



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.



Council of State of Belgium

***Association of the Councils of State and the Supreme
Administrative Jurisdictions of the European Union
With the collaboration of the Council of State of Belgium***

***Increasing the efficiency of the Supreme
Administrative Courts' powers***

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ISSUE 1: The “administrative loop”, or the power to rectify the legality of an administrative decision

Question 1: In your country’s legal system do you know of a mechanism laid down in the Constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to rectify a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?

Answer 1: Chapter XX on Administrative Actions of the Act n° III of 1952 on the Code of Civil Procedure (hereinafter referred to as the CCP), in particular Articles 324-340/A thereof regulate the powers of administrative courts in Hungary.

Article 339, Paragraph (1) of the CCP stipulates as follows:

“Unless otherwise provided for by the relevant legislation, the court shall abolish any administrative decision it finds unlawful and - if necessary - orders the body having adopted the administrative decision in question to reopen the case.”

Article 339, Paragraph (2) of the CCP provides as follows:

“The court shall have powers to reverse administrative decisions within the framework of judicial review in areas listed by the present Paragraph.”

Article 339, Paragraph (3) of the CCP stipulates as follows:

“The court shall abolish the administrative decision and shall order the body having adopted the decision to reopen the case if it deems appropriate to have another decision rendered on different legal basis.”

Thus, Hungarian administrative courts have the power to rectify the legality of an administrative decision, however, this power is restricted to specific and sensitive administrative cases, as enumerated in Article 339, Paragraph (2) of the CCP. In all other cases, as a general rule laid down in Article 339, Paragraphs (1) and (3) of the CCP, administrative courts have solely the power to have the flawed decision quashed and – if necessary – proceedings reopened.

If not, what are the reasons that, in your country’s law, lead to the power of the court to be limited to solely annulling the disputed decision or to denying the court the power to rectify an infringement that has been established or have it rectified?

The Hungarian legislator decided to confer the power to rectify a flawed decision to administrative courts only in some specific and sensitive administrative cases, ensuring at the same time that the parties to proceedings, in accordance with the conditions set forth in Article 340, Paragraph (2) of the CCP, have the right to submit an appeal against the rectifying court decision.

Article 340, Paragraph (2) of the CCP provides as follows:

“A court decision may be subject to appeal if the administrative action was filed for the judicial review of a judgement rendered in the first instance, which cannot be appealed through administrative channels, and the court has powers to reverse such decision on the

strength of law. This provision shall not apply to court decisions adopted in immigration matters and shall apply to court decisions adopted in public procurement matters only according to the provisions of the Act on Public Procurements.”

In all other cases, as a general rule, administrative courts have no power to rectify the disputed administrative decision, resulting in simplified court decisions and in the exclusion of the opportunity for the parties to lodge an appeal to the administrative court of second instance. Hence, court proceedings subsequent to the phase of proceedings before the administrative authorities are accelerated, enabling the parties to have their disputes resolved within a reasonable period of time.

If so, what specific powers does the administrative court have to rectify an infringement that has been established or have it rectified? Explain your answer.

In cases enumerated in Article 339, Paragraph (2) of the CCP, administrative courts have the power to rectify an infringement that has been established in connection with a disputed administrative decision. The administrative court is empowered to modify, partially or totally, the unlawful administrative decision, or to modify it in one part and annul it and – if necessary – have the proceedings reopened in another part.

Do these specific powers of the court apply to any infringement that has been applied and to all decisions of the authority? Explain your answer.

Article 339, Paragraph (2) of the CCP contains the list of administrative cases in which the decision of the administrative authority can be rectified by the administrative court, regardless the type of the infringement that has been established.

Article 339, Paragraph (2) of the CCP stipulates as follows:

“The court shall have powers to reverse the following administrative decisions within the framework of judicial review:

- a) decisions for the approval or refusal of adoption, or for declaring a minor eligible for adoption;
- b) decisions ordering the placement of a minor in a suitable institution for the care of children, or for the termination of such placement;
- c) decisions relating to parental custody rights, and for the appointment or dismissal of a guardian or administrator, or declaring the removal of a guardian or administrator;
- d) decisions concerning registry entries, as well as the refusal of the admission, the deletion, correction and updating of personal data in the vital statistics, the refusal of disclosure of personal data or their use in an authentic instrument;
- e)
- f) decisions of the real estate supervisory authority concerning the registration of rights and facts relating to an immovable property, or for the refusal of registration of rights and facts relating to an immovable property;
- g) decisions establishing tax and duty liabilities, or other similar payment obligations construed as such by specific other legislation, including other related payments;
- h) decisions for the placement of archive materials in general archives;
- i)
- j) decisions on granting asylum;
- k)
- l)

- m) decisions concerning the verification of the length of time spent in internment, deportation, or detention, and in custody for public policy, or in prison camps in the Soviet Union, furthermore, for the verification of the restriction of the personal liberty of the persons referred to in Article 1, Paragraph (1) of the Government Decree n° 74/1991 (VI. 10.), and listed in Article 1 of the Government Decree n° 174/1992 (XII. 29.);
- n) decisions on family welfare provisions and on social security benefits;
- o) decisions of the committee for transfer of property concerning the transfer of property;
- p) decisions for the use of residential properties or sections of residential properties; furthermore
- q) where permitted by law.”

At what stage of the proceedings and under what conditions can the administrative court exercise its power to rectify a flawed decision? Explain your answer.

In accordance with the provisions of Article 339, Paragraph (2) of the CCP, the administrative court, during the first instance proceedings or – if an appeal has been lodged – during the second instance proceedings, has the power to rectify partially or totally an unlawful administrative decision rendered in one of the specific cases above enumerated.

Question 2: Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

Answer 2: In cases enumerated in Article 339, Paragraph (2) of the CCP, administrative courts have the power to rectify an infringement that has been established in connection with a disputed administrative decision. The administrative court is empowered to modify, partially or totally, the unlawful administrative decision, or to modify it in one part and annul it and – if necessary – have the proceedings reopened in another part.

If so, explain in brief how this mechanism works. If not, is the authority required (obligation) – in the context of the exercise of this specific power to rectify a flawed decision – to rectify the infringement determined by the court? Explain your answer.

The administrative court can exercise all by itself its power to rectify a flawed administrative decision. In the event that an infringement has been established in connection with a disputed administrative decision, the court has the power to modify, partially or totally, the unlawful administrative decision, or to modify it in one part and annul it and – if necessary – have the proceedings reopened in another part.

Question 3: How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

Answer 3: Setting aside the action to quash, submitted by a party against an administrative decision considered unlawful, the administrative court has the power to rectify the flawed decision in administrative cases enumerated in Article 339, Paragraph (2) of the CCP.

The rectifying decision of the administrative court of first instance can be appealed to the court of second instance – i.e. the Administrative Department of the Metropolitan Appellate Court having

exclusive territorial competence over the whole country – in accordance with the conditions laid down in Article 340, Paragraph (2) of the CCP.

Article 340, Paragraph (2) of the CCP provides as follows:

“A court decision may be subject to appeal if the administrative action was filed for the judicial review of a judgement rendered in the first instance, which cannot be appealed through administrative channels, and the court has powers to reverse such decision on the strength of law. This provision shall not apply to court decisions adopted in immigration matters and shall apply to court decisions adopted in public procurement matters only according to the provisions of the Act on Public Procurements.”

Once becoming final, the rectifying court decision is binding on the parties to proceedings, i.e. on the clients of the administrative authority and on the administrative authority itself, thus, administrative proceedings continue in compliance with the rectifying decision.

Question 4: What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

Answer 4: Hungarian administrative courts are willing to exercise their power to rectify an unlawful administrative decision, particularly since their first instance court decision can be, in most cases, appealed to the administrative court of second instance, providing the opportunity of an ordinary judicial remedy for the parties to proceedings.

The rectifying court decision is implemented successfully by the parties, i.e. by the clients of the administrative authority and by the administrative authority itself.

Question 5: Does your court hear appeals against decisions that are rectified in this way and, if so, how are such appeals dealt with?

Answer 5: The Curia of Hungary, as the successor of the Supreme Court of the Republic of Hungary from the first of January 2012, is entitled to hear petitions for judicial review against final court decisions rendered by ordinary or administrative courts.

Pursuant to the provisions of Article 340/A, Paragraphs (1)-(4) of the CCP, the parties to proceedings may submit their petition for judicial review as an extraordinary remedy to the highest instance judicial body, the Curia of Hungary.

Article 340/A, Paragraphs (1)-(4) of the CCP stipulates as follows:

“(1) Article 271, Paragraph (1), point a) of the CCP shall not apply in administrative actions if there is no right of appeal against the judgement under Article 340 of the CCP.

(2) The Curia shall adopt a decision concerning the review within one hundred and twenty days from the time of receipt of the petition.

(3) If the party has filed a motion for retrial against a final judgement, the court of the first instance, and if petition for review was filed against the judgement, the Curia shall notify the administrative body thereof in the interest of rendering a decision for having the proceedings suspended.

(4) After the retrial or the petition for review is decided, if the court has reversed the decision, the administrative body shall carry on or dismiss the administrative proceedings in accordance with the decision.”

In accordance with the provisions of Article 275, Paragraphs (1)-(7) of the CCP, the Curia of Hungary has broad powers to sustain, abolish or modify the final court decision, and – if deemed necessary – have the proceedings reopened.

Article 275, Paragraphs (1)-(7) of the CCP provides as follows:

“(1) In review procedures no taking of evidence shall be performed. The Curia shall render its decision concerning the petition for review relying on the documents available.

(2) The Curia shall have powers to review a final decision only within the framework of the petition for review or the cross-petition for review, unless it decides to dismiss the action of its own motion, or if the court that rendered the decision had not been properly formed, or if a judge who should have been disqualified by law took part in rendering the decision.

(3) If the decision reviewed is found in compliance with the relevant legislation, or if any breach of procedural regulations has occurred, which had no impact on the merits of the case, the Curia shall sustain the decision contested.

(4) If a decision is found unlawful, except for the breach of procedural regulations mentioned in Paragraph (3), the Curia shall abolish the unlawful decision in whole or in part, and if the facts needed for a decision can be ascertained, it shall render a new decision instead, or in any other cases it shall instruct the competent court of the first or second instance to reopen the case and to render a new decision.

(5) If the Curia has ordered the competent court of the first or second instance to reopen the case and to render a new decision, it shall also convey mandatory instructions in its ruling of abolishment. In this case it shall only determine the amount of the costs of the review procedure, whereas the decision as to the bearing of such costs lies with the court rendering the new decision.

(6) If the Curia orders the court of the second instance to reopen the case, its decision shall be delivered to the parties by the court of the second instance, in other cases by the court of the first instance, and shall take measures - consistent with the decision - for having the enforcement procedure terminated or restricted, or for having the suspension of the enforcement procedure lifted.

(7) If the case is reopened, the hearing shall be opened by reciting the decision of the Curia, and shall continue according to the relevant provisions applicable to the court hearing the case.”

ISSUE 2: Power to award compensation and action for annulment

Question 1: Are you familiar with the system of compensation as an alternative to annulment?

Answer1: In the Hungarian legal system there is no opportunity to pay a compensation instead of the annulment. If an administrative court causes damage with its sentence, there is a possibility to pay compensation after a civil trial. This is declared in the 349. § of the CCP.

Question 2: What is the extent of the compensation and how is it calculated?

Answer 2: According to the 1st paragraph of the 349. § of the CCP: responsibility can only be taken because of a damage caused by bureaucracy if the damage can not be avoided by „regular” remedies and the injured person takes all the „regular” remedies, which are applicable to avoid the

damage. According to the 3rd paragraph of the 349. § the above-mentioned rules must be used in case of causing a damage by a court. In these cases the injured party must prove 3 components: 1) the damage is caused by an unlawful activity 2) the damage itself (the injured person's monetary or personal damage) 3) the causation between the above-mentioned two conditions. The amount of the compensation is different in every case.

Question 3: What is the impact of penalising an unlawful decision by awarding compensation on the decision itself?

Answer 3: As we mentioned before in the Hungarian legal system there is no possibility for penalising an unlawful decision by awarding compensation.

Question 4: Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts?

Answer 4: Nor the Curia, neither other courts have this power.

Question 5: What is the extent of the compensation and how is it calculated?

Answer 5: As we wrote in Answer 4 there is no possibility for that type of compensation.

ISSUE 3: The effectiveness of enforcement of the rulings of administrative courts

Question 1: Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgements by the authorities?

Answer 1: As each section of the Curia (the hungarian supreme court), the administrative section can also issue so-called „unifying decisions” for unifying the legislation, but it is made for the other courts, and not for the authorities and it is not mandatory, because it was not made by the Parliament.

Question 2: Do the administrative courts have the power to order the authority to enforce their rulings and judgements (power of injunction)?

Answer 2: The administrative courts do not have power of injunction. As we mentioned before these unifying decisions are not mandatory. They are guides for the courts of first instance in legal situations which are frequently happened. If a sentence refers to only a unifying decision, that is not enough, because it is not a rule. As a consequence of this, a court of first instance can decide contrary to the spirit of the unifying decision, but after the appeal the Curia will make the sentence which has the force of res judicata.

Question 3: Have all your country's administrative courts been granted this power of injunction?

Answer 3: None of our country's courts have power of injunction.

Question 4: Can your country's administrative courts sentence the offending authority to pay a penalty or a fine?

Answer 4: The administrative courts can not sentence an authority to pay fine or penalty. The civil courts can sentence an authority or a court to pay the damage what they cause with their decision or judgement, but not as a fine or penalty.

Question 5: What happens where the authority has enforced the ruling or judgement but this enforcement is not in line with the authority of res judicata?

Answer 5: Parties can bring an action against the new decision at administrative courts.