

# Administrative justice in Europe

## Inventory and typology of review by the courts of administrative authorities in the 25 Member States of the European Union - Hungarian answers by dr Péter Darák

### Preliminary Questions

1. The „October Diploma“ - an Habsburg imperial decree allowing Hungary independence in internal affairs - proved a structural reform of judiciary. The Royal Hungarian Curia regained its lawful powers and reputation. First, as separated public law court the Royal Financial Court was established in 1883. Later the Act XXVI of 1896 set up a single-instance special court, the Royal Administrative Court which incorporated the Financial Court too. It adjudged both general and financial cases in non litigation process. Following the extension of the powers of public law courts was created the Court of Competence to settle disputes of competence between ordinary, administrative courts or authorities of public administration. After The Second World War traditional formalised law was applied in usual cases of civil and administrative law, but in the area of the administrative law there was no place for courts anymore. Hungary turned from a liberated country into a newly occupied one, where the Communist (later Socialist) Party controlled the administration. The introduction of the reforms in the seventies and eighties set in motion some irrevocable changes. Ordinary courts got the competence to review more than twenty kind of administrative cases (taxes, land registry) in non litigation process. Law and jurisdiction became more liberal. The change of the regime of 1989-90 created the rule of law in Hungary and gave rise to a

gradually evolving reform in judiciary. As first step the Constitutional Court annulled the decree which restricted the scope of the disputable decisions. Act XXVI of 1991 ensures the possibility of judicial revision in every cases. In Hungary, legal practice takes place in a unified system of jurisdiction which have for levels: town, county courts, courts of Appeal, Supreme Court. Administrative cases are arranged on the labour courts (first level in social insurance issues), county courts (general first level) on the Budapest Court of Appeal (in important cases - 10% of all issues - second instance) Supreme Court (extraordinary remedy)

2. Judicial review is available to natural and legal persons in respects of administrative acts that directly affect their rights or interests. According to the „uniformity decision“ of the Hungarian Supreme Court associations formed by the citizens for the representation of their environmental interests and other social organisations - which are active in the impact area - shall be entitled in their area to the legal status of being a party in environmental cases. Newly the Convention of Aarhus ensures the position of a party without any subjective affected rights or interests. „Good functioning“ of the administration has a great importance where the local government would have no control outside because of the lack of a higher level authority. Here can the County Administrative Office ask for a review without to be affected by the case.

3. Administrative authority definition includes all public legal entities and private legal entities exercising public authority (government departments, police, agencies, local-government, public corporations).

4. The definition of administrative act is unfamiliar in Hungarian substantive law. The term is used in science and in juridical practice. Actually the theory distinguishes between normative and individual administrative acts.

In the CXV. Act of the administrative procedure(KET.), which enters in force on 1<sup>st</sup>.

November 2005, regulates public contracts awarded by administrative authorities and parties. In situations of refusal to act or an omission to do so in cases where the administrative authorities are under an obligation to implement a procedure following a request, the court is entitled to oblige the authority to exercise its competence. Normative acts can be reviewed by the Constitutional Court, but also courts can initiate annulment of unconstitutional law, when it is applicable in the case.

## **I.-WHO REVIEWS ADMINISTRATIVE ACTS?**

### **A-COMPETENT BODIES**

5. As a main rule there is a general right of appeal in the administrative procedure. Higher level authorities are fixed by the KET. In some special issues there is a direct way to courts (e.g. public procurement, competition cases). Juridical review is exercised exclusively by ordinary courts.

6. All the county courts and the capital court are competent to review administrative acts, but the capital court has a special exclusive competence in certain categories of matters, mainly in such cases where the first instance authority has competence for the whole country (issues of ministries, media cases, public procurement and competition cases). There are no tribunals in the

review procedure. Higher courts have no first instance competence at all.

A Hungarian judge can deal with administrative issues when she/he is assigned to the list of, „administrative“ judges. That means that she/he can handle administrative cases, but she/he isn't expelled from working in civil law cases.

The Hungarian Constitutional Court is competent to examine normative acts of administration. If it is found unconstitutional, the faulty law will be annulled.

#### **B-RULES GOVERNING COMPETENT BODIES**

7. According to the Hungarian Constitution ordinary courts control whether an administrative act is lawful or not. Case law extended the competence of courts step by step in the last decade. The unification decision of the Supreme Court (1/1999) declared that a „letter“ of the police which was written as an answer to a complaint about a measure of an officer shall be considered as administrative act. Another unification decision (3/1998) pointed out: an administrative decision which declared the lack of administrative competence is challengeable at court. There is the same regulation in KET and in the 20<sup>th</sup> chapter of the Civil Procedure Codex (CPC) now - there is no legal barrier more in front of the juridical control-competence.

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#### **C-INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES**

9. First instance - county courts: if there are at least 12 administrative judges on the court they compose a separate division for administrative law. If they are less than 12 people they are members of a common division of civil and administrative

law. Administrative divisions dispute practical problems, they have regular official sessions. The division gives a non-binding opinion about applicants for function of a judge.

Particular administrative judges arrange their cases in one person. If the judge means that the case is too difficult, or has a significant importance she/he can ask for a three-judge panel, which have to accept the initiation of the single judge. Chambers (panels) are composed by automatic rules of the statute of the court.

The Budapest Court of Appeal and Supreme Court: Three-judge panels deal with the case, one of them reports the case, if they have an oral trial, the head of the panel leads it. There is a formal vote for the judgement, where the youngest judge votes first, and the head of the panel last. The minority opinion can be enclosed to the case for the higher level court, which can take it in account at the second instance or in case of a revision.

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#### **D-JUDGES**

11. Administrative judges belong to a specific category. They need a special appointment by the National Judiciary Council (NJC). This appointment concerns only two types of cases, namely tax and custom cases, but practically all administrative judges are appointed for this special position.

12. Administrative judges are recruited partly from the administration, partly among trainee-judges of the court. There is no special condition for the position.

13. The NJC has a department that organizes professional training (a three-day session every autumn and several one-day sessions on current topics). The Association of Hungarian administrative

judges organizes 3-6 conferences a year to make judges up-to-date.

14. Every judge's position is being advertised. The administrative division and the self-governing body of judges express an opinion about the candidates. (Self-governing bodies are elected by all judges at every court - except for lowest level courts - for 6 years.)

Promotion in wages depends on the length of service (increases automatically by some percentage every 3 years), and on the level of the court (20% at the county courts, 40% at the courts of appeal, 60% at the Supreme Court).

15. Judges can't work outside the court except for the Ministry of the Justice, where they can take part in the work of the legislative department as "temporary codificator". The ordinary work as a judge is banned for this time. It is not possible to take up another position in public administration.

Usually judges move from lower courts to higher courts, but not often between courts of the same level.

#### **E- ROLE OF COMPETENT BODIES**

16. The competence of courts is based on the control of lawfulness. That means that the court can annul an unlawful decision in all cases, but in certain categories of matters (in my estimation more than 50% of all cases, e.g. tax cases, public procurement, land registry cases) a court can overrule the challenged administrative decision. It is not clarified by law in the categories of issues whether overrule means a "reform" or the court's free decision in the merit of the case. Theory and case law state that in family law cases the court decides in the merit of the case, so it can take a new fact into consideration and law

too. ("New" means here fact, which happened, and law, which entered in force after making administrative decision.)

Administrative judges review legality of administrative contracts in two ways. First, when the contractual partners can't agree about the modification of the contract, they can ask a judgement of the court. Secondary, when the authority finds that the partner has broken the contract, and therefore orders prosecution of it. The partner can request a review at the court. The reason of this regulation is that nobody would come to the court directly after signing it, but later, when the parties have a debate about it.

Hungarian courts can order in a judgement to act, when an authority is under obligation to implement a procedure following a request.

Claims for damages for harmful administrative acts, are exclusively heard by civil law judges.

17. The Constitutional court has competence to examine the constitutionality of the law, which is applicable in an administrative review case. The administrative judge suspends the case and asks the examination of the Constitutional Court. That is the way at the unconstitutionality of municipal regulations too. If the regulation is annulled by the Constitutional Court it can't be applied in the concrete case.

18. All bills and drafts of government decrees should be referred to the Supreme Court to report on if they touch upon the jurisdiction of the courts. The Supreme Court gives expert opinion, as representative of the Supreme Court some judges take part in the work of codification committees.

19. These opinions belong to the activity of the Supreme Court, and not to the individual judge.

## **F - ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES**

20. Yes, the Supreme Court has several means to ensure uniform application and interpretation of law. If there is a divergence in the case law or between lower courts, the president of the Supreme Court, the leader of the administrative division of the Supreme Court, or the head of the panel in the Supreme Court can bring in action a special procedure for the unification of the law. The judgement which is binding to the courts is passed by an extended panel of five or seven judges. The Administrative Division of the Supreme Court adopts non-binding opinions regularly. Judgements in individual cases are published, so the Supreme Court's practice influences the judiciary.

## **II - HOW ARE ADMINISTRATIVE ACTS AND ACTIONS REVIEWED BY THE COURTS?**

### **A - ACCESS TO JUSTICE**

21. It is essential that proper remedies in the proceedings before the administrative authority be exhausted.

22. Anybody (natural or legal person) whose rights or legal interests are directly affected by an administrative act can bring a case to the court.

23. The action has to contain the factual and legal reasons but the court examines ex officio whether the plaintiff's rights or interests are affected by the administrative act. Paragraph 98 of the Act on the protection of the environment gives access to courts for environmental associations in environmental issues.

The Public Prosecutor's Office can sue when the client is not able to protect his/her rights.

24. A review must be asked within 30 days of the delivery of the decision. The time-limit is the same in the case of action against inactivity from the date when the authority had to fulfil its duty.

25. Any final decision of authorities can be attacked at the court. Approximately 50% of acts of preliminary nature can be appealed, and also challenged directly before the court. Other acts of preliminary nature are reviewed indirectly, in the review-procedure of the final administrative decision.

26. No more screening procedures. The Constitutional Court annulled these rules last year explaining that the Supreme Court can not refuse a review in an individual case reasoning with general aspects of fundamental importance.

27. The action must be filed in writing. The plaintiff has to enclose the copy of the challenged decision, or has to give the main dates of it. It must state the infringement of law. The plaintiff has to present the relevant facts and his/her reason why and how far he/she challenges the decision.

28. Not yet.

29. A court fee in form of duty stamps amounting to 16 500 Ft (~ 66 €) is paid for an action against the administrative decision, and 36 000 Ft (~ 140 €) for the review of the Supreme Court. There is a higher fee for cases where the obligation of the authority is a payment (taxes, customs, fines), 6% of the

challenged sum, but can not be more than 900 000 Ft (~ 3600 €) in first and second instance and 2 500 000 Ft (~ 10 000 €) at the Supreme Court. Fees are paid only after the procedure in administrative cases.

30. A party (both plaintiff and authority) has to be mandatorily represented by an advocate only before the appeal court and the Supreme Court.

31. The plaintiff can ask for legal aid and cost-free permit from the court which deals with the administrative cases. Granting this allowance depends on the financial resources of the plaintiff. A decision of the court refusing this allowance can be appealed.

32. There is no such provision.

## **B - MAIN TRIAL**

33. The review procedures against preliminary decisions of authorities are non-litigious procedures. If a final administrative decision is reviewed, there is an oral hearing. Parties can ask for a closed trial. European standards are guaranteed. Evidence is given by the parties, the court produces evidence if the validity of acts is under discussion.

34. Judges who are affected by the administrative case can not take part in the procedure and have to notify the president of the court about this fact. If the judge is liable to be biased, another panel makes the judgement. Judges who worked earlier at an administrative authority before having been appointed to be a judge can not deal with cases of this authority for two years.

35. The action can be modified until the end of the first hearing at first instance. Modification means to give another direction to the review. Deepening the argumentation or referring to a new paragraph won't be considered as modification of the action. After the application has been lodged it can not be changed at the Supreme Court.

36. All clients of the administrative procedure and anybody who is affected by the administrative decision can intervene until the end of the last hearing at first instance. The court decides whether it accepts the intervention or not.

37. There is no right for a representative of the State to intervene in judicial review proceedings.

38. There is no such institution, but the Public Prosecutor's Office controls the administration, and can "appeal" against administrative decisions. If it is not accepted the Office can file a suit against the decision.

39. If the authority modifies its decision in a way that it becomes satisfying for the plaintiff, the latter may withdraw his recourse. The parties can settle the dispute by an agreement. If the plaintiff dies and the case was not personal bound, the successor can continue the procedure.

40. Yes.

41. Parties are responsible for providing evidences except when the validity of the acts is under discussion, and when the protection of a minor requires it. The burden of providing

necessary evidence afflicts the party whose interest it is to prove the facts.

42. Generally the oral hearing is open to the public. Taking into account the declaration of the parties the judge decides whether or not it is possible to take photos, video or audio records at the court room. Data of private life or business can justify hearings in camera. Oral hearings are conducted in the same way as civil law cases. Parties can express their opinion; can ask questions of the other parties, witnesses, experts. At the end they express their views and final proposals. Judgement is announced and a shortly reasoning is given.

43. Only the single judge alone or the panel passes the judgement. The panel deliberates in secret at the discretion of the judges.

#### **C - JUDGMENT**

44. Judgements contain factual and legal grounds, evidence and usually deal with the relevant objection raised. The explanation of the reasons must be sufficient to enable the parties to understand it.

45. Reference norms are usually national provisions, but also the Constitution, Community law and jurisprudence.

46. The parties have to suggest the factual and legal grounds upon which a decision may be held unlawful. The court does not usually conduct any inquiry of its own. The court overrules discretionary administrative decisions when they can be declared

unlawful. The higher court can change the lower instance judgement, or can modify the reasoning too.

47. The losing party bears the costs of the successful party, but if they both are partly successful and losing, the court may order that each party bear its own cost.

48. At first instance the decision is taken almost always by a single judge, at second instance and at the Supreme Court by three judges. There is a new provision that came into force on 1 November 2005, which authorizes the single judge at first instance to order that a panel should deal with the case if it seems to be complicated.

49. Yes. There is a vote where the opinion of the majority will be the judgement. The dissenting opinion can be attached in a closed envelope which can be read only by the higher court panel if there is an appeal or review of the Supreme Court.

50. Judgements are always announced in public and delivered in writing. The court puts down its ruling in writing within 15 days of its pronouncement and then delivers it.

#### **D - EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT**

51. The judgement binds only the parties of the proceeding. The unification judgement of the Supreme Court has a binding effect for all courts.

52. No, courts can not limit the effects of the judgement in time.

53. According to a new national provision the administrative decision made (by the court) in a repeated procedure may be "invalid" if it is controversial with the judgement. In this way it is guaranteed that the judicial opinion of courts are implemented by administrative authorities. In the case of inactivity the authority can be fined.

54. There are strict terms for the courts. The first trial must be hold within 60 days. The court puts down the ruling in writing within 15 days of its pronouncement and then delivers it. If the case is not finished in reasonable time, the parties are enabled for compensation.

#### **E - REMEDIES**

55-56. Asylum cases are handled exclusively by the Municipal Court of Budapest, there is neither an appeal nor extraordinary remedy against its judgement. Roughly 80-90% of all cases are finished at the county courts at first instance. There is a right to appeal only where the administrative decision was made by a ministry or by an organ that has competence for the whole country (public procuration cases, competition law cases e.g.) - such cases constitute about 10% of all cases. These cases are handled at second instance by the Appeal Court of Budapest. There is a possibility for an extraordinary remedy at the Supreme Court in every case. In the course of an extraordinary remedy the lawfulness of the final judgement is examined. The Supreme Court has exclusive competence to review decisions of the National Election Council in election disputes.

#### **F - EMERGENCY PROCEEDINGS AND SUMMARY JURISDICTION/APPLICATIOIS FOR INTERIM RELIEF**

57. Yes, cases of exceptional urgency are listed by law (issues of authority of guardians, disputes relating to elections etc). Upon request the plaintiff can be awarded a dilatory effect if the execution of the decision would mean an irrecoverable harm for the plaintiff and it is more significant than the interest of the public.

58. Request for suspension of the execution has to present the threat of serious harm.

59. Yes, cases of exceptional urgency are listed by law (issues of authority of guardians, disputes relating to elections etc). There is a strict time-limit for having a hearing and passing the final decision.

### **III- CAN ADMINISTRATIVE DISPUTES BE SETTLED BY NON-JUDICIAL BODIES?**

60. Yes, the authority can revoke or modify its decision during the procedure before the court and within one year after the decision was delivered, but can not trespass on acquired rights in good faith. If the plaintiff is satisfied with the new decision, the procedure is stopped.

61. The Ombudsman has no competence in court cases. His/her recommendation can prevent an action. Mediation is not a must before an action in the administrative area.

62. There is no arbitration in the administrative field.

### **IV - ADMINISTRATOIN OF JUSTICE AND STATISTIC DATA**

**A. Financial resources made available for the review of administrative acts?**

63. The expenses of administrative justice are not monitored separately.

64. Approximately 2600 judges and judicial officers work at the Hungarian courts.

65. Less than one hundred judges work in administrative justice.

66. Every panel at the Supreme Court has a trainee-judge assistant (they are graduated from the faculty of law) who works for 2-4 years at the same panel; some of them help in research and translate. For shorter time all judges have such assistants.

67. All courts have libraries where judges can find antiquarian and up to date legal literature. Every month a bulletin is published with information on new articles and books.

68. There is an internal Internet portal where applicable law, data basis of judicature is available. All judges have access to the Internet, so European law, other documents, and e-mail addresses of all judges can be find. It is planned to make the data base of judicature public.

69. Yes, every court has a website. The website of the Supreme Court, [www.lb.hu](http://www.lb.hu) contains the most important judgements.

**B - Other statistics and figures**

70. In 2003 there were 25550 and in 2004 there were 24711 new applications at the county courts and the capital court. In 2003 the Supreme Court received 2124 new cases, in 2004 the number of cases at the Supreme Court fell to 1074.

71. Both the county courts and the capital court as well as the Supreme Court finished approximately the same number of cases as the yearly new applications.

72. The percentage of cases not disposed of by the county courts, the capital court and the Supreme Court is not significant.

73. The length of the proceedings before lower courts is less than one year, at the Supreme Court 6-8 months.

74. Out of all applications the county courts and the capital court annulled 10-20% of administrative decisions.

75. The litigations concern the following fields: tax and custom cases (25%), social insurance (25%), land registration cases (15%), building and planning (5%). Media cases, bank and stock control, public procurement, environment, forest administration, asylum, expropriation and police administration (less than 5%).

#### **C - THE ECONOMICS OF ADMINISTRATIVE JUSTICE**

76. No, in spite of the fact that as a result of certain court decisions the public budget has had to pay great amounts in social cases.

