

Seminar organised by the Hellenic Council of State and ACA-Europe

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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from the Curia of Hungary (Please indicate your institution)

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers



2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- Constitutional provision
- General provision of a legislative nature
- Specific legislation**

Act CL of 2016 on General Public Administration Procedures (hereinafter referred to as “the Public Administration Procedures Act”) stipulates that an authority is a body, organization, or person that is authorized by law, government decree, or – in official municipal matters – by a municipal decree to exercise official powers, or is designated by law to exercise such powers. Act I of 2017 on the Code of Administrative Litigation (hereinafter referred to as “the Code of Administrative Litigation”) defines as administrative bodies not only the traditional actors in public administration, but also other organizations or persons authorized by law to perform administrative acts. Consequently, the legislator defines the bodies and persons that may exercise administrative powers and issue acts, and these persons may also be actors outside the administrative system, unless there is a prohibitive provision. For example, the technical inspections of motor vehicles are carried out by private individuals or companies, rather than by authorities that have been integrated into the public administrative system. Such delegated powers can also be observed in the case of service-providing veterinarians who are authorized to perform the food chain supervisory authority’s certain state tasks in animal health matters.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

The establishment of powers is stipulated by law, but the legislator has broad discretionary powers in this regard. At the same time, it follows from the principles of the rule of law that powers to handle official matters may only be granted for the purpose of performing a public duty or achieving an objective in the public interest. If a person outside public administration exercises such powers, their actions are subject to the procedural rules laid down in the Public Administration Procedures Act, just like the actions of administrative bodies.

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- Directly by law**
- By an administrative act
- By contract
- Other

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?



Please provide specific examples from legislation and case-law.

- Preparation of the administrative act**
- Issuance [adoption] of the administrative act**
- Implementation of the administrative act**
- Other

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

- Advisory tasks
- Decision-making tasks**
- Control and verification tasks:
 - Establishment of the facts**
 - Legal qualification of the facts
 - Other

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

- No**
- Yes (please specify)

If yes, which legal instrument provides for the corresponding prohibitions?

- Constitution
- Legislation
- Other

Please indicate any relevant case-law.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

- Participation in examinations
- Selection based on criteria
- Other

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register

- Selection from a list/register based on criteria
- Absolute discretionary power of the Administration
- Selection by the citizen [upon a declaration]

Other: In the case of a licensed veterinarian, a contract should be made with the veterinarian who meets the criteria specified in law.

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

No

If yes,

General normative act (e.g. Code of Administrative Procedure)

Specific normative acts

Codes of Conduct, good practices (soft law)

Other

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

Incompatibilities

Impediments

Criminal or disciplinary liability

Other

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

Withdrawal of the certification

Disbarment from the professional association

Imposition of a fine or other penalty

Personal liability of the private individual (civil, criminal, disciplinary)

Revocation of the administrative act in the issuance of which the private individual collaborated

Civil liability of the State

Other

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

Yes



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No

ii. If yes, at what stage are the checks carried out?

A priori

A posteriori

At any time

iii. How are checks activated?

Following a complaint/administrative appeal

Ex officio

iv. How extensive are the checks?

Checks based on sampling

Mandatory checks for all actions

v. What is the nature of the checks?

Of legality

Of the substance, of appropriateness

vi. What is the type of checks?

On persons

On actions

vii. Are the conclusions of private individuals binding on the Administration?

Yes

No

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

No

Yes

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se)

The judicial review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration)



ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes

private disputes

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

- Public body litigation – legal disputes between public bodies or their members, for instance, judicial review of a chamber's disciplinary matters;
- In the case of higher education institutions, matters relating to student status;
- Legal disputes relating to the issuance of high school diplomas.

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

N/A

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

N/A

iii. What criteria does the Administration use to select external senior managers?

N/A

iv. What is the nature of the duties of external senior managers? **N/A**

Decision-making

Advisory

Other

v. Does error on the part of a senior manager give rise to: **N/A**

Civil liability of the State

Personal liability of the manager (civil, criminal, disciplinary)

2. Organisational models



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i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Yes, certain elements of these models are used in the organization of Hungary's public administration. For example, a significant part of administrative procedures has been digitized, and land registry procedures and records have recently been transformed to give preference to electronic procedures. In addition, the evaluation and self-evaluation of the work of public-service employees can also be mentioned in this category. Public-service employees are also required to engage in self-learning and participate in organized mandatory training courses to ensure efficiency and customer-oriented work. A "one-stop shop" system has been introduced in government offices, where clients can handle almost all their official matters in one place. In the case of the Curia as an organization, digitization and electronic administration should also be highlighted, as proceedings before the Curia are conducted electronically and electronic documents should be regarded as official. In addition, judicial employees participate in an annual performance evaluation process.

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

No, there is not.

iii. In which public services and agencies is this type of organisation used?

- The Administration stricto sensu**
- Public enterprises
- Other public entities

iv. Are the policies for achieving the objectives designed:

- At national level**
- At regional level
- By subject-matter
- By taking into account specific public entities
- Other



v. Have specific objectives been set out for the action of the Administration? Please provide examples.

No, but the Public Administration Procedures Act stipulates that, in their proceedings, authorities are required to act in accordance with the requirements of good faith and cooperation with clients.

If yes, is their accomplishment:

Optional

Mandatory

Does failure to meet these objectives lead to:

Personal consequences for the senior managers

Legal consequences for the assessed organisation

Financial consequences for the assessed organisation

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

Yes, for instance, government officials receive a bonus if revenue targets that have been set by the tax authority are achieved.

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors: **N/A**

Compliance with the regulatory framework

Effectiveness

Efficiency

Economy

Achievement of strategic objectives

Other

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration

Mediation

Other: settlement



ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

** Please elaborate on your answer, citing any relevant legislation and/or case-law*

Pursuant to the Code of Administrative Litigation, the court shall attempt to reach a settlement between the parties if the subject matter of the dispute allows it and if it is not precluded by law. If the parties and interested parties agree, the court shall order mediation. During mediation, the parties and interested parties shall attempt to settle the legal dispute through negotiations conducted with the assistance of the court.

This is excluded in the following cases: tax, customs and excise cases; election and referendum cases; assembly cases; and disciplinary proceedings from among public service cases. These exceptions are provided for in relevant sectoral legislation.

In the case of the Curia, the use of these instruments in cassation proceedings is not theoretically excluded, but it is not typical.

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

The Code of Administrative Litigation states that the court may attempt to reach a settlement between the parties, which is not necessarily preceded by court mediation.

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

The procedure laid down in the Code of Administrative Litigation applies only to legal disputes that are already in progress before a court. However, depending on the subject matter of the dispute and the relevant substantive legislation, the parties and the administrative authorities may conclude a similar settlement in order to avoid court proceedings or an administrative (sanctioning) decision.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

The plaintiff may challenge both formal procedural errors and the merits of the administrative act in a single action. The court examines the legality of administrative activities within the framework of the action. At the same time, the court shall take into account *ex officio* the grounds for annulment or other grounds for invalidity specified in the law, as well as any material deficiencies in the case of which the administrative act shall be deemed non-existent, such as the fact that the administrative act is based on legislation that is not applicable in the case, as well as other facts and circumstances specified in the law.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

If the court attempts to reach a settlement, the framework shall be governed by the Code of Administrative Litigation. In terms of content, the parties may agree to settle any issue, provided that it does not go against the law.

In order for the case to be referred to mediation, all parties must consent to this procedure. In this case, the court shall suspend the proceedings for the duration of the mediation process, and the content of the settlement reached is also subject to the aforementioned rules.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?

The court that hears the case. Settlement/mediation is not typical in cassation proceedings before the Curia.

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

N/A

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

Yes, the settlement approved by a court order has the same legal force as a judgment. The rules governing the enforcement of judgments also apply to the enforcement of the court order.

Which court has jurisdiction over disputes concerning such enforcement?

There are no specific regulations governing this; enforcement can be sought before the administrative court in accordance with the general rules.

- ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:
- a legislative provision
- a general principle of law

N/A

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

- Yes
- No

iii. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Yes, the Code of Administrative Litigation ensures that court mediation be used while litigious proceedings are suspended.

Is it mandatory or optional?

It is necessary to obtain the parties' consent.

If it is optional, does it require:

- The mutual agreement of the parties
- Only the intention of the Administration
- Only the intention of the private individual/legal entity



Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

It is ordered by the court during litigation if the parties give consent.

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings

At any stage of the litigation proceedings¹

Is there a specific piece of legislation governing the mediation process?

Yes

No

If yes, please specify:

The proceedings shall be conducted in accordance with the Code of Administrative Litigation and Act LV of 2002 on Mediation.

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

The consent of all parties to the dispute is required, and the mediator may not be a member of the panel proceeding in the dispute.

How is the impartiality of the mediator ensured?

Apart from the aforementioned points, Act LV of 2002 on Mediation regulates the conditions for becoming a mediator, as well as the conflicts of interest and the reasons for exclusion.

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

No, there is not. The court shall suspend proceedings, may not issue any decisions, and may not perform any procedural acts during the mediation process (up to two months at most).

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

¹ It is possible before a final decision is issued. At the same time, it should be noted that there is no mediation before the Curia in cassation proceedings, even though it cannot be ruled out theoretically. This question is controversial.

Other possibility (please specify)

At the end of the mediation, the court mediator records the agreement reached in writing and sends it to the court, which issues an order to approve the parties' settlement.

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

The time limit for suspending proceedings due to the mediation process is two months. In the absence of a settlement or at the request of either party, the mediator shall notify the court of the failure of the mediation. If mediation ends without a settlement that covers the entire legal dispute, the court shall continue the proceedings in accordance with the general rules.

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

Yes, identical rules apply to it as to the settlement. The court will examine the settlement and – if it complies with the law – will incorporate it into an order that has the same legal effect as a judgment.

ii.b. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

N/A

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

Is it mandatory or optional?

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision

A general principle of law

According to Act LX of 2017 on Arbitration, arbitration proceedings are not permitted in cases to be settled in proceedings that fall under the scope of the Code of Administrative Litigation.

ic. If arbitration is optional, does it require:

The mutual agreement of the parties

The sole intention of the Administration

The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

iv. How are the independence and impartiality of the arbitrator ensured?

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

vi. In arbitration concerning administrative disputes:

yes / no

Is there an obligation to make publicly available the basic information and documents relating to the proceedings?

Is the participation of third parties permitted?

Is legal representation mandatory?

If yes, is legal aid available?

Is the hearing public?

Is the arbitral tribunal obliged to give reasons for its award?

Is the arbitral award made publicly available?

vii. During the proceedings, the applicable system is:

the adversarial system

the inquisitorial system

viii. What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature

Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)

Annuls/amends an administrative act of a non-pecuniary nature

Annuls/amends an administrative act of a pecuniary nature

Addresses only recommendations to the Administration

Restricts itself to awarding compensation for damages



Does the arbitral award have effect:

Erga omnes (with regard to all)

Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

Yes

No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Is it possible to waive the right to judicial review?

Which courts have jurisdiction?

What is the scope of the judge's review according to case-law?

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, Eco Swiss China Time Ltd v Benetton International NV and C-168/05 Mostaza Claro v Centro

Móvil Milenium SL, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?