



## **A NEW SYSTEM FOR ADMINISTRATIVE JUSTICE IN HUNGARY**

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## SCOPE OF THE PAPER

- New Hungarian development in the light of the
  - latest reforms that aims at developing a distinct, separated administrative court system,
  - most relevant types of administrative review mechanisms practiced in other countries and
  - principles pervading the legal system
- The background: the Hungarian phenomenon
  - abusive constitutionalism and illiberalism
  - basically unrestricted political power
  - disregard of the idea of the quality in legislation

# JUDICIAL REVIEW OF THE ACTIONS OF THE ADMINISTRATION

- Assessing the legality of administrative conduct
- Judicial review within the administration
- Judicial review separated from both the administration and the ordinary court system
- Judicial review is conducted within the ordinary judicial system
- Juridification of administrative law
- Common principles (Handbook for Monitoring Administrative Justice of the OSCE/ODIHR, Recommendation Rec(2004)20 on judicial review of administrative acts, Rule of Law Checklist of the Venice Commission)

## COMMON PRINCIPLES

- Competent, impartial and independent court or tribunal
- These courts adhere to international and regional fair trial standards is fundamental to the protection of human rights and the rule of law
- Basic principles of judicial independence should enshrine in the constitution or ordinary legislation,
  - objective procedures and criteria for judicial appointments and tenure
  - discipline and removals
- Courts should be perceived as independent
- Due process rights: right to a fair trial, openness, justification of judgments, and equality of arms

## THE HUNGARIAN CONSTITUTIONAL CONTEXT

- 1991
  - socialist system, decision 32/1990. (XII. 22.) of the ConstCourt
  - **ordinary court system**; later: admin law units within them
- 1998
  - admin law cases are deliberated **at county level**
- **Court system**: ordinary courts with Supreme Court;  
„separate court”: labour courts/county+capital
- Fundamental Law
  - Division of powres
  - **Judicial review** of administrative actions
  - **Right to remedy** against decisions of the adminsitration
  - **Independent and impartial courts**, reasonable time
  - **Separate courts** may be established

## THE HUNGARIAN CONSTITUTIONAL CONTEXT

- 2011: **Court system**: ordinary courts with Curia; „separate courts”: **labour courts and administrative courts**/county+capital
- 20 administrative and labour courts
- 6 regional boards (capital + 5 regional boards in the 19 county)
- Curia: administrative and labour board
- Case loads: 14-17 000/year
- Currently: 129 administrative law judges
- Law: civil procedure law
- 2018: new administrative court system outside of the ordinary court system

## NEW SYSTEM – DRAFT

- administrative and labour courts – supreme administrative court (ASC) – Curia (ordinary court system); administrative Procedure Law
- Panel of three judges, exceptional cases: one judge
- Judge:
  - Current judges
  - External experts having 5 years of experience in the administration and the bar exam
- Regionalisation: NO 1st instance in each county capital
- Competence
  - ASC: most important cases (independent regulatory, autonomous administrative bodies, administrative activities of the Hungarian National Bank, electoral board)



## REASONS

- It is currently a separate court – the system is hybrid
- Regulation of procedural aspects is problematic: chapter of the civil procedural law is a transitory solution
- Appeals are dealt with by civil law judges, as there is not enough administrative law judge
- professionalism: less centralisation, more regionalisation
- More administrative law judge is needed as there is a huge case load
- It is considered as an achievement of the historical constitution



## CRITICS

### ○ Now

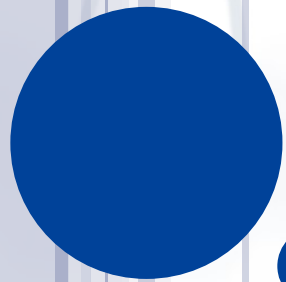
- courts are accesible: each county
- blacklog is decreasing
- unity in court practice is ensured due to the regional board meetings (virtual meeting)
- professional development is guaranteed

### ○ New system

- regionalisation puts courts far away from clients – access to justice?
- panel of 3 judges – more judges are needed, BUT!
- current administrative law judges cannot be reassigned outside of the ordinary court system
- new ones from the administration – independency?

## INSTEAD OF SUMMARY

- Is the reform really necessary or is it just another example of the Hungarian legislative voluntarism?
- Will common standards be met or will the new system be just another offspring of illiberalism made in Hungary?



**THANK YOU FOR YOUR ATTENTION!**