



**SEMINAR ORGANISED BY THE SUPREME COURT OF SPAIN IN COOPERATION WITH ACA-
EUROPE**

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***Questionnaire
Application of general principles and clauses in the case law of contentious-
administrative courts***

In order to deepen the open dialogue between the high administrative jurisdictions of Europe, this seminar will analyse the application, within the administrative legal system, of different general principles or clauses of law.

Given the variety and large number of existing general principles, an effort has first been made to delimit and select, on the basis of their topicality or potential expansion, a series of general principles which, although underlying most legal systems, nevertheless present differences in the various legal systems in terms of their nature, their recognition in legal norms and, in short, with regard to their functionality, with divergences evidenced in particular by their judicial application.

The seminar offers an eminently practical vision. For this reason, the questionnaire primarily takes judicial experience into consideration, suggesting the following perspectives as lines of analysis:

- (i) General principles of law in the system of sources;
- (ii) Common incorporation of general principles of law: European Union and horizontal dialogue;
- (iii) General principles and fundamental rights;
- (iv) General principles in certain sector-specific areas of public law, selecting, in this regard, some of these principles to determine their application and projection in fields such as *administrative organisation and procedure / administrative sanctions / public subsidies or grants / contracting by public bodies / town planning and environment / taxation*.

In short, the aim of the seminar is to find out whether there are convergences in the guidelines of the high jurisdictions of the Member States, by determining the degree of influence of European Union law (e.g. through Directive 2006/123/EC on services in the internal market, or through incorporation of the principle of good administration, recognised in Article 41 of the Charter of Fundamental Rights) in its application, without



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losing sight of the effects of the horizontal dialogue between the high national jurisdictions, which we hope the seminar can continue to stimulate.

I. – GENERAL PRINCIPLES OF LAW IN THE SYSTEM OF SOURCES

1^o) What place and function do general principles of law have in the system of sources of your country's legal system?

- They are applied where there are gaps in the law
- They may be applied directly, even to the extent of displacing the initially applicable written law and prevailing over it.

Explain your answer briefly:

In Hungary, the general principles of law appear within the binding framework of the constitutional provisions and fundamental rights enshrined in the *Fundamental Law of Hungary* (henceforth: "Fundamental Law"), which entered into force on 1 January 2012. The Fundamental Law is the basis of Hungary's legal system. The provisions of the Fundamental Law shall be interpreted in accordance with their intended purpose, with the National Avowal of the Fundamental Law and with the achievements of Hungary's historical Constitution. (Article R. of the Fundamental Law).

The Fundamental Law begins with *the National Avowal* (the introductory part or preamble of the Fundamental Law), which also lays down the basics of fundamental rights like as for the right to good administration the *National Avowal* states: "We hold that democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse." The National Avowal is not merely a declaration but *serves as an interpretative framework* for the other provisions of the Fundamental Law and has normative force.

Fundamental rights – like as the right to good administration – are also stated in the Fundamental Law, which must be respected in all procedures and be protected by the state.

Thirdly, we should emphasize that the Constitutional Court, in its proceedings conducted in the exercise of its competences, may establish in its decision *constitutional requirements* such that originate from the regulation of the Fundamental Law, upholding the provisions of the Fundamental Law, with which the application of the reviewed legislation or the legislation applicable in court proceedings must comply.

For example, in the field of tax procedures the Constitutional Court in its 25/2020. (XII. 2.) Decision defined as constitutional requirement deducted from the rule of law clause [Paragraph (1) of Article B) of the Fundamental Law] and from the provision of the right to good administration (Article XXIV of the Fundamental Law) that in the case when a tax fine is decided, the tax authority should consider the duration of its own procedure of imposing that tax fine. If the supervisory tax authority finds that the decision of the





first instance authority was taken after an unreasonable length of time beyond the statutory time limit, it must reduce the amount of the tax fine in proportion to the damage caused to the taxpayer or, in justified cases, refrain imposing a tax fine.

Lastly, we should highlight that the fundamental rights, the constitutional requirements, constitutional provisions set out in the Fundamental Law are detailed in *statutory rules, in various acts* according to the various fields of law. These *principles* applied in different branches of law can be found generally in the beginning of each Acts (in the general regulation of the area and in sector-specific acts too).

Meanwhile, the written principles are not mere declarations, but *norms which can be enforced* and are enforced by the courts (also in administrative cases), and ultimately by the Constitutional Court (for example, by annulling a judicial decision or, in some - rare - cases, even an administrative decision as a result of a constitutional complaint, if a judicial decision violates a general principle of law or a fundamental right enshrined in the Fundamental Law).

In summary, the general principles of law are respected, enforced in Hungary. Their appearance can be detected in several different levels of the sources of law (in the Fundamental Law, as fundamental rights, constitutional requirements expressed in the Constitutional Court decisions, principles in different Acts).

2^o) Can it be said that the most relevant general principles of law in your culture and legal tradition have been positivised, i.e. enshrined with legal status in your country's judicial system?

- Yes
- Yes, the most relevant ones (please indicate briefly the most notable of these)
- No

3^o) In the judicial practice of Public Law, are general principles of law frequently invoked and applied as a basis for decisions?

- They are frequently invoked and applied, and are also relevant and decisive in the settlement of disputes.
- They are frequently invoked and applied, although generally in a complementary manner, to reinforce the arguments that are primarily based on the interpretation and application of written rules.
- They are not frequently invoked and applied as a basis for decisions.

Explain your answer briefly:

General principles of law, the (constitutional and statutory) principles of law are *often* invoked both by litigants and the courts too.



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In this context, Article 28 of the Fundamental Law must be mentioned, according to which *“In 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. 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.”* Hence, in determining the various cases (including administrative cases), the framework for the interpretation of the legal regulations by the courts is determined by this provision of the Fundamental Law.

4º) If you have answered yes to the previous question, can it be said that the invocation and application of general principles of law is done in a general and transverse way, in all areas or matters of Public Law?

- Yes
- Especially or particularly in certain matters, or in certain sector-specific areas (in this case, explain your answer briefly)

5º) In your country's legal system, are there general principles specific to Administrative Law, independent of other general principles of law?

- There are no general principles specific to Administrative Law
- There are principles specific to Administrative Law that may be applied in conjunction with other general principles
- There are principles specific to Administrative Law that exclude and displace the application of the other general principles

Explain your answer briefly:

The principles specific to administrative law (such as the principles of efficiency and effectiveness) must be applied together with other general principles of law.





II. – COMMON INCORPORATION OF GENERAL PRINCIPLES OF LAW: EUROPEAN UNION AND HORIZONTAL DIALOGUE

6^o) Has your country's administrative legal system patently incorporated the general principles of European Union law?

- Yes, in general
- No special or specific incorporation has been necessary, because in general these principles were already recognised and enshrined in the country's legislation and practice.

Explain your answer briefly (this question mainly concerns the work of the legislator, i.e. the “legislative system”).

Hungary joined the European Union in 2004. The transposition of the general principles of EU law into Hungarian law did not pose any special difficulties. In many cases, similar provisions corresponding to the transposed provisions had already existed in Hungarian law.

7^o) Is it common in your country's judicial practice for the specific general principles of European Union law to be invoked and taken into account in areas where there is no regulatory harmonisation?

- Yes, for certain matters
- No, not generally

Explain your answer briefly (this question mainly concerns the work of the judiciary, i.e. “judicial practice”).

To ensure uniform jurisprudence, Hungarian judicial practice invokes and considers the principles of EU law. A strong reason to take these principles into account is that EU law is expanding, harmonisation efforts are increasing, therefore judicial practice takes it into account. Meanwhile this is not in a general level, but case-by-case can be examined.

8^o) When applying the general principles set out in European Union law, and when it is found that the general European principle applicable to the dispute in question conflicts in some way with national law, has the dispute been resolved through a solution involving the displacement and non-application of the national rule in order to give way to the general European principle?

- Yes



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- This solution has been chosen in some cases, while in others different solutions or answers have been used (in this case, explain your answer briefly)

The Hungarian constitutional rules provide detailed information on the relationship between European Union law (general principles set out in European Union law) and Hungarian law. According to Paragraphs (2)-(3) of the Article E of the Fundamental Law: „(1) Hungary shall take an active part in establishing a European unity in the pursuit of freedom, well-being and security for the peoples of Europe.

(2) In its role as a Member State of the European Union and by virtue of international treaty, Hungary may - to the extent necessary for exercising its rights and fulfilling its obligations stemming from the Founding Treaties - exercise certain competences deriving from the Fundamental Law, together with the other Member States, through the institutions of the European Union. The exercise of powers under this Paragraph must be consistent with the fundamental rights and freedoms set out in the Fundamental Law, and it must not be allowed to restrict Hungary's inalienable right of disposition relating to its territorial integrity, population, political system and form of governance.

(3) General binding rules of conduct may be laid down in European Union legislation within the framework set out in Paragraph (2).”

These constitutional provisions were examined in several *Constitutional Court decisions* [CC 11/2020. (VI. 3.) Decision, CC 16/2021. (V. 13.) Decision, lately in CC 32/2021. (XII. 20.) Decision].

If there is a conflict between national law and EU law, the application of the national law cannot be set aside automatically by the courts. The court may only apply EU law (in case of conflict between EU law and Hungarian law) based on Article E of the Fundamental Law, in a specific case where there is an involvement of EU law and only with legal effect extending to the parties concerned in the case. However, *the Hungarian law conflicting EU law remains in force until it is repealed by the legislator or annulled by the Constitutional Court*. In addition, we shall note that the beforementioned Article E) of the Fundamental Law does not, even exceptionally, provide a constitutional possibility to extend the scope of EU law to cases that do not have any involvement of EU law (so-called purely national cases). The arbitrary disregard of existing national law is therefore unconstitutional, whatever the reason is, therefore it cannot be justified by the unjustified application of EU law or by the resolution of a supposed but actually non-existent conflict between EU law and national law. In the absence of a specific legal act applicable uniformly in the Member States of the European Union, Hungarian courts cannot disregard the national law in force to respect the broad interpretation of EU law given in the judgment of the Court of Justice of the European Union. Neither European Union law nor the Fundamental Law authorize this.

9^o) Is it common in judicial practice for the principle of legitimate expectation to be invoked and taken into account?

- Yes, as a transversal principle



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- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- No

Explain your answer briefly.

In Hungary, the question whether the principle of legitimate expectation is to be invoked and is to be taken into account, must be determined on a case-by-case basis. It needs to be examined whether the client/party has a lawful interest in the application of this principle. This principle is invoked by the parties especially in the field of *tax law*.

It should be also mentioned that the principle of the protection of legitimate expectation is *similar to the regulation applicable in Hungary to the protection of rights acquired and exercised in good faith*, but the provisions of EU law are more permissive, since they allow to invoke the principle of legitimate expectation even if the client has not acquired and exercised the right raised in the given case.

10^o) Can taking the principle of legitimate expectation into account even result in the annulment of administrative decisions that are contrary to or violate those principles?

- Yes
- No, these principles are applied only in order to provide for compensation or reparation when they are violated in some way by the decisions of the Administration.

Explain your answer briefly.

In Hungarian judicial practice, the principle of legitimate expectation can be taken into account, and it can even result in the annulment of the administrative decision.

11^o) Has the “principle of good administration” referred to in Article 41 of the Charter of Fundamental Rights of the European Union been adopted and applied in your country’s judicial practice?

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- Not commonly applied

Explain your answer briefly.

Before the Fundamental Law, the principle of good administration was not declared in constitutional level. The *Fundamental Law* guarantees to everyone as a fundamental right the right to good administration. It is regulated in Article XXIV of the Fundamental





Law, which is similar to Article 41 of the Charter of Fundamental Rights of the European Union. Article XXIV of the Fundamental Law provides:

“(1) Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions, as provided for by an Act.

(2) Everyone shall have the right to compensation for any damage unlawfully caused to him or her by the authorities in the performance of their duties, as provided for by an Act.”

Article XXIV of the Fundamental Law is invoked in several court decisions. The right to fair procedure by authorities (or, in other words, to good administration) basically defines the requirements for public administration and also provides guarantees, mostly of a procedural nature, i.e. regarding the way and method of exercising the powers of the state. It should be noted that *several decisions of the Constitutional Court* had already specifically affected legal regulations of a procedural nature before the declaration of this fundamental right in the Fundamental Law.

12^o) Can taking the principle of good administration into account even result in the annulment of administrative decisions that are contrary to or violate that principle?

- Yes, in some specific cases.
- This would never be possible because, among other reasons, this principle applies solely as a guideline for conduct within the Administration and cannot be invoked by the citizen.
- No

Explain your answer briefly.

Violation of any provision of the Fundamental Law, like as the right to good administration may also result in the annulment of the administrative decision in a given case. Since the entry into force of the Fundamental Law (1 January 2012), the Curia of Hungary has, *expressis verbis*, invoked the fundamental right to good administration (Article XXIV of the Fundamental Law) in almost 600 cases.

The constitutional and legal content of the right to good administration includes the right to impartial administration, the right to a decision within a reasonable time, the right to use one’s mother tongue, and the right to a reasoned decision. The violation of even a single subset of the right to good administration will result the annulment of the administrative decision, which can be annulled by the courts, ultimately by the Constitutional Court.





13^o) Is it common in judicial practice for the principle of necessity and proportionality of administrative measures that limit or restrict access to or the exercise of an economic activity to be invoked and taken into account?

- Yes, this is a positivised principle whose non-observance results in the nullity of the measure or provision of a general nature.
- Yes, in certain matters and to different extents
- No

Explain your answer briefly.

Hungarian judicial practice takes into account the principles of necessity and proportionality. These principles are invoked for example in cases related to administrative measures which limit or restrict access to or the exercise of an economic activity. When sanctions are imposed by the authority or the court, these principles must be taken into account when passing the decision.

14^o) With regard to any of the above principles (legitimate expectation, necessity, proportionality or good administration) or other principles, has your country's Supreme Court taken into consideration the interpretation and manner of application of these principles by other European national high jurisdictions?

- Yes, on some occasions (in this case, explain your answer briefly)
- Never

III. – GENERAL PRINCIPLES AND FUNDAMENTAL RIGHTS

15^o) According to Article 6, paragraph 3 of the Treaty on European Union, fundamental rights that result from the constitutional traditions common to the Member States shall constitute general principles of the Union's law. Has your country's Supreme Court identified any of these common constitutional traditions?

- Yes, especially on the basis of the case law of the Court of Justice or the European Court of Human Rights
- Yes, especially on the basis of the case law of the Supreme Courts of other Member States.
- No such identification has taken place.





16^o) What status and importance does the principle of non-discrimination and gender equality have in your country's judicial practice?

- It is a principle commonly and generally taken into consideration, across all areas
- It is a principle that is taken into consideration and applied in certain legal relations and sector-specific areas

Explain your answer briefly.

The principles of non-discrimination and the equality of sexes are fundamental principles enshrined in the *Fundamental Law*. Article XV of the Fundamental Law provides:

- “(1) Everyone shall be equal before the law. Every human being shall have legal capacity.
(2) Hungary shall guarantee the fundamental rights to everyone without discrimination and, in particular, without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.
(3) Women and men shall have equal rights.
(4) By means of separate measures, Hungary shall promote the achievement of equality of opportunity and social inclusion.”

Observance of the principles of and the right to non-discrimination and the equality of sexes is examined by the court in a given case upon the party's request, where such a concern arises. It should be mentioned that in Hungary such issues are governed by a separate law, namely by Act No. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

17^o) In the judicial practice of your country, is the principle of protection of particularly vulnerable groups (e.g. minors, women, people with disabilities) invoked and applied?

- Yes, in a general, open and transversal manner
- Yes, for certain groups that are predetermined and identified in the different sector-specific rules (give a significant example)
- No

Explain your answer briefly.

Article XV (5) of the Fundamental Law provides: “By means of separate measures, Hungary shall protect families, children, women, the elderly and those living with disabilities.”

Vulnerable groups of persons are afforded increased protection by several acts. For example in administrative procedures Act No. CL of 2016 on General Public Administration Procedures provides increased procedural protection under a separate title (sections 29-31) for minors, adults with partial or no capacity to act, and persons



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with disabilities, in particular by laying down special rules for the hearing of minors, the taking of witness statements, the confidentiality of the data of such persons, the restriction of the right of access to their documents, and the summoning of such persons. Similarly to these regulations, Act No. I of 2017 on the Code of Administrative Court Procedure defines specific rules regarding vulnerable group members (e.g. in section 59 of the Code, among the rules applicable to the summoning of such persons for hearings).

Increased protection of vulnerable groups is also prescribed in other, sector-specific statutes, for example: protection of minors is provided in Act No. CLXXXV of 2010 on Media Services and Mass Communications. The principle of enhanced protection of vulnerable groups is invoked and applied in the judicial practice.

18^o) Do the judicial bodies demand enhanced reasoning in cases where the contested administrative measure or decision (e.g. eviction from housing, granting of nationality) affects these vulnerable groups (e.g. minors, women, people with disabilities) or has an impact on other constitutional values such as protection of the family?

- No special grounds are required in these cases
- Yes, and their absence results in the nullity of the decision

Explain your answer briefly.

In such cases, judicial authorities do not require enhanced reasoning in addition. However, it must be noted that *appropriate reasoning is a general requirement*, which should be complied in all cases.

19^o) In your judicial practice, have disputes been raised regarding the issue of the principles of transparency, equality and non-discrimination in relation to decisions based on artificial intelligence or predictive data management systems?

- Yes
- These principles are not frequently invoked, but some examples exist
- No

Explain your answer briefly.

Hungarian judicial bodies are familiar with new technologies and predictive data management systems. The *efforts* made to increase the use of such tools in decision-



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making processes are increasingly visible, but *no significant progress has been made*. Artificial intelligence and predictive data management systems are not used in judicial adjudication, therefore no related disputes have arisen so far.

IV. – GENERAL PRINCIPLES IN CERTAIN SECTOR-SPECIFIC AREAS OF PUBLIC LAW

IV.1. – ORGANISATION AND ADMINISTRATIVE PROCEDURE

20^o) In the administrative organisation, do the principles of decentralisation and subsidiarity apply?

- Yes
- No
- Not generally, but in certain areas or sectors (in this case, explain your answer briefly)

21^o) Are the general principles set out below applicable to the procedure for formulating administrative acts and provisions?

Principle of publicity and transparency

- Yes
- No

Principle of proportionality

- Yes
- No

Principle of impartiality

- Yes
- No

Principle of anti-formalism

- Yes
- No

Principle of gratuitousness

- Yes



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- No

Principle of self-correction (executory decision, without the need for judicial assistance).

- Yes
- No

(If you consider it appropriate, please indicate any other general principles of administrative procedure different from the above)

IV.2. – ADMINISTRATIVE SANCTIONS

22^o) Are the general principles of criminal law applied or projected in the area of administrative sanctions law? (Indicate the answer that you consider best reflects your legislation and practice)

- Yes
- Yes, although with nuances arising from the different natures of criminal offences and administrative offences
- Not in respect of minor, lesser or trivial infractions
- Only in relation to infractions that can be characterised as “criminal” in accordance with the doctrine of the ECHR

Explain your answer briefly.

In Hungary, separate laws govern regulatory offences (Act No. II of 2012) and the sanctions imposed for violations of administrative law, such as warning, administrative fine, prohibition from performing an activity, confiscation (Act No. CXXV of 2017).

Certain general principles of criminal law must also be taken into account in case of regulatory offences (Act No. II of 2012) for example principle of presumption of innocence. Meanwhile in case of violations of administrative law (Act No. CXXV of 2017) we can also find several principles like as the principle of proportionality. These principles are invoked in the mentioned regulations.

23^o) If you have answered yes to the previous question, could you specify whether or not the following general principles are applied for administrative sanctions, or to what extent?

Principle of presumption of innocence and right not to incriminate oneself or plead guilty:

- Yes



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- No
- With nuances (in this case, explain your answer briefly)

Principles of legality and definition of the constituent elements of the offence:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of non-retroactivity of sanctioning provisions:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of culpability:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of proportionality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of defence and legal assistance:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of hearing:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of separation between investigating authority and decision-making authority

- Yes
- No
- With nuances (in this case, explain your answer briefly)





Principle of reasoning of the sanctioning decision

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of time-barring of administrative offences and sanctions

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of judicial protection

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of double instance

- Yes
- No
- With nuances (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general principles of administrative sanctions law different from the above)

IV.3. – SUBSIDIES AND PUBLIC AID

24^o) Is the principle of proportionality applied in order to modulate the consequences of non-compliance by a beneficiary of public subsidies, aid or resources, or in the area of regulated sectors?

- Yes (in this case, explain briefly in what areas and with what consequences or effects)
- No

(If you consider it appropriate, please indicate any other general principles of subsidies or public aid different from the above)



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In case of state subsidies, aid, or resources, if the beneficiaries do not fully fulfil all the commitments undertaken by them, the courts will apply the proportionality principle. This principle is applied in several areas, such as *agricultural aid or aid for job creation*.

Moreover, we invoke case of the Curia of Hungary No.Kfv.IV.35.496/2018/12 of 22 January 2019, which was the first so-called model action¹ (adjudicated under Article 33 of Act No. I of 2017 on Administrative Court Procedure). The case concerned a subsidy granted for the performance of village caretaking services. The recipient (in this case, a local government) failed to comply with its administrative obligations and the defendant administrative authority issued a decision ordering the recovery of the all aid. The Curia held that the administrative decision, which failed to impose a proportionate repayment obligation in accordance with the facts of the case, violated the relevant legislation (the Public Finance Act). In 2019, almost 50 cases of this type were pending before the Curia of Hungary.

IV.4. – CONTRACTING BY PUBLIC BODIES

25^o) Is contracting by public bodies governed by different principles from contracting between private individuals and entities?

- Yes. Although based on a common foundation, administrative contracting is governed by different principles from civil or private contracting.
- There are specific principles applicable to contracting by public bodies as regards the procedure for advertising and selecting contractors and the award of the contract, but the performance, execution and effects of the contract are governed by principles substantially the same as those applicable to private contracting.
- No, public and private contracting are essentially governed by the same rules and principles.

(If you consider it appropriate, please indicate any other general principles of contracting by public bodies different from the above)

¹ Section 33 [Model action] of Act No. I of 2017 on Administrative Court Procedure provides:

(1) If at least ten actions with the same legal grounds and identical factual basis are launched before the court, the court, ensuring the parties' right to make statements, may decide to adjudicate one of these actions in a model action and suspend the other proceedings until the decision closing these proceedings is adopted.

(2) The court may, where reaches the conclusion that the suspended actions have the same legal and factual aspects as this action, adjudicate those actions according to the outcome of the model action without holding hearings. The use of evidence taken in the model action shall not prevent the court from ordering evidence taking.

(3) The court, while ensuring the parties' right to make statements, may also adjudicate legal disputes under subsection (1) launched after the judgment of the model action became final by applying the provisions of this section.





IV.5. – TOWN PLANNING AND ENVIRONMENT

26^o) Could you say whether the following principles of environmental law are invoked and applied in your judicial practice?

Precautionary principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

“Polluter pays” principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general town planning or environmental principles different from the above)

It must be mentioned that the Fundamental Law of Hungary recognises and enforces the right to a healthy environment, enshrines the "polluter pays" principle and prohibits to import pollutant waste [Article XXI. of the Fundamental Law]. According to Article XXI of the Fundamental Law:

“(1) Hungary shall recognise and give effect to the right of everyone to a healthy environment.

(2) Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration, as provided for by an Act.

(3) The transport of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited.”

The Constitutional Court 4/2019. (III.7.) decision summarized the practice – in particular regarding the *principle of non-derogation* – of Article XXI of the Fundamental Law and the obligation for saving natural resources mentioned in Article P) of the Fundamental Law. Regarding the right to a healthy environment, the Constitutional Court emphasized that in regulating the strengthened system of values affecting the environment, the legislator must demonstrate that the new regulation does not constitute a step backward to the achieved level of environment protection and thus it does not cause irreversible damage. However, a step back must be examined by the fundamental right test, it must be decided whether the regulation falls within the scope of the right to a healthy environment and whether a step back in the level of protection can be detected; and if so, can the restriction in the step back be justified by the necessity and proportionality criteria.





IV.6. – TAXATION

27^o) In tax matters, are the following principles applied in your legislation and judicial practice?

Principle of legality: Tax liability can be established only by rules with legal status.

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of economic or contributory capacity

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principles of equality and generality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of progressiveness and its limit: non-confiscatory taxation

- Yes
- No
- With nuances (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general principles of tax law different from the above)

It must be emphasised that as in all administrative procedures, also in tax administrative procedures provisions of the Fundamental Law should be respected and applied.

Act No. CL of 2017 on the Rules of Taxation expressly declares sector-specific principles such as (Part I, Chapter I): the requirement of the proper (purposeful) exercise of rights (prohibition of abuse of rights), the requirement of assessing a contract according to its content (genuineness clause), the requirement of assessing a transaction according to the economic results, the requirement of assessing contracts between related undertakings, the taxation in Hungary of income covered by an international contract, and the possibility of applying an estimate in case of improper exercise of rights.



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