Consiglio di Stato

ACA EUROPE

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"Techniques for the protection of private subjects in contrast with public authorities: actions and remedies – liability and compliance"

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Answers to questionnaire: Hungary

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SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

1. **In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
   - An ordinary judge
   - An administrative judge
   - A judge who deals with special areas
   - Others

Article 25(2) of the Fundamental Law of Hungary provides that the courts shall decide on the lawfulness of administrative decisions. In the Hungarian legal system, according to section 21(6) of Act No. CLXI of 2011 on the Organization and Administration of the Courts, in administrative disputes, in cases falling within regional high court competence, regional high courts having administrative departments shall act at first instance in the jurisdictions specified in the Act.

2. **Which actions can be brought before the administrative court in view of the exercise of administrative powers?**
   - Annulment of administrative acts
   - action of condemnation
   - Other actions

If you have replied 'other actions', please clarify which.

According to section 38 of Act No. I of 2017 on the Code of Administrative Court Procedure, the plaintiff may seek:

1. to quash, annul or modify an administrative act,

2. a declaration that the administrative act has not been performed,

3. an order prohibiting the performance of an administrative act,

4. an order that an obligation arising from an administrative act be performed,

5. an order to pay compensation for damage caused in connection with a contractual administrative relationship or a public service relationship, or an order to pay monetary damages for the violation of the personality rights,

6. a finding that an administrative act has caused a violation, or the establishment of other facts relevant to the administrative relationship.

3. **From which sources can actions be brought before the administrative court?**
   - Law
   - Public authority regulations
   - Guidelines
   - Supreme Court rulings
   - Other

In our legal system, actions which can be brought before the courts are specified by law.

4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

The subject-matter of an administrative dispute is the lawfulness of an act of an administrative body governed by administrative law, seeking to change or resulting in a change in the legal situation of the legal entity concerned, or the lawfulness of a failure to perform an act (henceforth collectively 'administrative act'). [See section 4(1) of the Code of Administrative Court Procedure.]

An administrative act shall be

1. the particular decision;
2. a provision of general effect not falling under the scope of the Act on Legislation, applicable in the particular case and
3. an administrative contract.

[See section 4(3) of the Code of Administrative Court Procedure.]

Under section 4(4) of the Code of Administrative Court Procedure, unless otherwise provided by law, no administrative legal dispute is possible

1. concerning government activity, in particular national defence, alien administration and foreign affairs,
2. concerning, independently, the lawfulness of an ancillary administrative act serving to realise an administrative act,
3. between parties being in control or management legal relationship with each other.

Political acts may not be challenged.

5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other

According to section 92(1) of the Code of Administrative Court Procedure, the court shall annul the administrative act if

a. the administrative act is null and void or is invalid for any reason provided for by law, or has such an essential formal deficiency which renders it non-existent,
b. the legal injury caused by the violation of the essential rules of the preceding proceedings cannot be remedied in the lawsuit,
c. the administrative body based its act solely on a legal provision which is not applicable in the case, or
d. the administrative act may not be changed.

6. **Can the judge partially annul the challenged administrative act?**
   - Yes
   - No

If your reply is yes, please elaborate.

Yes.

The administrative judge can partially annul an unlawful act.

7. **Can the judge substitute the Administration by modifying the content of the administrative act?**
   - Yes
   - No

If your reply is yes, please elaborate.

Yes.

According to section 90 of the Code of Administrative Court Procedure, the court may change an unlawful administrative act if the nature of the case allows it, the facts are properly clarified, based on the available data the legal dispute can be definitively decided, and the administrative act was performed in several-instance administrative proceedings, or – in case of an administrative act performed in single-instance administrative proceedings – change is allowed in the case by the law. The court shall also change the administrative act if the nature of the case allows it and if the administrative body has performed in the resumed proceedings, based on identical legal and factual situation, an act being contrary to the final judgment of the court.

The court may also change the amount of a payment obligation by giving definite directions in the judgment for the calculation of the amount, without specifying the changed amount of the payment obligation. [See section 91(1) of the Code of Administrative Court Procedure.]

According to section 90(3) of the Code of Administrative Court Procedure, no change may be made

1. in a case where a legal provision of general effect not falling under the scope of the Act on Legislation is applicable,
2. in case of an administrative act taken on equitable grounds,
3. in case of an administrative act based on the exercise of discretionary powers, relating to a payment affecting the budget, or
4. if it is precluded by the law.

8. **When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?**
   - Yes
   - No

If your reply is affirmative, please elaborate.

Yes.

The court shall give definite directions to the administrative body on the resumption of the proceedings or the performance of the act ordered in the judgment, covering all essential aspects of

the found violation to be remedied. [See section 86(4) of the Code of Administrative Court Procedure.]

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other

Generally, the court shall annul an administrative act with retrospective effect, from the date of its notification [see section 92(1) of the Code of Administrative Court Procedure]. Nevertheless, where justified by public interest, legal certainty or particularly important interests of the persons affected by the judgment, the court shall quash the administrative act by specifying the precise date on which it ceases to have effect [see section 92(2) of the Code of Administrative Court Procedure].

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

- Yes
- No
- Other

Yes. See the reply to question 9.

11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

No.

For a claim for compensation for damage caused by an administrative act to be enforceable, the court hearing the administrative case must establish the violation in a final decision. [See section 24(3) of Act No. CXXX of 2016 on the Code of Civil Procedure, henceforth: Code of Civil Procedure]

12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Please elaborate

Under section 6:548 (1) of Act No. V of 2013 on the Civil Code (henceforth: Civil Code), liability for damage caused in acting under administrative powers shall only be established where the damage was caused by the exercise or failure to exercise public authority, and could not be averted by ordinary remedy or in an administrative lawsuit.

According to the settled jurisprudence, an error in the application or interpretation of the law in the exercise of public authority in individual cases will only give rise to damages liability where the error is manifestly serious.

The court found an authority liable for damage in a case where the land registry registered property rights on the basis of evidently false deed.

For the purposes of damages liability, the court found a flagrant (manifestly serious) violation in a case where the administrative authority repeatedly adopted a decision rejecting an application without following the clear directions of the court given in the quashing judgment.

13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

According to section 6:522(1) of the Civil Code, the general rule governing damages is that the damaging party must compensate the damaged party for all damage suffered.

As regards full compensation, the damaging party shall compensate for the diminution in the value of the assets of the damaged party, the loss of profit; and the costs necessary to eliminate the pecuniary losses of the damaged party. [See section 6:522 (2) of the Civil Code]

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other

Yes.

As mentioned above (see the reply to question 12), under section 6:548(1) of the Civil Code, liability for damage caused in acting under administrative powers shall only be established *where the damage could not be averted by ordinary remedy or in an administrative lawsuit*. Moreover, a claim for compensation for damage caused by an administrative act can only be enforced *if the court hearing the administrative case has established the violation in a final decision*. [See section 24(3) of the Code of Civil Procedure and the reply to question 11.] From these legal provisions, read in conjunction with each other (and the relevant judicial practice), it follows that an administrative lawsuit is a precondition for filing a claim for damages. It means that if proceedings potentially resulting in setting aside the act [as a possible remedy in line with section 6:548 (1) of the Civil Code] is available to the party and the party fails to file an administrative action, he/she will not be entitled to claim damages at all.

15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?

- Yes – the party with burden of proof is…
- No

Yes – the party bearing the burden of proof is the individual/entity who suffered damage as a result of the administrative act.

To actions for damages (including damage caused within the scope of administrative jurisdiction) the general rules governing evidence taking shall apply. According to section 265(1) of the Code of Civil Procedure, unless otherwise provided for by an Act, facts deemed material to the case shall be proved *by the party in whose interest it is that such facts are recognized by the court as true* (onus of proof).

16. Can the judge convert *ex officio* one action into another?

- Yes
- No

If the reply is yes, please elaborate

Yes.

The judge *cannot change the substance of the claim ex officio*. It follows from section 85(1) of the Code of Administrative Court Procedure, which provides that "The court shall examine the lawfulness of the administrative activity within the limits of the statement of claims" and from section 86(1) of the Code of Administrative Court Procedure, which provides that "In the judgment, all claims asserted in the lawsuit shall be determined".

However, in exceptional cases, the judge may change *the cause of action*, if it is in the interest of the party. For example, according to section 140(1) of Act No. CLXXXIX of 2011 on the Local Governments of Hungary (henceforth: Local Governments Act), the government office may bring an action (so called 'action for failure to act') seeking to establish that a local government has failed to fulfil its obligation to adopt a decision. However, certain types of local government decisions have normative value. Section 139 of the Code of Administrative Court Procedure provides that a failure of the local government council to fulfil their obligation to adopt a *normative decision* shall be subject to a specific procedure ('procedure for failure to comply with a law-making obligation by a local government') before the Curia of Hungary (the supreme judicial forum, "the Curia"). Such proceedings are instituted upon a motion. In its decision (No. Köm.IV.5026/2021) the Curia has confirmed that an action brought under section 140(1) of the Local Governments Act may be considered and adjudicated as a motion made under Section 139 and Section 143(1) of the Code of Administrative Court Procedure if the (original) action brought under section 140(1) of the Local Governments Act seeks a normative decision by a local government.

17. Is there a time-limit for the proposition of the compensatory action?

- Yes

- No

If the reply is yes, please elaborate

There is no specific time limit for bringing such an action. Under section 6:533(1) of the Civil Code, the legal provisions governing statute of limitations shall also apply to damages. It means that claims for damages shall lapse after five years [section 6:22(1) point a) of the Civil Code].

18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes – explain
- No

Yes.

If the court finds a failure on the part of the administrative body (in an 'action for failure to act'; see the reply to question 16), the body having failed to act shall be obliged to perform the omitted act within the relevant statutory time limit or, in the absence thereof, within thirty days [section 129 (3) of the Code of Administrative Court Procedure]. No further prerequisites exist for the performance of such acts.

In proceedings instituted for failure to fulfil a law-making obligation by a local government, the court may oblige the administrative body to adopt an act of normative value. If, based on the regulatory supervisory body's motion submitted after the expiry of the time limit for the compliance with the law-making obligation, the Curia finds that the local government failed to comply with its law-making obligation, it shall authorise the head of the regulatory supervisory body (i.e. the government office) *to adopt a municipality decree or a normative decision* on behalf of the local government. [See section 150(1) of the Code of Administrative Court Procedure.]

SESSION II – SPECIAL PROCEDURES

1. Does your administration have provisions for special procedures

- Yes
- No

If the reply is yes, please elaborate

Yes.

The Code of Administrative Court Procedure provides for the following special procedures:

1. simplified action [sections 124–126]
2. action for failure to act [sections 127–129]
3. action for condemnation [sections 130–133]
4. action against a non-administrative body [sections 134–135]
5. supervisory action against a public body [sections 136–138]

6. procedures for examining conflicts of local government decrees with other laws, and for failures by local governments to comply with their law-making obligation [sections 139–150]
7. administrative non-contentious procedures [sections 151–153]
8. procedure for appointing an administrative body [section 154]

2. What do the specialities consist of?

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other

The specialities of these procedures (as derogations from the ordinary procedural rules) can be summarised as follows.

1. *simplified action* [sections 124–126 of the Code of Administrative Court Procedure]: simplified procedure (e.g. without a formal hearing or a preparatory session of the judicial panel), different procedural time limits, different decision delivered at the end of the proceedings (simplified judgment); no appeal may be lodged against the judgment adopted in a simplified action.
2. *action for failure to act* [sections 127–129 of the Code of Administrative Court Procedure]: the rules governing simplified actions shall be applicable with certain derogations concerning time limits for filing an action and appeals (appeals against a judgment adopted in such proceedings may be lodged).
3. *action for condemnation* [sections 130–133 of the Code of Administrative Court Procedure]: different procedural rules (e.g. modification of the claims, taking of evidence), different procedural time limits.
4. *action against a non-administrative body* [sections 134–135 of the Code of Administrative Court Procedure]: different procedural time limits.
5. *supervisory action against a public body* [sections 136–138 of the Code of Administrative Court Procedure]: different procedural rules (e.g. modification of the claims, taking of evidence), different procedural time limits, in the final decision the court may order legal consequences additional to ordinary ones.
6. *procedures for examining conflicts of local government decrees with other laws, and for failures by local governments to comply with their law-making obligation* [sections 139–150 of the Code of Administrative Court Procedure]: proceedings not *inter partes*, different procedural rules, different procedural time limits, final decision with legal consequences different from the ordinary ones
7. *administrative non-contentious procedures* [sections 151–153 of the Code of Administrative Court Procedure]: different procedural rules (e.g. solely documentary evidence may be taken in these proceedings), no appeals may be lodged against the "ruling having the effect of a judgment", that is, the final decision adopted in such proceedings.
8. *procedures for appointing an administrative body* [section 154 of the Code of Administrative Court Procedure]: the rules governing simplified action shall be applicable with certain derogations concerning the time limit for the adoption of the appointing decision.

3. **The special rites are established:**
   - According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
   - According to actions
   - Both of the above

Please elaborate

The special rites are established

- according to subject-matter (like proceedings in *simplified actions*, which are applicable, for example, in actions relating to official cards, official certificates and the keeping of official records; in actions relating to visa authorising planned residence not exceeding ninety days, requested for third country nationals and members of their family; in actions relating to petitions of persons of military age for performing military service without arms [section 124(2) of the Code of Administrative Court Procedure]; or proceedings in *actions for condemnation*, which are applicable, for example, in actions contesting the decision of the Civil Service Arbitration Committee)
- according to actions (like *administrative non-contentious proceedings*, which are initiated by a request and not by a statement of claim [section 151(2) of the Code of Administrative Court Procedure])
- both of the above: *for examining conflicts of local government decrees with other laws, and for failures by local governments to comply with their law-making obligation*: these proceedings are initiated by a motion [section 140 of the Code of Administrative Court Procedure] and the subject-matter is also specific, targeting the review of local governments' law-making obligations.

4. **Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?**
   - Yes
   - No

If the reply is yes, please elaborate

Yes.

Under sections 127–129 of the Code of Administrative Court Procedure, actions related to the non-performance of statutory obligations by administrative bodies (concerning the performance of an administrative act) can be brought by the client or the person whose rights are directly affected by the non-performance.

5. **Do the Administrations comply spontaneously with the decisions of the administrative courts?**
   - Yes, always
   - No, never
   - In the majority of cases, in any case more than in 50% of cases
   - Hardly ever, in any case less than in 50% of cases

In more than 90% of the cases.

6. **In your legal system, is there a special procedure for ensuring the integral execution of the sentence**?

- Yes

- No

If the reply is yes, please elaborate

Yes.

The Code of Administrative Court Procedure provides for a specific procedure for the execution of the judgments of the administrative courts. Section 152(1) and (2) of the Code of Administrative Court Procedure provides:

"(1) The plaintiff or the person concerned may, within ninety days of the expiry of the time limit for compliance, request the court having passed the first instance decision to execute the decision if the administrative body failed to comply within the time limit with the obligation flowing from the final court decision, relating to

(a) the resumption of the proceedings; or

(b) the performance of the omitted administrative act.

(2) On the basis of the request the court shall, within fifteen days, set a time limit and invite the administrative body to comply with its obligation or to provide an explanation for the failure to comply, together with the documents supporting the explanation."

In the resumed proceedings the party may bring new claims before the administrative court against the administrative body if he/she finds that the latter fails to comply with the former judicial decision (including the definite directions given by the court in the decision).

7. **Are the judge's decisions which are not of the last resort immediately enforceable?**
   - Yes
   - No

If the reply is yes, please elaborate

Yes (as a rule).

In the absence of a time limit for compliance, the court's decision must be complied with on the day following the day on which the decision becomes final, and the decision is enforceable after it has become final. [See section 97(1) of the Code of Administrative Court Procedure.]

The court may set a time limit for performance in its decision, in which case the decision shall be enforceable after the expiry of the time limit for performance. [See section 97(2) of the Code of Administrative Court Procedure.]

8. **Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the**

aforesaid discretionary power which ensure the definition of the litigation once and for all?

- Yes – elaborate

- No

In the Hungarian legal system, a court decision quashing an administrative decision taken under a discretionary power shall bind the administrative body solely in respect of the unlawfulness identified in the court decision. The court shall give the administrative body definite directions concerning all essential aspects of the remedy to be provided for the violation found, the conduct of the proceedings to be resumed or the performance of the act to be performed under the judgment [section 86(4) of the Code of Administrative Court Procedure]. These directions shall bind the administrative body. The administrative body's discretionary power can, however, not be diminished by giving a general definition (certain aspects) of unlawfulness (even if it is based on a former court decision).

SESSION III – PRECAUTIONARY MEASURES

1. **Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**
   - Yes
   - No

No.

In the Hungarian legal system, the proposition of an appeal does not have a suspensive effect.

2. **In your legal system, are precautionary measures provided for?**
   - Yes
   - No

Yes.

In the Hungarian legal system, under section 50(1) of the Code of Administrative Court Procedure, any person whose rights or legitimate interests are adversely affected by an administrative act or by the maintenance of the situation created by that act may, at any time during the proceedings, request immediate legal protection from the court having competence and jurisdiction in order to prevent an imminent threat of harm, to provisionally settle the legal relationship brought before the court, or to maintain unaltered the situation giving rise to the legal dispute. (**This legal instrument is called *immediate legal protection.***)

3. **What kinds of decisions can the judge apply as a precautionary measure?**

- The suspension of the challenged act;
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;

- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

In the Hungarian legal system, the judge can take the following measures within the framework of immediate legal protection:

(a) ordering suspensive effect
(b) lifting the suspensive effect
(c) interim measure; or
(d) ordering preliminary evidence taking.

[See section 50(2) of the Code of Administrative Court Procedure.]

It is important to underline that several immediate legal protection instruments may be used together or successively, but the court must refer to their interrelatedness in its order.

If the suspension or the lifting of the suspension is not appropriate to ensure immediate legal protection, the court may take any measure necessary to ensure immediate legal protection, within the limits of the decision to be taken in the case or within the limits of the law (temporary measures).[See section 54(1) of the Code of Administrative Court Procedure.]

4. What are the conditions for the acceptance of a precautionary request?

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- Other prerequisites (please specify)

The request for immediate legal protection must be lodged with the court if it has not been submitted together with the statement of claims. [See section 50(3) of the Code of Administrative Court Procedure.]

The request must state in detail the grounds on which immediate legal protection is required and must be accompanied by supporting documents. The facts on which the request is based must be substantiated. [See section 50(4) of the Code of Administrative Court Procedure.]

The court shall, based on the principle of proportionality, from the aspects of public interest and of all the parties, assess whether the non-granting of immediate legal protection would not cause more serious harm than the harm entailed by the granting of immediate legal protection.. [See section 51(3) of the Code of Administrative Court Procedure.]

5. Can the judge force the petitioner to pay bail?

- Yes
- No
- If yes, in which cases?

Yes.

The court may make compliance with the request subject to the provision of security. [See section 51(4) of the Code of Administrative Court Procedure.] The provision of security shall be governed

by the rules of the Code of Civil Procedure. [See section 36(1) of the Code of Administrative Court Procedure.] The court may make the provisional measure subject to the provision of security if the adverse party substantiates that, as a result of the requested measure, he/she may suffer a disadvantage which would give rise, if he/she wins the case, to a claim for damages or monetary compensation for the violation of personality rights against the applicant. In deciding on the provision of security, the court must also have regard to the degree in which the facts underlying the request are substantiated. In case of small disadvantage, no provision of security shall be ordered. [See section 106(1) of the Code of Civil Procedure.]

6. Are precautionary measures generic?

- Yes
- No – are there some subjects in which precautionary measures are not admitted? Which?

No.

In the Hungarian legal system no immediate legal protection is available if the administrative act
(a) serves the enforcement of a final court decision,
(b) imposes an obligation relating to the performance of civil defence duties or the provision of economic and material services forming part of national defence obligations; or
(c) concerns the designation of operational and protective areas of buildings and immovable property for defence and military purposes. [See section 50(6) of the Code of Administrative Court Procedure.]

7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?

- Yes
- No

Yes.

In the Hungarian legal system a precautionary request, that is, a request for ***providing preliminary evidence*** can be introduced autonomously before the presentation of the main trial proceedings. The court shall order to provide preliminary evidence if it can be substantiated that
a) the taking of evidence during the lawsuit or at a later phase could no longer be successfully conducted or might involve significant difficulties, or
b) the provision of preliminary evidence facilitates the conclusion of the lawsuit within a reasonable time.
[See section 55(1) of the Code of Administrative Court Procedure.]
The request must specify the facts sought to be proved, the evidence relating to them, and the circumstances attesting that preliminary evidence may be taken [See section 55(2) of the Code of Administrative Court Procedure.]

8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

None of the above can be found in the Hungarian legal system. If the court rejects the timely submitted statement of claims, the order for immediate legal protection shall remain in force until the rejecting order becomes final, or till the expiry of the time limit within which the legal effects of the filing of the statement of claims are to be maintained. [See section 51(8) of the Code of Administrative Court Procedure.]

9. When dealing with the precautionary request, does your legal system provide for specific procedure?

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
- No

Yes.

The judicial panel shall determine the request for immediate legal protection within fifteen days from its receipt by the court. No supplementation is possible. Upon the invitation of the court, the parties may also make a statement on the request by telephone or by electronic means other than written, of which the court shall make a record. If necessary, the court may also order a hearing of the parties. The court may make compliance with the request subject to the provision of security. [See section 51(1), (2) and (4) of the Code of Administrative Court Procedure.]

10. Is the precautionary decision taken unilaterally or collegiately?

- Unilaterally;
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

As a rule, cases are determined by judicial panels composed of three professional judges, so all decisions are taken collegiately. Exceptionally, specific cases shall be determined at first instance by a single judge:

a) lawsuits instituted for the examination of administrative acts adopted in two-instance administrative proceedings,
b) lawsuits instituted upon claims disputing a basic amount payment obligation not exceeding ten million HUF,
c) lawsuits relating to the entry and stay of persons having the right of free movement and residence, to the entry and stay of third-country nationals, and to the right of asylum,
d) a lawsuit relating to an administrative act performed by the head of a district office or a local government organ,
e) lawsuits relating to official cards, official certificates and the keeping of official records,
f) a lawsuit against an authority decision, solely where instituted upon the claim of another participant of the authority proceedings,
g) a lawsuit relating to an ancillary administrative act or a decision refusing the request or terminating the proceedings,
h) lawsuits for a failure to act,
i) lawsuits relating to civil service legal relationship,
j) in administrative non-contentious proceedings.
[See section 8(3) of the Code of Administrative Court Procedure.]

An appeal against an order shall be heard by a single judge, save for an appeal filed against an order dismissing the statement of claims and terminating the proceedings. Where the case is particularly complex, the single judge may order that the case be heard by a judicial panel composed of three professional judges. A case referred to a judicial panel may not subsequently be heard by a single judge. [See section 8(5) of the Code of Administrative Court Procedure.]

With the exception provided for above, the Curia shall sit in a judicial panel composed of three professional judges. If the case is of particular complexity or major importance for society, the Curia may order that the case be heard by a judicial panel composed of five professional judges. Where the nature of the case so justifies, no more than two members of the judicial panel of five professional judges may be professional judges not designated to hear administrative cases. [See section 8(6) of the Code of Administrative Court Procedure.]

11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?

- Yes (explain in which conditions)
- No

No.

12. Can precautionary measures be challenged before the Supreme Court /Council of State?

- Yes
- Yes, but only if they pass a test of eligibility
- No

Yes.

An appeal against an order adopted on immediate legal protection may be lodged within eight days of the notification of the order. An appeal against an order granting immediate legal protection shall not have suspensive effect. An order refusing a request re-submitted on the same factual and legal basis after the refusal of the original request, shall not be subject to an appeal. [See Section 51(5) of the Code of Administrative Court Procedure.]

13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?

- Yes
- No

Yes.

1) Unless otherwise provided by the law, an appeal shall have suspensive effect on the entry into force of the judgment. The appeal may be accompanied by a request for immediate legal protection. [See section 100(6) of the Code of Administrative Court Procedure.]
2) A petition for review may be accompanied by a request for immediate legal protection. If the petition for review contains a request for immediate legal protection, the first instance court shall immediately arrange for the case to be referred to the Curia. The Curia shall decide on the request for immediate legal protection when adopting an order on the admission of the petition, at the latest. [See section 119(2) of the Code of Administrative Court Procedure.]

14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

In Hungary, administrative cases are currently heard at first instance by regional high courts having the same seats and jurisdictions as the formerly existing eight main administrative and labour courts hearing such cases.

The Curia sits as a second instance court, a review court and, in certain cases, a first instance court.

In 2020, the Curia had 1527 review cases and 1370 appeal cases. As of 1 November 2021, there have been 1529 review cases and 1865 appeal cases.

Immediate relief is requested in about 50% of the appeal cases before the Curia. In about 50% of the petitions for review the parties request immediate relief, typically with suspensive effect. In tax cases, the proportion is significantly higher, with almost all cases involving a request for immediate relief.