



Consiglio di Stato



**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Law, Courts and guidelines for the public
administration”**

Fiesole (Firenze), Autumn 2021

Answers to questionnaire: Hungary



Seminar co-funded by the «Justice » program of the European Union



ITALIAN PRESIDENCY ACA - EUROPE
FIESOLE (FIRENZE), 19 OCTOBER 2020

"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

QUESTIONNAIRE

1. Introduction

1.1 The seminar to be held in Fiesole, on the 19th and 20th October 2020 at the European University Institute, is the first meeting organised by the Italian presidency.

As explained during the initial presentation of the programme for the upcoming Italian presidency, its leitmotiv will be to enhance and foster the value and the experience of “horizontal dialogue” among the highest administrative national Courts, aiming to create and develop a common culture and shared standards in judicial review of the activity of the public authorities.

This “horizontal dialogue”, more than “vertical dialogue”, aims to focus on examining and comparing modes of judicial decision making and judicial conduct, and the impact of judgments on the activities of public authorities.

Horizontal dialogue between Courts of Member States is the best way to achieve an effective European citizenship, that is to say a common standard of legal protection for citizens and companies living in Europe and dealing with public powers.

1.2 The purpose of this questionnaire and of the subsequent seminar is to provide a greater understanding of similarities and differences among our legal systems, especially regarding:

- a) the interpretation of law by judges;
- b) the binding effect of judgments both so as to ensure the judges’ compliance with the nomophylactic statements of the Supreme Administrative Courts (SACs) and to act as an instrument to address the future action of public administrations in similar cases;
- c) the effect of the administrative judgments on the activity of public administration and their enforcement;
- d) the consultative role of the SAC, if existing.

1.3. The seminar will cover the following topics:

- a) The method followed by administrative courts in the interpretation of the law, focusing on the criteria applied by judges (including reference to *ratio legis*, reference to preparatory work, reference to the advice of the SAC regarding the adoption of the law, if existing, etc.). A special focus will be placed on the tools for supporting judicial activity with regard to services for classifying and archiving judgments, e.g. databases and AI instruments.
- b) The application of the law by the Court, with specific reference to the nomophylactic pronouncements of the SAC. Jurisprudential stability and the predictability of decisions are important values related to the general principles affirmed by the European Court of Justice such as legal certainty, predictability for citizens and companies of the consequences of their behaviour and the protection of legitimate expectations. Therefore, there will be a special focus on the ways and the procedures, where they exist, through which SACs ensure compliance with the nomophylactic statements in the administrative system.
The “binding or steering effect” of the of Supreme Court judgments: this topic aims to foster mutual understanding of the capacity of administrative judgments to bind the public administration in the subsequent exercise of its power. It covers not only the binding effect on decided case, but it also aims to analyze judgments as instruments to orientate the future action of public administrations in similar cases (i.e. judgement as guidelines).
- c) The seminar will also examine the enforcement of the administrative judgment, in case the public administration fails to comply with it spontaneously and correctly, with special reference to judicial enforcement measures provided by each legal jurisdiction, if they exist.
- d) Finally, a brief session will be devoted to the consultative role of the SAC, if existing, and its impact on administrative action.

1.4 It is intended that the Seminar will provide each Supreme Administrative Court with a better understanding both of the decision making process underpinning the judgments of other SACs and of their impact on the activity of public authorities.

In a constitutional democracy, administrative courts are seen as performing a vital function in the interaction between law and administration.

The purpose, to reiterate, is to verify whether it is possible to find or develop a homogeneous method to scrutinize the way public administrations exercise their powers and to guarantee a common standard of legal protection for citizens and companies in all Member States.

The questionnaire which follows represents an initial information gathering exercise the purpose of which is to clarify the interaction of the administrative courts with the law, on the one hand, and the administration, on the other, so as to ensure certainty, legality and quality of justice for citizens and public institutions.

I SESSION

THE METHOD OF INTERPRETATION OF LAW AND ITS APPLICATION BY THE COURTS

1. The role of the Supreme Administrative Courts in the interpretation of law.

1.1. Does your legal system provide general rules for the interpretation of law?

No

Yes

1.2. What is the level of general rules for interpreting the law?

Law

Public authority regulations

Guidelines

Supreme Court rulings

Other

Please explain and give an example.

First, we should note that the Curia (Kúria) is the highest judicial authority in Hungary. There is no separate Supreme Administrative Court (SAC) and administrative court system in Hungary. Ordinary courts decide in administrative cases. Meanwhile, under the authority of the President of the Curia there are three departments: criminal, civil and administrative departments. Each department has various chambers: chambers hearing appellate cases, chambers passing uniformity decisions, chambers issuing decisions on principles, as well as working groups examining judicial practice.

From 1st April 2020, in most administrative cases Budapest-Capital, Budapest Environs, Debrecen, Győr, Miskolc, Pécs, Szeged and Veszprém Regional Courts proceed with regional competence on first instance. The first instance administrative court's decision can be directly appealed in front of the Curia.

Concerning the question 1.2., we shall highlight that general rules regarding the interpretation of law are found in the provisions of the Fundamental Law of Hungary and in different legal acts (like the Code Civil – for example: Section 6:8 of the Hungarian Code Civil:

“[Interpretation of a juridical act](1) In the event of a dispute, a juridical acts shall be interpreted like it had to be interpreted by the addressee on the basis of the presumed intent of the party making the statement and of the circumstances of the case, and in accordance with the generally accepted meaning of words.”

1.3 What are the criteria for interpretation of the law?

- X literal interpretation
- X reference to purpose of law (so-called *ratio legis*)
- X consistency within the legal system
- X reference to preparatory work
- X reference to the advice of the SAC regarding the adoption of the law, if existing
- Other

Explain, if necessary.

Article R paragraph (3) of the Fundamental Law states that “[t]he provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historic constitution.” The provisions of the Fundamental Law is interpreted by the Constitutional Court of Hungary. Meanwhile Article 28 of the Fundamental law of Hungary states that: “[i]n the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble of that law and the justification of the proposal for or for amending the law. When interpreting the Fundamental Law or laws, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good.”

1.4. What criteria do judges apply when there are gaps in the law?

- X Analogy (reference to similar *ratio* of other rules)
- X General principles of the legal system
- Other

Explain, if necessary.

1.5. Does the SAC elaborate general interpretative *criteria*?

- X No

Yes

Please explain and give an example.

Not in general terms. The Curia can specify regarding a specific case how the law applicable to the case should be interpreted.

1.6 In deciding the case, to what extent does the Court take the following into account and within which limits?

- EU law (Nice Charter, EU regulations, EU directives) and the judgments of the EU Courts;

never seldom sometimes often

- The European Convention of Human Rights and the general principles elaborated by the ECHR;

never seldom sometimes often

- The general clauses of proportionality and of reasonableness.

never seldom sometimes often

- The statements (or case law) of the Courts of other countries in similar cases;

never seldom sometimes often

- The general interests involved (i.e: order and public safety, environmental protection, consumer protection, the economic, financial and social effects on the labour market)

never seldom sometimes often

- The results of regulatory impact analysis (AIR), if applicable;

never seldom sometimes often

- The impact of the decision;

never seldom sometimes often

Other

Please specify.

2. Tools for supporting judicial activity.

2.1. Are there any services established in the Supreme Administrative Court responsible for classifying the judgments and drafting their abstracts?

- No
- Yes

All judgments are classified and short abstracts (100 – 400 words) are written by the judges who decided the case. The judgments are also uploaded to the Curia's database, where there is a possibility to search in it. Meanwhile, this research can be only made by the persons who works in the Curia.

2.2. What other activities do these Services perform?

- preparation of useful material for the most important judgments of the SAC ;
- comparative studies;
- information about new developments in the law and in the case law;
- training of judges
- other activities.

Please specify.

2.3. Are administrative Court judgments stored on a searchable and free database?

- No
- Yes

Please explain.

Hungarian judgments are stored on the one hand in free and open database, but there are court's databases too, which are only used by judges and persons working in the Court with the possibility to access these databases.

2.4. What kind of database do the administrative judges consult in their daily work?

- public and free databases
- private databases, provided by their institution

- other

Please explain.

Hungarian judges access to a full range of technical equipment (computers, laptops, mobile phones, etc.) and free access to public databases and to some private databases, provided by the Court. Meanwhile, the mostly used database is provided by the Court and it is a closed accessed database.

2.5. Are there projects implementing advanced artificial intelligence systems operating in the decision making process and/or for the preparation of decisions?

- X No
- Yes

2.6 If yes, explain the role of the AI systems in the decision-making process (e.g. drafting final decisions, supporting judges for some significant aspects of the case, such as for example the calculation of damages, etc.)

There is not yet no ongoing-project implementing AI systems for drafting the content of final court decisions. Nevertheless, there are many free software products available on the internet useful for supporting judges in their judicial activity (for example day calculation etc.).

3. The application of law: the “nomophylactic” statements in the administrative judicial system.

3.1. Does the judgment of the SAC have binding effect on lower courts?

- No
- X Yes
- Only if the SAC decides in special composition

Section 110 of the Act I of 2017 on the Code of Administrative Court Procedure states that: “(3) If ordering the first instance court to conduct a new procedure and adopt a new decision, the second instance court, in the order on setting aside the decision, shall provide guidance as to the conducting of the new procedure and the court of first instance shall be bound by it. In this case, the second instance court shall only establish the amount of the costs incurred in the second instance proceedings and the bearing of costs shall be decided upon by the court adopting the new decision.” The second instance is the Curia of Hungary.

Regarding the decisions on the of the conflict of the local government decree with another law Section 146 paragraph (5) the Code of Administrative Court Procedure underlines that this kind of the decision of the Curia shall be binding on all.

3.2. If the answer to question 3.1. above is no, what percentage of lower court cases comply with SAC decisions?

- less than 25%
- from 25% to 50%
- from 50% to 75%
- from 75% to 100%

3.3. If the answer to question 3.1. above is no, how is the consistency and predictability of court decisions ensured?

Please explain and give an example.

3.4. When solving jurisprudential conflicts or stating principles of law, does the SAC work in a special composition (for example a Plenary Assembly or a larger panel)?

- No
- X Yes

First, we should note that the Code of Administrative Court Procedure [Section 8] states that the Curia shall proceed in a panel of three professional judges. If justified by the particular complexity or outstanding social relevance of the case, the Curia may order that a panel of five professional judges proceed in the case. If justified by the nature of the case, no more than two of the members of a panel of five professional judges are allowed to be professional judges not designated as judges proceeding in administrative cases.

We should also underline that from 1st April 2020 a new procedure so-called the uniformity complaint procedure entered into the judicial system.

A uniformity complaint may be filed against a Curia's decision:

- a) adopted in connection with an application or petition for review (hereinafter referred to collectively as "application for review") upholding the decision challenged for the appeal filed under the Act on the Code of Administrative Procedure was found unsubstantiated;*
- b) on the refusal of judicial review under the Code of Civil Procedure;*
- c) on the refusal to admit an application for review under the Act on the Code of Administrative Procedure;*

provided that the application for review contained an allegation of deviation in a question of law from the published Kúria decision.

A uniformity complaint may be filed also if the adjudication chamber of the Kúria deviates in a question of law from the published Kúria decision - without initiating the unification procedure - knowing that such deviation had not been applied in the decision of the lower courts.

A uniformity decision - unless provided for by law to the contrary - shall not concern the parties and the ones obligated. Uniformity complaints shall be adjudicated by the uniformity complaints chamber. The uniformity complaints chamber shall be chaired by the President or the Vice-President of the Kúria (Curia). The uniformity complaints chamber shall consist of the chair and eight members. Members are selected by the chair from the colleges of the Kúria, where each college shall be represented by at least one member.

[See Section 41 – 45 of the Act CLXI of 2011 on the Organization and Administration of the Courts]

3.5. Is there a specific procedure for referring a question to the SAC working in special composition?

X No

Yes

3.6. If the answer to question 3.5 above is yes, if a judge of the SAC does not agree with the principle affirmed, what can he or she do?

it is not possible to disagree

it is possible to take a different decision, giving reasons

a new referral to the Court is necessary

3.7. In order to guarantee the consistency of jurisprudence among the various sections of the SAC or with another Supreme Court, if such exists, are there organizational mechanisms in place to promote this aim (for example, periodical meetings among judges or among presidents)?

No

X Yes

If the answer is yes, please explain.

It is good practice to organize periodical meetings among judges of the various chambers of the Curia of Hungary and judges of the first instance to promote discussion on questions of common interest.

3.8. If your judicial system has administrative Courts separated from other Courts (civil ones), which body or Court is entitled to resolve conflicts of jurisdiction between administrative and ordinary courts? (e.g. *Tribunal des Conflits*).

This question is not relevant as in the Hungarian judicial system administrative courts are not separated from other - ordinary - courts.

SESSION II.

THE IMPACT OF DECISIONS OF SUPREME ADMINISTRATIVE COURT ON THE FUTURE DEVELOPMENT OF ADMINISTRATIVE ACTIVITY

1. To what extent does the administrative judgment bind the public administration in the new exercise of its power?

Please explain.

If establishing the infringement on the basis of the action or ex officio, the court

a) shall amend, annul or set aside the administrative act,

b) shall, in addition to annulling or setting aside the administrative act, oblige the administrative organ to conduct a new procedure, if necessary,

c) shall find against the administrative organ.

The court shall provide the administrative organ with categorical guidance covering all the relevant points of remedying the infringement established, in connection with the new procedure ordered in the judgment (so-called: “repeated procedure”) or the performance of the act.

The proceeding administrative organs shall be bound by the operative part of the decision and the statement of reasons in the repeated procedure and in the course of performing the act ordered in the decision of the court.

[Sections 86, 89 and 97 of the Code of Administrative Court Procedure]

2. Can the decision of an administrative judge influence the work of public administrations even beyond the objective and subjective context of the case decided?

- No
 Yes

Please explain.

The general principle is that the effects of a Hungarian administrative judgment are limited to the parties involved in the trial. Nevertheless, in some exceptional cases, the annulment of an administrative measure may produce effects also ultra partes. We should note that the decision on the of the conflict of the local government decree with another law is binding all. Finally, an administrative judgment can have a persuasive effect on the work of public administrations even beyond the objective and subjective context of the case decided, when applied to similar cases.

3. According to regulatory rules or practices, may the effects of an administrative judgment be extended by the administration itself beyond the case decided?

- No
 Yes

Please explain.

Administrative judgment may effect on the general practice of the public authority.

SESSION III

IMPLEMENTATION AND ENFORCEMENT OF THE DECISIONS.

1. Is there a specific legal procedure in your system aimed at monitoring and pursuing the full and complete execution of the judgment?

- No
 Yes

In the Hungarian legal system a specific procedure to enforce compliance with a judgment ordering a new procedure is regulated by the Code of Administrative Court Procedure.

The execution of judgments is regulated in the Act LIII of 1994 on Judicial Enforcement.

1.1 If the answer to question 1 above is yes, in what percentage of cases are such remedies used?

The procedure to enforce compliance with a judgment ordering a new procedure regulated by the Code of Administrative Court Procedure is a very rarely used procedure.

2. If there is no specific procedure, how does your system ensure the full compliance of the judgment?

3. If there is such a judicial remedy, does it require the judgment to become final?

No

Yes

Please explain.

Yes, the judgment shall become final due to the regulation as Section 152 of the Code of Administrative Court Procedure states that:

*“(1) The plaintiff or the person concerned may file a petition for forcing performance, within ninety days from the expiry of the performance deadline, to the court adopting the decision of the first instance, if within the performance deadline the administrative body did not perform its obligation arising from the **final** court decision*

a) to conduct new proceedings, or

b) to realise the omitted administrative act.

(2) On the basis of the petition, by setting a deadline the court shall within fifteen days call the administrative body to perform its obligation or give explanation for non-performance and simultaneously send the underlying documents of the explanation.

(3) If the administrative body performs on the basis of the notice, the court shall dismiss the proceedings and oblige the administrative body to reimburse the costs of the petitioner.

(4) The rules of this Chapter shall also be applied when forcing the obligation as set out in the final decision of the court does not fall under the scope of the Act on Judicial Enforcement.”

4. Do judges have the power of substitution, directly or through Commissioners *ad acta*, in the case of *inertia* or incorrect execution of judgments?

No

Yes

Please specify.

Meanwhile, the judges can take several tools for enforcing the execution of the judgment like:

“ (6) The court shall, in addition to imposing the performance penalty, take the following measures by a ruling

a) appoint another body having competence identical with that of the administrative body to conduct the proceedings, and simultaneously oblige the administrative body to bear the costs of the proceedings,

b) authorise the regulatory supervision body of the administrative body to perform in compliance with the decision, and simultaneously oblige the administrative body to bear the costs of the proceedings, or

c) where the legal consequences stipulated in paragraphs a) and b) cannot be applied, if the nature of the case and the information available make it possible, may take temporary measures, which shall be effective until performance.

(7) If the body appointed pursuant to Subsection (6) paragraph a) fails to fulfil its obligation of procedure, forcing performance may be requested by a petition in accordance with the rules of this Subsection.”

[Section 152 Section 153 of the Code of Administrative Court Procedure]

5. Is the administration (and/or the official) liable for damages due to non-execution or incorrect execution of the judgment?

No

Yes

5.1. If the answer above is yes, is it within the jurisdiction of the administrative judge to decide on the action for damages?

Please explain and give an example.

We should first note that section 153 of the Code of Administrative Court Procedure specifies the performance penalty and measures as following:

“(1) If the administrative body fails to give an explanation for non-performance or the explanation is not grounded, the court shall impose performance penalty on the administrative body, in addition to obliging it to reimburse the costs of the petitioner. It shall not substantiate application of performance penalty if after fully effecting the procedural acts prescribed by the court - when upon their impact it arrives at a legal assessment different from that of the court - the administrative body takes a legal stand other than the one expounded in the final decision obliging it to conduct new proceedings and/or applies legal consequences other than those determined therein.

(2) The amount of the performance penalty determined may range, aligned to the circumstances of the case and the weight of the breach of obligation, from one hundred thousand to ten million forints. The performance penalty may be imposed again if performance does not take place within a reasonable period.

(3) The court may - instead of or in addition to imposing the performance penalty again - oblige the head of the administrative body to pay a financial penalty aligned to the circumstances of the case and the weight of the breach of obligation.

(4) Appeal against the ruling for imposing the performance penalty may be lodged within eight days, and shall be decided by the court within fifteen days.

(5) In other matters, regarding the performance penalty the rules of financial penalty shall apply.”

The performance penalty and measures are very-very rarely used. Meanwhile, the administration is also liable for damages due to non-execution or incorrect execution of the judgment.

SESSION IV

THE CONSULTATIVE ROLE OF THE SAC (IF EXISTING) AND ITS IMPACT ON ADMINISTRATIVE ACTION.

1. Does the SAC play advisory functions for the government or for the public administration?

X No

Yes

1.1 Where the answer to the above question is yes, please specify the kind of acts to which the advisory functions apply.

(More options are possible)

primary legislative acts (of parliament or of government)

governmental and ministerial regulatory acts

resolution of specific questions on request of a public administration, on the interpretation of a law or in the definition of a specific matter.

Other

Please specify.

2. The SAC's advice in its consultative role is:

- optional and non binding
- mandatory and binding
- mandatory but not binding
- optional and, once required, binding
- it depends on circumstances (please clarify)

3. In exercising its advisory functions, can the SAC consult experts in economics or statistics in order to assess the economic and social impact of regulations?

- No
- Yes
- In certain circumstances only (please specify)

4. Are there forms of collaboration of administrative judges in the activity of the Government or of public administrations? (for example, secondment of individual magistrates to head legislative boards of a Ministry or as members of an independent authority, participation in study commissions, etc.).

- No
- Yes

5. Can the advisory function of the SAC also consist in the resolution of a specific dispute working as an ADR (alternative dispute resolution)?

- No
- Yes