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The Procedural Autonomy of Hungarian Administrative Justice as a Precondition of Effective Judicial Protection

Autonomia proceduralna węgierskiego sądownictwa administracyjnego jako przesłanka skutecznej ochrony sądowej

ABSTRACT

The article is aimed at showing the hesitant and slow developments whereby the Hungarian administrative justice should be approached to the dualistic model of administrative justice. After 40 years of almost total monism, and 25 years of transition, one decisive step was made with the promulgation of the Code of Administrative Court Procedure. The article investigates why its concept taking form in the declaration of the principle of autonomy of administrative court procedure rules is crucial for providing effective legal protection against administration in Hungary, and what safeguards the Code contains to foster this autonomy, and by this, the strengthening of a functional administrative justice.

Keywords: effective judicial protection; dualistic model of administrative justice; autonomy; Hungarian administrative justice; administrative court procedure rules

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INTRODUCTION

In Hungary, the creation of administrative justice after the fall of the Wall in 1989–1990, just as in the 19th century, was not an easy undertaking. In the legal-political and scientific discourse, the primary question was that of constitutional jurisdiction and the extrajudicial control mechanisms of the administration; no great importance was attached to administrative jurisdiction, although the Hungarian Constitutional Court already at the dawn of democracy obliged the legislature to create a constitutional framework for the judicial control of administrative decisions.[1] Because of the short interval given by the Constitutional Court for this enormous undertaking, the possibility of judicial review against administrative decisions was simply extended, but neither the organisation of administrative courts nor their procedure were redesigned. The strong connection to civil jurisdiction and civil procedure has been retained: the administrative court procedure was regarded to be a special civil procedure and civil judges were proceeding in administrative court cases. Consequently, the Hungarian solution of the 1990s could be labelled as adhering to the monistic model.[2] Until 1949, on the contrary, the administrative judiciary was following the dualistic model, as the Hungarian Royal Administrative Court was set up based on the Austrian system, but solutions from other countries also influenced the very singular system which was set up in 1896. Practically it was a mixture of the two archetypes of the dualistic model, seasoned with some peculiarities of the monistic model.

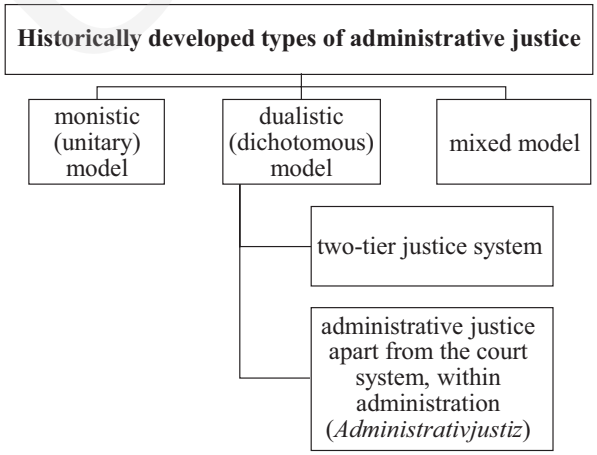

Fig. 1. Historically developed types of administrative justice

Source: own elaboration.

[1] Decision no. 32/1990 (XII. 22.) AB.

[2] For the models, e.g., see I. Stipta, *Die Geschichte der Verwaltungsgerichtsbarkeit in Ungarn und die internationalen Modelle*, "Journal on European History of Law" 2014, vol. 2.

A more precise typology which is not only focused on the historical development of administrative justice better serves the positioning of the current Hungarian solution. In addition to the organisational situation, other elements of independence also play an important role for this typology, so a partial separation, i.e. the creation of administrative courts at least on one instance, or even the mere separation of judicial bodies proceeding in administrative court procedures within the courts can be observed in several countries and serve as a characteristic of categorisation. Equally important is the aspect of procedural independence, the indication of which is the separation of procedural law, i.e. the existence of an act on administrative justice or a code of administrative court procedure. It also seems appropriate to take legal action for official liability claims – as a form of secondary judicial protection against public administration – into consideration. With the help of these aspects, we can set up a more diversified categorisation with several transitional phases between the monistic and the dualistic model, like "just not monistic", "halfway dualistic" or "almost dualistic".

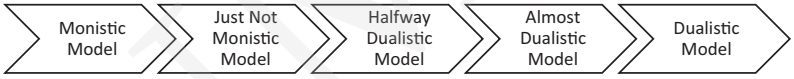

Fig. 2. Transitional phases between the monistic and the dualistic model

Source: own elaboration.

This typology takes better account of the tendencies in the field of administrative justice in Europe over the past few decades.[3] These can very briefly be summarized as the creation of independent administrative court procedure codes, the expansion of the possibility of judicial review as well as an organisational approximation of most national administrative jurisdictions to the German kind of dualistic system. In the new democracies both in Southern and later in Eastern Europe there was in the last three decades either a full separation of administrative justice from the ordinary court system, as with two instances in Poland, Bulgaria, Latvia and Croatia, and even with three instances (and also a separate fiscal justice) in Portugal and Ukraine. There are also differentiations in other judicial systems where administrative justice became only partially independent, like it happened at the lowest instance in Slovenia and Estonia, at the first and second instance in Spain and Lithuania and with a separate highest instance in the Czech Republic.

[3] K.F. Rozsnyai, *Current Tendencies of Judicial Review as Reflected in the New Hungarian Code of Administrative Court Procedure*, "Central European Public Administration Review" 2019, vol. 17(1).

THE SLOW PROGRESS OF HUNGARIAN ADMINISTRATIVE JUSTICE TOWARDS THE DUALIST MODEL

1. First step

In Hungary, the above-mentioned signs of independence were sporadically already present at the turn of the millennium. On the one hand, the category of administrative judges developed in the central Hungarian region,[4] where around 80% of administrative disputes arose. On the other hand, these judges practically had created some administrative procedural rules in their case law by reinterpreting the rules of the Hungarian Code of Civil Procedure (CPR). Although the idea of the creation of a code of administrative court procedure was introduced in the process of the recodification of the general rules of administrative procedure in 2003–2004 by science, it was not retained by the legislator. In 2005, parallel to the entry into force of the new Administrative Procedure Act, a few elements of the established case law were included in the regulation of administrative processes in Chapter XX of the previous Hungarian CPR, but no comprehensive reform took place.[5]

On the organisational side, since the establishment of courts requires a two--thirds majority, the question of the creation of administrative jurisdiction until 2010 could not be seriously raised due to political circumstances. The idea of an independent administrative justice was caught up in the course of the preparation of the new constitution in 2010–2011, but only led to the creation of so-called administrative and labour courts (ALCs) at the lowest level, whereby the administrative jurisdiction has not achieved any actual independence. The administrative jurisdiction has therefore not become an independent judicial branch.[6] Regarding the separation of the procedural regulations, the pivot came with the conceptual preparation of the new codification of civil procedure. The expert commission submitted a dual concept for administrative disputes where – albeit only as a minority opinion – the possibility of the separation of the administrative procedural rules from the Hungarian CPR already was mentioned. The newly appointed Minister of Justice, himself an academic proponent of administrative justice,[7] has taken up

[4] Budapest and Pest County, which is located around Budapest.

[5] We must also mention the creation of a non-litigious administrative court procedure for the review of orders and against the silence of administration with Act no. XVII of 2005.

[6] The ALCs were placed at the lowest level and have not been completely detached from ordinary courts: the administrative activities of the presidents of the ALCs were subject to the instructions of the president of the county court, who also made the most important judicial administrative decisions on the local courts and the ALC (announcement of judicial posts, decision on applications and finances, etc.). At the higher courts, judicial review continued to be granted through the ordinary courts.

[7] L. Trócsányi, *A közigazgatási bíráskodás egyes elméleti és gyakorlati kérdései*, Budapest 1990.

this suggestion, so at the beginning of 2015, the government followed his proposal and ordered the codification of administrative court procedure.

2. The aims of the codification

2.1. Arriving at the dualistic model

Taking up again the perspective of models, the concept of the codification of administrative court procedure, submitted to the Government by the Minister of Justice in May 2015, contained three steps in the direction of the dualistic model.[8] In addition to our main theme, the independent administrative procedural law, the need to create a second-instance administrative court and thus the expansion of the organisation of administrative justice was also formulated. The concept also raised the possibility of opening administrative court procedures to liability claims for damage caused while exercising administrative powers. However, finally promulgated on 1 March as Act no. I of 2017 – Code of Administrative Court Procedure[9] (CACP) could only take one full step forward, that of the autonomy of administrative court procedure.

We can report two additional "half steps". Albeit claims arising from public law liability have not been transferred to the competence of administrative courts, some procedural changes were made giving a binding force to administrative court judgements regarding the lawfulness of administrative action in civil procedures.

Though only one step ahead, the CACP is the most important step in creating distance from civil justice, the basis for the organic development and optimal performance of administrative justice. It has far more importance than organisational independence. The principle of the autonomy of administrative procedural law, which is underlined through both the mere existence of the CACP and its Section 6, is to a certain extent the focal point of the development of the Hungarian administrative justice: it reflects both the results of the organic development of the last decades and those of the codification.

2.2. Ensuring effective judicial review

If we leave this perspective of models, we arrive back at the most important aim of administrative justice throughout Europe,[10] which was also at the heart of

[8] Decision no. 1011/2015. of the Hungarian Government of 22 January 2015.

[9] English translation of the CACP at: https://njt.hu/translation/J2017T0001P_20180101_FIN.pdf [access: 30.12.2020].

[10] K.-P. Sommermann, *Entwicklungsperspektiven der Verwaltungsgerichtsbarkeit in Europa*, "Die Öffentliche Verwaltung" 2019, vol. 72(8), pp. 293–305.

all endeavours of the codification of the CACP, namely to ensure effective judicial review. This endeavour had four directions. On the one hand, seamless protection was to be created by the widening of the notion of administrative disputes.[11] Secondly, protection should also become more effective through a more realistic concept of equality of arms: it had to be taken into account in the detailed set of regulations that in administrative disputes, as a rule, the parties are not of the same rank. Thirdly, the effectiveness also had a time dimension. Providing timely judicial protection not only in the court procedure but also before and after, so the CACP expanded the possibilities of interim measures,[12] and vested the judges with powers to sanction the failure of the administration to enforce administrative judgements.[13] These goals were joined by the fourth aim of professionalisation, as only judges meeting high professional standards are apt to interpret the rules of administrative (procedural) law properly, which is crucial for activating the proper functions of administrative justice. In the field of court organisation, due to the lack of a qualified parliamentary majority[14] as a functional replacement, the CACP has also introduced some procedural changes to concentrate administrative judges on less fora and thus create the possibility of specialisation.[15]

[11] I. Hoffman, *Application of Administrative Law in the Time of Reforms in the Light of the Scope of Judicial Review in Hungary*, "Studia Iuridica Lublinensia" 2020, vol. 29(3).

[12] Chapter IX Sections 50 to 55 CACP.

[13] Chapter XXVI Sections 152 and 153 CACP. In detail, see K.F. Rozsnyai, I. Hoffman, *New Hungarian Institutions against Administrative Silence: Friends or Foes of the Parties?*, "Studia Iuridica Lublinensia" 2020, vol. 29(1), pp. 109–127.

[14] The Act on the organisation and administration of justice is a so-called cardinal law, the amendment and removal of which requires a two-thirds majority of the MPs present. For this category, see A. Jakab, P. Sonnevend, *Continuity with Deficiencies: The New Hungarian Basic Law*, "European Constitutional Law Review" 2013, vol. 9(1), p. 102.

[15] On the one hand, eight courts were given regional jurisdiction, with a few exceptions these ALCs were generally responsible for administrative matters in the first instance from 2018. The other thirteen ALCs only dealt with cases from social administration and civil service law, the decisive part of the administrative matters belonged to the responsibility of the eight selected ALCs. On the other hand, the Metropolitan Court was granted exclusive competence for appeals against the decisions of the ALCs, as well as the authority for first instance proceedings in special administrative matters, especially decisions of autonomous administrative bodies (regulatory authorities as well as chambers and other non-territorial self-government bodies). The Curia had competences in all three instances: in addition to the revisions, it was responsible for appeals against the decisions of the Metropolitan Court, and also retained its first-instance powers in the electoral jurisdiction and for municipal judicial review procedures. This differentiated system of competences was abolished at the end of March 2020, as well as the ALCs. Despite their dissolution, however, the concept of regionalisation elaborated in the CACP remains, as eight selected county courts will proceed with the same territorial jurisdiction as the eight selected ALCs. With the omission of the "middle" instance, the second instance will now always be the Curia (as well as the revision instance).

2.3. Functions of administrative justice to be activated

Undoubtedly, the most important function is providing subjective legal protection. Due to the constitutional requirements of separation of powers, the function of objective administrative control, which may also be necessary in the absence of the need for subjective legal protection, has far greater importance than in civil proceedings because of the special needs to safeguard public interests or the principle of legality flowing from the constitutional concept of checks and balances.[16] The previous proximity to the Hungarian CPR and the "tradition" resulting from this proximity, however, did not allow for the reshaping of the foundations of administrative disputes completely giving more weight to the investigation principle. Objective legal protection thus continues to be ensured by a matrix of various rights and duties of the judge and the possibility of bringing an action without personal concern by the so-called privileged plaintiffs.

On the one hand, the principle of investigation is applied in the most important places within the framework of the law.[17] Thus, it is still possible to order evidence *ex officio* in the case of the most serious errors and in the case of the weakest plaintiffs.[18] On the other hand, the judge must observe certain errors *ex officio*.[19] Also, the CACP prescribes the reversal of the burden of proof in cases where the previous administrative procedure was initiated *ex officio* and the plaintiff disputes the facts established there.[20] An important novelty is that now the judge, if he grants a claim, must *ex officio* oblige the administration to eliminate the consequences of its unlawful administrative action.[21] This possibility also flows from the constitutional duty of legality control.

If the judge has ordered evidence or proceedings *ex officio*, but the proceedings would have to be discontinued afterward due to withdrawal of the action or lack of legal succession, the judge is also free, if he considers it necessary to continue the proceedings for reasons of public welfare, to notify the public prosecutor instead of discontinuing the proceedings. The judge shall decide on this at his discretion, and the public prosecutor shall also decide on joining the proceedings at his discretion. If he does not intervene, the proceedings must be discontinued.[22]

These rules, as well as the relaxation of the binding nature of the lawsuit through its reformulation[23] and the shift in the direction of substantive control through the em-

[16] Maintaining this dual protection is the most important task of the court (Article 2 (1) CACP).
[17] Anchored as a rule in Article 2 (5) CACP.
[18] Article 78 (5) CACP.
[19] Article 85 CACP.
[20] Article 79 CACP.
[21] Article 89 (3) CACP.
[22] Article 81 (4) CACP.
[23] Article 85 (1) CACP.

phasis on the judicial task of substantive litigation according to the German model,[24] are intended to provide greater objective legal protection, i.e. the control of legality. Another direction of objective legal protection continues to be the possibility of filing suit without being personally affected by the so-called privileged plaintiffs.[25]

The CACP provides for the creation of procedural equality of arms, which the introductory provisions also emphasize as a principle, with many rules that are also related to legality control. For example, the judge himself must correct the errors in the designation of the defendant due to the legal regulation of jurisdiction, and also the changes in the person of the defendant due to the reorganization of the administrative organization system must not fall to the burden of the plaintiff.[26]

In addition to these two basic functions, there are also two other, genuinely *sui generis* tasks of administrative justice, unknown in civil justice: on the one hand, the stabilisation of administrative decisions, as these can only gain *res judicata* effect through court judgements. *Res judicata* serves not only to stabilize individual administrative decisions by rejecting complaints, but also to correct the performance of tasks by administrative bodies in the event of illegality. As a result, the administrative judiciary takes on a special role in the control of administrative law enforcement activities. On the other hand, the judgements of the administrative courts are issued *inter partes*, but since they generally concern the future administrative action of the administrative body in similar matters, they have a regulatory function on the future administrative action of not only the defendant organ, but also its super- and/or subordinate bodies.

Finally, the last function which is also inherent in both civil and criminal jurisdictions, but is not as intensive as in administrative law, since civil and criminal justice have been doing this for a much longer period of time, with the result of extensive codes and finely consolidated doctrine: the development (or rather the maintenance of the continuous development) of administrative law.[27] The job administrative judges have in developing the administrative legal doctrine is really challenging, since it is often simply a one-stakeholder mission. Legislation in administrative law is typically sectoral and only focused on the issues of the given sector. Thus, it is the case law of administrative courts that must deal with general questions left aside by the legislator, as well as with novelties. To enhance this function, the CACP creates several notions providing margins of appreciation for judges.[28]

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[24] Article 71 (2) CACP.

[25] Article 17 CACP.

[26] Article 25 CACP.

[27] E. Schmidt-Assmann, *Aufgaben- und Funktionswandel der Verwaltungsgerichtsbarkeit vor dem Hintergrund der Verwaltungsrechtsentwicklung*, "Verwaltungsblätter für Baden-Württemberg" 2000, vol. 2, pp. 45–46.

[28] A. Kovács, *A Kúria megváltozott szerepköre a közigazgatási perrendtartás rendszerében*, "Jogtudományi Közlöny" 2017, vol. 72(9), pp. 403–404.

PROCEDURAL AUTONOMY OF ADMINISTRATIVE JUSTICE

1. Why does procedural autonomy matter?

To let these functions fully play their role and ensure more effective legal protection, it was essential to create the necessary distance from the rules of civil procedure. This resulted in the development of the principle of the autonomy of administrative procedural law. Until 2017, the CPR, like the prevailing opinion of judges, reflected the view that the administrative process was just a special civil process. This prevented the functional development of administrative court case law. Between 1991 and 2016 the administrative judiciary has completely reinterpreted an enormous number of Hungarian CPR rules for functional application in the administrative process. Nevertheless, there were still many uncertainties in the case law, especially regarding the application of the general part of the Hungarian CPR. Judges had viewed the specific rules often not as being supplementary to the general rules, but as exclusive which often resulted in a restrictive interpretation.[29]

These historically grown peculiarities led to the formulation of the principle of autonomy according to which the provisions of the Hungarian CPR are only to be applied in administrative disputes where the CACP is explicitly referred to and only in accordance with its rules and principles.[30] Why did the legislator not opt for a complete set of rules where there is no need of lending any regulations from the CPR? This had practical as well as theoretical obstacles. On the one hand, there is the requirement of norm-economy hindering the unnecessary duplication of rules of the same legal institutions, which does not only make such an undertaking pointless, but would also carry the risk of violating legal certainty. On the other hand, the new Hungarian CPR was codified in parallel with the CACP, and the latter was codified at such a strenuous pace that there was not even enough time to work out the specific rules of the administrative court procedures – there would have been no time for the codification of the non-specific rules, as there were no rules "to be borrowed" at that moment of time, which could have eradicated the jeopardy of the parallel regulation of common procedural institutions.

It was also not possible to take another (easier) way by stating that the questions not regulated in the CACP shall be governed by the CPR. The purpose of eliminating the traditional dominance of civil procedural rules over the specific rules of

[29] For example, the dominant view was that administrative judges have no authority to issue interim orders, as these were not mentioned in Section XX of the Hungarian CPR on administrative court procedures, which regulated the suspension of enforcement as a means of interim legal protection. In the last years before the CACP, junior judges had begun to expand the notion of the suspension of enforcement partly *contra legem* to counterbalance the lack of the interim order and so evade the restrictive interpretation.

[30] Section 6 CACP.

the administrative process did not allow for this option. As already mentioned, the administrative judges were used to this situation of subsidiarity of the general part of the Hungarian CPR regarding the application of the rules of administrative procedure and would have continued to maintain this tradition. The new, peculiar rules of the CACP would thus have been embedded in a dysfunctional framework. It was also important to emphasize that the CACP is on an equal footing with the Hungarian CPR.

From the point of view of the CACP, the relationship between the two procedural rules changed even more. One such aspect is that the CACP itself now determines which Hungarian CPR rules are to be applied in the administrative process and indirectly also, how these rules must be interpreted in administrative disputes. The possibility of different interpretations of the Hungarian CPR in civil and administrative jurisdiction also stresses this equality in a previously inconceivable manner.

2. Some safeguards of procedural autonomy

Of course, equality does not come easy after so many years of subordination. Given these circumstances, it is no wonder that the legislator deemed it necessary to provide for further safeguards to protect the autonomy of not just administrative procedural law but administrative justice itself. It is mainly the *res judicata* effect of administrative court decisions, which seemed to be apt to prevent the predominance of civil courts in certain relations.

The need for these safeguards is stressed by the Hungarian CPR's regulation of the possibility of recourse to legal action. Whereas the previous Hungarian CPR from 1952 determined its scope with an objective: "to ensure an unbiased judicial forum for resolving the legal disputes of natural and other persons relating to their property and personal rights",[31] the new Hungarian CPR now determines its scope of application without specifying the nature of underlying legal relationships in the legal text and states that the CPR "shall apply to court procedures, if taking the judicial path is allowed by law and no Act requires the application of other rules".[32] This could be interpreted in such a way that the Hungarian CPR takes no notice of the fact that there are also other general rules in the legal system regulating access to justice, but as this seems quite unreasonable, it is more probable that the legislator only wanted to make sure that no disputes remain without the possibility of recourse to legal action.[33]

[31] Old Hungarian CPR (Act no. III of 1952), Section 1.

[32] Section 1 (1) of the new CPR. There isn't any reference made to the nature of the legal relationships in the legal text, but only in the Preamble of the New Hungarian CPR: "with a view to resolving civil law disputes following the principle of fair trial and to enforcing substantive rights effectively".

[33] The need for safeguards of autonomy is even more evident in view of some features of scientific discourse. See, e.g., the IJOTEN Internet Encyclopaedia of Law which lists the topic of "Administrative Court Procedure" under the heading "Civil Procedure" (https://ijoten.hu/szocikk/

Anyway, the regulations on the possibility of recourse to legal action as codified through the scope of the two acts on court procedure increase the risk of conflicts of jurisdiction, which is still further enhanced by the fact that several disputes that previously had fallen into the competence of civil courts were assigned to administrative courts with the entry into force of the CACP, like disputes in connection with professional chambers, administrative contracts or public service disputes.[34]

So, if the administrative court determines its material competence in a matter, this decision is binding for the civil court. Accordingly, no positive conflicts of jurisdiction are possible.[35] The competence for deciding on negative conflicts of material jurisdiction belongs to the Curia, the safeguard here is that the Curia is proceeding in a mixed panel of five where the majority of the members are from the administrative branch.[36]

Liability claims for damage caused while exercising administrative powers had not been transferred under administrative justice. The half-step in the direction of the dualistic model already mentioned was to extend the *res judicata* effect of administrative court judgements to these disputes. Thus, the admissibility requirement of a state liability claim is now that the administrative court (of course if judicial review of the administrative action is possible) had already reviewed the contested administrative action. This rule does not come alone, its twin rule is, that the civil court shall be bound by a final and binding decision adopted by an administrative court.[37] Latter flows from a substantive rule of the Civil Code, which only makes the claim admissible if the violation of the law could not be averted with legal remedies under administrative law.[38] At the same time, this special *res judicata* effect is also a legislative response to the doctrine of "branch-of-law-specific illegality" elaborated in civil case-law allowing the civil court to autonomously decide on

kozigazgatasi-per, access: 30.12.2020), or the textbook of the Faculty of Law of Pázmány Péter Catholic University, partly written by scholars of civil procedure, where not a single word is dedicated to the special principles and functions of administrative court procedure, instead the textbook contains almost as a starting point a detailed introduction to the basic features of civil procedure – Í.E. Horváth, A. Lapsánszky, Z. Wopera, *Közigazgatási perjog*, Budapest 2019.

[34] These procedures had not been manageable by Chapter XX of the previous CPR, as they had neither been actions for annulation, nor had the underlying legal relationship been based on public authority or on subordination.

[35] Section 11 CACP and, with the same wording, Section 24 (3) of the new CPR.

[36] Section 15 (4) CACP: "If the conflict of material jurisdiction arises between an administrative court and another court, the Curia shall decide, sitting in a five-member panel, on the designation. The chair and two members of the panel shall be administrative judges, and the other two members shall be judges specialised in the division affected by the dispute".

[37] Section 246 (4) of the new CPR.

[38] Section 6:548 (1) of the Hungarian Civil Code: "Liability may be established for damage caused in the course of exercising administrative powers if the damage has been caused by exercising public authority or by failing to exercise it, and the damage could not be averted by an ordinary legal remedy or an administrative court action".

the legality of the contested administrative act according to civil law, and not to administrative law, nor taking into consideration the judgement of an administrative court having reviewed the action already.

This construction hopefully will eliminate the divergence of the civil and administrative courts' case-law deciding on the legality of administrative action mostly connected to liability claims for damage caused while exercising administrative powers. Unfortunately, the problem of the consecutiveness and thus the excessive duration of proceedings are not tackled by this solution which could have only been solved by transferring the material competence for state liability claims under administrative justice.

3. Possible future synergies

The principle of autonomy of administrative procedural law, with all the other safeguards designed to prevent a backsliding to subordination, is kind of an assistance in attaining the autonomy of the administrative judiciary. After more than half a century of a symbiosis, distancing administrative justice from civil justice is not an easy and certainly not a short-term project, but it is indispensable for a functional administrative jurisdiction.

Keeping distance does by far not mean that the two jurisdictions should be strictly separated. The separation is only a basis for a new type of dialogue between civil and administrative justice. The CACP has also provided for this, not only in the regulation of conflicts of jurisdiction, but also with the possibility of forming mixed panels at the Curia. These changes, which are accepted somewhat hesitantly by some judges, are opportunities for creating dialogue based on independence and equality. The synergies that result from the cooperation and joint problem solving mean mutual enrichment and impetus for the further development of the case-law of both jurisdictions. We only refer here to the gains to be hoped for regarding legal doctrine, like in the realm of administrative contracts or of legal personality under public law, not to even mention questions of state liability.

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Legal acts

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Act no. CXXX of 2016 – (New) Code of Civil Procedure Rules.
Act no. I of 2017 – Code of Administrative Court Procedure.

ABSTRAKT

Artykuł ma na celu ukazanie niepewnych i powolnych tendencji, w efekcie których węgierski wymiar sprawiedliwości w sprawach administracyjnych powinien zbliżać się do dualistycznego modelu sądownictwa administracyjnego. Po 40 latach niemal całkowitego monizmu i po 25 latach transformacji zrobiono jeden decydujący krok poprzez ogłoszenie Kodeksu postępowania przed sądami administracyjnymi. W opracowaniu przeanalizowano, dlaczego leżąca u podstaw Kodeksu deklaracja zasady autonomii przepisów postępowania sądowoadministracyjnego jest kluczową koncepcją dla zapewnienia skutecznej ochrony prawnej przed administracją na Węgrzech oraz jakie Kodeks zawiera zabezpieczenia wspierające tę autonomię, a tym samym wzmacnia sądownictwo administracyjne w sensie funkcjonalnym.

Słowa kluczowe: skuteczna ochrona sądowa; dualistyczny model sądownictwa administracyjnego; autonomia; węgierskie sądownictwo administracyjne; przepisy postępowania sądowoadministracyjnego