

COUNTRY STUDIES CONCERNING STATE AID - HUNGARY



Country Study
Justice and Environment 2023

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Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely [ACCC/C/2015/128 \(EU\)](#). Specifically, the Committee [found that](#):

- (a) *By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;*
- (b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.

Questions

What courts have competence to make a judgment when allegedly unlawful state aid government measures are challenged in court? Administrative? Civil? Constitutional?

In Hungary, the main legislations governing the measures granting State aid are Act CXCV of 2011 on Public Finances (the Aht.) and Government Decree No 37 of 2011 (22 March) on procedures relating to State aid measures under Article 107(1) of the TFEU and the regional aid map (Gov.Decree 37/2011).

The national legislation uses different terms for aids. Aid is defined as any subsidy granted from the subsystems of the public finances (central or local government sub-system) in any form without consideration. An aid may be granted by a legislation or individual decisions, by means of a tender or outside a tender scheme.

The Aht. defines State aid as any aid within the meaning of Article 107(1) of the TFEU or aid granted as de minimis aid under a directly applicable legal act of the EU.

The detailed national rules on the adoption and notification of a State aid have been laid down by Gov.Decree 37/2011 which legislation does not specify the forms/acts in which a State aid may be adopted.

According to the Aht. an aid (including State aid) may be granted from the subsystems of the public finances based on legislation or individual decisions, by means of a tender or outside a tender scheme,

- by the decision of an administrative authority,
- by an administrative contract, or
- by a deed of aid or a grant agreement.

Depending on the legal measure adopting the State aid, the Constitutional Court or administrative courts may have competence to make a judgement in this regard. Challenging the legality of laws (e.g. acts of the Parliament, decree of the Government, decrees of the Ministers, decrees of local municipalities) or public administrative measures (normative

decisions) is possible under the Act CLI of 2011 on the Constitutional Court (the 'Abtv.')

Individual decisions may also establish State aid in form of an aid scheme or an individual aid. Where the decision (that can be considered as State aid decision) is taken by an administrative authority in an administrative proceeding, or the authority enters into an administrative agreement with the beneficiary, an administrative appeal and/or the administrative judicial review can be initiated in accordance with Act CL of 2016 on the General Rules of Administrative Proceedings (the 'Ákr.')

and Act I of 2017 on Administrative Litigation (the 'Kp.'). However, the scope of the Kp. does cover governmental activities, which implies that lawfulness of individual decisions adopted by the Government cannot be subject to an administrative lawsuit.

As to each of the courts identified in reply to answer 1, what requirements must be met in order to show standing? Specifically, could an NGO meet these requirements and initiate/file a case challenging potentially illegal state aid? Could other members of the public meet these requirements (presuming they are neither aid beneficiaries nor (potential) competitors Could this NGO join an ongoing case on any side of the legal dispute as an amicus curiae?

As regards the constitutional complaint, the Abtv. provides that **any person or organization** affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings

- their rights enshrined in the Fundamental Law were violated, and
- the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

Constitutional Court proceedings may also be initiated if due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights, or the petitioner has already exhausted the possibilities for remedy.

Constitutional complaints are admitted by the Constitutional Court only if the case raises constitutional law issues of fundamental importance.

In relation to bringing a case to the administrative court, where the state aid decision is made by an administrative authority, the rules of the Kp. apply. Persons and entities whose rights or legal interests are directly concerned by an administrative proceeding may have the status of a party and may bring an action to the administrative court.

In addition, any non-governmental organization may be the plaintiff in the cases specified by law, if

- that organization has been pursuing its registered activity to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year, and
- the administrative activity affects its registered activity.

Based on Act LIII of 1995 on General Rules of Environmental Protection (the 'Kvt.') environmental associations can initiate an administrative lawsuit in environmental cases. Therefore, an eNGO can have legal standing in the administrative lawsuit if the State aid decision in question is an administrative act in terms of the Kp and it was adopted in a proceeding that can be considered as an environmental administrative procedure.

The Kp. provides the possibility to join an ongoing case to support the plaintiff (or the defendant). Any person whose rights or lawful interests are directly affected by the disputed administrative activity or might be directly affected by the judgment to be passed in the action may join the action as a person concerned. Theoretically, an NGO can join an action under this rule.

Has any national court granted legal standing in practice to a party whose competitive position was not affected by

a state aid? If yes, how would you categorize this party? An NGO? Another type of member of the public (individuals, citizens initiatives, and other non-incorporated groups)? In what position was this party accepted by the court: plaintiff or amicus curiae (on either side)?

We did not find any cases in Hungary.

Presuming a national court would grant standing to an NGO to challenge a state aid decision, what criteria would this NGO need to meet in order to be recognized? Are there different criteria for becoming a party vs. an amicus curiae?

As regards the constitutional complaint, the Abtv. provides that **any person or organization** affected by a concrete case may submit a constitutional complaint based on the violation of the Fundamental Law.

Criteria of standing of NGOs in administrative lawsuits are the following (Art. 17 pt. g), Kp.)

- only in cases specified by law
- the organization has been pursuing its registered activity to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year, and
- the administrative activity affects its registered activity.

To join an administrative lawsuit in progress, an NGO (like any other person or organization) has to confirm that its rights or lawful interests are directly affected by the dispute.

Has an eNGO ever filed a lawsuit against a state aid measure in your Member State? Has an eNGO ever been admitted into a case as amicus curiae? If yes, what was the outcome of the case? What was the contribution of the eNGO to the outcome of the case? Please address both admissibility (standing/scope) and merits.

We did not find such national case.

Can an applicant claim a state aid measure or scheme violated EU or national law relating to the environment? If yes, please provide details, specific examples where this was done, etc. You can quote here cases that were not initiated by eNGOs or members of the public, too.

In Hungary, we did not find such cases.

In a constitutional complaint, the violation of the EU or national law relating to the environment can be claimed if it causes the violation of any right provided by the Fundamental Law (e.g. the right to a healthy environment).

In an administrative lawsuit, in the petition of claim it can be claimed that the decision challenged violates the EU or national law relating to the environment.

What sort of remedies is available in a judicial procedure started against a state aid measure?

In the procedure based on a constitutional complaint, if the Constitutional Court finds a legislation in force or a statutory provision contrary to the Fundamental Law, it annuls the legislation or statutory provision in question in whole or in part.

According to the Kp., if the administrative court declares the legal injury based on the claim or ex officio,

- it alters, annuls or abrogates the administrative act,
- if necessary, in addition to annulling or abrogating the administrative act it obliges the administrative body to conduct new proceedings,
- it condemns the administrative body.

The court may also apply these consequences together.

Assuming eNGOs and other members of the public have standing to challenge state aid measures, what potential costs would they face? Would these costs be different if these eNGOs and members of the public are only acting as *amicus curiae*?

The proceedings of the Constitutional Court are free of charge. The petitioner bears his/her own costs incurred in the course of the proceeding (e.g. lawyer's fee).

The costs of court proceedings include for instance procedural fees, remuneration of the experts, and legal fee. As a main rule, in administrative lawsuits, the court duty is 30.000 HUF. Associations are exempted from the obligation of paying duties, however, this exemption does not pertain to other costs of the procedure (e.g. experts' fee, lawyer's fee which might be high).

In an administrative court procedure, as the main rule, court costs of the successful party have to be covered by the unsuccessful party. Where a party succeeds partly, he covers the costs of the opposing party in proportion of his losing. The fee of private expert has to be paid by the party commissioning the expert. If the private expert's report is considered to give cause for concern the party shall not be allowed to include the private expert's fee among court costs.

How can eNGOs and other members of the public have access to information about any possible planned state aid or an actually granted state aid? Specifically, are there national registers? Please answer not only as to general information “out there”, but specifically indicate whether, in your view, this register is fit for the purposes of mounting a timely legal challenge of any such aid.

Act CXXXI of 2010 on Public Participation in the Preparation of Legislations sets out that public consultation is not necessary when preparing decisions on State aid that are adopted in the form of a legislation or a public administrative measure. Before their adoption, draft legislations on State aid cannot be not challenged even if it is made available for public consultation.

Where the conditions stipulated by the Abtv. are met, the legal review of laws and normative decisions can be initiated before the Constitutional Court within 60 days of receipt of the contested decision, or within 180 days of the entry into force of the law contrary to the Fundamental Law.

As regards the administrative lawsuit, the claim has to be lodged with the administrative body realizing the disputed act within 30 days from the disclosure of the disputed administrative act. If the administrative act does not have to be disclosed, the statement of claim shall be lodged within 30 days from gaining knowledge of the act but no more than 1 year from the realization of the act.

Certain information on State aid measures (as required by Gov.Decree 37/2011) have to be disclosed after the adoption thereof:

- within 6 months if the individual aid was granted under block exemption regulations, or
- if the aid scheme or individual aid was approved by the European Commission.

Information on individual aid must be published within one year of the aid being granted if it exceeds the amount EUR 100,000. In the case of aid to primary agricultural production or fisheries, this threshold is set at EUR 10,000.

The publication deadline of one year does not allow for legal challenge against a State aid measure on such individual aids.

Members of the public obtain information on existing State aid schemes and individual aids via the website of the State Aid Monitoring Office (*Támogatásokat Vizsgáló Iroda*):

https://tvi.kormany.hu/download/7/4c/e2000/Létező_támogatások_listája_2022.pdf

Furthermore, the National System for Aid Monitoring, (*Országos Támogatásellenőrzési Rendszer* - the OTR) maintained by the Hungarian State Treasury contains information provided by the bodies granting an aid (including State aid):

<https://www.allamkincstar.gov.hu/Koltsegvetes/kincstari-monitoring-rendszer1/otr>

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