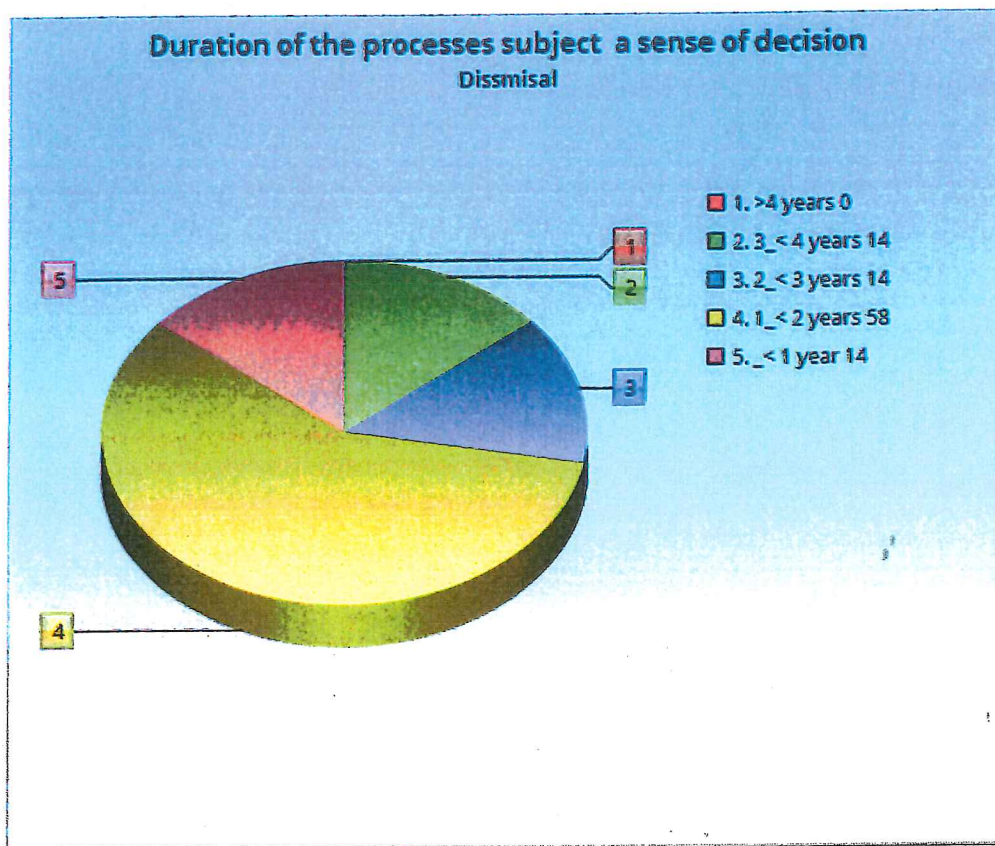
## VI.3. Duration of the processes subject a sense of decision

Striking is the speed with which the (few) occur inadmissiones in judgment, as resolved by more than 70% of cases in less than two years. Outside this particular conclusion, the data are not as strong, although they can be seen sufficiently differentiated trends. In this regard, it should be appreciated that the procedures that end with the complete dismissal of the claims are resolved remarkably in less

time than those who end up with the total estimate of peti + um. Proof of this is that almost 60% of cases that end with a complete dismissal are resolved in less than two years, while those ending with the complete estimate of the claims of the appellant only in 30% of cases are resolved in less than two years. Therefore,

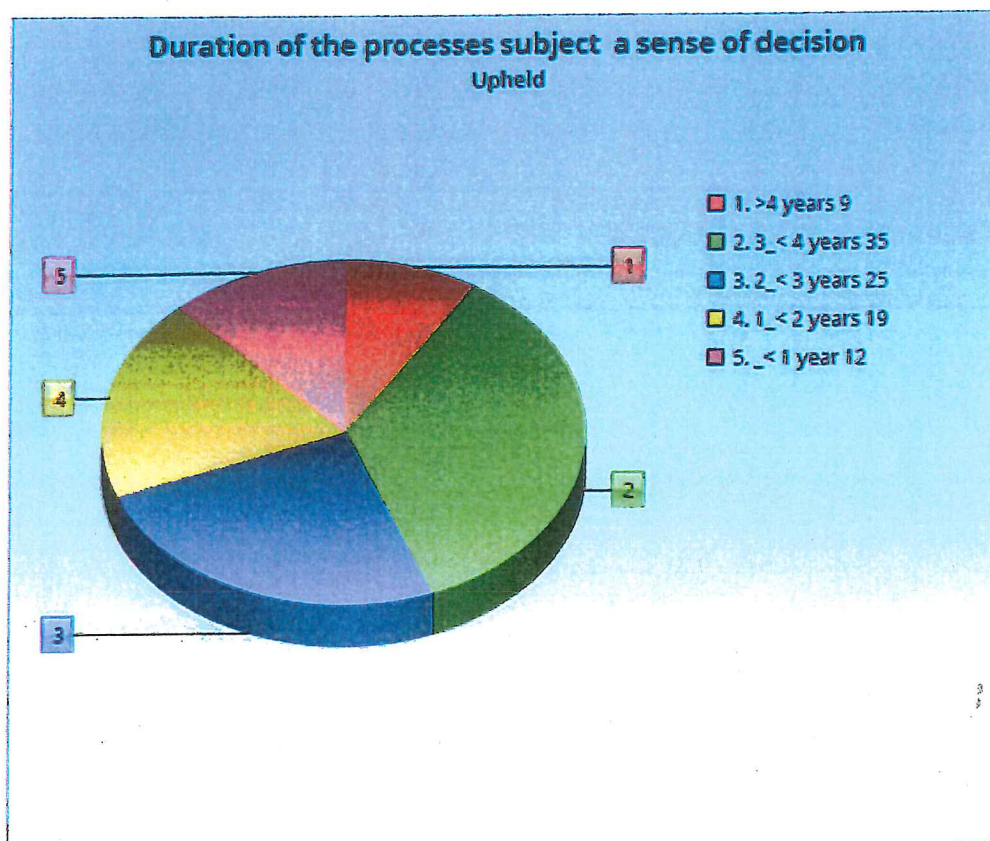
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without being able to sign the causes that motivate, courts take less time to convince the complete dismissal of the claims of the appellants that the adoption of the opposite decision.

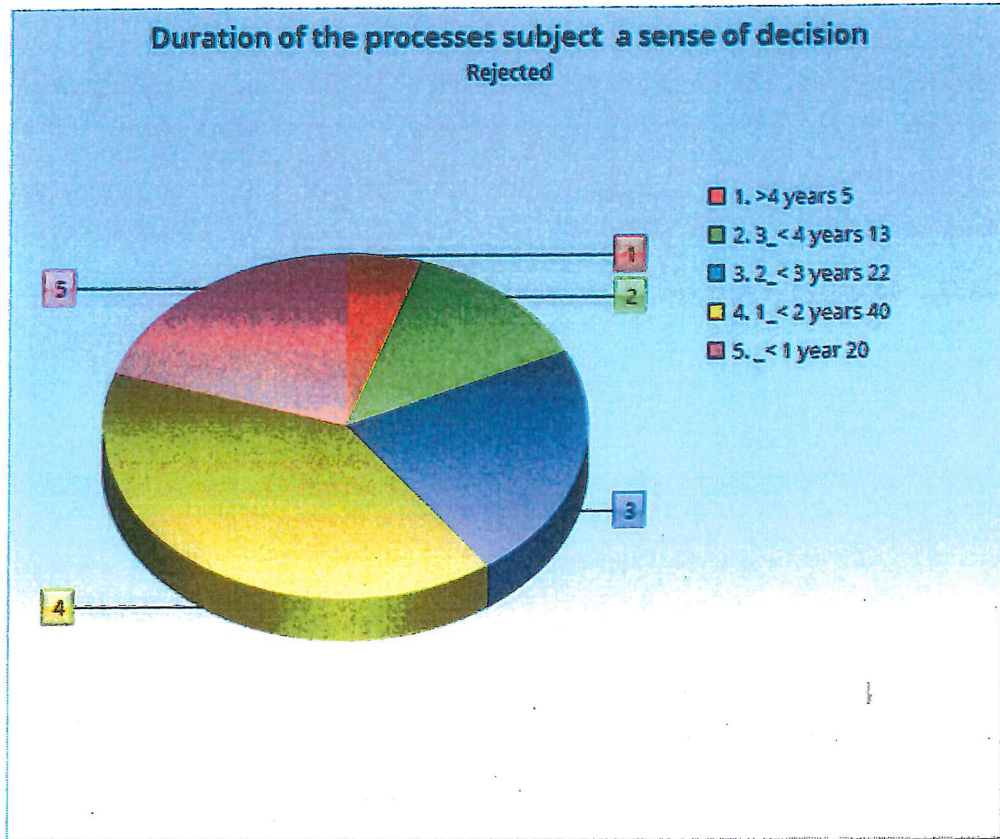




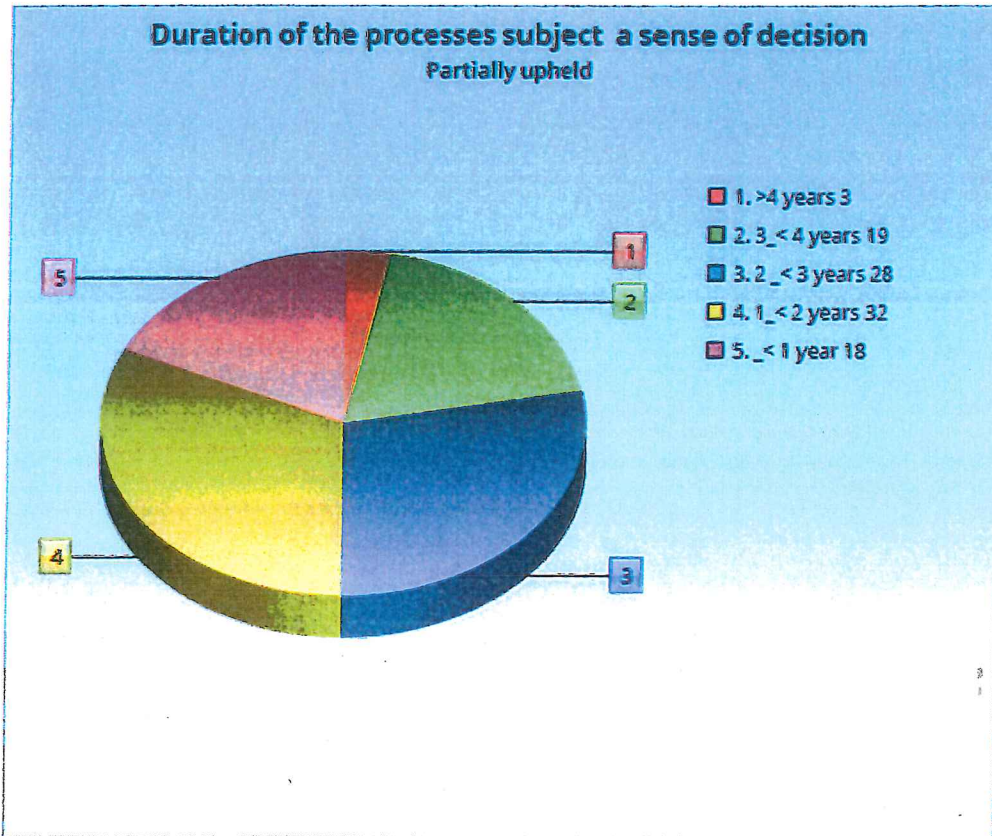
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## VII. Conclusions

### *A. Inspections are challenged sobre todo por legal persons*

In 2015 legal entities are most resort resolutions related to settlements resulting from an inspection procedure in that sense the 17,50% of actions brought by a legal person had that underlying object while in the case of natural persons represents only 7.60%. On the other hand, the situation is reversed when it refers to the challenge of liquidity tions from different inspection procedures (data verification, limited verification, etc.) among natural persons constitute 40.90% all resources and, in the case of legal persons, barely half that percentage (20.60%). These data seem to support a widespread perception in the tax sector: there is a greater concentration of inspections in legal entities in the physical, so that the latter are controlled mainly by the verification procedures carried out by the management bodies.

### *B. The appellants in casation are mostly legal persons*

With respect to the resources of resolute appeal in 2015, both the percentage of recurring who are natural persons and the Administration are markedly lower mind, so that in 76% of cases the appellant is a person legal, almost identical to the period appreciated by analyzing figure 2003-2014.

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## *C. Lawsuits of legal persons are more substantial.*

In fact, of all actions brought by individuals, more than 39% of the subjects had a lower figure than the 23,000 €, while only 14% of all actions brought by legal persons were in di- cho section. On the contrary, if 13% of all actions brought by natural persons reflected an amount exceeding € 685,000, this rate almost tripled in the case of legal persons (32%). Continuity in the volume of rejections. The volume of rejections increases steadily, although not very sharp, as it passes through the higher courts. While in the first instance is rejected by 50.2 percent of the cases, that percentage rises to 62.5 percent in cassation. If these data (for 2015) with what is offered in the report of last year (years 2003-2014), a continuity shown in percentages, except as regards the matching estimates are compared. Indeed, although the relationship between des- timates and estimates (both total and partial) remains which is very similar within estimates has significantly increased the percentage of partial versus total. The processes begin to shorten the average duration of proceedings on taxation in relation to Instance identifies a clear trend towards reducing the length of proceedings in the second instance and, to a lesser extent in cassation. So while at first only 16.6% of cases are heard in less than one year, in the second instance this percentage rises to 71.4%. In 2015, in the first instance to bear the costs it affects 51 percent of cases in second instance that percentage is 50% and on appeal za reached 59%. This issue is again very useful comparison with the data that were offered last year in relation to the period 2003-2014. Thus, during that period, only 5% of the cases decided in the first instance ended with imposition of costs, while in 2015.