Conclusions of the summary report on jurisprudence related to the scope of the defendant authority's defense in administrative proceedings

Pursuant to the provisions of Articles 29-30 of Act CLXI of 2011 on the Organization and Administration of Courts (Hungarian abbreviation: Bszi), the President of the Curia considered it appropriate to examine case law on administrative proceedings and, in this framework, he defined the subject in the analytical program for 2021: "The scope of the defendant authority's defense in administrative proceedings." One of the reasons why the analysis was opportune was that Act I of 2017 on the Code of Administrative Procedure (Kp) entered into force on 1 January 2018, and compared to the previous legislation, it introduced significant changes in several areas; the practical experience of these changes could be analyzed after several years.

The aim of the analysis of case law was to establish that administrative lawsuits constituted a special category of lawsuits that were broadly and collectively referred to as civil litigation. One of their specific features was that they were predominantly preceded by single or multi-tier administrative proceedings, in which the relationship between the public authority and the client was characterized by subordination. Generally, the legality of a decision taken in these prior proceedings could be reviewed in an administrative lawsuit at the request of the client. However, in such proceedings, the authority that took the administrative decision was placed in the "party" position typical of civil litigation – that is, it became a co-defendant defending its own decision. Therefore, the analysis particularly aimed at examining and illustrating the specific consequences and requirements, as well as the procedural characteristics of a situation in which the authority ended up on the defendant's side.

The analysis summarized its findings in 10 chapters and presented the purpose, methodology, and legislative background of the inquiry, as well as the codification considerations of the Kp. Furthermore, it provided international and constitutional perspectives and placed heavy emphasis on the case law, examining the practices of those authorities which had a huge caseload and also describing the experience of multi-tier court proceedings. Overall, it was determined that, in most instances, the defendant's defense (the procedural acts or measures to be taken in this framework) was prompt, professional, and basically efficient. The defense statement perfectly fit the petition, responded to it, and did not move beyond the reasons of the administrative decision. The authority did not attempt to complete the decision's reasons, which might have been inadequate, in the defense statement. The same applied if submitting a motion for a legal remedy or responding to a motion for legal remedy that was submitted by the opposing party – in other words, a counterclaim and a comment – comprised the defendant's legal work (as a special type of defense). It was highly uncommon for a defendant's omission to result in delayed litigation or failure to decide on the merits of the case. If the defendant lost the case partially or fully, they usually took advantage of the legal remedies available for that specific case by law. Typically, they responded to the adverse party's appeal or petition for review and exploited the opportunity to submit a counterclaim or make

comments. The success rates for both first-instance court decisions and legal remedies were statistically significant.

The analysis also recorded occasional instances of particularly good or bad practices. In this context, it could be concluded that good practices were generally widespread, while bad practices were rare and could be linked to specific, individual cases or to particular types of cases. Members of the jurisprudence-analyzing working group firmly held that, after the initial difficulties caused by the new law, there had been a growing confidence in the application of the law and, in general, in the use of all procedural institutions, which was also true for the quality of the defendant's defense. In conclusion, the analysis put forward concrete suggestions and proposals to support the application of the law.