



Bundesverwaltungsgericht



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

ReNEUAL I –

Administrative Law in the European Union

“Single Case Decision-Making”

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Answers to questionnaire: Hungary



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ACA-Seminar
ReNEUAL I – Administrative Law in the European Union
Single Case Decision_Making

Questionnaire

I. Parties to Administrative Proceedings: Categories and Legal Positions

1. a)

According to section 10 of Act CL of 2016 on General Public Administration Procedure:

[The client]

(1) Client means any natural or legal person, other entity whose rights or legitimate interests are directly affected by a case, who is the subject of any data contained in official records and registers, or who is subjected to regulatory inspection.

(2) An act or government decree may define the persons and entities who can be treated as clients - in connection with certain specific types of cases - by operation of law.

1. b)

The categories of parties to administrative proceedings are defined in a general codification, namely: Act CL of 2016 on General Public Administration Procedure.

2. a)

According to section 10 (2) of Act CL of 2016 on General Public Administration Procedure:

An act or government decree may define the persons and entities who can be treated as clients - in connection with certain specific types of cases - by operation of law. For example, non-governmental organizations.

2. b)

For example, public interest, large number of parties, in order to protect a fundamental right, etc.

3.

- According to section 35 (1) of Act CL of 2016 on General Public Administration Procedure: Application means a statement made by a client requesting the opening of administrative proceedings or a decision of the authority for the enforcement of a right or legitimate interest.

- A decision of the administrative authority admitting the party is required. According to section 46 (1) of Act CL of 2016 on General Public Administration Procedure: The authority shall refuse the application in the absence of a statutory condition required for the opening of the proceedings.

- The administration is obliged to qualify potential parties ex officio while ascertaining the

relevant facts of the case. According to section 3 of Act CL of 2016 on General Public Administration Procedure: The authority shall, of its own motion, ascertain the relevant facts of the case, define the means and extent of evidentiary procedure.

According to section 123 (1) point g) of Act CL of 2016 on General Public Administration Procedure: The decision shall be annulled or withdrawn, and if necessary new proceedings shall be opened if other clients should have joined the action.

4. a)

The administration is obligated to identify third parties entitled to participate or potentially interested in the given administrative proceedings while ascertaining the relevant facts of the case. According to section 3 of Act CL of 2016 on General Public Administration Procedure: The authority shall, of its own motion, ascertain the relevant facts of the case, define the means and extent of evidentiary procedure.

4. b)

The administrative authority is obliged to announce the commencement of the administrative proceedings to (potential) third parties so as to enable them to participate, when ascertaining the relevant facts of the case.

4. c)

According to section 114 of Act CL of 2016 on General Public Administration Procedure: The clients may bring administrative action against definitive decisions.

But, according to section 20 of Act I of 2017 on the Code of Administrative Litigation

(1) Any person whose rights or lawful interests are directly affected by the disputed administrative activity or might be directly affected by the judgment to be passed in the action may join the action in progress between other parties as a person concerned. Furthermore, any person who took part in the preceding proceedings as a client may join the action as a person concerned.

(4) The person concerned will be informed by the court of the possibility to join the action. Simultaneously with the notification, the court will serve the statement of claim, if it has not been done earlier. The possibility of joining the action may be notified ex officio or upon any of the parties request until the judgment becomes final in any phase of the proceedings.

(6) The court may, on request or ex officio, bring any person into the action as a person concerned whose rights or lawful interests are affected by the judgment to be passed in the action, if the court deems that their involvement in the action is necessary in order to resolve the legal dispute.

5. a)-b)

According to section 114 of Act CL of 2016 on General Public Administration Procedure: Only clients may bring an administrative action against a definitive decision.

But, according to section 20 of Act I of 2017 on the Code of Administrative Litigation

(1) Any person whose rights or lawful interests are directly affected by the disputed administrative activity or might be directly affected by the judgment to be passed in the action may join the action in progress between other parties as a person concerned. Furthermore, any

person who took part in the preceding proceedings as a client may join the action as a person concerned.

5. c)

According to section 115 (1) of Act CL of 2016 on General Public Administration Procedure: The authority shall, if it finds upon receipt of a statement of claim that its decision is unlawful, amend or withdraw the decision in question.

According to section 120 (1) of Act CL of 2016 on General Public Administration Procedure: If the authority finds that its decision still unjudged by the second instance authority or the supervisory body or the administrative court is unlawful, it shall amend or withdraw the decision in question, on one occasion at most, within one year from the date of its delivery.

6. a)-b)

All categories of parties have the same procedural rights.

7.

Act CL of 2016 on General Public Administration Procedure and Act I of 2017 on the Code of Administrative Litigation entered into force on 1 January 2018, therefore no political or academic discussions exist concerning any kind of reform with regard to the participation rights of third parties to administrative proceedings, and no recent legislative proposals exist either.

8.

Since Act CL of 2016 on General Public Administration Procedure and Act I of 2017 on the Code of Administrative Litigation entered into force on 1 January 2018, there is no relevant case law concerning these Acts.

II. Determination of Facts and Discretionary Powers

1. a)

According to section 3 of Act CL of 2016 on General Public Administration Procedure:

[Own motion principle]

The authority may open proceedings of its own motion, apart from those which may be opened only upon request. Proceedings opened upon request shall be carried out under the conditions prescribed by law. The authority shall, of its own motion, ascertain the relevant facts of the case, define the means and the extent of the evidentiary procedure, and may review - within the framework of the Act - its own decisions and actions and the decisions and actions of other authorities under its supervision.

1. b)

No, they are not, but according to section 5 of Act CL of 2016 on General Public Administration Procedure: (1) Clients shall have the right to make statements and comments

at any time during the proceedings.

1. c)-e)

No.

2. a)

According to section 6 (1) of Act CL of 2016 on General Public Administration Procedure: All parties to the proceedings are required to act in good faith, and to cooperate with the other parties.

According to section 63 of Act CL of 2016 on General Public Administration Procedure: If deemed necessary to ascertain the relevant facts of the case the authority may request the client to make a statement.

According to section 65 (1) of Act CL of 2016 on General Public Administration Procedure: Where considered necessary in ascertaining the relevant facts of the case, the authority may request the client to present some document or other instrument.

2. b)

According to section 64 (2) of Act CL of 2016 on General Public Administration Procedure: If the client or his representative provides any false information that is considered material for the case on hand in spite of his knowledge otherwise, or suppresses such information, he may be subjected to administrative penalty.

According to section 77 (1) of Act CL of 2016 on General Public Administration Procedure: Any person who committed a breach of any obligation for reasons within his control shall be ordered by the authority to cover any resulting extra expenses or may be subjected to administrative penalty.

2. c)

No.

3. a)-b)

According to section 62 (4) of Act CL of 2016 on General Public Administration Procedure: The authority shall be free to define the means and the extent of the evidentiary procedure, and shall assess the available evidence at its own discretion.

3. c)

According to section 25 (1) of Act CL of 2016 on General Public Administration Procedure: The authority may - by setting a time limit of at least five days - contact another body or person:

- a) if any procedural step is necessary outside the area of jurisdiction of the requesting authority; or
- b) where any data or document that is required for the proceedings is held by others.

4. a)-c)

According to section 62 of Act CL of 2016 on General Public Administration Procedure:

[Ascertaining the relevant facts of the case]

(1) If the information available is insufficient for bringing a decision, the authority shall initiate evidence-taking proceedings.

(2) In administrative proceedings all evidence shall be admissible that is suitable for ascertaining the relevant facts of the case. Any evidence illegally obtained by the authority shall be inadmissible.

(3) Facts officially known to the authority and forming common knowledge shall not be evidenced.

(4) The authority shall be free to define the means and the extent of the evidentiary procedure, and shall assess the available evidence at its own discretion.

(5) An Act of Parliament or a government decree may, on the basis of overriding reasons related to public interest, make the use of a specific document or other deed to be used as means of evidence mandatory.

According to section 64 (1) of Act CL of 2016 on General Public Administration Procedure: If not precluded by law, the client's statement shall be admissible as a substitute for any unavailable evidence, if obtaining such evidence is impossible.

4. d)

Effectiveness.

4. e)

According to section 62 (2) of Act CL of 2016 on General Public Administration Procedure: In administrative proceedings all evidence shall be admissible that is suitable for ascertaining the relevant facts of the case. Any evidence illegally obtained by the authority shall be inadmissible.

5. a)

According to section 3 (3) of Act I of 2017 on the Code of Administrative Litigation: Exploring the facts necessary for adjudging the legal dispute, making the data and evidence serving to support them available – if a law does not provide to the contrary - shall be the parties' responsibility.

5. b)

No, but according to section 79 (1) of Act I of 2017 on the Code of Administrative Litigation: If the preceding proceedings were initiated ex officio, and the party substantiates that the facts established thereunder are unfounded, incomplete or contrary to documents, the court shall oblige the administrative body to prove that the facts of the case are true.

5. c)

According to section 78 (2) of Act I of 2017 on the Code of Administrative Litigation: The court shall assess the evidence one by one and in their totality, with due regard to the facts established in the preceding proceedings.

6. a)-b)

According to section 78 (2) Act I of 2017 on the Code of Administrative Litigation:
The court shall assess the evidence one by one and in their totality, with due regard to the facts established in the preceding proceedings.

(4) The plaintiff or the person concerned may refer to any fact, circumstance existing but not evaluated in the preceding proceedings if in the preceding proceedings in spite of the reference made by administrative body they did not take them into consideration, did not know them through no fault of their own or did not refer to them through no fault of their own.

According to section 79 (1) Act I of 2017 on the Code of Administrative Litigation: If the preceding proceedings were initiated ex officio, and the party substantiates that the facts established thereunder are unfounded, incomplete or contrary to documents, the court shall oblige the administrative body to prove that the facts of the case are true.

6. c)-d)

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7. a)

According to section 62 (4) of Act CL of 2016 on General Public Administration Procedure:
The authority shall be free to define the means and extent of the evidentiary procedure, and shall assess the evidence available at its own discretion.

7. b)

Effective proceedings.

7. c)-d)

No.

7. e)

According to section 80 of Act I of 2017 on the Code of Administrative Litigation:

[Employing a forensic expert appointed in the preceding proceedings]

(1) The expert opinion of the forensic expert appointed in the preceding proceedings shall be deemed as the expert opinion of the expert appointed by the court. In the action regarding the same professional issue, primarily the forensic expert appointed in the preceding proceedings shall be employed as an expert.

(3) After employing a forensic expert appointed in the preceding proceedings, no private expert or other expert appointed in other proceedings may be employed with regards to the same professional issue.

7. f)

No.

8. a)

No.

8. b)

According to Article XXIV (1) of the Fundamental Law of Hungary: Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. This right includes the obligation of such authorities to give reasons for their decisions.

8. c)

According to Article XXVIII (7) of the Fundamental Law of Hungary: Everyone shall have the right to seek remedy against judicial, administrative or other official decisions, which infringe upon his or her rights or legitimate interests.

9.

Act CL of 2016 on General Public Administration Procedure and Act I of 2017 on the Code of Administrative Litigation entered into force on 1 January 2018, thus no political or relevant academic discussions exist concerning any kind of reform with regard to the discretionary powers of the administration, and there are no legislative proposals either.

10.

Since Act CL of 2016 on General Public Administration Procedure and Act I of 2017 on the Code of Administrative Litigation entered into force on 1 January 2018, no relevant case law exists concerning these Acts.

III. Case Study

1.

Under section 88 (2) point b) of Act I of 2017 on the Code of Administrative Litigation, the court shall reject the claim where no direct injury to the (M, F, P) plaintiff's rights or lawful interests can be established. They did not justify direct injury to their rights.

2.

Under section 10 (2) Act CL of 2016 on General Public Administration Procedure, an Act of Parliament or government decree may define the persons and entities (such as O) who can be treated as clients - in connection with certain specific types of cases - by operation of law. If O is defined as client by the law, its action will be successful. Furthermore, under section 17 point d) of Act I of 2017 on the Code of Administrative Litigation, any non-governmental organization (such as O) having pursued, for at least one year, its registered activity aimed at protecting a fundamental right or enforcing a public interest in a geographical territory affected by the administrative activity, shall have the right to institute an action in cases

specified in a law or government decree, where the administrative activity affects its registered activity. O's action could be successful, because it submitted an expert opinion.

The court will decide in the same way in the modified case.