

Conclusions of the summary report on the quashing practice of the judicial review court in administrative cases

The President of the Curia of Hungary set up a jurisprudence-analysing working group to examine the quashing practice of the judicial review court in administrative cases. The working group included Curia justices, the administrative law heads and deputy heads of the country's six Regional Administrative and Labour Inter-court Divisions, a retired Curia head of panel with outstanding practical experiences, a first instance administrative judge and an academic expert as well.

The working group had to take it into consideration that a court decision might be quashed based on either procedural or substantive legal grounds. The working group concluded that the procedural grounds for quashing could be appropriately categorized, nevertheless, the substantive grounds for quashing were too diverse for a convenient categorization. With regard to the foregoing, the members of the working group focused their examination on only three substantive irregularities. Hence, the working group's topics of investigation were as follows:

Procedural issues:

1. an incorrect identification of the parties, failure to invite the intervener to join the proceedings
2. mistakes concerning the assessment of the right to be parties to administrative lawsuits (an excessively broad or narrow interpretation of whether a party is to be directly affected by the proceedings)
3. an erroneous identification of the statement of claims and mistakes on the prohibited extension thereof
4. errors originating from the court's failure to comply with its duty to provide information and the consequences thereof
5. the erroneous placing of the burden of proof on the parties in respect of a specific issue in the given procedural phase of a particular legal dispute
6. the maze of the taking of expert evidence (misidentification of the area of expertise, lack of competencies, assessment of the expert opinion, resolving the inconsistencies between different expert opinions)
7. reasons behind the incorrect establishment of facts, insufficient reasons given in the court's judgement
8. failure to comply with the Curia's guidelines and the reasons thereof

Substantive issues:

1. disregard of the decisions of the Constitutional Court of Hungary
2. disregard of the rulings of the European Court of Justice
3. disregard of the Curia's jurisprudence-harmonising instruments

The working group primarily examined court decisions delivered in the period between the years 2013 and 2016. Nevertheless, a couple of decisions rendered in 2017 and 2018 were also analysed. The decisions of the early period (2013-2014) were chosen to enable the working group to assess whether they had complied with the Curia's guidelines, while the examination of the 2017-2018 decisions was carried out to address certain interesting issues (for instance, the taking into account of the Constitutional Court's decision).

The jurisprudence-analysis aimed at safeguarding the fairness of court proceedings, drawing attention to the importance of complying with the relevant procedural rules and describing the typical errors revealed so far by the judicial review court's practice. All of the procedural irregularities examined have been of a substantial nature and have affected the merits of the case concerned. The working group's summary report was intended to assist administrative judges in departing from existing bad practices and in conducting orderly proceedings. In the jurisprudence-analysing working group's opinion, compliance with the provisions of the procedural codes by the courts in their proceedings is a precondition for the delivery of well-founded decisions: factual mistakes – even through an appropriate legal interpretation – lead to erroneous legal conclusions, opinions drafted by incompetent experts cannot provide a basis for correct court decisions, since such opinions deliver no suitable answers to deal with the specialised topic concerned, the courts' failure to take the Curia's jurisprudence-harmonising instruments, the guidelines of the Constitutional Court in the field of fundamental rights issues and the case-law of the European Court of Justice into due account leads to the erroneous interpretation of the relevant national and Community pieces of legislation.