

# ADMINISTRATIVE ADJUDICATION IN THE HISTORY OF THE DEVELOPMENT OF THE COUNTRY

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Administrative adjudication is not unknown in Hungarian history. From the end of the 19th century until the middle of the 20th century, administrative courts, separate from the ordinary courts, exercised judicial control over the public administration. After the socialist takeover, the administrative courts were abolished and judicial control was relegated to the background, with judicial review, limited to an extremely narrow circle, being carried out by the ordinary courts. After the change of regime, with the rule of law coming to the fore, judicial redress became more prominent again and the idea of setting up administrative courts was again raised, but concrete steps in this direction had to wait until the mid-2010s. After lengthy legislative and constitutional work, the constitutional and legislative basis for the establishment of administrative courts was created by 2018, but as a result of EU and international pressure, they were not established.

## 1. Introduction

Judicial control over public administration is a conceptual element of the modern rule of law, a fundamental constitutional right of citizens enshrined in the Fundamental Law. Judicial control ensures the protection of the individual against the administration. The principle of separation of powers and the rule of law also requires the possibility of judicial remedy against alleged or actual wrongful acts or omissions by public authorities, thus ensuring effective legal protection for citizens. Whether this is done within the ordinary court system or by specialized courts is a matter for the legislator and the constitutional legislator to decide. In Hungary, there have been examples of both types of organization in the course of history. At the end of the 19th century, the legislator voted in favour of special courts, which were abolished after the socialist takeover and the ordinary court system took over the task of administrative adjudication. After the regime change, the idea of establishing special courts was raised again, but the first step in this direction, namely the establishment of administrative and labour courts, had to wait until 2013. The process led to the fact that the 7th Amendment to the Fundamental Law of Hungary (hereinafter: Fundamental Law) established at a constitutional level that in Hungary the ordinary and administrative courts are courts. All the legislation necessary for the establishment of the administrative courts was enacted, but at the last minute, the constitutional legislator reverted to the administrative judiciary integrated into the ordinary court system.

This paper aims to use descriptive and analytical methods to show how judicial control over administrative decisions was exercised in Hungary in different periods and how the organizational model of



administrative adjudication has evolved over the course of history. Finally, I will briefly analyse why in 2019 the constitutional legislator finally backed down from setting up a separate administrative court system.

## 2. The situation of administrative courts in Hungary until 1950

The establishment of the Hungarian administrative judiciary dates back to the end of the 19th century. Act XLIII of 1883 established the Financial Administrative Court, modelled on the Austrian model, which was a single-tier public court with national jurisdiction and competence to hear appeals against decisions of individual tax and duty authorities.<sup>1</sup> This court was replaced by the Royal Hungarian Administrative Court established by Act XXVI of 1896. The Royal Administrative Court of Hungary was organized as a single, independent, special court at the same level as the then-supreme court, the Curia. The judges were appointed by appointment by the Head of State.<sup>2</sup> When the Royal Administrative Court of Hungary was set up, the idea of a two-tier administrative court was raised, but was eventually abandoned due to concerns about the possibility. However, the need for a two-tier system arose again at the time of the enactment of Act XVI of 1933, which limited the appeal to a single instance on the assumption that it would be supplemented by the lower administrative courts.<sup>3</sup>

The Royal Administrative Court of Hungary was divided into two departments: the Financial Department, which carried out the work of the Financial Administrative Court, and the General Department. The two divisions were divided into several councils, consisting of four members in addition to the President. Of the four members, only half had judicial qualifications.<sup>4</sup> The cases falling within the jurisdiction of the Royal Administrative Court of Hungary were established in a taxative manner in Article XXVI of the Act of 1896. According to the perception of the time, this court also performed the functions of a constitutional court, as its jurisdiction extended to the defense of local governments against decisions of the state administration.<sup>5</sup> He had broad discretionary powers over contested decisions, as he could also rule reformatories, cassatorius, and meritorious.<sup>6</sup> Special rules of administrative procedure were also established for the operation of the Royal Administrative Court of Hungary, which laid down the procedure for bringing administrative disputes before the court, the procedure of administrative proceedings, the acts of the court,

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<sup>1</sup> PATYI András: *A bírói kontroll kihívásai*. In: Jog, Állam, Politika - Jog- és Politikatudományi Folyóirat, 2011. Különszám, pp 54.

<sup>2</sup> PATYI András: *A magyar közigazgatási bíráskodás elmélete és története*, Budapest, 2019, Dialóg Campus Kiadó, pp 21.

<sup>3</sup> MAGYARY Zoltán: *Magyar Közigazgatás – A közigazgatás szerepe a XX. sz. államában a magyar közigazgatás szervezete működése és jogi rendje*, Budapest, 1942, Királyi Magyar Egyetemi Nyomda, pp 629.

<sup>4</sup> MAGYARY: *ibid* pp. 629.

<sup>5</sup> KÜPPER, Herbert: *Magyarország átalakuló közigazgatási bíráskodása*, in: MTA Law Working Papers, 2014. év 59. szám, pp. 3.

<sup>6</sup> PATYI: *ibid* pp. 54.

and the persons involved in the proceedings, the scope of these acts and the legal consequences of these acts.<sup>7</sup> The divisions of the Royal Administrative Court of Hungary could issue decisions on matters of principle which came before them, which the councils of the division were obliged to follow until they were changed by another division agreement. In addition, decisions of so-called case law and decisions of principle were also known.<sup>8</sup> In this way, the judiciary has also developed law.

The subject of the administrative lawsuit was a public law dispute, in which the court examined whether a decision or action by a public authority had caused harm to the legal entity concerned. The defendant was always a public authority, which meant that the rules of civil procedure could not be applied in their entirety. This need for regulation led to the development of a mixed procedural system, akin to both civil and criminal litigation.<sup>9</sup> The procedure of the Royal Administrative Court of Hungary was regulated as a special administrative procedure by Act XXVI of 1896. As there was no legislation in force regulating administrative procedure in general, the rules of administrative court procedure were drawn from the rules of the Code of Civil Procedure.<sup>10</sup>

The Royal Administrative Court of Hungary acted only on the initiative of the injured party. The application that initiated the proceedings was the complaint. Two forms of complaint were distinguished: the private complaint and the official complaint. The complaint could be based on a right infringed by a decision or action of an administrative authority. A private complaint could be made by any party who had an interest in the harm caused by the public authority. If only one of several interested parties complained, the other interested parties were generally not affected and the administrative decision became final against them. The exception to this was where the issue could only be decided uniformly for all interested parties. A private complaint could be lodged both to redress harm to rights and interests and to protect private or public interests.<sup>11</sup>

An official complaint against the action and decision of the chief magistrate, the magistrate and the administrative commission, the deputy magistrate, the director of finance, the superintendent of education, the administrative commission in the administrative branch they represent, and the rapporteur of the tax clearance commission against the decision of the tax clearance commission. The complaint could be lodged within 15 days. The complaint could also include facts or evidence that were not raised in the previous administrative procedure.<sup>12</sup>

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<sup>7</sup> KMETY Károly: *A magyar közigazgatási jog kézikönyve. Ötödik kiadás*, Budapest, 1907, Politzer Féle Könyvkiadó Vállalat, pp. 220.

<sup>8</sup> MAGYARY: *ibid* pp. 630.

<sup>9</sup> BOÉR Elek: *Magyar Közigazgatási Jog. Általános rész*, Kolozsvár, 1908, Stief Jenő és Társa Kiadó, pp. 136.

<sup>10</sup> MAGYARY: *ibid* pp. 631.

<sup>11</sup> PATYI András – VARGA Zs. András: *A közigazgatási eljárásjog alapjai és alapelvei*, Budapest-Pécs, 2019, Dialóg Campus Kiadó, pp. 101.

<sup>12</sup> MAGYARY: *ibid* pp. 631.

In the administrative court procedure, in addition to the trial principle, the investigative principle has also become very important. The administrative court had the right to involve persons it considered interested in the administrative proceedings and could take measures of its motion to clarify the facts, and was even obliged to clarify the facts. To this end, it could summon not only witnesses and experts but also the parties, on the pain of a fine. The court was not bound by the parties' requests for evidence. The administrative procedure was not simply a continuation of the previous administrative procedure, but even a reopening of it, since the case could be placed on a completely new factual basis, both in the complaint and in the defence of the authority and the 'defense'. The procedural rules transformed the Royal Administrative Court of Hungary from a simple review or annulment forum into a genuine appellate forum.<sup>13</sup>

It is important to mention that in 1907 the Court of Jurisdiction was established to resolve conflicts arising within the asymmetrical bipolar court system. The Court of Jurisdiction was composed of the President of the Curia the President of the Royal Hungarian Administrative Court and 8-8 judges of the latter, and it adjudicated jurisdictional disputes between the courts and the administrative bodies, as well as between the ordinary courts and the Royal Hungarian Administrative Court.<sup>14</sup>

After the end of the Second World War, the socialist takeover began to reduce the administrative judiciary, which eventually led to the abolition of the Royal Hungarian Administrative Court and the Court of Appeal in 1949. The administrative courts were considered to be a typical institution of the bourgeoisie since their existence was based on the principle of separation of powers and the division of state power. The Royal Administrative Court of Hungary was replaced by the Arbitration Committee for Remuneration and Finance, and the Court of Appeal was replaced by the Arbitration Committee for the Court of Appeal. The Arbitration Committees were quasi-judicial bodies. The Financial and Remuneration Arbitration Committees were under the supervision of the Minister of Finance, but the chairman of the arbitration committee could only be a judge. The Finance and Remuneration Arbitration Committees were not long-lived, as they were abolished in 1950 with the establishment of the Council. The Arbitration Committee for Appeals was a joint committee, chaired by the Deputy Minister of Justice and composed of delegates from the Supreme Court and the main High Courts. The Appeals Committee was dissolved under Act II of 1954, with the establishment of the new judicial organization.<sup>15</sup> After that, administrative cases were heard by the ordinary courts.

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<sup>13</sup> *Ibidem* pp. 102.

<sup>14</sup> KÜPPER: *ibid* pp. 3-4.

<sup>15</sup> BERÉNYI Sándor (eds): *Államigazgatási jog – Általános rész*, Budapest, 1975, BM Tanulmányi és Propaganda Csoportfőnökség, pp. 452-453.

The competent district court had jurisdiction to hear the action, applying the rules of the Civil Procedure Act. The action had to be brought against the administrative body which had taken the contested decision. The action could be brought before the body which issued the decision at the first instance or before the competent district court within 30 days of the notification of the decision challenged by the action.<sup>16</sup> The range of cases that can be challenged in judicial review, and the scope of judicial review, have varied over the years.

Act IV of 1957 on the General Rules of State Administrative Procedure (hereinafter: Act IV of 1957) only allowed recourse to the courts in a specific category of cases. An action could be brought only if expressly permitted by law, decree-law, or decree of the Council of Ministers. In addition, an action could only be brought if the right of appeal in the case had already been exhausted. The court action was therefore an extraordinary remedy. In addition, the court could not, as a rule, change the decision of the administrative body, but could only annul it and order the administrative body to conduct new proceedings. The right to alter the decision was conferred on the court only by express provision of law. The administrative body was obliged to act again based on the court's decision and to take a new decision. Once the court had given its decision, *res judicata* applied, i.e. the same facts and the same case could not be reopened.<sup>17</sup>

Under the early system of Act I of 1981 amending and consolidating Act IV of 1957 (hereinafter: Ae.), judicial review could take two forms. In one, the court acted on an express application by the client for judicial review (direct judicial review). This request by a party for a remedy triggered a state administrative remedy, irrespective of the fact that the remedy was ultimately decided by a court rather than a state administrative body. In this case, the court was entitled and obliged to review the administrative decision directly based on the party's application for judicial review in cases where judicial review was expressly permitted by law. In the case of indirect judicial review, the court did not act based on the party's application for judicial review but entered into the review of the administrative decision to decide the case pending before it. In this case, the client did not have the right to apply for judicial review but had the right to appeal against the decision taken in the judicial review. The direct object of the indirect review was therefore not the administrative decision, but without reviewing it, the court could not make a well-founded decision on the case pending before it. What distinguished these two types of judicial review was the case where the proceedings in a particular type of case were conducted by a public administration, but its power to decide the case was limited and the remaining question was a matter for the court. In this case, a judicial procedure was attached to an administrative case but did not constitute a judicial review. A similar situation existed where a public administration acted in the first instance but the court ruled in the next forum. Such cases

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<sup>16</sup> *Ibidem* pp. 225.

<sup>17</sup> *Ibidem* pp. 218-224.

were cases concerning the protection of property. In these cases, the client and the public administration were not the two parties to the litigation, so these cases did not fall into any of the categories of judicial review.<sup>18</sup>

Initially, the General Tax Code defined the scope of cases in which ordinary courts could review decisions of public administrative authorities using a limited general clause. The MT Decree No. 63/1981 (XII. 5) of 5 December 1981 on administrative decisions reviewable by the courts (hereinafter: MT Decree), which was issued to implement the General Law, applied a positive enumeration method. The general clause in the General Decree would have allowed judicial review in the vast majority of cases, but the MT Decree limited it to cases in which judicial review was already allowed under the General Decree. After 1981, the number of cases that could be challenged before the courts continued to increase, but it was only after the change of regime that the right to appeal to the courts became general. Judicial review could still only be requested if the client had exhausted his right of appeal or if an appeal was excluded in principle. So judicial review was an extraordinary remedy. Judicial review was only for the law, i.e. the court could only correct administrative decisions that were in breach of the law. In general, it did not have full jurisdiction, because, in most types of cases, it could only make a cassation decision. The court only had reformatory decision-making powers in a few types of cases. As was the case under the rules in force at the time of the St., the state administration was bound by the decision of the court and *res iudicata* was established by a final court decision. The rules governing the procedure of the court were contained in Chapter XX of Act III of 1952 on the Code of Civil Procedure.<sup>19</sup>

### 3. The situation of the administrative courts in Hungary after the regime change

After the change of regime, the amendment of the Constitution by Act XXXI of 1989 created the constitutional basis for judicial review of administrative decisions, with Article 50 (2) of the Constitution giving the courts the power to review administrative decisions, and Article 57 (5) of the Constitution making it a subjective right of the individual to appeal to the courts against administrative decisions. These provisions of the Constitution, however, did not specify at all what kind or which court, in what procedure, what decisions, and from what point of view, was entitled or obliged to review.<sup>20</sup> Since the possibility of judicial review of administrative decisions was not generally guaranteed even after the amendment of the Constitution, the Constitutional Court annulled the Constitutional Act of the Hungarian Constitutional Court (AB) No. Article 72 (1) of the Act and the MT Decree. It also found that there was an

<sup>18</sup> *Ibidem* pp. 732-733

<sup>19</sup> MADARÁSZ Tibor: *A magyar államigazgatási jog alapjai*. Budapest, 1995, Nemzeti Tankönyvkiadó, pp. 522.

<sup>20</sup> PATYI András: *A magyar közigazgatási bíráskodás elmélete és története* *ibid* pp. 172.

unconstitutionality of omission due to the failure to legislate on the judicial review of administrative decisions, and therefore called on the Government to submit to Parliament a bill regulating the judicial review of administrative decisions by the Constitution by 31 January 1991.<sup>21</sup>

As a result, Act XXVI of 1991 on the extension of judicial review of administrative decisions was adopted. The Act regulated the jurisdiction of the courts by a general clause and applied the negative taxonomy exception only to a very narrow range of cases, thus making judicial review of administrative decisions essentially general. The preamble to the Act stated that Parliament had enacted the Act only to implement Article 50 (2) of the Constitution pending the full establishment of administrative adjudication.

Initially, there were two levels of court procedure, with the local court at the county court's seat acting as the court of first instance, and the county courts and the Budapest Metropolitan Court acting as the court of second instance. Appeals against the decisions of the local courts were fully permitted.<sup>22</sup> However, the extension of the possibility of judicial review has posed a serious challenge to the court system. Another difficulty was that the court system was not prepared to handle such a large number of judicial review applications. Although training of administrative judges was started, initially administrative judges were drawn from the redeployment of civil judges, from clerks or secretaries, or the then civil service. As a result, the whole organization was characterized by uncertainty. With the extension of the possibility of judicial review, the number of cases also increased to a staggering number. Whereas in the 1980s, approximately 1.200-1.300 judicial reviews of decisions of the public administration were launched each year, the number of new cases rose to 5.000 in 1991 and to 25.000 in 1993. The peak in the number of judicial reviews was reached in 1997 when around 40.000 cases were opened. Such a rise in the number of cases has resulted in a significant increase in the length of proceedings and a lengthening of the administrative and litigation process.<sup>23</sup>

On 1 January 1999, with the amendment of the Hungarian Civil Code, the competence of judicial review was transferred to the county courts, thus judicial review became a single instance. This change has had a positive impact on the duration of litigation and has made the operation of the court more efficient from an administrative and professional point of view.<sup>24</sup>

For a few years after the change of regime, the need for a separate administrative court was discussed, but by the end of the 1990s, the idea of setting up separate administrative courts seemed to have been completely silenced. However, during the preparation of the Fundamental Law, the idea of setting up separate

<sup>21</sup> 32/1990. (XII.5.) AB határozat, operative part

VADÁI Ildikó: *A közigazgatás bírósági kontrollja Magyarországon*, In: Pólusok folyóirat, 2020. I. évfolyam 2. szám, pp. 92.

<sup>23</sup> SPERKA Kálmán: *Quo vadis közigazgatási bíraskodás? A közigazgatási bírósági szervezetrendszer átalakításával kapcsolatos kihívások*, In: ACTA HUMANA, 2019/1. szám, 125-126. oldal ([http://real.mtak.hu/121228/1/Sperka\\_2019.pdf](http://real.mtak.hu/121228/1/Sperka_2019.pdf), download: 2022. április 20.)

<sup>24</sup> *Ibidem* pp. 126.

administrative courts was again raised. During the preparation of the Fundamental Law, the chairman of the Parliament's Ad Hoc Committee on the Preparation of the Constitution asked a three-member so-called expert drafting committee to deal with the large number of draft texts and to prepare a unified concept, with the experts being allowed to contribute as authors to the drafting of the text of the draft resolution. The draft resolution H/2057, prepared by the Parliamentary Ad Hoc Committee on the Preparation of the Constitution, would have provided for the establishment of an administrative court separate from the ordinary court. The Constitution was not adopted with this wording, so the future of administrative adjudication was still defined within the judicial system, with the control of the legality of administrative decisions being a separate judicial task.<sup>25</sup>

With the adoption of the Fundamental Law, a new area of administrative adjudication, the control of local government norms, has appeared. Previously, the Constitutional Court was the sole body responsible for this activity, but now a shared competence has been created between the Constitutional Court and the Curia. After the adoption of the Fundamental Law, the Constitutional Court can only carry out a constitutional review of local government regulations, while the Council of the Curia can decide on the conflict with an annulment of another law and on the determination of the failure of a local government to fulfill its legislative obligations under the law. The activity of reviewing norms was a completely new task compared to the judicial review of decisions in individual cases, but the Curia, relying on the previously established jurisprudence of the Constitutional Court, quickly settled down to the task.<sup>26</sup>

The first major step towards the creation of administrative justice in organizational terms had to wait until 1 January 2013, when the administrative and labour courts were set up. Although they were still part of the ordinary court system and therefore not yet formally independent, at least they were already called administrative courts. The administrative and labour courts had the same legal status as district courts, but their jurisdiction was the same as that of the courts of law. Administrative and labour courts did not have legal personality but were subject to the legal personality of the tribunal. The Administrative and Labour Court was a branch of the tribunal, under the administrative and financial control of the president of the tribunal, who had direct powers of intervention in the administration of the Administrative and Labour Court in certain matters. The court of first instance was the court of appeal, with the tribunal above it.

However, the seeds of organizational autonomy have already been sown in the case of the six regional colleges of administration and labour. The college was a regional organization covering several counties, not

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<sup>25</sup> PATYI András: *Útközben Alapkérdések a szervezeti önálló közigazgatási bírósághoz megközelítés kapcsán*, In: ACTA HUMANA, 2019/1. szám, pp. 100.

<sup>26</sup> SPERKA: *ibid* pp. 128-129.

aligned with the jurisdiction of the courts, in which the administrative and labour judges of the region met together or separately to discuss professional issues.<sup>27</sup>

#### 4. Rethinking the redress system and administrative justice

Up until the mid-2010s, a faster and more efficient system of redress was seen in the regulation of appeals as ordinary appeals, i.e. substantive administrative decisions could, as a rule, be challenged using an appeal, which was then adjudicated by another, typically higher administrative body. Under this system, the right of appeal to the courts was only available after the appeal had been exhausted and was therefore only available as an extraordinary remedy. For a long time, it was felt that the primacy of administrative litigation would jeopardize the simple, speedy, efficient, and professional handling of administrative cases. Many argued that judicial review would hamper the speed and efficiency of the procedure, that the courts lacked the necessary administrative expertise, and that the generalization or extension of judicial review would lead to the overburdening of the courts. Indeed, speed is counteracted by the fact that the time required for proceedings without time limits is significantly longer than the time limits for the administration of administrative cases. The requirement of simplicity is called into question by the fact that the application is much more complex in form and content than the previously almost informal application. Other views argue that the broad judicial review of administrative decisions will lead to a consolidation of legality. In addition, the advantages in terms of the protection of citizens' rights far outweigh the disadvantages in terms of administrative efficiency.<sup>28</sup> It was probably with the latter in mind, and because of the ineffectiveness of years of efforts to speed up and make more efficient the system of legal remedies in public administration. To reform the administrative procedural law, the preparation of the Act on the Code of Administrative Procedure and the Act on the Pseudo General Administrative Procedure was launched in 2015. Both laws were adopted by the Parliament on 6 December 2016, but the Head of State requested the Constitutional Court to declare the provisions of the Administrative Procedure Act concerning the Higher Administrative Court to be unconstitutional and invalid under public law, which was confirmed by the Constitutional Court in its Decision No 1/2017 (I. 17.) AB. The Parliament finally adopted Act I of 2017 on the Administrative Procedure Code (hereinafter: the "Act I of 2017"), as amended by the Constitutional Court's decision, on 21 February 2017, which deleted the term "court acting as a higher court". Both laws entered into force on 1 January 2018.

<sup>27</sup> KÜPPER Herbert: *Magyarország átalakuló közigazgatási bírászkodása*. In: MTA Law Working Papers, Magyar Tudományos Akadémia, Budapest, 2014/59. szám, pp. 2-15.

<sup>28</sup> FAZEKAS Mariann – FICZERE Lajos (eds): *Magyar közigazgatási jog Általános rész*, Budapest, 2006, Osiris Kiadó, pp. 495-496.

Act CL of 2016 on the General Administrative Procedure broke with the previous model of remedies and classified administrative lawsuits as ordinary remedies and appeals as extraordinary. An appeal can now only be lodged if expressly permitted by law.

Changes in the system of redress are also typically closely linked to changes in the organizational system. The CP initially introduced changes to the jurisdiction and scope of competence of administrative and labour courts. As a result of the changes in the jurisdiction, the vast majority of administrative cases were heard at first instance by 8 specialized administrative and labour courts with regional jurisdiction. These were: the Administrative and Labour Courts of Budapest, the Budapest Region, Debrecen, Győr, Miskolc, Pécs, Szeged, and Veszprém. All the administrative and labour courts had jurisdiction in disputes relating to social security, social and child protection benefits, and benefits or assistance provided by public employment services. In addition, for certain types of litigation, only the Metropolitan Court of Justice was competent.

The next step towards a separate administrative judiciary was the amendment of the Fundamental Law. On 20 June 2018, the Parliament adopted Amendment 7 to the Fundamental Law, which, among other things, provided for the establishment of the Higher Administrative Court. The amended Article 25(1) and (3) of the Fundamental Law provided that "[the] courts shall exercise judicial functions. The ordinary and administrative courts are courts. The administrative courts shall decide administrative disputes and other matters specified by law. The highest body of the administrative court organization is the Higher Administrative Court, which shall ensure the unity of the administration of justice of the administrative courts, issue decisions on the unity of the administrative courts, and issue decisions on the unity of the administrative courts, which shall be binding on the administrative courts."<sup>29</sup>

Act CXXX of 2018 on Administrative Courts (hereinafter: the Act on Administrative Courts), which regulates in detail the duties and competencies of the Higher Administrative Court, was adopted by Parliament on 12 December 2018. This completes the process of setting up administrative courts.

The proposed law, which contains specific, additional rules on the organization and status of administrative judges, has been the subject of lively debate at home and interest abroad. Hungary has been the subject of numerous criticisms and attacks from both international and EU sources. Such criticism was expressed, among others, by Dunja Mijatovic, Commissioner for Human Rights of the Council of Europe, in a statement issued on 14 December 2018, in which she stressed that the fact that the Minister of Justice would have strong influence over administrative courts under the Administrative Courts Act raises serious questions about the independence of the Hungarian judiciary. He regretted that the Hungarian government and parliament did not wait for the Venice Commission's opinion before adopting the package of laws

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<sup>29</sup> Article 25 (1) and (3) of the Magyarország Alaptörvénye

initiated by the justice minister. He also regretted that the public debate on the measure was rather limited. Dunja Mijatovic called on the President of the Republic to send the package back to Parliament to allow for a thorough review. She added that she would raise the matter in her talks with representatives of the Hungarian authorities.<sup>30</sup>

In 2018, for the first time in the history of the European Union, the European Parliament asked the European Council to declare that Hungary had violated the EU's fundamental values. Among these, one of the European Parliament's main concerns was the independence of judges. The European Commission has launched infringement proceedings against Hungary for breaching the independence of the judiciary.<sup>31</sup>

The Venice Commission, as the advisory body of the Council of Europe on Fundamental Rights, also strongly criticized the new court system planned to be in place from 2020 in its Resolution CDL-AD(2019)004-e, issued on 18 March 2019. The Venice Commission's main concerns and recommendations were as follows:

The new law would have placed a great deal of power in the hands of very few leaders and would have lacked checks and balances to limit that power.

The Minister of Justice would have had too much power to appoint judges and their careers, to promote them to senior positions, and to raise their salaries, without any real recourse.

In many respects, the Minister of Justice would have had even more power than the President of the National Court of Justice.

The Minister would have had a great deal of power when the courts were set up, even in the initial period: he would have had the power to determine the size of the courts and would have had too much influence on the selection of future judges and presidents of the courts, without adequate guarantees.

The Venice Commission concluded by asking the Hungarian authorities to review the law with the participation of the organizations concerned.<sup>32</sup>

In response to the criticisms outlined above, Judit Varga, Minister of Justice, announced on 31 October 2019 that following a serious professional debate, the Government believes that the court should be protected from unnecessary disputes, and therefore the unified court system will be maintained, and the independent administrative court organization will not be established. Given this, the entry into force of Act CXXX of 2018 on Administrative Courts has been postponed indefinitely with the adoption of Act LXI of 2019 on the postponement of the entry into force of the Act on Administrative Courts. As a next step,

<sup>30</sup><https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts>

<sup>31</sup> <https://www.europarl.europa.eu/news/hu/press-room/201809061PR12104/magyar-jogallamisag-a-parlament-fellepesre-szolitja-fel-az-uniot>

<sup>32</sup> Velencei Bizottság CDL-AD(2019)004-c számú állásfoglalása (2019). Elérhető: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)004-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)004-e) (download: 2022. április 21.)

on 12 December 2019, the Fundamental Law was amended again, based on which the provisions on separate administrative courts introduced by Amendment 7 were removed from the Fundamental Law. Finally, on 19 December 2019, the Parliament adopted Act CXXVII of 2019 amending certain Acts in connection with the creation of single-tier district courts, which abolished administrative and labour courts as of 31 March 2020. The successors of the administrative and labour courts are the competent courts, and in the case of the Administrative and Labour Court of Budapest, the Metropolitan Court. The regional administrative and labour colleges and the administrative and labour college of the Metropolitan Court of Justice were also abolished as of 31 March 2020. As of 1 April 2020, labour colleges were established in the magistrates' courts and administrative colleges in the courts of law dealing with administrative matters. The labour section of the Administrative-Labour Chamber of the Curia has been separated from the Administrative-Labour Chamber of the Curia and merged into the Civil Chamber of the Curia as of 1 March 2020. As of 1 April 2020, the Administrative Chamber of the Curia will operate independently. On this basis, as of 1 April 2020, the organization of the Court of Cassation and Justice will essentially revert to the situation as it was before 1 January 2013. This effectively brings to an end almost a decade of work.<sup>33</sup>

On this basis, as of 1 April 2020, the organization of the Court of Cassation and Justice will essentially revert to the situation as it was before 1 January 2013. This effectively brings to an end almost a decade of work.

## 5. Summary

Based on the experience of the history of public administration, the principles of administrative organization are always applied and are always given prominence or relegated to the background in the specific circumstances of a given period. They are never one-way and irreversible processes. How they are brought into or out of the foreground always depends on when and which of the social and economic needs that trigger the reforms are met, and which of them best serves the objectives of the period, which is the most effective and appropriate solution to the political and social problems of the time, without compromising, or rather, improving the values of a democratic state based on the separation of powers and the rule of law. In choosing the guiding principles for the organization of public administrations, governments should always be mindful of how a country has developed in the past, but also of what can and should be done in the international context of a globalized world.<sup>34</sup> The judicial system must also be adapted to the needs of

<sup>33</sup> Az egyes törvényeknek az egyfokú járási hivatali eljárások megteremtésével összefüggő módosításáról szóló 2019. évi CXXVII. törvény 88. § (1), (2)

<sup>34</sup> BALÁZS István: *A közigazgatási jogérvényesítés egyes szervezeti és működési kérdéseiről Magyarországon 1990-től napjainkig*, In: *Közigazgatás Tudomány*, 2021. 1. évfolyam 1. szám, 22. oldal ([http://real.mtak.hu/128460/1/ A Közigazgatasi Jogérvényesítés...pdf](http://real.mtak.hu/128460/1/A_Közigazgatasi_Jogérvényesítés...pdf), download: 2022. április 17.)

the times so that it can provide an effective means of enforcing subjective and objective rights in equal measure. The purpose of judicial control over administrative decisions is to ensure the rule of law in all areas of public administration. As we have seen, the organizational form of the judicial control mechanism over administrative decisions in Hungary has been shaped by the ideas of the political elite in power. While after the socialist takeover, the constitution-maker considered the administrative court as an institution of the bourgeoisie and therefore abolished it, the constitution-maker who drafted and shaped the Fundamental Law included the administrative courts among the achievements of our historical constitution and decided to re-establish them using the 7th Amendment to the Fundamental Law. Nevertheless, he did eventually abandon this idea, even though, in my opinion, the establishment of separate administrative courts was indeed necessary. In favor of special administrative courts is the special nature of administrative cases compared with civil and criminal cases, which, because of the specific nature of the preventive procedure, require a completely different knowledge and way of thinking compared with the other two major areas of law. Thus, a separate court system, with a specialized judicial apparatus for administrative cases, can, in my opinion, better serve the objective and subjective function of legal protection. We have also seen that the international and European Union criticisms have not been directed at the institution itself, but only at how it is implemented. That is why, in my view, there was no need to abolish the administrative judiciary, but merely to transfer the powers that were intended to be vested in the Minister of Justice to another body or person outside the executive branch. This would have prevented criticism and would not have put an end to nearly ten years of work.

