

## Conclusions of the summary report on the courts' jurisprudence in financial support-related civil and administrative cases

The basic aim of the jurisprudence-analysis was to examine the extent to which the courts' practice did, in light of the complex legal relationships and the fragmented legal regulation, allow for the enforcement of financial support-related claims, as well as to identify any such practice whose revision may be necessary.

Whether a lawsuit related to financial support is to be categorised as a civil or as an administrative case depends on the substantive-law regulation applicable to the given support scheme. A delineation can be made on the basis of the extent to which a concrete legal provision confers actual competence in respect of the given support scheme on an administrative authority. Competence must be clearly conferred under the law, via a designation of the first instance authority to proceed in the case. Competence is only ensured where it is clearly provided for under a particular law. Administrative competence cannot be conferred indirectly.

The existence of public-law elements in the legal relationship will not transform a decision on financial support into an administrative decision; only such lawsuits are administrative which fully comply with the criteria set forth in Chapter XX of the Code of Civil Procedure.

In case no administrative competence is expressly conferred by the law on the authority involved in the legal relationship, the legal relationship shall be categorised under Section 1(1) of the (former) Civil Code as civil law relationship, despite the existence of certain public law elements. In such cases the enforcement of financial support-related claims, in particular of claims related to the payment, reimbursement of the support or the enforcement of the securities or collaterals involved in the legal relationship, shall be governed by civil law and the proceedings shall be conducted by courts acting in civil cases. The existence of certain public law elements in the legal relationship, for example the holding, in respect of other tasks, by the grantor of the financial support of administrative powers or general control powers, shall not transform the legal relationship into administrative legal relationship, as administrative proceedings in a given case can only be conducted upon express statutory authorization to that effect.

In light of the findings of the summary report, the competence problem, in general, indicates the significance of second instance court decisions in cases when the lack of court competence is established at second instance. An erroneous second instance court position may frustrate the enforcement of a claim where the lack of competence is established by invoking another legal relationship, the separate conditions of which the given case, however, does not fulfill. Therefore the competence-related examination of a second instance court should not be limited to the examination of the framework of the given legal relationship, but should also clarify whether in the invoked legal relationship found to be applicable to the case by the second instance court, the conditions for the enforcement of the claims specified in the case at issue are actually fulfilled. Under the Fundamental Law such examination is, in fact, an express obligation of the courts. Under § 1 of Article N of the Fundamental Law, Hungary shall observe the principle of balanced, transparent and sustainable budget management, which principle the courts shall respect in performing their duties. Such cases involve a great

amount of public money which evidently affects the balance and sustainability of the budget. The same court obligation can also be inferred from Article 28 of the Fundamental Law, which provides that in the course of the application of law, courts shall interpret the text of legal regulations primarily in accordance with their purposes and with the Fundamental Law. In such cases the teleological interpretation of the purpose requires from the courts to reimburse to the State any unlawfully used financial support.