



Bundesverwaltungsgericht



**Seminar organized by the Federal Administrative Court of
Germany and ACA-Europe**

**Functions of and Access to Supreme Administrative
Courts**

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Answers to questionnaire: Hungary



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ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

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Oberverwaltungsgericht Berlin-Brandenburg
(Higher Administrative Court Berlin-Brandenburg)

Questionnaire

Introduction

One of the most important tasks of ACA- Europe is to foster mutual understanding of the jurisprudence of the member states. The recognition and evaluation of the jurisprudence of the Supreme Administrative Courts of other member states is a key prerequisite for the development of a European legal community. For this purpose it is not sufficient to be able to read the decisions of the other member courts. In order to really understand their jurisprudence it is also eminent to understand under what conditions and traditions our colleagues perform their duties.

The conditions Supreme Administrative Courts work under are among others strongly determined by the specific functions a Supreme Administrative Court has in its national legal order. The specific functions on their part might have strong influence on how the access to the Supreme Administrative Court is designed and what scope of assessment of a case is applied. This leads to a number of questions: Which “filters”, for example, does administrative procedural law incorporate into the procedure, if it does at all? Does the procedure require a special admission or can every case be brought to the Supreme Administrative Court by the parties? Are only legal questions or also facts to be discussed?

Dealing with these questions the seminar to be held in Berlin from 12th to 14th May 2019 hopes to contribute to a deeper mutual understanding of the decisions of the member states’ Supreme Administrative Courts. It shares this objective with the closely linked seminar taking place in Dublin on 25th and 26th March 2019, which will lay an emphasis on the internal mode of decision making, asking how our courts decide. Both seminars will deal with different aspects of the ways of our judicial conduct, deliberation and reasoning which are all important to understand the jurisprudence of the different member states.

These aspects cannot be studied efficiently from manuals, so ACA-Europe seminars are the right place to assess these important features of the judge’s daily work.

I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

In Hungary administrative jurisdiction has a three-tier system, namely administrative-labour courts, high courts (seated at county level), and the Curia of Hungary (henceforth: Curia). (The Curia's powers to *review of legality of a decision* constitute the third tier.)

In Hungary at present there are 20 administrative-labour courts, which proceed at first instance in administrative and labour cases. As of 1 January 2018, most administrative and labour lawsuits started on or after 1 January 2018 are heard by 8 regional administrative-labour courts.

As of 1 January 2018, administrative cases falling in exclusive high court competence and jurisdiction are determined by the Budapest High Court (*Fővárosi Törvényszék*). (In cases filed before the above date the high court having jurisdiction for determining the case shall proceed.) High courts hear not only administrative cases. Administrative cases at the high courts are determined by judges appointed to hear administrative and labour cases.

The highest-level judicial forum is the Curia. The Curia has three Departments: Civil, Administrative-Labour and Criminal Department.

The rules governing competence and jurisdiction for determining lawsuits started after 30 December 2017 are as follows:

1. Lawsuits are determined at first instance by administrative-labour courts, in cases specified under the law by the Budapest High Court (as the only high court) or, exceptionally, by the Curia.
2. Cases determined at first instance by administrative-labour courts are adjudicated at second instance (solely) by the Budapest High Court; cases determined at first instance by the Budapest High Court are determined at second instance by the Curia (in both cases in the form of ordinary remedy proceedings).
In exceptional cases, a first instance decision of the administrative-labour court can be challenged directly, via a so-called "jumping appeal" before the Curia (detailed elaboration is provided below).
3. Petitions for review filed against first instance administrative-labour judgments not subject to appeal and against second instance judgments of the Budapest High Court are determined by the Curia (as extraordinary remedy).

According to the new regulation entering into force on 1 January 2020, administrative cases will be adjudicated within a separate administrative court system which will be set up as a two-tier system.

At first instance, administrative cases will be determined by eight regional administrative high courts. (These courts already exist in the sense that most administrative cases are, at present, too, determined by these eight key administrative-labour courts, which will be turned into regional administrative high courts).

An Administrative Superior Court will be set up (while the Curia's Administrative Department will cease to exist within the Curia), which will proceed at first instance in cases specified in the law, at second instance, upon appeal, in cases determined at first instance by regional high courts, and will also determine petitions for reviews (extraordinary remedy).

The coming changes will affect not only organisational and, consequently, competence-related issues, but also administrative and procedural issues.

b) Does your SAC also serve as a first instance court?

The Curia proceeds at first instance in cases specified in the reply given to question c).

c) If so, under what circumstances does your court serve as a first instance court?

- depending on the subject-matter?
- depending on the importance of the case?
- depending on a choice by the plaintiff (alone) or the parties (by agreement)?
- depending on other criteria?

Please explain.

According to the Fundamental Law of Hungary, the Curia as supreme judicial organ proceeds at first instance only exceptionally, typically where the constitutional rules or the special features of the case justify the commencement of the court proceedings before the supreme judicial organ. As to their nature, these cases are related to norm-control or decisions of the Constitutional Court.

According to the competence rules of the Act on Administrative Court Procedure, the Curia has first instance competence to:

- examine the non-compliance of a local government decree with another piece of legislation
- conduct proceedings against a local government for failure to comply with its duty to adopt a piece of legislation
- conduct proceedings for determining the procedural means of redressing a constitutional complaint

First instance competence may be conferred on the Curia in another law, too; it is not necessary to specify all competences in the Act on Administrative Court Procedure.

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

In **2017** the Administrative-Labour Department of the Curia completed the adjudication of 1813 cases, from which there were:

- 1568 review proceedings
- 19 appeals
- at first instance
 - o 45 norm control of local government decrees
 - o 7 election-related cases
 - o 38 referendum-related cases
- 136 other (appointment of a court to proceed in a case)

In **2018** (which was an election year in Hungary, therefore the Curia proceeded in a great number of election-related cases) the respective figures were as follows.

Number of completed cases: 1537, from which there were

- 1537 review proceedings
- 96 appeals

- at first instance
 - o 40 norm control of local government decrees
 - o 173 election-related cases
 - o 29 referendum-related cases
- 75 other (appointment of a court to proceed in a case)

2. a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load?

The Curia's activity can be broken down into the following groups:

- o Adjudicative proceedings (first instance, second instance, review)
- o Ensuring the uniformity of the courts' jurisprudence by adopting so-called uniformity decisions and by analysing final decisions in the framework of so-called jurisprudence-analysis

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

The complexity of the cases brought before the Curia varies (even within the various groups of cases), the amount of time required for their treating cannot be weighed.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

When **acting at second instance as appellate court**, the Curia reviews the decisions of the lower courts both as to facts and law.

Under the regulation in force at present, to lawsuits started after 31 December 2017 the following remedy regime is applicable:

Where it is allowed under the law, against a first instance judgment appeal can be filed by alleging a violation of law. Where the first instance judgment has been given by the Budapest High Court, the appeal shall be determined by the Curia. As a rule, the appeal must be submitted to the first instance court within fifteen days from the communication of the judgment. Where a request for immediate legal protection is made in the appeal, the appeal shall be transmitted to the Curia within three days. The adverse party and any interested party can, within eight days from the communication of the appeal, file a counter appeal or a cross appeal. New fact or evidence can only be submitted in the appeal where the new fact or evidence was learnt by the appealing party after the adoption of the first instance judgment and the new fact or evidence would have resulted in more favourable decision for the appealing party, if they had been adjudicated; or the new fact or evidence is submitted in order to substantiate the unlawfulness of the first instance judgment.

Exceptionally, the decision of the administrative-labour court can be challenged directly before the Curia, via a so-called "jumping appeal" (see the detailed explanation at II.4.e).

Moreover, first instance orders given in second instance proceedings and being subject to appeal according to the first instance procedural rules, can also be challenged via appeal.

b) When **acting in its review powers** (extraordinary remedy), the Curia shall only review the lower court's decision as to issues of law. Review is carried out only by the Curia.

No review shall lie:

- against a decision having become final at first instance, save where appeal is excluded under the law
- where one party failed to avail of his right to appeal and the first instance decision was upheld by the second instance court upon the other party's appeal
- against final judgment provisions governing payment of interests, court costs, time of performance or instalment payment, when only these provisions are appealed
- against the Curia's decision
- where it is excluded under the law, in especially justified cases.

The petition for review must be submitted via the party's legal representative to the court having adopted the first instance decision, from thirty days from the communication of the final decision. In the petition for review new legal ground, fact or circumstance not having formed the subject matter either of the first instance proceedings or the second instance proceedings cannot be submitted.

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law?
- the deliverance of single case justice?
- (further) development of the law?
- care for adherence to procedural rules of lower courts?

According to the Fundamental Law of Hungary, the Curia (Administrative Superior Court) is Hungary's supreme judicial organ. The Curia shall ensure the **uniform application of the law by the courts**. In order to perform this task, the Curia shall:

- a) adopt uniformity decisions binding on all courts
- b) carry out jurisprudence-analysis in respect of cases terminated by a final decision, in the course of which it shall analyse the courts' adjudicative practice
- c) publish decisions and rulings laying down principles ("court decision of principle" or "court ruling of principle")

ad a) **Proceedings for the adoption of a uniformity decision** are conducted where in the interest of further developing the courts' jurisprudence, or ensuring the uniform application of law by the courts, or altering or overruling a former uniformity decision, or in case a judicial panel of the Curia wishes to depart on an issue of law from the decision of another judicial panel of the Curia formerly published as a court decision of principle or court ruling of principle. The motion proposing the adoption of a uniformity decision shall be forwarded to the Chief Public Prosecutor, who shall give a statement on its position on the motion. Upon the motion, a 'uniformity decision judicial panel' shall either adopt a uniformity decision or an order rejecting the adoption of a uniformity decision. Uniformity decisions are binding on the courts but not on parties, save where an exception is made by the law.

ad b) The task of the **jurisprudence-analysing working groups** is to examine the courts' jurisprudence. The topics for the analyses are annually determined by the President of the

Curia, after obtaining the opinions of the heads of the Departments of the Curia. The heads of the various jurisprudence-analysing working groups are appointed, according to the subject-matter of the analysis, by the President of the Curia from among Curia judges, upon the proposals of the heads of the Departments of the Curia. The jurisprudence-analysing working groups summarise their findings in so-called Summary Reports, which are discussed within the respective Curia Department and in case they are agreed on, the head of the respective working group shall publish the Summary Report on the Curia's website.

ad c) Where in a case affecting large segments of society or raising questions of great public importance a judicial panel of the Curia has passed a decision stating principles, the head of the judicial panel shall inform the head of the respective Department of the adoption of the decision. The head of the respective Department shall forward the decision to the Curia's judicial publication panel, which shall determine whether it is justified to publish the decision as a **court decision of principle**.

Moreover (as it has been presented above in point 3), in cases specified by the law the Curia, as appellate court, shall determine **appeals** filed against high court decisions and, as review court, shall determine **petitions for review** filed against lower court final decisions.

5.a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?

b) What is the rationale of assigning certain proceedings to the SAC as a court of first instance?

As it has been presented above in point 1.c), the Curia only exceptionally proceeds at first instance. To commence proceedings before the supreme judicial forum is justified either by constitutional rules or by the nature of the case (for a detailed description of the competences see point III.1).

6. a) Is there a separate constitutional court in your country?

Yes, in Hungary a separate Constitutional Court operates, which does not form part of the ordinary court system, but in determining constitution complaints it may overrule and set aside the judgments of ordinary courts, including the Curia.

b) Does the SAC in your country serve as a constitutional court?

It follows from the reply given to the above question that the Curia does not function as a constitutional court. (However, certain Curia competences formerly belonged to the Constitutional Court. On this issue see point III.1.)

c) In how far does your SAC consider constitutional law, especially fundamental rights?

Sitting as appellate or review court the Curia can consider cases related to constitutional law and fundamental rights, but the determination of noncompliance of court decisions with the Fundamental Law of Hungary falls within the competence of the Constitutional Court.

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?

If a right ensured for a party in the Fundamental Law of Hungary has been violated in the course of the adjudication of the party's case, the party may file a constitutional complaint. (In the constitutional complaint no review of the lawfulness or well-foundedness of the court decision can be sought, because the Constitutional Court does not function as an additional remedy forum within the ordinary court system.) The Constitutional Court shall examine whether the decision adopted or the statutory provision applied in the case challenged in the complaint has violated the petitioner's right enshrined in the Fundamental Law of Hungary.

However, not all Curia decisions closing review proceedings can be challenged before the Constitutional Court. Constitutional complaint can only be filed against a Curia decision adopted in review proceedings where the review decision:

- upheld the contested decision
- quashed the final decision in part or in full and adopted instead of the final or the first instance decision a new decision which was in compliance with the law, or
- partly modified the final decision and adopted a new decision which was in conformity with the law, or
- quashed the impugned decision and discontinued the proceedings, provided that the petitioner did not challenge the final decision before the Constitutional Court, or the Constitutional Court rejected the complaint against the final decision for the reason that proceedings were still pending before the Curia.

A Curia decision quashing a lower court decision and remitting the case to the lower instance court cannot be challenged in a constitutional complaint. In such cases constitutional complaint can only be filed after the completion of the review proceedings in the case.

Nor can a final decision sought to be reviewed by the Curia can be challenged in a constitutional complaint if the petition for review has not yet been determined by the Curia.

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?

Where in a case under adjudication the judge should apply a law that he finds to be contravening the Fundamental Law of Hungary or whose nonconformity with the Fundamental Law has already been established by the Constitutional Court he shall, while staying the proceedings, turn to the Constitutional Court seeking to establish the nonconformity of the piece of legislation with the Fundamental Law of Hungary or to exclude the applicability of the piece of legislation whose nonconformity with the Fundamental Law of Hungary has already been established by the Constitutional Court.

Judges may turn to the Constitutional Court in respect of a piece of legislation, a statutory provision, a regulatory instrument of a public law body, or a uniformity decision. The norm control of a local government decree can only be requested by a judge where the aim of the examination is solely to establish the conformity or nonconformity of the local government decree with the Fundamental Law of Hungary but not with other laws. Because, if a local government decree (also) violates other laws, the local government decree shall be examined by the Curia's Municipality Judicial Panel. (For a more detailed explanation see III.1.)

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

Administrative acts cannot directly be challenged before the Constitutional Court.

II. Access to the SAC

1.a) Does a party have to be **represented by a legal professional** before the SAC?

Yes, representation by a legal professional is mandatory in proceedings before the Curia.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

Representation by a legal professional can be provided by an attorney, a counsel registered with the Hungarian Chamber of Attorneys, or an officer or employee of an administrative body having passed the bar exam.

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

No special authorisation is needed.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?

No.

e) Are there specific (different) rules for representatives of administrative authorities?

No, there are not.

2.a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?

a) An **appeal** must specify the alleged violation serving as a basis for the appeal and the contested statutory provision, and must contain a definite request for a ruling of the second instance court. New fact or evidence can only be submitted in the appeal where the new fact or evidence has been learnt by the party after the adoption of the first instance judgment, and the new fact or evidence would have resulted in more advantageous decision for the party in case it had been determined. Moreover, new fact or evidence can be submitted and evidence-taking not conducted by the first instance court can be motioned where their purpose is to substantiate the unlawfulness of the first instance judgment.

b) A **petition for review** is governed by the rules applicable to an appeal, save that in the petition for review legal grounds, facts or circumstances that have not constituted the subject-matter of first instance or second instance proceedings cannot be submitted.

Admission procedure: a petition for review meeting the procedural requirements can only be admitted where the examination of the alleged violation of law affecting the merits of the case is justified by the

- need to ensure the unity or further develop of the courts' jurisprudence
- gravity and social significance of the legal issue raised in the petition
- need to refer the case to the CJEU for a preliminary ruling
- fact that a provision of the judgment given in a case departs from the Curia's published jurisprudence

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

a) Save where evidence-taking and examination is ordered *ex officio*, the Curia as **second instance court** may only examine an appeal within the frameworks of the appeal, the cross-appeal and the counter-appeal. The second instance court shall review not only the first instance judgment but also all other decisions given in the case, except for those decisions which are subject to separate appeal.

b) **Acting as a review court**, the Curia shall examine the lawfulness of the final judgment within the confines of the petition for review and the cross-petition for review, that is, it shall examine the alleged unlawfulness of the final judgment in the light of the laws specified in the petitions, save where it discontinues the proceedings *ex officio*, or the court having passed the decision was formed not in accordance with the relevant rules, or a judge against whom a ground for exclusion existed took part in the adoption of the decision. The review shall extend to facts having occurred before the adoption of the final judgment and determined in the final judgment. In review proceedings evidence shall not be taken, in determining a petition for review the Curia shall pass a decision on the basis of the available documents and evidence.

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

A case may be referred to the CJEU for a preliminary ruling either *ex officio* or upon request. According to Article 267 of the Treaty on the Functioning of the European Union, where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court, save where the CJEU has found in a case that the interpretation of the given EU provision is evident. Based on the above EU regulation the Act on Administrative Court Procedure provides that the Curia shall admit a petition for review where the examination of an alleged unlawfulness affecting the merits of a case is justified on account of the need to conduct prior preliminary proceedings by the CJEU. It means that in case a contested issue of law affects the merits of a case, no CJEU case law giving directions is available, and a reasonable doubt arises as to the proper interpretation of EU law, the Curia must admit the petition for view in order to refer the case to the CJEU for a preliminary ruling.

3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

a) In administrative lawsuits, **appeal** against the first instance judgment (on account of violation of law) can only be filed where it is allowed under the law. Appeal may be allowed not only by the Act on Administrative Court Procedure but also by other Acts of Parliament. Appeal may be filed by a party to the proceedings, an interested party and, in respect of a provision applicable to him, a person to whom the provision is applicable. As a rule, the first instance judgment of a high court is subject to appeal, unless it is provided otherwise in an Act of Parliament. In administrative lawsuits appeal against an order passed on a procedural issue can only be filed in cases specified by the Act.

b) **Review**, as an extraordinary remedy, can be filed against a final judgment. A petition for review can be filed against a final judgment and against an order rejecting a statement of claims or terminating the proceedings, by a party to the proceedings, an interested party or, in respect of a provision applicable to him, a person to whom the provision is applicable, by alleging violation of law.

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

a) As a rule, **no appeal lies** against a judgment given in summary proceedings, save where it is expressly allowed under the Act (e.g. in proceedings against an administrative authority having failed to comply with its obligation to take action)

b) **No review lies:**

- against a decision becoming final at first instance, save where appeal is excluded under the law
- where a party failed to avail of his right to appeal and the first instance decision was upheld by the court upon the other party's appeal
- against final judgment provisions governing payment of interests, court costs, time of performance or instalment payment, when only these provisions are appealed
- against the Curia's decision
- where it is excluded by (another) law, in especially justified cases (sectoral legislation excludes review e.g. in cases concerning elections, referenda, right of assembly, right of asylum)

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

No such filter (depending on the value in litigation or qualitative) exists.

b) If there is a preliminary assessment, please give details:

- Which court decides (lower court or SAC)?

- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?
- If the SAC decides, is there a specific procedure of admittance before the SAC? Please give details!
- If the lower court decides (in a negative way), can the SAC still admit a case?
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?

a) In respect of appeals **no preliminary assessment** is made.

b) The rules of **admission procedure** for **review** are the following:

A petition for review meeting the formal requirements shall be admitted by the Curia where the examination of the alleged violation affecting the merits of the case is justified

- in order to ensure the uniform jurisprudence of the courts or develop courts' jurisprudence
- on account of the special weight and social significance of the issue of law raised in the petition,
- by the need to refer the question to the Court of Justice of the European Union seeking a preliminary ruling
- by a judgment provision departing from the Curia's published jurisprudence.

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

There are no filters.

d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?

In respect of appeals no admission procedure exists.

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?

Where the first instance decision has been given by an administrative-labour court, in a joint request enclosed in the appeal the parties can motion that the appeal alleging the violation by the court of a substantive statutory provision be determined directly by the Curia. This so-called "jumping appeal" shall be admitted by the Curia where it concerns a violation by the court of a substantive statutory provision which is of fundamental importance from the aspect of ensuring uniform jurisprudence. If the Curia admits such a "jumping appeal", it will determine the appeal on the merits.

f) Are there specific requirements in certain fields of law?

No.

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?

In respect of appeals, no procedure of admittance exists. Figures related to the admission of petitions for review are not available yet (admissibility procedure has only been applied since 1 January 2018).

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

a) As to the (in-)admissibility of appeals, **no established jurisprudence exists** since the grounds for rejecting an appeal are specified in the law and the existence of such grounds is examined by the first instance court (to which appeals are to be submitted).

b) As to the admissibility of reviews **no established jurisprudence has developed yet.**

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

An appeal to the Curia provides wider remedy possibility than a review, to which admissibility filter is applied. (Therefore, the legislative solution, namely that in normal administrative lawsuits appeal is allowed, whereas in summary lawsuits conducted at first instance before the Budapest High Court review is allowed, constitutes a coherent regulation.)

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

The Fundamental Law of Hungary (the Part entitled *Freedom and Responsibility*) provides that everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his rights or legitimate interests.

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

As presented above in point a), the Fundamental Law of Hungary ensures the right to remedy but does not say anything about the court system and the various means of remedy (appeal, review).

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

The Act on Administrative Courts providing for the setting up of the new administrative court system was adopted by the Parliament on 12 December 2018 and will enter into force on 1 January 2020. The detailed rules of performing the Administrative Superior Court's tasks specified in the above-mentioned Act and/or the adjustment of the procedural rules in force at present to the new court system will be done in 2019.

III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:

The Curia only exceptionally proceeds at first instance. The Code of Administrative Court Procedure specifies only three cases in which the Curia has first instance competence:

- a) procedure examining the non-compliance of a local government decree with a piece of legislation
- b) procedure instituted against a local government for failure to meet its statutory obligation to pass a piece of legislation
- c) procedure for determining the procedural means of redressing a constitutional complaint.

ad a) If the Curia finds that a local government decree or a provision thereof is in non-compliance with a piece of legislation, it shall annul the local government decree or the provision. Where such non-compliance and annulment takes place upon the court's motion, the annulled local government decree or provision shall become inapplicable in the case pending before the motioning court and in all other cases pending before any court at the time of the annulment. (Before 2012 the norm control of local government decrees was carried out by the Constitutional Court.)

ad b) Where the Curia finds that a local government failed to meet its statutory obligation to pass a piece of legislation, it shall invite the local government to meet its obligation by fixing a time limit. Where after the elapse of the specified time, upon the motion of the organ exercising control of legality over the given local government, the Curia finds that the given local government failed to comply with its obligation to pass a piece of legislation, the Curia shall authorise the head of the organ exercising control of legality over the given local government to adopt a local government decree or a so-called normative decision in the name of the local government.

ad c) Where upon a constitutional complaint the Constitutional Court has established the non-compliance of a court decision with the Fundamental Law of Hungary and has annulled the court decision, the Curia shall remit the case to the first or second instance court, or shall order to adopt a new review decision. The Curia shall not remit the case to the lower instance where the violation cannot be redressed *ex post facto*. (This competence is conferred by the Act on the Curia because the binding force of a court decision having become final before the delivery of the Constitutional Court's decision can only be abolished by a judicial forum.)

Under the relevant sectoral laws, in cases related to elections and referenda a request for the judicial review of a decision passed by the National Election Committee shall be adjudicated (at first instance) by the Curia. The Curia shall either uphold or modify the contested decision.

- cassation of the administrative act?

- if a local government decree contravenes another piece of legislation

- obligation of the administrative authority to issue an administrative act?

- in proceedings conducted on account of a local government's failure to comply with its obligation to adopt a piece of legislation
- in proceedings aimed at determining the means of redressing a constitutional complaint

- obligation of the administrative authority to issue a new discretionary decision?
 - if a local government decree contravenes another piece of legislation
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
 -
- issue an administrative act itself?
 - in election cases, in relation to the decision of the National Election Committee
- issue a discretionary decision out of its own authority?
 -
- remit to the constitutional court?
 - if a local government decree contravenes another piece of legislation
 - in election cases, in relation to the decision of the National Election Committee
- other?
 -

2.As far as your SAC serves as a court of appeal:

a) What is the possible content of decisions of your SAC:

a) In **appeal** proceedings:

- The second instance court *ex officio* **quashes the first instance judgment and remits the case to the first instance court** where:
 - o the first instance court was formed not in compliance with the rules,
 - o a judge against whom a ground for exclusion existed participated in the adoption of the judgment, or
 - o the judgment suffers from an unredressable formal deficiency rendering the judgment unsuitable for review on the merits (*absolute ground for quashing a judgment*)
- The second instance court quashes the judgment and remits the case to the first instance court where the violation of a material rule governing first instance procedure had an impact on the determination of the merits of the case in a manner unredressable in the second instance proceedings (**ground for quashing a judgment upon discretion**). The court proceeding at second instance must give instructions as to the conduct of the resumed proceedings, which instructions the first instance court shall comply with.
- In case of violation of a law the second instance court partly or fully modifies the first instance **judgment** while upholding or quashing certain provisions of the judgment. In such cases the second instance court can, based on the regulation governing first instance judgments admitting claims (not presented in detail here), modify, annul or quash an **administrative legal act** and can remit the case to the administrative authority, where appropriate.

b) In **review** proceedings

- Where the decision requested to be reviewed violates the law in a manner affecting the merits of the case, the Curia **quashes** the final decision in its entirety or **in part**, and

remits the case to the first or second instance court having acted in the case, where appropriate (by instructing that court to conduct resumed proceedings in the case and to adopt another decision). Hence, in contrast to the rules governing appeal, in review proceedings the Curia has no reformatory powers (that is, powers to modify the decision).

- Where appropriate, the Curia shall quash the final decision with effect extending to the **administrative act**, and shall remit the case to the administrative authority before which the resumed proceedings shall be conducted.

Where a decision is quashed, the Curia shall remit the case to the first or the second instance court or to the administrative authority and shall give proper instructions as to the conduct of the resumed proceedings.

- cassation of the decision of the lower court and remitting the case back to the lower court?

As presented above, both in appeal and review proceedings.

- cassation of the administrative act?

As presented above, both in appeal and review proceedings.

- obligation of the administrative authority to issue an administrative act?

As presented above, both in appeal and review proceedings.

- obligation of the administrative authority to issue a new discretionary decision?

Both in appeal and review proceedings.

- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?

In appeal proceedings.

- issue an administrative act itself?

Only in appeal proceedings.

- issue a discretionary decision out of its own authority?

As presented above, both in appeal and review proceedings.

- remit to the constitutional court?

Both in appeal and review proceedings.

- issue a legal opinion/authoritative interpretation of the law without connection to a single case?

In review proceedings.

- other?

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b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

In appeal proceedings the second instance court can take evidence and can overrule evidence. Though the new facts and pieces of evidence will not change the action, they provide possibil-

ity for the second instance court to supplement the evidence-taking proceedings conducted by the first instance court, or to evaluate the evidence differently from the first instance court or to reach different conclusions on issues of fact and law than the first instance court.

In review proceedings no evidence-taking can be conducted and evidence cannot be overruled, given that in such proceedings only issues of law and not issues of fact are examined. In determining a petition for review the Curia shall pass decision on the basis of the available documents and evidence.

3.a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

No.

b) If not, what are the differences?

See the reply given at III.1.

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

No such rules exist.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure?

No such rules exist.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

Yes.

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

Yes.

b) If so, under which conditions can they deviate from a decision of the SAC?

Deviation is not allowed.

c) Is the SAC bound by law to follow its own previous decisions?

Yes.

d) If so, under which conditions can it deviate from its previous decision?

The issue shall be determined in uniformity decision proceedings. (For a detailed presentation see the reply given to question no. I.4. ad a).)

7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

Yes, they are. Departure is only possible on the basis of a uniformity decision.