

HUNGARIAN ADMINISTRATIVE JURISDICTION

The Hungarian judicial system

Based on paragraph 45(1) of Act XX of 1949 on the Constitution of the Republic of Hungary and on paragraph 16 of Act LXVI of 1997 on the Organisation and Administration of the Courts (hereinafter: OAC), in Hungary justice is administered by the Supreme Court, the court of appeals, the county courts (including the Municipal Court of Budapest) and the local courts. First instance jurisdiction in most matters rests with the local courts. The county courts, including the Municipal Court hears most of the appeals submitted against the decisions of the local courts, but in cases specified by the laws of procedure they act as courts of first instance. The territorial competence of county courts and the Municipal Court is determined by and identical with public administration. The Municipal Court of Appeals shall hear the appeals in cases defined by law, submitted against the decisions of the local or county courts and will act in other matters referred to its authority by law. The Supreme Court is the highest judicial body.

In Hungary the Constitutional Court is not part of the ordinary court system. The court's decisions reviewing the constitutionality of norms have erga omnes effect and cannot be appealed. Its jurisdiction includes ex ante review of bills of Parliament, and ex post review of constitutionality of laws. Ordinary judges may also initiate ex post review if they think that the law to be applied in a specific case is unconstitutional. The constitutional court may also review whether a law complies with international treaties that the Government has ratified. (see paragraph 1 and 44-45 of Act XXXII of 1989)

The Supreme Court

Based on paragraph 47 of the Constitution and paragraphs 24-25 of OAC, the functions of the Supreme Court are manifold:

- as a court of second instance it adjudicates appeals lodged against the decision of the county courts (including the Municipal Court) and the appeals courts;
- it reviews final decisions if these are challenged through an extraordinary remedy;
- it adopts uniformity decisions and thereby provides judicial guidance to lower courts;
- it adjudicates in other matters referred to its authority by law.

The Supreme Court exercises its judicial activities in panels administering justice or passing binding decisions with regard to unify the jurisdiction of lower courts. The panels work within the framework of the Administrative, Criminal and Civil Divisions, the latter comprising special branches of civil, economic and labour law. The Administrative Division has four panels, altogether 15 judges, including the President of the Supreme Court, who chairs one of the panels. Decisions concerning the uniform application of law are taken in all three divisions and the adjudicating panel in such cases generally consists of five members chaired by the leader of the division concerned, however, in cases requiring the collaboration of more divisions the size of the panel increases to seven members chaired by the President or Vice-President of the Supreme Court.

Uniformity decisions are issued if required for the development of or to ensure the uniformity of judicial practice, or if a panel of the Supreme Court intends to deviate from the case-law established by another panel of the Supreme Court (see paragraph 29 of OAC). All uniformity decisions are published in the Hungarian Official Journal (*Magyar Közlöny*). Furthermore, the Supreme Court has the right to issue decisions on principle. These are judgements passed by the panels of the Supreme Court in various cases and are selected for publication with a view to unify the interpretation of law as the solution of the relevant legal dispute is considered theoretically significant. The publication of such decisions – issued twice yearly – in the Official Corpus of Supreme Court Decisions (*A Legfelsőbb Bíróság Határozatainak Hivatalos Gyűjteménye*) is thus also helpful in creating uniform jurisdiction in all courts (paragraph 27(2) of OAC). In addition, the Supreme Court publishes every month the Court Decisions (*Bírósági Határozatok*), which includes all the judgements of the court and a selection of the decisions of the European Court of Justice and the European Court of Human Rights. Besides, the administrative case-law is published in a special compilation (*Közigazgatási Döntvénytár*).

The history and development of the administrative judicial system

The history of Hungarian administrative jurisdiction goes back to over a hundred years. It was first introduced by Act XXVI of 1896 and functioned as a separate supreme administrative court. It adjudged financial and general cases through out-of-court proceedings. After its dissolution in 1949, Act IV of 1957 on the General Rules of State Administration Procedures (hereinafter: SAP) provided for the possibility of judicial revision as regards certain types of state administrative cases (e.g. decision declaring tax or duty

liability, refusal to register birth, marriage or death, decision ordering the requisition of residence, decision refusing the release of assets seized in the course of an administrative proceeding etc.) From 1982 on the scope of disputable decisions was further restricted by Decree No. 63/1981 of the Ministerial Council which was, however, annulled on 31 December 1991 by a decision of the Constitutional Court. Act XXVI of 1991, which modified the SAP and which entered into force on 27 July 1991 ensures the possibility of judicial revision in almost every case.

Judicial review

As a general rule every decision issued on the merits of a case by an administrative organ may be subject to review by the court. However, the SAP specifies cases where judicial revision is not permitted as an exception. Pursuant to paragraph 72(4) of SAP, no judicial review of administrative decisions lies:

- if it is excluded by law;
- if the administrative decision serves the execution of a final decision of the court;
- if the decision is temporary and a final decision has to be taken within a time specified by law;
- if the decision affects administrative legal relations concerning foreign trade, fire-arms, explosives, radiating matters and drugs, ordering the appearance of those of military age before a recruiting committee, civil military service or civil defence service matters, the protection of order at the national borders.

The SAP does not define what qualifies as a decision on the merits of a case. In the course of judicial practice, however, a state administrative action is regarded as a decision on the merits of a case if the organ entitled to proceed in the case passes a final decision on the dispute constituting the subject matter of the case. As regards the produced legal effect a decision on the merits of a case may originate, modify or alienate rights, it may establish rights or obligations, in addition it may apply a legal consequence.

As opposed to the SAP, Act XCI of 1991 on the Rules of Taxation (hereinafter: RT) explicitly states which financial decisions of tax authorities may be subject to judicial revision and what are the criteria of a decision on the merits of the case. According to paragraph 86(1) of RT every decision concerning tax liability, or establishing the rights and obligations of the taxpayer or of the person obliged to pay the tax – except for a decision concerning the

allowance of deferred payment and payment by instalments – shall qualify as a decision on the merits of the case. It should be emphasised that application for review may be filed against a decision reached in a procedure of equity as well. Such a decision, however, cannot be arbitrary. Paragraph 4(5) of SAP lays down a special provision according to which upon the request of a client the administrative court may – in non-contentious procedure – oblige an administrative organ to resume the proceedings in a case falling within the scope of its authority and competence. This means that the client has an opportunity to gain remedy for an infringement originating in the negligence of the administrative organ, and the decision of the administrative court that establishes such an obligation qualifies as a decision on the merits of the case. What's more a decision of the administrative organ that establishes the absence of authority based on the lack of administrative relations also counts as a decision on the merits of the case and thus may be subject to judicial revision. (Administrative uniformity decision no. 3/1998)

Judicial proceeding at first instance

According to the specific rules of Chapter XX of the Code of Civil Procedure, Act III of 1952 (hereinafter: CPP), paragraph 72 of SAP and paragraph 86(1) of RT, the courts (county courts and the Municipal Court) will revise the following decisions in administrative actions:

- a decision of the administrative organ, or other organs entitled to act in official administrative actions, that is a decision in which the mentioned organ identifies a right or a duty in respect of a client, certifies data, keeps records or conducts on official review;
- the order, internal regulation or other decision of a local authority defined by law;
- a decision of another organ, the revision of which may take place in an administrative action under a separate law.

A client or a person whose lawful interest has been injured may file a complaint with the court within 30 days of the announcement of the decision passed in the merits of the case by an administrative authority, referring in the complaint to the infringement upon the law. Administrative lawsuit may be instituted by the person whose right or legal interest is affected by the case that constitutes the basis of the proceedings. The request for judicial review has to be submitted to the competent court or to the administrative organ that passed the decision at first instance, in which case the administrative organ is obliged to forward the application, together with all the documents of the case, to the court within eight days. No judicial review

is possible when the party failed to avail themselves of the right to appeal, consequently the judgement became final at the first instance. There are exceptional cases when the right to appeal is excluded by law, e.g. cases of competition, cases of public procurement.

All administrative cases fall within the jurisdiction of the county courts or the Municipal Court, and the court by the seat of the administrative organ will be competent in the procedure. If a client files a complaint with the court against an administrative decision, it postpones the enforcement of the ruling. However, the administrative organ may declare the decision immediately enforceable if so required by public interest or a principal interest of the client concerned. In such a case and in financial cases, where the fact of submitting an application for review has no delaying force on the execution, the court may suspend execution of the decision *ex officio* or upon the request of the client. Suspension of execution of an administrative decision may be ordered by the court especially if establishing the decision as immediately enforceable constitutes an infringement upon the law, if suspension may be reasoned by circumstances deserving special equity or by other significant circumstances, or if execution of the decision entails consequences that produce serious disadvantages for the client.

As a general rule cases are adjudicated in trial presided by a single judge. If, however, the value of subject-matter of litigation exceeds 30 million Forints, the case shall be judged by a panel consisting of three professional judges (paragraph 324(4) of CCP). The lawsuit is instituted against the administrative organ that issued the final decision at second instance, it will thus participate as defendant in the procedure of review. The plaintiff is not obliged to be represented by a counsel. If parties of adverse interest participate in the administrative case and the request for judicial revision was filed only by one of the parties, the court is obliged to enable the adverse party to intervene in the lawsuit.

As regards the court, it may review the decision of the administrative organ only within the limits set by the application for review, which means that the decision shall not go beyond the relief sought. As a result, if the court establishes no infringement of law referred to in the petition, it cannot abrogate or modify the administrative decision based on another infringement of law, which is essentially different from the one included in the petition.

The court in administrative cases examines mainly whether the administrative decision complies with substantive legal regulations. Based on infringement of the rules of procedure abrogation may be applied only if such infringement is significant and affects the decision on the merits without being remediable in judicial proceeding. As a general rule, the court shall always proceed based on legal regulations that were in force and facts that existed while

passing the administrative decision. It has to take into account when the client's claim to establish its right, or the enforceable demand of the administrative organ vis-a-vis the client came into being. It often happens that in administrative cases the proceeding authority applies a legal rule that has, at the time of judicial review, been annulled yet is governing for the legal relation concerned (e.g. cases of taxation) In such cases the legal rules that were in force at the time of establishing the claim or demand shall be applied. If, however, the amended regulation stipulates that its provisions shall be applied to pending cases as well, the court reviews the given case not according to the regulation that was in force when the administrative organ passed its decision but according to the legal rule that is governing for the pending cases. The reason for this is that if the administrative proceeding is followed by judicial revision, the case is ended not with the administrative but with the judicial proceeding, or in case of abrogation and instruction for a new proceeding, with a new administrative procedure based on judicial revision. Another important rule is that if a legal rule modifies earlier provisions with retroactive effect, in doubtful cases the court has to look for the regulation which is more favourable for the client.

If the challenged decision complies with the legal rules, or if only a minor infringement of the procedural rules occurred with no significant effect on the judgement on the merits of the case, the court shall refuse the motion and shall maintain the decision of the administrative organ in force. If, however, the decision proves to be illegal according to the court, the latter may nullify it and may simultaneously instruct the administrative organ (of first or second instance) to initiate a new proceeding with giving compulsory instructions as to how to conduct it. In certain cases mentioned by the law, the judge may also modify the administrative decision. These cases are related among others to adoption, education of minors in state owned institutions, guardianship, register record, registration of vital statistics, real property register, payment of taxes and duties, placement of documents in the archives, expropriation, recognition as a refugee, request for civil military service, certificate of the time in internment, family allowance, social insurance, and besides these modification may be prescribed by law (paragraph 339(1-2) of CCP).

In administrative cases – as a main rule – appeal is not permitted by law. There lies an appeal against the court judgement as an exception provided that the action was initiated for the judicial review of a decision that was issued in a single instance procedure by an administrative organ whose competence covers the whole country and this decision may be modified by the court (see paragraph 340(2) of CCP). Appeals are heard by the independent administrative division of the Municipal Court of Appeal.

The re-opening of a case

The provisions of Chapter XX of CCP enable the client to file an application for the re-opening of a case or for the review of a final judgement from the Supreme Court.

According to paragraph 260(1) of CCP, a new trial may take place if:

- a party refers to a fact or a proof or a final judicial or official decision which was not adjudged in the proceedings, provided that – in the case of adjudication – it could have resulted in a decision more favourable for him;
- a party has lost a suit in contradiction with the law because of criminal offence of the judge passing the judgement, of the opposing party or of another person;
- a final judgement was passed on the same right prior to the judgement passed in the proceedings.

A motion for the re-opening of a case may be filed within six months from the coming into force of the contested decision, and it has to be submitted to the court of first instance which proceeded in the suit. In the case of permission of a new trial, the case shall be heard within the limits of the motion. Depending on the result of the new trial, the court may keep the challenged decision in force, or it may pass a new judgement in conformity with the law, while simultaneously annulling the contested decision in whole or in part. (Chapter XIII of CCP)

The review of a final judgement by the Supreme Court

Referring to an infringement of law the review of a final judgement may be sought from the Supreme Court by the party, the intervening party or anyone else who is affected by the provisions included in the court decision, against the part of the provision affecting them. As included in Chapter XIV of CCP, a petition for review may be lodged if the contested decision on the merits of the case infringes a legal rule and

- it does not comply with the uniformity decision of the Supreme Court;
- its review is indispensable to ensure the uniformity and development of judicial practice, since either in connection with the decision a question of principle arises concerning which the Supreme Court has not passed a decision or it issues a decision on principle

concerning which in the Official Corpus the Supreme Court has issued a decision of differing content.

The application for review shall be filed with the court having passed the decision of first instance within sixty days from the communication of the decision.

In the course of the review procedure, the party filing the petition is obliged to act with counsel, accordingly, the power of attorney must be attached to the application. No lawyer-candidate may proceed in the Supreme Court. The motion soliciting the review is examined by a single judge of the Supreme Court and s/he shall act (accept or refuse it) within sixty days. No appeal is permitted against the decision of the proceeding judge. Unless a party demands a trial, the case is adjudged out of sessions. In the course of the judgement of the application, the Supreme Court shall make its decision on the basis of the available records and the submitted documents. Besides that, no other evidence shall be proceeded with. If the challenged decision complies with the legal rules, or if only a minor infringement of the procedural rules occurred with no significant effect to the judgement to the merits of the case, the Supreme Court shall maintain the challenged decision in force. If, on the contrary, the decision infringes a legal rule, the Supreme Court shall replace the judgement infringing the law by a new decision in accordance with the legal rules, or if it is not possible, it shall quash the judgement infringing the law as a whole or in part and shall instruct the court of first instance or appeal to initiate a new proceeding and to make a new decision.

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