

REPORT OF THE KURIA OF HUNGARY

QUESTIONNAIRE – REPLIES

Introductory questions

1. An important feature of alternative procedures is that in addition to, or instead of, the traditional, minutely regulated administrative procedure and administrative court procedure they allow the parties to the administrative review lawsuit - that is, the state authority and the client of the administrative proceedings - to reach a settlement which is satisfactory to both the state authority and the client. To determine the extent to which an administrative authority may refrain from exercising its official duties can, however, pose difficulties. A question may, for example, be whether a tax authority may agree on refraining from imposing a tax penalty upon a taxpayer's promise to pay the claimed tax amount within a short time. In alternative procedures the parties' equal position is even more expressed and they may exchange ideas and arguments under a less strict procedural order. In alternative procedures dialogue and not trial is the dominant element.
2. In Hungary at present alternative procedures are not available in administrative proceedings and administrative court proceedings. The introduction of such procedures would be well worth for consideration as they might accelerate and make more cost-effective the settling of administrative disputes. A great advantage and a decisive element of alternative procedures is that neither party feels themselves to be the „losing party” because of the outcome of the proceedings.

I. The goals and the scope of alternative procedures

1. One of the most important goals that can be achieved by alternative procedures is the settling of disputes within a shorter time and in a more cost-effective way. In alternative procedures the parties may consider aspects and may reach alternative solutions that cannot be considered and reached in traditional procedures.
2. At present no alternative solutions can be applied in administrative cases. Though in administrative review lawsuits the parties may – subject to approval by the administrative court – reach a settlement, such settlements cannot be regarded to constitute alternative procedures.
3. Neither restricting nor permitting rules exist. The Act on mediation (including judicial mediation) was enacted by the Parliament with a view to promoting and facilitating out-of-court settlements in **civil** cases.
4. No such instruments exist.
5. Act no. LV of 2002 on mediation, which was supplemented with provisions governing judicial mediation in 2012, is applicable – as it has been indicated above – to out-of-court settlements reached in civil disputes, not in administrative disputes.

II. The stakeholders in administrative procedures

Since in Hungary in administrative cases no recourse is allowed to alternative procedures, only some of the questions raised in this chapter can be answered.

3-4. Out-of-court settlements reached in civil disputes are regulated in an Act of Parliament, which determines the third person's (mediator's) legal status and specifies the whole process. Under Hungarian law mediation can be carried out either upon the parties' joint request or as mandatory mediation.

5. Under the law, in administrative cases judges may not have recourse to mediation but may help the parties to reach a settlement. Such settlements are, however, subject to court approval for entering into force. Despite the regulation, in everyday practice this legal institution is not used.

III. The procedures of alternative procedures

As in Hungary in administrative cases no recourse is allowed to alternative procedures, only some of the questions raised in this chapter can be answered.

2. Most administrative proceedings are subject to an appeal, which is adjudicated by the second instance – typically county- or regional-level – administrative authority. The scope of the appeal by the second instance administrative authority is not limited to the issues stated in the appeal, hence the administrative authority may fully review the decision and is not forbidden from aggravating the decision either. Judicial review can only be sought where the right of appeal has been duly exhausted. In certain types of cases no appeal lies against the administrative decision (e.g. against the decision of an administrative authority having national competence, e.g. in competition cases). A party seeking judicial review may also allege injuries and violations other than those raised in the appeal and may rely on new facts and evidence as well.

IV. The efficacy of alternative procedures

1. In lack of practical experience it can only be assumed at a theoretical level that alternative procedures are faster and more cost-effective than ordinary court procedures. Having regard to the courts' present caseload, the faster processing of cases in alternative procedures can reasonably be presumed. Alternative procedures may also be more cost-effective for the parties as no duties, court fees and expert expenses are incurred.

A quantitative comparison in this respect cannot be provided by Hungary.

5. For the time being in Hungary the question is not the further development of the alternative procedures but the very creation and introduction in the legal system of such procedures. The ongoing codification of the new Code of administrative court procedure may facilitate and promote this process.