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The Curia's tasks in the Code of Administrative Court Procedure**

ABSTRACT

Act I of 2017 on the Code of Administrative Court Procedure (hereinafter referred to as: Kp.), to be entered into force on 1 January 2018, brings about fundamental changes in the system and scope of administrative justice. My lecture focuses on the modified role of the Curia as the country's supreme administrative court. The Curia has been given more significant tasks as a result of the extension of the administrative courts' competences and the Curia's strengthened position within the system of administrative justice. My basic premise is that the Curia, as a judicial forum responsible for the harmonisation of the administrative courts' caselaw and as a court of second instance, has an overweight role in the system of administrative justice, which is contrary to the rationale behind the Kp.'s regulatory framework.

KEYWORDS: Supreme Court, Curia, scope of administrative justice, administrative court procedure, administrative procedure, court case law, judicial forum, system of appeals, full review

I. THE GENERAL REASONS BEHIND THE INCREASED ROLE OF THE CURIA AS THE SUPREME ADMINISTRATIVE COURT

Several factors explain the fundamental changes in the characteristics and scope of administrative justice. The key ones are the following: a significant extension of the Kp.'s material scope in comparison with Chapter XX of the Code of Civil Procedure, an important increase in the administrative courts' procedural and decisionmaking competences and the possibility of a broader interpretation of the Kp.'s abstract

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definitions. These reasons together result in the emergence of a need for the further development of procedural and substantive administrative law.

The Kp.'s material scope has been fundamentally changed, since it now extends to administrative acts and the omission of such acts, as opposed to the previous regulation according to which administrative decisions could be challenged before court. By virtue of the new rules, individual decisions (except for supplementary ones, the ones related to the Government's activities and the ones delivered in a management and leadership relationship), administrative measures, administrative contracts and provisions of general effect (communications, resolutions, recommendations, regulations, etc.) – not falling under the scope of the Act on Legislation – to be applied in an individual case may be subject to judicial review. Legal disputes related to civil service and, in certain cases defined by law, legal disputes related to a public law issue that does not qualify as an administrative dispute are to be dealt with by the administrative courts as well. In addition, administrative courts will, in principle, overturn the unlawful administrative acts and condemn the administrative authority that had rendered or carried them out, or establish the authority's violation of law instead of the application of the earlier general rules on quashing the impugned administrative decisions and ordering the competent authorities to reopen their proceedings. They will be able to establish the unlawful omission of an authority in a larger variety of cases and will be given stronger powers concerning the enforcement of their judgments.¹

In many cases, the Kp.'s provisions leave it to the courts' practice to "determine the details" of their application and provide highly abstract definitions, which give the possibility of a broader judicial interpretation.² For instance, section 20(6) of the Kp. stipulates that the court may, on request or *ex officio* bring any person into the action whose rights or lawful interests are affected by the judgment to be passed therein as a person concerned, if the court deems that their involvement is necessary in order to resolve the legal dispute. It is not regulated, for example, whether the guidelines to be given by the court for the administrative authority's reopened proceedings should be included in the operative part or, in conformity with the earlier judicial practice, in the reasoning part of the court's decision,³ and, in general, it introduces a novel set of definitions (administrative acts, nonexistent acts, etc.) that are to be interpreted

¹ The introduction of the legal instrument of immediate legal protection will also result in an important expansion of competences.

² F. Rozsnyai, K., The emancipation of the law of administrative court procedure: the Code of Administrative Court Procedure (A közigazgatási perjog emancipációja: a közigazgatási perrendtartás), (2017) (5) *Jogtudományi Közlöny*, (235–242) 239.

³ Section 86(4) of the CAL regards the guidelines as part of the court's judgment; hence, it may be concluded that they should be included in the operative part. On the other hand, other provisions – such as on the availability of the operative part one day after the judgement's delivery and prior to the latter's being put in writing – may have the effect of creating a different judicial practice.

and developed by the jurisprudence.⁴ As an example, the provision according to which, in the event of establishing a legal injury, the court shall *ex officio* oblige the administrative authority to eliminate the consequences of the activity that injure the plaintiff's rights [section 89(3) of the Kp.] gives an abstract mandate to the courts to act *ex officio*, which will substantially alter the strict interpretation-based approach of judges. These changes fit into the latest international trends which originate from legal uncertainty due to a multilayered (national, European Union and international) legislation and are generally accepted by the jurisprudence of the European Court of Justice and the European Court of Human Rights. According to these trends, the need for a consistent caselaw prevails over the courts' strict legislation-based interpretation.⁵ The higher the court, the more lenient judicial interpretation becomes. The Curia will rightly continue to strive for a legislation-based interpretation, but it will not be as "efficient" as in the past; however, it will certainly not be as lenient as the caselaw of the relevant international judicial forums. The Curia's competences will, therefore, increase, not only because of the Kp.'s broader material scope, but also due to a less stringent judicial interpretation.

In the long term, the Curia's role will continue to be strengthened as a result of the Kp.'s effect of forcing the legal environment's further development. Although the legislator's intention was to adopt the Kp. and Act CL of 2016 on the Code of General Administrative Procedure (hereinafter referred to as: Ákr.) as parts of an integrated legal framework, it can be stated that the Ákr.'s provisions on the rights of the parties to administrative proceedings constitute a major setback in comparison with the rules of the previous piece of legislation, namely Act no. CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred to as: Ket.)⁶ and that the legislator was not able to include the Kp. and the Ákr. into a well-integrated system. The Ákr.'s material scope is narrower than that of the CAL or of the ÁKR.S,⁷ which implies that administrative acts other than administrative decisions, such as other individual decisions and administrative measures, will continue to lack a general procedural framework on the basis of which they could

⁴ It is one of the most important tasks of administrative justice, K. F. Rozsnyai, *Administrative justice in Procrustes' bed (Közigazgatási bíráskodás Prokrusztész-ágyban)*, (Budapest, Eötvös Kiadó, 2010) 13–17.

⁵ See this issue from a linguistic approach in R. Somssich, *The different language versions of the concepts of European community law, with particular regard to European private law (Az európai közösségi jog fogalmainak nyelvi megjelenítése különös tekintettel az európai magánjogra)*, PhD thesis, (Budapest, 2007) 182–193.

⁶ É. Szalai, *The legal standing of the client in the Ákr. (Az ügyfél-jogállása az Ákr.-ben)*, lecture in Jubilatory conferences on the occasion of the 350th anniversary of the foundation of the Faculty of Law of ELTE University, Our new procedural codes II: the Act on the General Rules of Administrative Proceedings and the Code of Administrative Litigation (*Új eljárásjogi kódexeink II.: az általános közigazgatási rendtartás és a közigazgatási perrendtartás*), conference, 5 May 2017, ELTE University, Faculty of Law, Conference Room.

⁷ Tax matters, asylum, alien policing and competition cases are not covered by the Ákr.'s material scope.

appropriately be subjected to judicial review. If the Ákr. were adopted in order to create a general procedural framework for administrative acts then some of the Ákr.'s newly introduced concepts – such as the term definitiveness instead of the principle of administrative *res judicata* – would have truly made sense and they would have helped administrative judges in reviewing the lawfulness of administrative acts other than administrative decisions. As regards the latter category of administrative acts, the principle of *res judicata* makes no sense; on the other hand, their definitiveness is an essential element for the administrative courts to being able to carry out their judicial review.⁸ All the above limit the Kp.'s impact, since the judicial review of administrative acts other than administrative decisions cannot be undertaken in an efficient manner. Nonetheless, administrative judges are, in the long term, expected to shape the aforementioned procedural framework, which will then strengthen the role of administrative justice.

The Ákr.'s and the Kp.'s other main objectives were to introduce a singleinstance administrative procedure and to make administrative litigation a fundamental means of legal remedy.⁹ The Ákr.'s objectives could be achieved only partially, as tax matters (that represent one third of all administrative court procedures) and the administrative disputes referred to in section 116(2) a) of the Ákr. (first instance decisions rendered by a district office or a body of a municipal government other than the council of representatives) continue to be dealt with in a twoinstance administrative procedure. With regard to the recent centralisation of public administration, which resulted in the district offices becoming generally competent firstinstance administrative bodies and to the continued existence of a twoinstance administrative procedure concerning decisions delivered by a body of a municipal government, it can be established that the Ákr. failed to comply fully with the Kp.'s new system. However, it is important to stress that full achievement of the above objectives would have entailed a significant change to the structure and personnel of the system of administrative justice, the lack of which can be deemed a positive result of the process of legislation. This means that the majority of administrative cases will continue to be heard by a single judge and not by a threemember judicial panel,¹⁰ which removes the risk of the judiciary's dilution

⁸ The term *Bestandskraft* (definitiveness) is used by the German Code of Administrative Procedure [*Verwaltungsverfahrensgesetz* (VwVfG)] not for administrative decisions (*Entscheidung*), but for administrative acts (*Verwaltungsakt*) in a generalised manner (section 43 of the VwVfG). It is evident that only definitive administrative acts may be subjected to judicial review.

⁹ There are other connecting points as well, see in K. F. Rozsnyai: Connecting points between the law of administrative litigation and the law of administrative proceedings (A közigazgatási perjog és a közigazgatási eljárásjog kapcsolódási pontjai), (2015) 1 (2) *Fontes Iuris*, 15–21.

¹⁰ Administrative disputes preceded by a twoinstance administrative procedure are to be dealt with by a single judge. See section 8(3) a) of the Kp.

and ensures the continuous and organic development of administrative judges and the system of administrative justice.¹¹

In addition, the Kp. will generate the development of substantive administrative law; for instance, the legislator will not be able to avoid the unambiguous qualification of administrative contracts, hence it can be stated that, in the long run, the spectacular development of substantive and procedural administrative law, as well as a growth of the role of administrative litigation, are expected.

The Kp. has therefore singlehandedly launched a revolutionary reform which effects the entire field of administrative law and which will be implemented by administrative judges under the guidance of the Curia as the country's supreme administrative court. The role of the Curia in the development of Hungarian administrative law and in the promotion of a culture of legality in respect of the functioning of the Hungarian State will be similar to that of the European Court of Justice in the development of European Union law and in enhancing European integration.

II. THE CURIA AS A JUDICIAL FORUM RESPONSIBLE FOR THE HARMONISATION OF THE ADMINISTRATIVE COURTS' CASELAW

Turning now to the Curia's role in the system of administrative justice, it should first be pointed out that, in the past, the Curia had not been entitled to exercise full supervisory power over the traditional, narrow-scope judicial review of administrative decisions. Through judicial review procedures, the Curia could examine only the legality of lower instance judgments dealing with administrative decisions and not with administrative orders; moreover, petitions for judicial review could not be submitted to the Curia in certain types of cases (*e.g.* asylum cases). On the other hand, petitions for judicial review had been lodged as a kind of "appeal" and their annual number had amounted to about 2,000,¹² in addition, a majority of them had raised

¹¹ If the adjudication of cases by three-member judicial panels became the rule, then it would have resulted in the recruitment of additional judges coming mainly from the public administration, thus with different socialisation background and law enforcement experiences, and their number would have been twice as many as the number of administrative judges currently in office at first instance, which would have brought fundamental changes to the judiciary's organisational culture and would have quickly marginalised the traditional judicial approach that is based on the judges' professional autonomy.

¹² According to the statistical report of the National Office for the Judiciary, in the year 2016, the Curia heard 1,699 petitions for judicial review in the field of administrative law, while it dealt with 882 such petitions in the field of labour law (including civil service disputes and certain types of administrative lawsuits, such as social security cases). <http://birosag.hu/kozerdeku-informaciok/statisztikai-adatok/2016-evkonyvek> (Last accessed: 19 June 2017).

no serious legal issues, but they had taken away valuable resources from the Curia's more complex tasks, in particular regarding the harmonisation of the courts' caseload. Making matters worse, administrative orders and asylum cases had to be dealt with by twenty different courts in a single instance judicial procedure; as such, there had been no higher instance court that could have taken over, at least informally, the Curia's harmonisation role in such cases. In those circumstances, the Curia's strategic objective in respect of administrative cases could be none other than to have direct control over all types of cases through their individual adjudication and to have a continuously decreasing number of individual cases (a total of approximately 7,000 cases¹³ had been brought yearly to the Curia, this number is roughly the equivalent of the regional appellate courts' combined annual workload). With regard to the country's size and in comparison with the regional appellate courts' workload, the Curia's aim was therefore to make the number of its incoming cases decrease to about 2,000.¹⁴ The reason behind such aim was to alleviate the Curia's caseload in order to enable it to perform its main task better, namely the harmonisation of the courts' caseload via the adjudication of individual cases.

This shift in the supreme judicial forum's functions has been apparent in the past couple of decades, when the reestablishment of the regional appellate courts resulted in a significant decrease of the Supreme Court's powers as a second instance appellate court (the Supreme Court's such powers remained unaffected only in the field of criminal law and only with regard to certain procedural orders).¹⁵ As a result of the entry into force of the Fundamental Law of Hungary, the Curia has been given the task of analysing the courts' jurisprudence as well.¹⁶ Such analyses are to be carried out by jurisprudence analysing working groups that publish the results of their findings in the form of summary reports, which qualify as "soft" means for orienting the courts. Uniformity decisions – with a strengthened role despite international criticism¹⁷ –, as well as decisions and rulings of theoretical importance remained applicable for the purpose of harmonising the courts' case-law. The most efficient means of harmonisation, however, continues to be the adjudication of individual

¹³ In 2016, a total of 7,326 petitions for judicial review was lodged with the Curia. Source: see the previous footnote.

¹⁴ See the lecture of Péter Darák, President of the Curia delivered on the occasion of a series of talks entitled "Legal system from within", held by the Institute for Legal Studies of the Centre for Social Sciences of the Hungarian Academy of Sciences on 6 November 2014, from 10:11, <https://www.youtube.com/watch?v=62-yb4h4Zg4> (Last accessed: 31. December 2018).

¹⁵ According to the explanatory notes attached to Act no. LXIX of 1997 on the establishment of the regional appellate courts, the setting up of the regional appellate courts as appellate courts enables the Supreme Court – as a result of a decrease in its caseload – to fully comply with its constitutional duties in the field of the harmonisation of the courts' case-law.

¹⁶ Section 24, subsection (1), point d) of Act no. CLXI of 2011 on the Organisation and Administration of the Courts of Hungary.

¹⁷ Opinion no. CDL-AD (2007) 003 of the Venice Commission of the Council of Europe.

cases by the Curia to guide the courts' jurisprudence. With regard to the above, the Curia set up three jurisprudenceanalysing working groups to justify the adoption of a code of administrative litigation and to determine the latter's regulatory principles.¹⁸ Each working group concluded that petitions for judicial review should be allowed to be submitted in a broader range of situations; the Curia, on the other hand, should be allowed to apply an admission policy to admit the cases that could be of relevance in respect of the harmonisation of the courts' caselaw.

The Kp. sought to achieve both objectives by extending – in cases where no appeal can be lodged with the Curia – the possibility of submitting a petition for judicial review in all types of administrative lawsuits and by introducing a filtering mechanism to help the Curia to concentrate its resources on dealing with cases that are of higher importance concerning the Curia's harmonisation role.

As regards the first issue, administrative orders can now be reviewed by the courts through a simplified administrative lawsuit, and it can be noted that the Kp. truly seeks to empower the Curia to hear all types of administrative matters. The new regulation can be, nonetheless, criticised, because it maintains a number of special procedural regimes which hinder the implementation of the Kp.'s universal approach. Despite the fact that the Curia's jurisprudenceanalysing working group on the courts' caselaw related to asylum cases had clearly indicated that a higher instance judicial forum should be created in order to resolve the differences in the jurisprudence of the various administrative courts in asylum matters, the legislator had not taken the working group's findings into due account during the adoption of the Kp. and of the other pieces of legislation related thereto.¹⁹ The working group found that, similarly to the previous regulation, either a court should be given exclusive territorial competence to deal with asylum and even alien policing cases or, if there would be more than one court to hear such cases, a higher instance judicial body should be set up so as to harmonise the lower instance courts' necessarily diverging caselaw. The above findings had been completely disregarded by the legislator, as a result of which the Kp. does not entitle the Curia to decide on the admissibility of a petition for judicial review related to an asylum case with the aim of harmonising the courts' caselaw.²⁰

Due to the Kp.'s extended material scope, an increase in the Curia's powers in respect of judicial review proceedings and the introduction of a filtering mechanism at

¹⁸ Published on the Curia's website on 21 February 2013, 17 February 2014 and 24 November 2015.

¹⁹ Summary report of the jurisprudenceanalysing working group on the courts' caselaw related to asylum cases (20 October 2014), page 90, published on the Curia's website.

²⁰ The maintenance of the previous situation cannot be justified by any professional reason, while the proposed regime could have been able to efficiently remedy the anomalies in the courts' diverging caselaw, complained by the Immigration and Asylum Office, without further delaying the conclusion of the relevant disputes in 99.9 percent of the cases.

the level of the Curia, the latter is able to review almost the full range of administrative decisions and administrative court decisions and to concentrate on legal disputes that are of importance with regard to its harmonisation role.

III. THE CURIA AS A COURT OF SECOND INSTANCE

Having regard to the above, the question arises as to why the new rules according to which the Curia had become an appellate court before which the decisions of the Metropolitan High Court, acting as a first instance administrative court, delivered in highly important and rather complex cases can be brought have been adopted contrary to the aforementioned efforts. The cases which are to be dealt with by the Metropolitan High Court are mainly related to the regulatory decisions of the administrative authorities and are of considerable economic importance, but they also include some fundamental rightsbased disputes, such as the following: the judicial review of the decisions of the Equal Treatment Authority and the National Authority for Data Protection and Freedom of Information, as well as decisions touching upon the freedom of assembly and access to classified information.

According to the legislator's initial concept, first instance judgments related to regulatory decisions with economic importance could have been appealed and the appellate court, after carrying out an admissibility check (similar to the filtering mechanism introduced for judicial review procedures), would also have been entitled to modify the impugned judgments; all that instead of allowing the submission of petitions for judicial review as a result of which the judicial review court would have been authorised only to quash the impugned judgments.²¹ The concept was in line with the Kp.'s fundamental purpose, *i.e.* to create a procedural code which promotes the quick conclusion of cases. This would have been particularly important in respect of regulatory decisions which are of *ex ante* nature, based on a complex background and usually valid for a 2-3 yearlong regulatory cycle; therefore, their *ex tunc* quashing by the supreme judicial forum, for example due to a need for minor corrections, in the framework of a judicial review procedure, would have been mostly nonsensical and incomprehensible.²²

²¹ http://www.drhosszu.hu/admin/feltolt/ozigazgatasi_perrendtartas_2016_04_13_p.pdf (Last accessed: 31 December 2018).

²² See in detail in A. Gy. Kovács, *Market regulation and means of legal remedy – the courts' caselaw related to regulatory decisions with particular regard to the field of electronic communications (Piacszabályozás és jogorvoslat – a piacsabályozói döntések bírói gyakorlata, különös tekintettel az elektronikus hírközlésre)*, (HVG-Orac, Budapest, 2012) 325.

In April 2016, a modified bill was presented²³ which, as a general rule, excluded the possibility of submitting petitions for judicial review in administrative lawsuits, hence, 80 percent of such lawsuits would have been finally disposed of by a planned Administrative High Court which would have functioned as an appellate court. Under this regime, only the regulatory as well as public procurement, competition law and certain fundamental rights-related decisions of the Administrative High Court, acting as a court of first instance, could have been appealed to the Curia. In the latter types of cases, there were, however, no professional reasons for maintaining the appellate system. Regulatory cases have been traditionally dealt with in a singleinstance administrative procedure because of their complexity and the shortage of experts capable of handling them, in particular in a medium-sized country like Hungary. In the absence of a sufficient number of appropriately trained experts, legal practitioners and judges, it would have been quite difficult to establish a twoinstance administrative procedure or a singleinstance administrative procedure combined with a twolevel judicial system.²⁴ In such a setting, the Curia would have been unable to exercise its harmonisation role, originating from the Fundamental Law of Hungary, regarding the review of administrative decisions, which would have resulted in an unconstitutional legal regime; on the other hand, if the Administrative High Court would have been given that role, the Curia's functioning as an appellate court would then have become completely meaningless. This was particularly true since the Constitutional Court's control, through the mechanism of genuine constitutional complaints, over the legality of the Administrative High Court's proceedings would have been a sufficient guarantee. There would have been no need for additional safeguards, as there would have been not enough judges, at a systemic level, to assess the relevant substantive administrative law issues in a twolevel judicial system in an appropriate manner. All that raised the possibility that the Curia would have shortly fallen out of the system of administrative justice as a result of the exclusion of appellate procedures by an act of law adopted by a simple majority and it would have been replaced by the Administrative High Court, operating outside the ordinary court system with newly recruited judges.²⁵

²³ http://www.drhosszu.hu/admin/feltolt/ozigazgatasi_perrendtartas_2016_04_13_p.pdf (Last accessed: 31 December 2018).

²⁴ Numerous critical remarks alleging a lack of experts have been made in a recurring manner as regards the adjudication of such regulatory cases which may currently be dealt with by three different judicial instances. See among others the polemical articles of András Tóth, András Kovács and Szabolcs Koppányi published in 2006 and 2007 in the periodical entitled *Infocommunications and Law (Infokommunikáció és Jog)*.

²⁵ See: Bill on the modification of certain acts of law due to the renewal of the system of administrative justice, <https://d2gvief1bctb7.cloudfront.net/wp-content/uploads/sites/7/2016/08/normaszoveg.pdf> (Last accessed: 22 June 2017); K. F. Rozsnyai: A separate procedural code and separate courts in the system of administrative justice (Perjogi önállósulás és különbíróági jelleg a közigazgatási bíráskodásban), (2016) (4) *Public Law Review*, 7–8.

Finally, the legislator decided, in view of constitutional concerns as well, to withdraw the draft provisions which would have excluded the possibility of lodging a petition for judicial review; however, it decided to introduce a traditional system of appeals, which entailed the rejection of the initial concept of the quick conclusion of cases and of decreasing the level of the courts. It, nonetheless, became obvious for those who have followed the process of legislation that if the Administrative High Court were set up by the modification of the relevant cardinal acts of law (to be adopted by a two-thirds majority) then the Curia's "removal" from the system of administrative justice can easily be carried out by the adoption of a piece of legislation requiring only a simple majority vote of the members of the Parliament. Having regard to the legislator's initial concept, this solution is professionally justified, because the Curia's remedy proceedings would be unnecessary in such a model provided that the Administrative High Court would also take over the Curia's harmonisation role in the system of administrative justice.²⁶ Ultimately, the establishment of the Administrative High Court failed due to a lack of majority support among MPs', while the traditional system of appeals continued to be applicable and the Curia became the "successor" of the Administrative High Court, which resulted in the introduction of a redundant level of jurisdiction and an increase in the duration of proceedings in respect of cases of high complexity and priority. Thus, the Curia became a second instance administrative court, but it also remained responsible for harmonising the administrative courts' jurisprudence.

Consequently, the Curia was given an excessive role within the system of administrative justice, in which complex regulatory cases are heard in a twoinstance court procedure (despite a shortage of legal expertise in such cases), while traditional and mainly less complex cases are dealt with in a singleinstance court procedure. We should not forget that, if we take the Ákr.'s main rule into due consideration, both traditional and regulatory cases should be, in principle, heard in a singleinstance administrative procedure. Contrary to that rule and in an illogical manner, regulatory

²⁶ The unconstitutionality of such a model could have been raised, but the Constitutional Court's proceedings could have been initiated only by the President of the Curia or the Prosecutor General (no constitutional complaint could have been submitted in that regard), and the big question is whether the Constitutional Court would have shared the aforementioned concerns. The complexity of the issue is well shown by the fact that the Kp. has also been examined by the Constitutional Court, the latter rendered a rather contradictory decision which sought, in an inappropriate way, to prevent the promotion of the Metropolitan High Court to the position of an administrative high court within the judicial system and which reflected an approval of the legislator's aforementioned initial concept and a dismissal of any other solutions (namely the establishment of an administrative high court within the existing system of justice). See Constitutional Court decision no. 1/2017 (of 17 January 2017).

cases – in which there would be a need for the concentration of expertise – are dealt with in a twoinstance administrative court procedure.²⁷

IV. CONCLUSION

With regard to the above, I am of the opinion that it would be necessary to introduce the newly proposed appellate system only in respect of the Curia instead of the currently applicable system of appeals²⁸ with the aim of ensuring the harmonisation of the courts' caselaw and to exclude the possibility of such appeals contrary to the Kp.'s internal logic. In this way, the Curia could efficiently fulfil its supervisory role and become a true guardian of the administrative courts' harmonised caselaw.

²⁷ The focus here is rather on administrative regulatory issues, and the analysis has disregarded the cases in which, as a result of the modification of the CAL's material scope, there is a twoinstance procedure due to a lack of the administrative authority's formal decision. This, however, does not alter the substantive findings.

²⁸ The current system of appeals may and should be maintained in cases in which the administrative authorities had not delivered any individual administrative decision prior to the commencement of the administrative lawsuit.