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Meeting at the Crossroads: A Comparative Study of the Hungarian and Finnish Legal Remedy System in Administrative Law*

Spotkanie na rozstajach. Studium porównawcze węgierskiego i fińskiego systemu środków ochrony prawnej w prawie administracyjnym

ABSTRACT

We can find mechanisms in every legal system for addressing the eventual breaches of law caused by the activities of public administration. The classical aspect of this issue is the creation of different legal remedy procedures against administrative decisions. Legal remedies can be divided into two main types: internal remedies and the judicial review of administrative acts. Although the core purpose of these procedures is the same, they are not identical neither in their functions nor in their outcomes. Finding the right balance between them can be a difficult task and result in different answers. To demonstrate this and outline some basic questions of the construction of a remedy system, the paper chose two prime examples of this divergence, Hungary and Finland. The regulations on the remedy

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systems of these two countries put different emphasis on the role of internal remedies and of judicial review, as well as on the *ex officio* investigation powers of judges which is strongly connected to this equilibrium. The two legislatures have followed different paths: in Hungary the internal remedies, which used to be available more widely have been gradually reduced, meanwhile in Finland internal remedies, which were initially exceptional, are becoming more and more widespread. Comparative legal and dogmatic methods were used in the research, which led to the appropriate contextualisation of the legal instruments and allowed for conclusions regarding not only the two administrative remedy systems, but the basic elements of remedy systems in general as well as their interdependencies.

Keywords: administrative remedies; judicial review; Finland; Hungary; comparative administrative law

INTRODUCTION

In the last decade, there has been an ongoing effort to rethink and reconstruct the administrative redress system in Hungary. A significant shift in emphasis took place as judicial legal protection was preferred and promoted by legislature. The process affected the role of internal remedies, the judicial review of administrative acts and the remedies against administrative courts' judgments, too. Creating a well-functioning remedy system in the field of administrative law which sustains a high level of legal protection, and at the same time is efficient is not a unique Hungarian problem but is a challenge for all lawmakers. To better understand the expectations that weigh high on legislature, it can be helpful to examine countries where similar or even contrasting legislation has been enacted in recent times. Albeit it is essential to consider the different cultural, social and legal aspects of administrative redress systems, by analysing them it becomes apparent that the bases have a lot in common in democratic societies within the European legal tradition.

The Hungarian system of administrative legal protection was successively completely reformed from 2016 on. In 2019, the Finnish lawmaker made minor adjustments to that system of legal protection. Although different in the extent of changes, these transformations are only to be seen as steps in a more extended process, so to say the tips of two icebergs. This paper aims to describe the novelties of the latest Hungarian reforms in the light of the Finnish administrative justice system and its minor changes in 2019. It will analyse the legal remedy systems from a comparative perspective.

The point of comparison is that the Finnish and Hungarian administrative remedies systems – at least at a theoretical level – use similar forums and are based on similar principles, but very interestingly the two systems have arrived at the current regulatory environment from two completely opposite directions.

So, we have a snapshot that can be seen as the meeting point of two different developments at a crossroads. It is therefore worth examining how different motivations and impulses can lead to (almost) parallel formal outcomes in the remedy

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regime. Even more interesting is whether there is also a great deal of similarity in the substance, the provision of effective legal protection against the administration.

As the English-language literature on the Finnish administrative justice system is quite limited, it has to be presented in more detail. The first part of this paper is dedicated to the administrative procedures and internal remedies of the two countries in general, and after setting the scene, the second part compares the models of judicial review with the set of available remedies against administrative court judgments. The paper does not give a comprehensive comparison of the two administrative justice systems but rather focuses on those elements that are necessary to identify the differences and similarities between the two new codes and describe the main rules of the legal remedy system.

MAIN CHARACTERISTICS OF THE FINNISH AND HUNGARIAN INTERNAL ADMINISTRATIVE REDRESS SYSTEM

1. The regulation of administrative procedures in the two legal systems

In Finland, administrative procedures are regulated by the 434/2003 Administrative Procedure Act (hereinafter: APA) that was amended by the 893/2015 Act on Amendment of the Administrative Procedure. The APA contains general procedural provisions which have to be applied in all administrative matters unless a *lex specialis* provides otherwise.[1] The personal scope of the APA is quite broad as not only the public administration authorities in the narrow sense must apply the act, but also agencies operating under the supervision of the Parliament or the Office of the President of the Republic, furthermore the so-called quasi-authorities.[2] Thus the APA regulates not only cases falling within the executive branch's competence, but is applied generally in cases regulated by public law.

In the current Hungarian regulatory framework, administrative procedures are regulated by Act CL of 2016 on the Code of General Administrative Procedure (*Általános Közigazgatási Rendtartás*, hereinafter: Ákr.) which applies to cases when a body empowered with public authority decides on private parties' cases within its public power conferred to it by administrative law. In contrast to the Finnish solution, the Ákr. stands on the basis of primacy, which means that sectoral legislation can derogate from the Ákr. only if the Ákr. itself explicitly allows for this. Despite the name and original concept of the act, mainly due to this concept of primacy,

[1] Section 5 (1) APA.

[2] Z. Szente, *Conceptualising the Principle of Effective Legal Protection in Administrative Law*, [in:] *The Principle of Effective Legal Protection in Administrative Law: A European Comparison*, eds. Z. Szente, K. Lachmayer, London 2016; Section 2 APA.

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the general character of Ákr. is however quite limited, as its scope does not cover taxation and customs, electoral procedures, immigration and asylum, competition law or financial regulatory oversight procedures, neither misdemeanour proceedings.[3] Recently, the general character of Ákr. has been eroded even more intensively as sectoral regulation is adopted in abundance – partly due to the deficiencies of the Ákr., that is simply kept too short and too general. Simultaneously, there is a growing tendency to create general statutory rules applicable to all administrative procedures, which, however, are not promulgated in the Ákr. but in separate laws.[4]

In both countries, provisions on legal remedies are divided into two parts. Rules regarding internal remedies are placed in the general administrative procedure acts, in the APA and the Ákr., while regulations of judicial review can be found in separate codes of administrative court procedure. In Hungary, the latter entered into force in 2018, while the Finnish code is older and has a different development history.

2. Legal protection in administrative law

In the Finnish system of legal remedies against administrative acts, the three most important legal institutions are administrative review, administrative complaint and judicial review of administrative acts. As alternative dispute resolutions (ADRs) in administrative cases are not available, the formal review and remedy processes have a dominant role in guaranteeing the legality of administrative decisions.[5] Despite the lack of the actual ADR mechanisms, less formal proceedings exist, because the Chancellor of Justice and the Parliamentary Ombudsman have investigative powers in the entire public sector.[6] However, these ombudsmen-type legal protections cannot be considered as an ADR, even if they are somewhere midway between formal review procedures and ADRs.

In the Hungarian system, the appeal and the judicial review are certainly the main actors. Appeal is the general internal legal remedy available against administrative decisions. The Hungarian system of legal protection against public authorities' activity has undergone significant changes in recent years. Despite the strong intention of legislature to make judicial review primary and every other form of legal protection exceptional, for a time, non-judicial reviews have remained equally important and

[3] Section 8 (1) Ákr.

[4] I. Hoffman, I. Balázs, *Administrative Law in the Time of Corona(virus): Resiliency of the Hungarian Administrative Law?*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), pp. 103–119.

[5] Finnish Ministry of the Justice, *Government Report on Administration on Justice*, 2023, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164658/VN_2023_9.pdf?sequence=4&isAllowed=y (access: 25.11.2023).

[6] O. Mäenpää, *The Rule of Law and Administrative Implementation in Finland*, [in:] *Introduction to Finnish Law and Legal Culture*, eds. K. Nuotio, S. Melander, M. Huomo-Kettunen, Helsinki 2012, pp. 197–198.

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significant.[7] In addition to these formal remedies, we can find in Hungary alternative, less formal guarantees for securing that the public administration operates lawfully, too. After the democratic transition, Hungary also implemented the ombudsman-type legal protection,[8] which is one of the achievements of the Scandinavian (Swedish) legal tradition. The Commissioner for Fundamental Rights (hereinafter: the Ombudsman) has extensive investigative powers aiming to protect fundamental rights of individuals. Thereby the Ombudsman exercises control over the lawful operation of public administration although he is not able to make binding decisions. There are some really significant differences between the Finnish and the Hungarian ombudsman-type legal protection. The role played by the Finnish ombudsman in administrative matters can be rather compared to the public law competences of the public prosecutor in Hungary.

Besides the above-mentioned remedies initiated upon the request of parties, both countries have review procedures conducted *ex officio*. In the subsequent sections, we present the internal remedies one by one.

3. Administrative review and appeal

The classic formal, but not judicial legal protection is the remedy procedure within the public administration system (*internal remedy*), usually conducted by a superior administrative body. In Finland, this internal remedy is called "administrative review" and is regulated by Chapter 7a APA. The administrative review can be compared to the Hungarian "appeal". Appeal in the Finnish terminology is used to describe the motion for judicial review of an administrative act, however. Therefore, using these terms carefully and correctly is essential to avoid any misunderstanding.

In Finland, administrative review is not generally granted in all administrative cases. It is available against administrative decisions only if a specific provision of law regulates so. Despite this fact, we can find the possibility of administrative review in several cases, such as decisions made by municipal authorities (municipal councils excluded),[9] decisions by regional authorities (regional councils excluded),[10] tax cases[11] and cases concerning social welfare services.[12] The APA lays down some essential rules regarding administrative review in general, special legal provisions can derogate from these. The general regulation of administrative review was introduced in 2010 by amending the APA with Chapter 7a. Prior to that, general

[7] K. Kis, *A közigazgatási jogorvoslati rendszer átalakítása: hangsúlyeltolódások*, [in:] *Jogászegyleti Értekezések 2022*, ed. B. Bodzási, Budapest 2022, pp. 164–189.

[8] L. Csink, Zs.A. Varga, *The Ombudsman*, [in:] *Hungarian Public Administration and Administrative Law*, eds. A. Patyi, Á. Rixer, Passau 2014, pp. 242–252.

[9] Section 134 of Act on Local Government (410/2015).

[10] Act on the Wellbeing Services Counties (611/2021).

[11] Act on Taxation Procedure (1558/1995).

[12] Social Welfare Act (1301/2014).

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rules for administrative review did not exist, different *leges speciales* regulated administrative review with specific rules for each sector. This demonstrates the historical development of administrative review: initially judicial proceeding was the primary form of legal protection against administrative decisions, over time, legislature created the possibility of a remedy within sectoral public administration. This exceptional remedy form gradually conquered more and more space, leading to the legislature setting general rules for administrative review. From a sectoral legal institution, administrative review became a general legal institution.

No surprise thus that in cases where administrative review is available, its exhaustion before starting an administrative court proceeding is stringent.[13] From a comparative point of view, this is the common solution in cases where an "in-house", pre-trial remedy is provided to the parties.[14] Another strong characteristic of administrative review is its suspensory effect. This means that the first-instance administrative decision does not become immediately with its communication final, but only if the administrative review procedure has finished and a review decision is achieved or if the parties did not initiate such a remedy procedure, after the expiration of the time limit set for introducing an administrative review. The practical consequence of the suspensory effect of the administrative review is that the reviewed decision may not be enforced until the review procedure has not been terminated.[15] Administrative reviews are less formal than judicial reviews, which is an advantage not only for parties considering social inclusion and equal access to justice but also for public administration as well as courts. Administrative review in Finland has no appellate function as they are delt with by the same authority – however, usually not by the same public servant or body. Most requests for review are dealt by councils or boards and not by one public officer. The fact that also policy and effectivity issues can be reconsidered in the remedy process does not raise any question in relation to legality or separation of powers as the competence of deciding on requests for administrative review remains within the organization of public administration, moreover in the same organ. This is a great advantage compared to judicial review from the public and also the parties' interest point of view.

The term "appeal" adequately describes the key feature of the Hungarian internal remedy procedure. Unlike in Finland, the request for remedy submitted by the party is dealt with by a superior administrative body. The general rules of the appeal procedure are laid down in Ákr. According to Section 116 (1) administrative decisions of first instance can be challenged via appeal only if a legislative act expressly prescribes it. The Ákr. specifies two cases where appeal is available: if the decision was made

[13] Section 49b APA.

[14] See A. Buijze, P.M. Langbroek, M. Remac, *Designing Administrative Pre-Trial Proceedings*, Utrecht 2013; Z. Szente, *op. cit.*, pp. 21–22.

[15] Section 49 APA.

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by a body of a municipality (other than the council of representatives) or by a local branch of a law enforcement agency. Despite the fact that appeal is generally regulated by the Hungarian legislature, it is not generally, but only exceptionally granted in administrative cases. The regulation in this sense is similar to the Finnish one, but it is a result of a development of a diametrically opposed direction. According to the Hungarian way of development, historically the appeal procedure (administrative review) was available as a general remedy, and it has subsequently lost its prevalence until it became an exceptional possibility depending mostly on sectoral regulations. However, Finland has not reached the point from where Hungary started, as administrative review is not generally guaranteed in each and every administrative case. The conceptual difference of the Hungarian administrative redress system has its roots in the historical context. During the communist regime, legislature, guided by the principle of the unity of power, did not find it desirable to subject administrative decisions to the control of courts.[16] As a result, judicial review had a very limited extent, giving way to challenging administrative activity in front of a judge only in a few cases. In the Hungarian context, the actual and widely accessible judicial review of administrative decisions, in practical terms, has become available only since the 1990s. This marked a paradigmatic shift with far-reaching implications. Before that time, to address the absence of the judicial protection of parties' rights, the appeal process was used to fill this void. Thus, in several cases, the appeal process was the exclusive recourse for parties to contest the legality and accuracy of administrative decisions. The Hungarian way of and the process to create judicial review is not unique, however. Following the typical European historical path, initially internal remedies were established for challenging administrative decisions, and these were later replaced or supplemented by judicial means.[17] Specific for the Hungarian system – but common to post-Soviet Eastern European states – is that this process took place twice as the judicial protection was practically abolished with the rise of Soviet regimes and then successively gained prominence following the downfall of the communist regime.[18]

Returning to the characteristic that specific laws open the way for appeal, like it was in Finland before, is the new – perfectly opposite – stage of development in Hungary. It is even not improbable, that at this stage it will be able to make a U-turn. Firstly, the appeal could prevail outside the Ákr. in a limited number of cases, which are nevertheless by their numerosity important exceptions. For instance, the sectoral regulation on taxation and fiscal matters – exempt from the Ákr., but taking

[16] J. Petrétei, *Hatalommegosztás*, [in:] *Internetes Jogtudományi Enciklopédia*, eds. A. Jakab, B. Fekete, 2018, http://ijoten.hu/szocikk/alkotmanyjog-hatalommegosztas (access: 26.8.2024), [10].

[17] K. Rennert, *Administration, Administrative Jurisdiction and Separation of Powers*, "ELTE Law Journal" 2018, no. 1, pp. 152–153.

[18] It should be noted that there was administrative adjudication by courts also in Hungary for a short time before the communist regime. Cf. A. Patyi, *A magyar közigazgatási bíráskodás elmélete és története*, Budapest 2019, pp. 40–45.

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in the first place by numbers within administrative cases – provides so.[19] The same goes for practically all administrative cases before authorities belonging under the supervision of the Home Ministry, not only minor police cases but also water and catastrophe-protection matters. There is also a tendency for the reinstalling of the appeal to be noticed in the last year, e.g. in environmental protection cases. This is probably also due to the fact that unlike the Parliament and the Government, public administration itself is favourable to the possibility of appeal, just like jurisprudence.

Hungarian jurisprudence considers appeal as an ordinary redress procedure for several reasons: it has a suspensory effect on the reviewed decision, exhausting the appeal before filing an action for judicial review is obligatory, just like in Finland. The suspensory effect and rule of preclusion are typical characteristics of internal remedies in general, but there are some exceptions also in Europe.[20]

By appealing an administrative decision, the public administration gets a second chance in many cases to rethink the administrative matter and to correct its own mistakes both in legal and policy sense. A request for appeal has a so-called "conditional devolutionary effect". Conditionality means that first-instance authority gets a possibility to review its own decision upon the appeal and to withdraw or modify it if it agrees with the party's appeal and finds its own decision either unlawful or gets convinced that there would have been an equally lawful other decision that would have been more favourable to the party and there is no counter-interested party in the case. This makes correction easy. In these cases, first-instance authorities are not required to submit the appeal and the documents of the case to the second-instance authority. If that's not the case, the devolutionary effect comes into play, by which the material competence of the first-instance authority is conferred to the superior body, which can reform or annul the reviewed decision[21] not only if it is unlawful but also if it is deemed impractical or for other public policy and efficiency reasons it is not deemed suitable.[22] This also implies that *reformatio in peius* is possible.

4. Complaints and *ex officio* review procedures

The right to file a complaint against a public authority's activity usually exists in all European countries. Normally, the difference between the complaint and the pre-trial remedy procedure is the obligation of conduct a formal procedure for review in the latter and the relating powers regarding the reviewed act. In the

[19] Article 122 (1) of Act CLI of 2017 on the Tax Procedure Code.

[20] A. Buijze, P.M. Langbroek, M. Remac, *op. cit.*, p. 113.

[21] There is an almost exclusive obligation for reforming or annulling without referring back the case to the first instance authority. Of course, there are a few constellations where this is not possible, like in the case of nullity.

[22] É. Szalai, *A fellebbezési eljárás*, [in:] *Közigazgatási jog – Általános rész III.*, ed. M. Fazekas, Budapest 2021, pp. 287–288.

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case of Finland, the administrative complaint has a broader scope than the formal review mechanisms and falls more explicitly within the supervisory power of the superior body. This is affirmed by the fact that administrative complaint rules are placed in the APA. The complaint has a more significant role in ensuring the hierarchical relationships within public administration as this is the only way to get access to the superior body of the decision-making authority since the requests for administrative review are dealt with by the same authority. Thus, the complaint is an alternate possibility for the party. Once however he/she submits a complaint, appeal and administrative review are no longer available for the party, so it excludes any other type of legal remedy, both judicial and pre-trial.

In Hungary we can find administrative complaint, too, but with a different function. Complaints are regulated by Act XXV of 2023 on Complaints and Whistleblowing, and not by the Ákr. By submitting a complaint, the party does not initiate a formal redress procedure, but exercises his general fundamental right for submitting petitions to public entities. Thus, the complaint is not closely linked to administrative procedures, as it can challenge any aspect of the activities of the respective state entity, not only administrative acts and procedures, but service provision activities, and it can also formulate recommendations. Upon the complaint, however, public authorities may initiate *ex officio* review procedures – receiving administrative complaints is deemed as a way for the authority to become aware of a violation of law upon which review can be initiated upon their own motion. Unlike in Finland, administrative complaints are in general handled by the same authority.

In addition to legal remedies exercised upon the request of the parties, there are act-review mechanisms initiated *ex officio* as well. Authorities has the possibility to annul their own decision and replace them with a new one if a serious breach of law occurred during the procedure. Section 50 APA lists cases where the *ex officio* act-review is available for the public authority; if the decision is clearly based on erroneous or insufficient evidence, or a manifestly incorrect application of law, and even if a procedural error has occurred in the decision making. Only in the favour of the party, the annulment of decision is possible in the case of significantly relevant new evidence. The Finnish regulation has a rather different characteristic from the Hungarian one, which puts more emphasis on the protection of the interests of the parties, since the act-review usually requires the concerned party's consent if it would be to its detriment. An exception to this rule is made in cases where the error is obvious and has arisen from the party's own conduct.

The Hungarian system of *ex officio* act reviews is designed to serve objective legal protection, and its prerequisite is always a violation of law. In other words, procedures based solely upon expediency, efficiency or other considerations falling within the discretionary powers of the competent authority cannot be initiated. If finds a violation of law in the decision or during the foregoing administrative procedures, the first-instance authority may modify or withdraw its decision within its

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own competence. The supervisory body of the authority is also entitled to reform or annul the first-instance authority's decisions in the case of illegality. In both cases, the law establishes strict limits, because these types of act-reviews disrupt the finality of decisions. Such limits include the protection of legitimate interests and a specified (one-year) deadline. Furthermore, the public prosecutor has powers to control public authorities' activities, too.

The Hungarian public prosecutor has a typically post-Soviet competence, the oversight of the legality of administrative procedures. Within his so-called public interest protection tasks, the prosecutor can control final administrative decisions not adjudicated by court. If an infringement of law is identified, the prosecutor can issue a notice to the authority that made the decision. In such cases, the authority has at its disposal a *sui generis* act-review procedure under the Ákr., allowing it to modify or withdraw its decision regardless of the limitations seen in the previous *ex officio* review procedures. However, the authority is not obliged to initiate any procedure. If it disagrees with the prosecutor's position or does not act, the prosecutor is endowed with the right to file an action to the administrative court. In the Hungarian legal system, the Public Prosecutor's Office is a separate, independent entity from the public administration. Considering its aforementioned power, the prosecutor's role in administrative procedures can be classified as part of the external control system.[23] Because of his powers to initiate remedy procedures, the prosecutor's role in ensuring the legality of administrative decisions is more significant than that of the ombudsman. The latter acts exclusively in cases of fundamental rights violations and can only proceed if the complainant has exhausted all available remedies, judicial review included. The ombudsman can only make recommendations, submit its report to the Parliament and publish it.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

1. How does judicial review of administrative acts appear in the constitutions of Finland and Hungary?

The judicial review of administrative acts is anchored in the Finnish Constitution. As Section 21 of the Finnish Constitution provides: "Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice". As a result, the legislature had no choice

[23] Zs.A. Varga, *Public Administration and the Prosecution Service*, [in:] *Hungarian Public Administration…*, pp. 229–241.

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but to adopt parliamentary acts that create a legal framework where access to court in administrative matters is general. In addition to access to court, the Constitution also contains other principles regulating Finnish administrative law in general, such as the criteria of legality or the right to good administration. Remaining at the constitutional provisions, the Finnish system has a special distinctive feature: the not-centralized constitutional review. There is no constitutional court or other body with similar *ex post* constitutional review powers in the country – which is a strong characteristic of the Nordic law family[24] – and neither the common-law principle of *stare decisis* is applicable. Therefore, courts dealing with administrative or ordinary cases have the right to disapply unconstitutional provisions of statutory law in individual cases before them.[25] This imposes a very important duty on every judge and administrative authority, namely not only to guarantee the legality of its own action but also to check the constitutionality of the applicable law. Although the courts and public authorities have this uniquely strong power, it is rarely used in practice.[26] This type of *in concreto* constitutional review creates an interesting double-standard in administrative court procedures, as in this constellation, statutory law is not only the standard of the legality of administrative acts but also the subject of review. As a result, it is possible to base the action on that the law applied by administrative authority is unconstitutional and does not address the legality of the administrative act at all. However, for two reasons it is to doubt, whether the mere constitutional review of legal norms in administrative court proceedings without the examination of the legality of the administrative action in the narrow sense could exist. First, the court performs an *in concreto* review for which considering the circumstances is essential. Second, the obligation to disapply unconstitutional law extends not only to courts but also to administrative authorities. If a plaintiff challenges the constitutionality of the law applied, it also implies a failure on the part of administrative authorities not to have disregarded that norm.

The presented Finnish system strongly differs from the Hungarian solution on several points. The Hungarian Constitution (Fundamental Law) unlike the Finnish – and we have to add, most European constitutions – does not address the specific right of effective judicial protection against the administration. It contains provisions on the right to appeal and the task of the courts to control administrative acts. These constitutional rules were the result of the change of regime in 1989.[27] The text of Act

[24] J. Husa, *Panorama of World's Legal Systems – Focusing on Finland*, [in:] *Introduction to Finnish Law…*, pp. 12–15.

[25] J. Lavapuro, *Constitutional Review in Finland*, [in:] *Introduction to Finnish Law…*, pp. 134–137.

[26] J. Lavapuro, T. Ojanen, M. Scheinin, *Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review*, "International Journal of Constitutional Law" 2011, vol. 9(2), pp. 524–528.

[27] I. Hoffman, M. Papp, M. Varju, *Can EU Law and the Right to Effective Judicial Protection Rescue Judicial Review in Hungary?*, "European Public Law" 2023, vol. 29(3), pp. 255–274.

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XX of 1949 (Old Constitution) in force from 23 October 1989 contained Article 50 (2) which provided that courts review the legality of administrative decisions. At the same time, Article 70/K stipulated that judicial protection is necessary where an infringement of a fundamental right or obligation arises from a public authority's decision. For a short while, until there were no statutory provisions, this was even the basis for judicial review. The Fundamental Law of 2011 essentially incorporated these rules with minor changes, not addressing judicial review specifically.[28]

According to Article XXVIII (7) of the Fundamental Law, "everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests". However, this article does not prescribe that legal remedy must be a judicial procedure, so a simple internal remedy procedure, such as appeal, can satisfy this constitutional requirement. The judicial review's constitutional basis has a stronger attachment to the task of the court to control administrative acts.[29] Nevertheless, in the light of recent changes presented in this study, Article XXVIII (7) is gaining increasing importance, as in the majority of administrative procedures currently internal remedies are not provided, and judicial review plays a crucial role in ensuring the fundamental right to legal remedy.

Constitutions also establish the fundamental characteristics of the judiciary. The organization of justice in Finland follows the dual model; administrative cases are not dealt by ordinary courts but by regionally competent administrative courts. At the top of the hierarchy of the administrative justice system, there is the Supreme Administrative Court as a higher instance. Hungary basically still belongs to the monistic system. Courts dealing with administrative matters have separate administrative chambers, though. The first-instance courts with administrative chambers are established at a regional level, just like in Finland. Higher courts are the Budapest Metropolitan Court of Appeal and the Kúria, which is the supreme court of Hungary.[30]

2. Regulations of court proceedings

In Finland general access to judicial review of administrative acts is guaranteed. The law regulating the entirety of administrative judicial proceedings, from the start to the enforcement of the judgments, is 808/2019 Administrative Judicial Procedure Act (hereinafter: AJPA). This relatively new act replaced the former Administrative

[28] For a short period, there were however rules on a Supreme Administrative Court. See K.F. Rozsnyai, *Judicial Review in Hungary: The Turmoil of Organisational Changes Through the Lenses of Procedural Law*, "ELTE Law Journal" 2023, no. 1, pp. 95–97.

[29] Article 25 (1) of the Fundamental Law kept the framing of the Old Constitution's Article 50 (2).

[30] K.F. Rozsnyai, *The Procedural Autonomy of Hungarian Administrative Justice as a Precondition of Effective Judicial Protection*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), pp. 491–503.

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Judicial Procedure Act (586/1996, hereinafter: old AJPA) in 2019 and entered into force in 2020.[31] The question is given: What kind of novelties has the AJPA brought to the Finnish administrative justice system? It can be maintained that the new AJPA did not bring a complex reform of the administrative justice system, but mostly introduced already existing tools established by the case law of administrative courts or by the legislator in specific areas of administrative law. Except for novelties regarding legal remedies against administrative courts judgments, AJPA did not substantially change the procedural regulations. The additional provisions simply clarified or supplemented the existing procedural rules with only minor changes in their wording, but without any substantial modifications. All of these changes lead us to say that AJPA did not bring a real, large-scale reform of procedural law of judicial procedures, instead it aimed to further expedite and simplify court procedures.

In Hungary, judicial review is regulated by the Code of Administrative Court Procedure (I of 2017, hereinafter: CACP) which entered into force on 1 January 2018. This Code was strongly influenced by the principle of effective legal protection and the effect of the Europeanization of administrative justice.[32] Prior to 2018, the procedural rules on administrative litigation were found in Chapter XX of the Civil Procedure Code (III of 1952). Creating an autonomous procedural code was a real change not just in positive law but also in the whole concept of administrative justice.[33] Administrative judicial procedure is no longer a mere special type of civil lawsuit, and civil judges no longer adjudicate in administrative matters. Novelties of the new Code cannot be summarised easily because of its extent. The replacement of civil procedure rules with autonomous procedural provisions resulted overall a legislative framework which is more fit for the specific characteristics of administrative court proceedings. The reform affected the extent of judicial review, the structure of taking evidence, the obligation to prove, the relation between the preceding administrative procedure and the judicial one, furthermore it led to the addition of extra measures for securing the equality of arms, to create a more comprehensive interim relief system and a lot more.

3. Extent of judicial review

As we have already mentioned above, the Finnish term to express the initiating action for judicial review of an administrative act is "appeal", so hereinafter when speaking about the Finnish judicial review system we will use this term to refer to it.

[31] Since extensive case law and English-language literature about the function and motives of the new regulation is not yet accessible, we do not intend to give a complete overview about it, but some considerations can still be drawn.

[32] 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), p. 9.

[33] Eadem, *The Procedural Autonomy…*

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The extent of this judicial protection against administrative acts in Finland is wide, as Section 6 AJPA declares that all decisions by which an authority has ruled on an administrative matter or ruled an administrative matter inadmissible shall be eligible for judicial review by appeal. This general-clause solution is a very essential element of legal protection in Finnish administrative law and gives way to judicial control over almost all administrative cases. The formal reviewability is necessary but not sufficient to secure the dual role of administrative courts, i.e. to balance the executive's power and guarantee the lawful implementation of statutory law and legislative intent.[34] To better understand the latter role of administrative courts, we must keep in mind that Finland adheres to the Nordic legal tradition. In Nordic countries, the judiciary is strictly separated in its functions from the legislature (cf. for instance the lack of constitutional courts). One of the consequences of this phenomenon is the exceptional importance of legislative preparatory works and the intent of the legislature when interpreting law.[35] This is the reason why courts also have a duty to observe and implement legislative intent in such a strong and highlighted way.

The decision of a judge must be based on legality criteria, other issues and interests, such as policy considerations, cannot be taken into account by courts. The depth of legal scrutiny is comprehensive, as all issues of legality may arise.[36] According to Finnish jurisprudence courts investigate not only whether procedural and substantive law was applied correctly by the respondent authority, but also whether the respondent authority respected the general principles of administrative law when exercising discretionary powers.[37]

The extent of judicial review varies based on whether the authority has discretionary power or not, but it also depends on the type of appeal. Administrative Judicial Procedure Act distinguishes two main types of appeal: administrative on the one hand, and municipal and regional appeals on the other. Logically, we speak about a municipal or regional appeal when the plaintiff appeals against a decision of a municipal/regional authority, while in the case of an administrative appeal judicial review focuses on the decisions of central administration, but decisions of municipal or regional authorities that directly affect an individual's rights or duties (e.g. cases concerning welfare benefits, building permits, taxes) may also be subject of an administrative appeal. The reason for the distinction is to respect the autonomy of local and regional governments in their affairs. This solution is not unique in the Finnish

[34] O. Mäenpää, *Deference to the Administration in Judicial Review in Finland*, [in:] *Deference to the Administration in Judicial Review: Comparative Perspectives*, ed. G. Zhu, Cham 2019, pp. 187–188.

[35] J. Husa, *op. cit.*, pp. 9–11.

[36] T. Paloniitty, S. Kangasmaa, *Securing Scientific Understanding: Expert Judges in Finnish Environmental Administrative Judicial Review*, "European Energy and Environmental Law Review" 2018, vol. 27(4), p. 132.

[37] O. Mäenpää, *Deference…*, pp. 192–193.

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legal system, as other types of appeal regimes, like the appeal against a decision made by an authority in the province of Åland or an ecclesiastical authority, differ from the already listed ones based on the autonomy these bodies enjoy.

The municipal appeal is regulated by the Act on Local Government (410/2015) and the regional appeal by the Act on the Wellbeing Services Counties (611/2021). Compared to the general administrative appeal, in municipal and regional cases the court's hands are more tied as it is endowed only with cassation power, so it may not reverse or amend the appealed decision. Furthermore, the court's investigative powers are limited, too, so these proceedings have a more adversarial nature.

Besides the most important power concerning the administrative and municipal appeals, Finnish administrative courts also decide on other administrative disputes, such as public liability cases, disputes deriving from administrative contracts or cases where other interests, rights or obligations arise from a legal relationship governed by public law.[38]

In Hungary, if parties are dissatisfied with the decision of the appellate authority or in cases when pre-trial proceedings are not granted, they can file an action for judicial review. By adopting the CACP, the Hungarian legislature addressed a long-standing deficiency and chose the so-called general clause technique for determining the jurisdiction of administrative courts and to establish the material scope of the CACP. In brief, Articles 4 and 5 CACP sets out which administrative acts are subject to judicial review, and which are not.[39] This solution is more conform to European and constitutional standards than the prior one. According to the previous Civil Procedure Code (III of 1952) and specific statutory law, access to court was not generally available against all administrative activity but legal provisions enumerated administrative acts against which judicial review was granted.[40] This solution did not cover all cases where an administrative action or measure directly affected parties' rights or legitimate interests, so it did not meet the requirement of effective legal protection. Thus, the legislature recognized the importance of seamless judicial protection as an indispensable aspect of effective legal protection, so expanded the judicial path.[41] However, the CACP not only provides an opportunity for judicial review of all administrative decisions but also regulates actions for omissions, i.e. judicial protection against the unlawful silence of public administration, as well as disputes related to administrative contracts and public service conflicts. The CACP also widens the definition of administrative au-

[38] Section 20 AJPA.

[39] Section 4 CACP: "The subject of the administrative dispute shall be the lawfulness of an act regulated under administrative law and taken by an administrative organ with the aim to alter the legal situation of an entity affected by administrative law or resulting in such an alteration, or the lawfulness of the administrative organ's failure to carry out such an act (hereinafter 'administrative activity')".

[40] Section 324 of Act III of 1952 on the Civil Procedure Code.

[41] K.F. Rozsnyai, *Current Tendencies…*, p. 9.

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thorities to include other public bodies not classified as administrative organs (such as professional chambers and academies, universities), to grant judicial protection against their acts. Furthermore, a distinctive feature of the Hungarian system is the possibility of norm control: on the one hand, decrees enacted by local governments and the failure of local governments to fulfil their legislative obligations, on the other hand the so-called normative acts of non-legislative nature issued by administrative organizations are addressed by the CACP.[42]

4. The role of judges in court proceedings

Speaking in general terms, Finnish administrative courts have a strong power when dealing with administrative appeals. Judges play an active role during court proceedings. The applicable inquisitorial principle allows judges to obtain evidence and factual information on their own initiative.[43] This concept makes it easier to guarantee effective legal protection to the parties and to exercise control over public administration. While certain parties may not possess the same expertise in law or financial resources as courts or respondent public authorities have, the inquisitorial principle helps them to practice their procedural and material rights in an appropriate way. Of course, a limit on *ex officio* investigation exists, as courts are bound by the request of the parties. Despite the wide investigative powers of courts, the burden of proof remains on parties[44] so it is rarely possible to contest judgments on the grounds that the court did not sufficiently clarify the facts and obtain all evidence *ex officio*. There are specific cases although, like tax cases where the investigational power of judges is narrower.

Although the new CACP brought some innovation in Hungary regarding the basic principles no total change was possible. This means that the investigative principle only plays a supplementary role besides the principle of free disposal of the parties, a system that falls far behind the level achieved in the Finnish administrative justice system. A certain shift in emphasis took place with the CACP in strengthening the *ex officio* powers of courts. Section 85 (3) CACP describes circumstances that courts must consider *ex officio*, i.e. if an act is non-existent or null and void or otherwise invalid, and if the act is based on a legal provision that is not applicable in the case. It is for the courts to decide on a case-by-case basis which substantial deficiencies makes administrative acts non-existent as substantive law does not define these more precisely. Judges have an unquestionable margin of appreciation when deciding on this aspect, however, it can only occur in exceptional cases when the act has serious formal deficiencies. The grounds of nullity

[42] *Ibidem*, pp. 9–10.
[43] O. Mäenpää, *The Rule of Law…*, pp. 197–198.
[44] Idem, *Deference…*, p. 195.

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and invalidity are set out in detail in the Ákr. and other sectoral regulations and it concerns the most serious breaches of law. Other facts and circumstances can be part of the administrative dispute only if the parties refer to them. Obtaining evidence and factual information on the own motion of judges is strongly connected to these circumstances since this competence is available only "with respect to evidence substantiating a fact or circumstance which the court is required to take into account *ex officio* or if an infringement jeopardising the interests of a minor or a person entitled to disability allowance is invoked".[45] To sum up, Hungarian administrative judges can exercise investigative power only in cases explicitly prescribed by law.

This characteristic is to be defined as a shortcoming in the light of the presented reduction of administrative pre-trial procedures. Although obvious, but it should be highlighted that to assess the level of legal protection in a certain legal order it is necessary to examine the available remedies in the complexity of their system. While the appeal is based on the principle of full review, allowing to investigate all questions of the appealed decision and the procedure for its adoption, it grants both subjective legal protection and objective legality control. Its use thus played a crucial role in guaranteeing the legality of administration, not to mention its easier accessibility because of less formalities and costs. Its obligatory use before the trial has mitigated the shortcoming that in Hungarian administrative justice the function of subjective legal protection is dominant. The investigatory powers of the decision-making body help to grant objective legal control over the administration and at the same time increase the degree of inclusivity in legal remedy processes as well, and by this, enhance the subjective legal protection function, too. Despite the gradual abolition of pre-trial remedies in the Hungarian legal system, legislature has not accordingly altered the rules of judicial procedure. As a result, the inquisitorial power that was previously present in appeal proceedings has been eliminated from the system because it has not been transferred to the judicial stage of the remedy procedures. This is even aggravated by severe material preclusion rules formulated in view of a two-level administrative procedure.

This is not an issue in Finland, as administrative review is not generally recognized within the Finnish legal system, and it is only available when expressly provided for by law. In terms of objective legal control and access to justice, a significant distinct feature lies in the fact that during the administrative court procedure, the strong inquisitorial powers of judges can fulfil this constitutional role of granting the control of legality. Of course, the perfect replacement of administrative review by judicial procedure is not possible neither in the Finnish system (see, e.g., the standard of the review), nor elsewhere. Nevertheless, it contributes to a more harmonious overall system of legal remedies compared to the Hungarian one.

[45] Section 78 (5) CACP.

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5. Remedies against court judgments

The most important changes of the Finnish AJPA occurred in the structure of judicial remedies. Finnish administrative court proceedings are two-tiered: the regional administrative court's judgments and decisions are appealable, and the requests for appeal are considered by the Supreme Administrative Court. Under the old legislative framework, appeals against the court's decisions have automatically proceeded to the phase of substantive review. This meant that the Court had the duty to examine the merits in all cases if the formal requirements were fulfilled by the submitting party. At the same time, the old AJPA has allowed sectoral law provisions to derogate from this rule by requiring the use of the "leave to appeal". This institution basically allows the Supreme Administrative Court to choose among cases and only deal with cases raising important legal issues or otherwise relevant legal problems. The introduction of the leave of appeal in sectoral law started the irreversible erosion: gradually it became a common sectoral practice, as legislature made use of this instrument widely in sectoral administrative law to finally convert this practice to an institution of general administrative court procedure. The AJPA has thus switched to the opposite model. According to Section 107 (1), "an appeal against a decision of a regional administrative court issued in an administrative judicial matter may be made to the Supreme Administrative Court if the Supreme Administrative Court grants leave to appeal". The codification of the existing extensive sectoral practice to a general rule of course reduces the burden on the Supreme Administrative Court even further. From the parties' point of view, introducing the leave to appeal demoted their general right to appeal to an exceptional opportunity for further judicial review. The extraordinary nature of the appeal undoubtedly adversely affects the effectiveness of legal protection from the perspective of the quantity of levels of legal protection. Nevertheless, it can have a favourable impact on the temporal aspect of effective legal protection. The less burdened Supreme Administrative Court can concentrate its resources on cases where the guidance of the highest judicial forum is genuinely necessary for the resolution of specific legal issues, contributing to the overall efficiency of the legal protection system.

The reason behind this change was possibly the aim of reducing the duration of judicial procedures, which is a general European endeavour of legislature. Other novelties of the AJPA similarly aim at making court proceedings faster and more concentrated. The Finnish administrative court proceedings are mainly written procedures. However, Section 47 AJPA created the possibility for an oral hearing upon the decision of the court. This instrument can be useful to clarify parties' statements and it is also a faster way of getting information from the parties as they have to answer the judges' questions on the spot. There were updates in that sense regarding the service of court documents, as well.[46] Finally, the new Section 113 introduces

[46] See Section 90 (3) AJPA.

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a further change in the role of the Supreme Administrative Court through narrowing the scope of extraordinary requests for review.

Even though the organization of administrative judiciary in Finland is following the dualistic model, while Hungary basically adheres to the monistic one, a noticeable convergence in the system of judicial redress can be observed. The contestation action, which is the principal model in administrative court procedures, is typically two-tier in both countries. Against the judgments of regionally competent (administrative) court, a request for legal remedy on the grounds of violation of law is possible upon which the superior administrative judicial body – the Supreme Administrative Court in Finland, and Kuria in Hungary – will decide. The main difference between the two redress systems is the type of remedy procedure, as in Finland parties can seek an appeal, which means that an ordinary legal remedy with suspensory effect is guaranteed, while in Hungary there is only an extraordinary review process available against the first instance judgment. This implies that decisions rendered by the first-instance Hungarian courts are typically considered final and are generally not subject to regular appeals, but rather may be subject to extraordinary review. In specific instances outlined in sectoral law, appeals against a court's judgment are possible. In such cases, the Budapest Metropolitan Court of Appeal holds exclusive jurisdiction to make a final decision in the matter.

Similarities can be found not just at the level of the adjudicating body. Since the introduction of the leave for appeal in Finland, legal remedies dealt by the highest judiciary in both countries are only exceptional; parties have no general right for a substantial review, but only if the court so decides. The novelties of recently adopted rules on administrative court procedures are though stemming from a different historical context but point in the same direction: supreme courts have the power to decide whether they want to consider the merits of the specific case or not. The difference in the historical context means that the Finnish lawmaker has integrated the institution of leave to appeal into the Code as a solution already existing in the sectoral regulations and the case law of the Supreme Administrative Court. In contrast, the admissibility procedure before the Kuria had no real precedent in administrative trials. This novelty also brings changes in general to the role of the supreme fora.[47]

Both the Finnish and the Hungarian supreme courts have a pre-trial filter built into their procedures and only deal with cases of exceptional significance based on criteria established by law. These criteria in Hungary are the need to ensure uniformity of jurisprudence, the necessity of a preliminary ruling procedure at the Court of Justice of the European Union, the specific importance or social relevance of the legal issue raised, as well as a likely infringement of fundamental procedural rights,

[47] A. Kovács, *The Curia's Tasks in the Code of Administrative Court Procedure*, "Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae – Sectio Iuridica" 2018, pp. 15–25.

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or other procedural violation affecting the substance of the case.[48] The uniformity of legal practice is a reason to permit leave to appeal also in Finland, the other grounds are a manifest error that has occurred in the matter or if the Supreme Administrative Court finds "some other serious grounds".[49] This latter flexible rule allows a sufficient margin of appreciation for the Finnish Administrative Court. Although formulated in more detail, it is comparable to the discretion that the Kuria enjoys based on the criteria established in CACP. It should be added that the Kuria exercises its power by developing a rather restrictive jurisprudence, with many cases in which the parties are not given the opportunity for exceptional review. The Kuria not only takes the formal requirements seriously (even *contra legem*), but also accepts the requests of the parties (and especially the plaintiffs) in very exceptional cases. It must be borne in mind that the same panel of judges will hear the case on the merits and decide on admissibility, with the same judge as rapporteur, and that accepting a review request will create more work for the deciding panel. As it is the last instance, there is no legal remedy – other than a constitutional complaint – against the rejection, which thus becomes a discretionary decision. Of course, this is the case for revision procedures in national systems that apply a filtering system, but it must not be too formalistic and make revision illusory. Supreme courts must exercise their discretion in such a way that the restrictions applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.[50]

CONCLUSIONS

Both the Finnish and the Hungarian new Codes of Administrative Court Procedure are aimed to increase the effectiveness of legal protection. The two administrative remedy systems and procedural laws started from different lines of development, so it is not surprising that while Hungary underwent a genuine, large-scale reform with the adoption of the new Code of Administrative Court Procedure, Finland only introduced minor adjustments and modifications with its new Code. Although both laws are guided by the same concept of achieving a timely effective legal protection by concentrating and thus speeding up court procedures, it is evident that the Finnish legislature – in contrast to the Hungarian Parliament

[48] Section 118 CACP. There is also the ground of deviation from the published case law of the Kuria, but that is practically part of the uniformity concern.

[49] Section 111 AJPA.

[50] Cf. with references in the judgment of the ECtHR of 12 July 2001 in the case *Prince Hans-Adam II of Liechtenstein v. Germany*, Application no. 42527/98, ECLI:CE:ECHR:2001:0712JUD004252798, [44], or the decision of the German Bundesverfassungsgericht of 16 January 2017, 2 BvR 2615/14, ECLI:DE:BVerfG:2017:rk20170116.2bvr261514, [18–19], especially for the administrative court procedure.

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– paid particular attention to ensuring that this legal policy goal does not come at the expense of inclusivity and access to justice.

The Hungarian reform of administrative justice, as compared to Finnish regulations, introduced several important changes. Firstly, significantly expanded the scope of acts subject to review by administrative courts, which is more in line with European and constitutional standards. This change made judicial review more accessible in cases where administrative actions affected parties' rights or legitimate interests. Secondly, the reform replaced civil procedure-based rules with more tailored procedural provisions suitable for administrative court proceedings. However, it is worth noting that the reinforcement of the principle of officiality in Hungary, despite some undoubted progress, fell short of the level that exists in Finnish administrative justice. Furthermore, the lack of internal remedy processes in the majority of administrative cases affects negatively the level of legal protection available to individuals, which is not the case in Finland where the legislature has taken an entirely opposite direction, despite that in Finland inquisitorial powers of judges play a significant role in the course of administrative litigation. As a result of the comparison, it becomes apparent that the principle of officiality during court procedures holds substantial significance when ensuring the effectiveness of both subjective and objective legal protection in administrative matters. In legal systems, like in Hungary, where the application of this principle is insufficient or even absent, arises a strong need to compensate it through pre-trial procedures. By comparing the Finnish and Hungarian legal remedy systems, on the one hand we can observe convergence regarding the role of the highest judicial forum, which also aligns with European trends, while divergence is evident in the allocation of responsibilities between judicial and non-judicial (internal remedies) forms of legal protection. Both legislatures aim at a more efficient resolution of administrative disputes, but it will ultimately be time that determines which of them is more successful.

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Constitution of Finland.

ABSTRAKT

W każdym systemie prawnym można znaleźć mechanizmy odpowiedzi na ewentualne naruszenia prawa wynikające z działalności administracji publicznej. Klasycznym aspektem tego zagadnienia jest tworzenie różnych procedur ochrony prawnej przeciwko decyzjom administracyjnym. Środki ochrony prawnej można podzielić na dwa główne rodzaje: środki ochrony prawnej o charakterze wewnętrznym oraz kontrolę sądową aktów administracyjnych. Chociaż zasadniczy cel tych procedur jest taki sam, różnią się one pod względem funkcji czy skutku. Poszukiwanie właściwej równowagi między nimi może przysparzać trudności i przynosić różne odpowiedzi. Aby to wykazać i zarysować pewne podstawowe kwestie dotyczące konstrukcji systemu środków ochrony prawnej, w artykule podano dwa podstawowe przykłady takich różnic: Węgry i Finlandię. Regulacje dotyczące systemów środków ochrony prawnej obu państw w różny sposób podchodzą do roli środków o charakterze wewnętrznym i do kontroli sądowej oraz do uprawnień sędziów do podejmowania rozpoznania sprawy z urzędu, co mocno wiąże się z tą równowagą. Ustawodawcy poszli różnymi drogami – na Węgrzech wewnętrzne środki ochrony prawnej, które wcześniej były stosowane szerzej, zostały stopniowo ograniczone, podczas gdy w Finlandii środki o tym charakterze, które wcześniej stanowiły jedynie wyjątki, stają się coraz bardziej powszechne. W badaniu zastosowano metodę prawnoporównawczą i dogmatycznoprawną, co doprowadziło do prawidłowej kontekstualizacji instrumentów prawnych i umożliwiło wyciągnięcie wniosków dotyczących nie tylko obu systemów środków ochrony prawnej, lecz także podstawowych elementów systemów środków ochrony prawnej jako takich oraz wzajemnych zależności między nimi.

Słowa kluczowe: administracyjne środki ochrony prawnej; kontrola sądowa; Finlandia; Węgry; komparatystyka prawa administracyjnego