HUNGARIAN PUBLIC ADMINISTRATION AND ADMINISTRATIVE LAW

András Patyi – Ádám Rixer (Eds.)

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Authors

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Chapter 1. *Ádám Rixer*

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Part III.
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Chapter 5. *Ádám Rixer*

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Foreword

The system of Hungarian public administration has gone through major institutional and legal changes in the past three-four years. This English language publication, Hungarian Public Administration and Administrative Law, presents the system of today's Hungarian public administration to foreign readers – its constitutional bases, main functions (for example public finances, public services), its main institutions, procedures, sanction system, staff – by paying special attention to the aforementioned changes. Moreover, it must be mentioned that some of the essays shed light on the history of public administrative institutions and draw their course of development.

The book may be important and instructive because the increase in significance of public administration and the growth of the number of its tasks have been worldwide phenomena both in legislation and in law enforcement. In the opinion of some experts, this course of development has been predestined, and there is a forming 'public administrative state', as separate branch of power, which focuses on results and seems to be independent from the executive. Partly due to these phenomena, constitutional requirements defined for public administration, the theory of constitutional public administration gain significance again and again. The essays of this book specifically focus on these rule-of-law requirements, among others the following:

– subordination to law and legality of public administration;

– the wide-scale supervision of public administration by external constitutional institutions.

Separate essays deal with public administrative law, the right to good public administration, administrative courts, and the control role of the prosecutor and the ombudsman over public administration. The social control and publicity of public administration may be facilitated by the civil relationships of public administration and the quasi public administrative organisations.

The book pays special attention to the modernisation of public administration, e-public administration and info-communication.

Even though the publication was realised in the cooperation of the Lajos Lőrincz Research Centre for Public Law of the Károli Gáspár University of the Reformed Church, Faculty of Law and the National University of Public Service – its editors are András Patyi and Ádám Rixer – the scope of authors includes almost the whole of today's science of Hungarian public administrative law and the departments and law faculties teaching this subject. A separate essay studies the past and present of the science of Hungarian public administrative law.

The book may appear for the foreign reader as a descriptive, critically evaluating and extremely informative publication. It uses various legal sources and studies the main case law, as well. Its authors and editors aimed at facilitating understanding by unifying legal terminology and definitions, and by using internationally accepted professional terms.

This publication is the scientific work of the representatives of the science of Hungarian public administration, and the majority of its authors, editors and lectors are members of the Hungarian Academy of Sciences, Section of Economics and Law, Committee of Public Administration. Based on this, I gladly recommend this book to all interested readers.

19 January 2014

István Kukorelli (Professor of Public Law, DSc.)
Head of Department of Constitutional Law
Eötvös Loránd University, Faculty of Law

Editors' Preface

The public administration system and the administrative law of a country have constitutional significance. What the public administration of a country is unable to implement from the constitutional provisions, nobody else will implement.

This book presents Hungarian public administration and administrative law. These are the legal tools of a country which was the last of the Eastern-Central European states to approve its new Constitution (Fundamental Law of Hungary). Of the country which did its best to shape democratic structures, which revolted in 1956 and fought against the Soviet empire. The revolution was suppressed, but its impact has been alive ever since. Decades later, in 1989-90, as an impact of that revolution, a democratic transformation began, and the establishment of democratic public administration, not obliged to adopt foreign patterns, was launched.

The current state of affairs in Hungarian public administration is a result of the 25 years that have passed since the changes in 1989-90. A lot of things have changed for these 25 years, as a lot had to be changed. These changes were justified not only because of the establishment of democratic rule of law in the country. The alliance relations of the country have also changed, Hungary joined NATO and the EU; moreover, immediately after the accession agreement in 1994, full legal harmonisation was launched. Countries had new challenges to face worldwide. Such new tasks, new challenges, coupled with technical development, required new solutions, new organs and procedures in public administration. Our EU membership also meant that the indirect application of EU law by the public administration organs of the member states required new and modern public administration culture. While Hungary has centuries-old traditions (both good and bad) in public administration, there was a need to adopt the solutions and models of other countries and those of the EU.

The systems of public administration in modern states are complex and complicated, even in a small country like Hungary with a population of 10 million. Yet the systems of these states, although complex, are different. No two systems of public administration are alike. Small countries regard their public administration as a value helping to preserve and express the constitutional identity and independence of the nation.

It is understandable that science focuses on and researches the public administration procedures and organisational systems of large, model states. Nevertheless, the solutions of smaller countries may present a model or an example not just for large states but for each other, as well. For this it is inevitable for these states to become familiar with each other's public administration and public administration law. The present book aims at providing help with this activity.

András Patyi and Ádám Rixer

25 June 2014

List of Abbreviations

AES	Act on Electronic Signature
AIDP	Association internationale de Droit pénal
AMR	Act CLXXIX of 2002 on the Rights of Minorities
Áe.	Act IV of 1957 on General Rules of State Administrative Proceedings / Act I of 1981 on Modification and consolidation of the Act of IV of 1957 on General Rules of State Administrative Proceedings
Áht.	Act CXCV of 2011 on Public Finances
ÁROP	State Reform Administrative Programme
Bszi.	Act CLXI of 2011 on the Organisation and management of courts
CAP	Common Agricultural Policy
CCIF	International Telephone Consultative Committee
CCPE	Consultative Council of Prosecution of Europe
CDCJ	European Committee on Legal Co-operation
CEE	Central and Eastern European Countries
CPC	Civil Procedure Code
CPGE	Conference of the Prosecutors General of Europe
CSR	Corporate Social Responsibility
CSS	(Hungarian) Civil Service System
ECOFIN	Economic and Financial Affaires
EAFRD	European Agricultural Fund of Rural Development
EAGF	European Agricultural Guarantee Fund
ECHR	European Court of Human Right
EFF	European Fisheries Fund
EGTC	European Grouping of Territorial Cooperation
EMMI	Ministry of Human Resources
ENVI	Environment
EPSCO	Employment, Social Policy, Health and Consumer Affairs
Et.	Act of IV of 1957 on General Rules of State Administrative Proceedings
EYC	Education, Youth, Culture, and Sport
GOTI	Act CXXVI of 2010 on the Establishment of the County Government Office, and the Government Office of the Capital, and the Amendment of the Establishment, of the County Government Office, and the Government Office of the Capital, and Territorial Integration
GMMS	Government Members and Minister of States

GRAPS	Act CXL of 2004 on General Rules of Administrative Proceedings and Services
GRSAP	Act IV of 1957 on General Rules of State Administrative Proceedings
GYEMSZI	National Institute for Quality- and Organisational Development in Healthcare and Medicine
HR	Human Resources Management
HRM	Human Resources Management
ICEC	Inter-ministerial Committee of European Coordination
IDA	Interchange of Data across administrations
Internal Market Directive	Directive 2006/123/EC
Jat.	Act XI of 1987 on Legislation
Jártv.	Act XCIII of 2012 on the Establishment of Districts
Játv. 1	Act LVII of 2006 on central state administrative organisations, and on the legal status of the members of Government and the state secretaries
Játv. 2	Act XLIII of 2010 on central state administrative organisations, and on the legal status of the members of Government and the state secretaries
JHA	Justice and Home Affaires
KEK KH	Central Office of Online Public Services
KeSz	Regulation of Councils of Ministers 59/1952
Ket.	Act CXL of 2004 on General Rules of Administrative Proceedings and Services
KIK	Klebelsberg Institution Maintenance Centre
Ktjt.	Act LVIII of 2010 on Cabinet civil servants
LGH	Act of CLXXXIX of 2011 on Local Self-Governments of Hungary
LPIS	Land Parcel Identification System
LSG	Act LXV of 1990 on Local Governments
MCA	Act I of 1981 on Modification and consolidation of the Act of IV of 1957 on General Rules of State Administrative Proceedings
Media Act	Act CLXXXV of 2010 on Media Services and Mass Media
MFA	Ministry of Foreign Affaires
Mötv.	Act of CLXXXIX of 2011 on Local Self-Governments of Hungary
MSG	Minority self-government
MSZMP	Hungarian Socialist Workers' Party
MVH	Agricultural and Rural Development Agency
NADI	National Authority of Data Protection and Freedom of Information
NBF	National Patient Forum
NEFMI	Ministry of National Resources
NER	System of National Consultation

NFÜ	National Development Agency
NGO	Non-governmental organisation
NHH	National Communications Authority
NMHH	National Media and Infocommunications Authority
NOJ	National Office for the Judiciary
NPM	New Public Management
NSM	Neue Steuerungsmodel
NUTS	Nomenclature of Statistical Territorial Units
Nvtv.	Cardinal Act CXCVI of 2011 on National Property
Ombudsman-act	Act LIX of 1993 on the Parliamentary Commission of Human Rights
ORÖ	National Roma Self-Government
OTKA	National Scientific Research Fund
OWiG	Gesetz für Ordnungswiedrigkeiten
Ötv.	Act LXV of 1990 on Local Governments
PIT	Personal Income Tax
PM	Prime Minister of Hungary
PMO	Prime Minister Office
Postal Services Act	Act CLIX of 2002 on Postal Services
PPP	Public-Private Partnerships
PS	Act CXLIII of 2011 on the Prosecution Service
Revision Act	Act CXI of 2008 on Amending Act CXL of 2004 and Act LIX of 2006
RMA	Act CLXXIV of 2011 on the Amendment of Act CXL of 2004 on General Rules of Administrative Proceedings and Services
SCM	Standard Coast Model
SME	Small and middle enterprises
Standing orders	Government Resolution 1144/2010 (VII.7.) on the standing orders of the Government
TASZ	Hungarian Civil Liberties Union
TTE	Transport, Telecommunications, and Energy
VAT	Value added tax
VStG	Verwaltungsstrafgesetz

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Part I.

INTRODUCTION

Introduction

1. Possibilities of the scientific analysis of Hungarian public administration

1.1. The significance of jurisprudential approaches

Hungarian public administration and science of public administration – traditionally – are very much of legal character. This is not changed by the fact that the most acknowledged researchers of the science of public administration (earlier Zoltán Magyary, in the near past Lajos Lőrincz) often expressed their concerns about the one-sided legal analysis of public administration. Nevertheless, the analysis of public administration primarily with jurisprudential methods and from a legal approach is comfortable, because '(…) the questions of public administration may be homogenised legally, and its mechanisms have been consciously based on law since the beginning of the 19th century'[1], therefore this is determinative also in practice. According to the data of a survey published not long ago, the civil servants questioned – in their own opinion – spend exactly two-thirds of their office hours on legal activities, and this rate is slightly higher in case of jurists working in public administration (68%).[2]

According to the presently prevailing majority opinion, the narrowest examination possibility of any field of public administration is the analysis of the internal principles of administrative law. It provides for a wider analysis, and thus for a kind of 'legal internal multidisciplinarity' if we compare the institutions of public administration with similar institutions of other fields of law: *e.g.* comparing administrative responsibility, as a sub-type of the system of legal responsibility, with the elements composing the system of responsibility in other fields of law.[3]

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1 Tamás András, 'Közigazgatási jogtudomány' [Administrative legal science] in Fazekas Marianna (ed), A közigazgatás tudományos vizsgálata egykor és ma: 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet [The scientific analysis of public administration in the past and today: The Institute of Hungarian Public Administration was established 80 years ago at the law faculty of Budapest] (Gondolat Kiadó 2011) 67–68.

2 Gajduschek György, 'A közigazgatás értelmezése Magyarországon' [Interpretation of public administration in Hungary], in Takács Péter (ed), Ratio Legis – Ratio Iuris: Ünnepi tanulmányok Tamás András tiszteletére 70. születésnapja alkalmából [Ratio Legis – Ratio Iuris: Essays for the 70th birthday of András Tamás] (Szent István Társulat 2011) 395.

3 For this see for example Nagy Marianna, 'A közigazgatási felelősség – mi van a jogon túl?' [Administrative responsibility – what is beyond law?], in Fazekas Marianna (ed), A közigazgatás tudományos vizsgálata egykor és ma: 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi

The necessity of 'internal legal multidisciplinarity' is supported also by some specific features of relationships regulated by administrative law: we shall pay attention to the fact that the number and significance of those complex legal relationships which are established in the 'overlap', at the borders of administrative law and civil law is rising.[4] Thus *for example* in relation with public services (permitting) decisions delivered based on administrative rules originating from acts or decrees, and the civil law contracts realising these decisions compose a unified, complex (mixed) legal relationship in which the various elements materially overlap each other.[5] The decisions and contracts assume each other, and therefore their realisation is shared too. Grasping these complex legal relationships is a difficult issue, both in legislation and in law enforcement, especially that 'the dogma of such complex (mixed) legal relationships is less worked out'[6], even though – as has been mentioned – this is not a new phenomenon.[7]

Experiences the significance of which is magnified by the crisis show that the interests of the national economy and other aspects more and more require the limitation of contractual freedom from the interests of the public. 'In developed modern legal systems such areas of limitation are especially the law of the limitation of competition, cartel law, abuse of economic power, supervision of organisational associations, price regulation, standard contracts, protection of the environment, protection of consumers, etc. In these fields of regulation, the contractual freedom of the parties is often doubted, as well as the determination of the contracts' contents by the parties, and moreover, the unaltered nature of the content of contracts.'[8]

Since the second part of the 19th century, university education and scientific research have considered legal interpretation determinative. Differences may be observed only in some minor issues, such as in addition to 'descriptive' explanations, the number of works describing and analysing the public law/constitutional law frameworks has been increas-

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Intézet [The scientific analysis of public administration in the past and today: The Institute of Hungarian Public Administration was established 80 years ago at the law faculty of Budapest] (Gondolat Kiadó 2011) 200.

4 Károly Szladits has already written about this phenomenon in 1941 that '(…) there are amphibian, mixed legal situations, which are of public law features in one part and of civil law features in the other. (…) The direction of legal development turns towards the combination and commutability of public law and civil law institutions: new reorganisations are going on in front of our eyes, especially in the area of the so-called economic law (…), which unite public law and civil law elements in a new synthesis.' [Szladits Károly, Magyar magánjog, I. kötet [Hungarian private law, Volume I] (Grill Károly Könyvkiadó 1941) 20. According to Article 198 paragraph (3) of Act IV of 1959 on the Civil Code (herein after referred to as Ptk.) 'An obligation or an entitlement to services may be constituted, on the basis of legal regulation or official order, without the conclusion of a contract if so ordered by the legal regulation or competent authority, and if the obligor, the obligee, and the service are accurately specified. In such case, the provisions on contracts shall be duly applied, unless otherwise provided by legal regulation or official order.'

5 Reasoning of the 3062/2012. (VII. 26.) ABH Constitutional Court Decision

6 ibid

7 About the features of relationships in the 'no man's land' between administrative law and civil law see Harmathy Attila, Szerződés, közigazgatás, gazdaságirányítás [Contract, public administration, economic control] (Akadémiai Kiadó 1983) 84.

8 ABH 1991, 146, 151–152.

ing lately. Moreover, the examination of the legal system [and of institutions showing a close relationship with public administration] is more and more simplified to exclusively constitution-based evaluation with aspects of constitutionality.[9] However, in the case of this approach – which has been strengthened by the approval of the Fundamental Law of Hungary on 25 April 2011 and its entering into force on 1 January 2012 – it is important that 'The examination of [the] constitution, as norm category, considering its establishment, modification (amendment), subject, effect and unique characteristics requires the consideration of a complex system of aspects.'[10] One reason for this is that 'constitution making is an act of legal and political nature at the same time. The decision whether a new constitution is needed is made outside of the legal system. It is not a concern of law either which should be the main directions of a new constitution (e.g. form of government, mechanisms for the protection of fundamental rights, etc.) These decisions shall be made via politics.'[11] A constitution always contains at least two types of norms: one related to positive law, and one containing political norms. Constitutional law analysis is always needed, but it can never be exhaustive if it excludes the description of the nature of political norms.[12] *In a broader approach*: the material problem of constitution making cannot be managed exclusively from a legal or jurisprudential point of view; the catalogue of questions and the pool of answers which provide for the completion of the task may be put together only upon a summary of the aspects and opinions of several professional fields.

1.2. The significance of inter- and multidisciplinarity in administrative research

In addition to the above mentioned factors our presumption is that in connection with the direct subject of this work – public administration – a sort of inter- or multidisciplinary method is needed for an examination which allows for drawing credible further conclusions and founding new analyses; thus in the examined subject – in addition to the methods and results of the traditionally strongest administrative jurisprudence – a strong scientific and material framework should be established from the scientific methods of other social sciences,[13] such as political sciences, organisational sciences (organisation-

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9 Examining the issue from a different approach, we may observe that it seems that the analysis of certain fields of social phenomena (analysed also in this work) is 'reserved' exclusively to the sciences of constitutional law and legal sociology.

10 Csink Lóránt and Fröhlich Johanna, Egy alkotmány margójára. Alkotmányelméleti és értelmezési kérdések az Alaptörvényről [To the Sidelines of a Constitution: Constitutional scientific and interpretation issues regarding the Fundamental Law] (Gondolat Kiadó 2012) 13.

11 ibid

12 Szigeti Péter, Társadalomkutatás – mi végre? Politikatudomány – Alkotmányjog – Világrendszerelmélet. [Research of society – for what? Political science – Constitutional law – Global system theory] (Publicationes Jaurinenses, Széchenyi István Egyetem 2011) 53.

13 About the possible use of natural scientific approaches and methods see e.g. Nagy Marianna, Interdiszciplináris mozaikok a közigazgatási jogi felelősség dogmatikájához [Inter-discpilinary mosaics to the dogmatics of administrative law responsibility] (ELTE – Eötvös Kiadó 2010).

management sciences), public policy science, the narrowly interpreted science of public administration (theory of public administration and economics), broadly interpreted management sciences, statistics, sociology, social psychology or Christian social ethics or ethics of economics (!), moreover, certain natural sciences, in which, or compared to which the narrowly interpreted jurisprudential reasonings and textual examinations may receive their real place and value.

International literature refers to the fact that in the attempts at description of different public administrations, public policy and institution-centred approaches were in an almost monopolist situation for a long time, also at international level.[14] We shall direct our attention to the fact that the rather traditional methods of the science of public administration, administrative-sociology and science of economy are nowadays supplemented by approaches of network theory which are more suitable for analysing the globalised world.[15] In order to see the full picture, it must be added that the examination of administrative phenomena is not only affected by the proper scientific field and method; ideological relations are also equally important, which may be considered as separate directions with scientific appearance, and may be separated from each other: 'During the scientific analysis of Hungarian public administration traditionally we may distinguish between at least three approaches: the classic method of Weber, the public policy approach stressing social effects, and that of of public management.'[16]

For the establishment of dialogue between law and other forms of knowledge, a strongly inter-disciplinary starting point is needed.[17] Today this means more than the application of the methods of sociology or discussion-analysis for a better understanding and overview of legal processes. The need to turn towards new (scientific) fields has been formulated; new fields which have not or have not really been in connection with the science of law or economy before (science of literature[18], cultural anthro-

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[14] See for example: M. P. van der Hoek, Handbook of Public Administration and Policy in the European Union (Taylor & Francis 2005).

[15] Nagy Marianna, 'A közigazgatási felelősség – mi van a jogon túl?' (n 3) 200, 207–209.

[16] Gajduschek György, 'A közigazgatás értelmezése Magyarországon' (n 2) 391.

[17] Richard Sherwin, Intersections of Law and Culture (A cross-disciplinary conference hosted by the Department of Comparative Literary and Cultural Studies, Franklin College Switzerland, Lugano, October 2, 2009).

[18] Law and literature is becoming a new discipline also in Hungary. It aims at revealing the literary context of legal phenomena. According to the simplest – and perhaps most applied – scheme there are two specific approaches in the research field: the first one examines how law appears in literature (law in literature), while the other one treats law as a special field of literature (law as literature). H. Szilágyi István, Jog és irodalom [Law and literature] (2010) 6(1) Iustum Aequum Salutare 5. (About this topic see also: Nagy Tamás, 'Jog, irodalom, intertextualitás' [Law, literature, intertextuality] in Takács Péter (ed), Ratio Legis – Ratio Iuris. Ünnepi tanulmányok Tamás András tiszteletére 70. születésnapja alkalmából [Ratio Legis – Ratio Iuris. Anniversary essays for the 70th birthday of András Tamás] (Szent István Társulat 2011) 38–47., and Kiss Anna and Kiss Henriett and Tóth J. Zoltán (eds), Csíny vagy bűn? [Prank or sin?] (COMPLEX Kiadó 2010).
In addition to the fact the 'law in literature' approach is closely related to the criticism of law (H. Szilágyi István op. cit. 6.) the picture of law in literature may be also used as source of legal history and the history of ideas. (H. Szilágyi István op. cit. 9.) Moreover literary works – especially the modern novel – may also serve as valuable sources for legal sociological research. In this latter discipline – based

pology[19], or psychology and cognitive nerve sciences, etc.). Moreover, nowadays the relationship of these cannot be limited to 'mutual introduction' at the level of generalities, but rather the establishment of previously formed inter-disciplinary procedures and related coherent and systematic methods is necessary, which are able to provide a firm framework for material comparative analyses/research, and at the same time are committed to flexibility and openness.[20]

Naturally, in the examination of administrative (state) phenomena this need – observable in the above-mentioned multidisciplinary approach – does not appear only on the side of the narrowly interpreted science of public administration and administrative legal science. Gyula Gulyás – approaching the subject from his own field, the science of public policy – writes the following: 'Multidisciplinarity requires a break-up with the one-sided political analysis of institutions and structures [thus administrative institutions and structure]: these examinations shall be supplemented with the theoretical and methodological possibilities offered by sociology, economics and legal sciences.'[21]

This complex approach – regarding all administrative phenomena – is justified by the fact that the difference between change processes emerging in law and real social changes has traditionally faded away: '[The] need to get used to the new, and the significance of the management of society mostly by law shows shifts even in cases when in reality nothing happens.'[22]

Due to these features (characteristics) during the examination the *method of model making* should be used, if public administration may be interpreted as an adaptive complex method – *in which the separate examination of certain elements significantly decreases the value of possible explanations*. In this model, the relationship of the state, moreover, of the broadly interpreted administrative institutions to society, other authorities, market and international integrations, etc. – due to the conflicts of the above-mentioned pretence

on the 'living law' concept of Ehrlich – the first works mentioning the possibility of this approach in the analysis of documents appeared in the 1970s. (H. Szilágyi István op. cit. 9–10.) Such analyses may provide valuable help for example in reviewing the ideas of society about jurists. According to the 'law as literature' concept literature and law may be interpreted as different directions or methods of the continuum of linguistic actions, but both are actions expressing or establishing the identity of the individual and of society at the same time. The basic function of law is to hold society together, and therefore its essence is constitutive rhetoric – namely the 're-telling' of the stories of society members which facilitates the return of the individual to the community or the establishment of its (new) role, as a closure of the conflict handled by law. (H. Szilágyi István op. cit. 14–15.)
Based on the above-mentioned, the appearance of the structures, operation and staff of the strictly legal public administration in old or modern literature may contribute to the better scientific understanding (researchability) of the real movements, rules, possible new directions or repeated specialities of public administration. These ideas are still theoretical, and substantial research regarding this context has not been performed in Hungary yet.

19 For details see e.g.: Michael Freeman–David Napier: 'Law and Anthropology' (2009) 12 Current Legal Issues 40, 47.

20 Jonathan Rothchild, 'Law, Religion, and Culture: The Function of System in Niklas Luhmann and Kathryn Tanner' (2008–2009) 24 Journal of Law and Religion 465, 476.

21 Gulyás Gyula, A közpolitika paradoxonai [Paradoxons of public policy], (Dphil. thesis, ELTE Budapest 2002) /draft/ 69.

22 Sajó András, Társadalmi-jogi változás [Social-legal change] (Akadémiai Kiadó 1988) 7.

created by law and reality – shall be examined from all possible aspects also with the approach whether the administrative reforms have touched upon the *merits* of the system of relations, and if yes, how and at what degree.[23]

In order to present the full picture it must be mentioned that methods and procedures pointing in the direction of interdisciplinarity require the utmost care, because the clarity of terminology is extremely important in this aspect. For example, the notion of governmental capacity – in its broadest meaning – refers to the ability of the state through which – in hope of realising its public policy goals – it is able to overcome certain difficult, hampering circumstances.[24] Part of our uncertainties about notions – with legal, economic, etc. contents – originates from the fact that it is very difficult to find material, useful indicators which meet the standards of comparison, especially that these are often very complex 'sets of aspects' composed of several elements. One of them – for example – is the approach from the side of trust capacity,[25] which – beyond the traditional measurements of trust towards institutions – is not afraid of the complex examination of mutualities based on trust, among other things.[26]

1.3. Beyond multi- and interdisciplinarity: new approach of social sciences

As in other fields, modernity has resulted in the introduction of new explaining principles in political philosophy. For a long time the majority of authors discussing good governance and the order of social coexistence explained the 'human phenomena' based on the presumptions of the ontology and epistemology of the Cartesian-Newton ethos', which was dominant for a long time in modern natural sciences, and they considered any other approach irrational: the individual was considered the natural starting point and atomic element of social examinations.[27] Either this way or the other, they derived the right to existence of political institutions from the authorisation received from individuals and/or from natural efforts attributed to individuals, and historical heritage and the 'blind' forces of nature were only considered obstacles to be overcome in order to allow for the undisturbed establishment of the individual. The unbinding of the personality, emancipation became the main political [and administrative] goal, the main tool of which [in mainstream approaches] is clear, rational power.[28]

Today's canon requires the researchers of society to distinguish clearly between statements of fact and statements containing value judgements. The 'scientific majority' tends

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[23] Gellén Márton, A közigazgatási reformok az államszerep változásainak tükrében [Administrative reform in light of the changes of the role of state] (Dphil.thesis/Thesis book, SZIE ÁJ DI, Győr 2012) 14.

[24] Mark Bevir, Key concepts in governance (SAGE 2009) 41.

[25] For this see e.g.: Boda Zsolt and Medve – Bálint Gergő, 'Intézményi bizalom a régi és az új demokráciákban' [Institutional trust in old and new democracies] (2012) 21(2) Politikatudományi Szemle 22, 27.

[26] Meleg Csilla, 'A bizalom hálójában – társadalmi nézőpontok' [In the net of trust – approaches of society] (2012) 14(1) JURA 72–75.

[27] Lányi András 'Az ökológia mint politikai filozófia' [Ecology as political philospohy] (2012) 21(1) Politikatudományi Szemle 103, 105.

[28] ibid

to accept as scientifically valuable and thus realistic only the former ones.[29] However, the global spread of rational institutions led to great political changes by the end of the 20th century, in so far as the [complex] operation of 'knowledge power' embodied in networks, technologies and formalised relations (e.g. law, market, IT) has become more and more uncontrollable and pressing,[30] including the fact that attempts at description with traditional methods have become impossible.

As Marianna Nagy puts it, in regards to the question of 'why law is not working', we have not received sufficient answer yet;[31] the traditional, 'usual' methods of the broadly interpreted economic science and the related – typically social scientific – fields do not give answers. It is unavoidable to re-establish the *philosophic* synthesis between legal norm regulating public administration and the facts of the real operation. Probably this direction will/may be the basis and realiser of the change of paradigm (also) in Hungarian sciences (of public administration).

*In general it may be stated that due to the crises social sciences more and more shall start examining, the real meaning of things, the broader examination frameworks of the analysed phenomena, instead of descriptive questions analysing the ways of operation. In the era of crises, when everyday experiences falsify our expectations, legal and political science become more radical: it shall examine and revise the validity of its preassumptions – which it had considered firm before. '*Therefore *philosophy* has become valid again, as it is more and more difficult to exclude questions from political scientific [and economic scientific] discussion which is averted from philosophic questioning, appearing with the requirement of descriptive science which are not related to the method of operation, but to its meaning (the framework of meaning).'[32] The attention of jurisprudence is turning – among others – to the issue of how it is possible that moral principles are more and more present in the world of law, also in fields where the need for these is a long repeated fact, but the practical incorporation has not or just partly happened (see. e.g. the issue of moral responsibility of the majority society towards the Roma minority in the legal instruments of Hungary). A definite sign of the expansion of the horizon of jurisprudence – interpreted in the broadest sense – is that the warriors of 'traditional' legal positivism keep establishing their own systems of criteria, through which this incorporation may provably take place in all possible fields.[33]

1.3.1. Strengthening of the natural law approach

For modern people the functional differentiation of society is an experience; the more and more obvious autonomy of politics, law, economy, science and the subsystems of religion, which have meant significant challenge for social sciences when they should have described

[29] ibid 106.
[30] ibid 107.
[31] Nagy Marianna, 'A közigazgatási felelősség – mi van a jogon túl?' (n 3) 207.
[32] Lányi (n 27) 107.
[33] Matthew H. Kramer, Where Law and Morality Meet (Cambridge University Press 2008) 17.

this acentric – centreless – world.[34] The feature of modern and 'post-modern' social science concepts conceived in the era without a central guiding principle is that they do not (or not much) consider the philosophic-moral nature of man, and they do not touch upon the principles of proper social coexistence and order related to society integrative forces, and this way they also give up the theoretical founding of a feasible social order.[35]

In early cultures, law and religion typically formed a unified knowledge complex which identified itself eventually as a gift of God, as power organiser knowledge, [sometimes] with ambiguous origin, bequeathed orally across the generations.[36] One of the main effects made on the present state of modern law and jurisprudence originated from the break up with the exclusivity of divine natural law: the transcendent (moral) verification of the validity of positive law made by man profanised in form of rational natural law.[37] Even though the need to verify the validity of positive law with transcendent, so-called meta-juristic (moral) principles has not vanished yet, the verification problem itself shifted into the dimension of the history of the non-created world.[38] Pál Kecskés wrote: 'As the conservativism of the historical-legal school established in the concept of Romanticism considered customs which appeared in the historical spirit the origin of positive law, with the urging of the historical method it significantly facilitated the creation of legal positivism',[39] which, by rejecting metaphysics – thus the existence and role of God – considered only concrete, positive law as the only existing and valid law (therewith that in its opinion the only possible background reason of the created rules must be found in historical circumstances). In this approach, the notion of law is limited to the material (positive) law, the only origin and therefore interpreter of which is the state, or the will of the state.[40]

Natural law itself has always had a double meaning: the approach interpreting nature in a metaphysical – religious – way has always been contradicted with the new (16–18th century), 'enlightened, rationalist – or in other words layman-approach – interpretation of natural law', which by providing specific, empirical meaning to nature attaches the notion of natural law to an empirical feature of human nature (typically to its instinct, or any easily recognisable need).

With the advancing of the positivism of the law, the separation/division of ethics and law (morality and legality) from the strengthening of legal positivism, pushing the natural law approach to the background, there has been the following alternative solution for the question of the 'origin and nature' of legal validity: positive law becomes valid either through a decision delivered in a rationalised (legal!) procedure, and it does not need any transcendent justification beyond law, or there is a need for external justification, reliance on metajuristic

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34 Cs. Kiss Lajos, 'Bevezetés' [Introduction] in Cs. Kiss Lajos – Karácsony András (eds), A társadalom és a jog autopoietikus felépítése [Autopoiethical structure of society and law] (ELTE 1994) 7–8.

35 Frivaldszky János, Klasszikus természetjog és jogfilozófia [Classic natural law and legal philosophy], (Szent István Társulat 2007) 382.

36 Juhász Zita, 'De iure non scripto, avagy a korai jogfogalom duplexitása' [De iure non scripto, i.e. the duplexivity of the early notion of law] (2011) 5(1) De Iurisprudentia et Iure Publico 1, 8. www.dieip.hu>accessed 25 July 2013.

37 Cs. Kiss (n 34) 8.

38 ibid

39 Kecskés Pál, 'Natural law' in Szabó Miklós (ed), Natura Iuris (Bíbor Kiadó 2002) 219–220.

40 ibid

(moral) principles.[41] *At this time it must be stated that nowadays we may witness the slow strengthening of the natural law approaches, interpreted in the broadest sense*. Regarding legal positivism, which can still be considered the ruling approach, the assumption is realistic according to which '[law] as momentum related to the system of norms and values requires the certification of its validity, and the changing world of positive experience cannot serve as sufficient justification; it could remain in the shadow only till the wise spirit tied down by one-sided natural scientific knowledge'.[42]

2. The effect of the science of public administration on the itemised regulations and practice of public administration

The so-called professional substantiation of local-regional public administration established in the transition in Hungary started in the 1980s with empirical and deductive, descriptive and comparative research and modelling,[43] and in the past twenty years there have been some significant programs for the elaboration of which working teams composed of theoretical and practical experts (e.g. the works of the reform of public administration in the middle of the 1990s, the grounding of the new procedural law, the IDEA program) were set up.[44] However, regarding these we may generally state that in the later phases of legislation, at the ministries or at the Parliament, the results of these working groups were not built into the finalised form of the draft text, or only in a very fragmentised way.

'Administrative-sociological, public policy and public management research obviously works with a much broader set of tools [than the jurisprudential ones], but it is still observable that the most usual subjects of these are the operation of local governments, especially the organisation of public services, or in somewhat broader sense the territorial structure of public administration. The other thoroughly examined area is the administrative staff (…). However, the mapping of authority work based on process examinations is almost completely missing, and we cannot talk about unified authority statistics. Probably this is the reason why instead of the revision of sectoral material law, governments always

41 Cs. Kiss (n 34) 8–9.

42 Kecskés Pál (n 39) 220.

43 Kökényesi József, 'A helyi közigazgatás szervezési tendenciái' [Organisational tendencies of local public administration.] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások [Swings. Public service changes] (Dialóg Campus 2012). Among these works he mentions Verebélyi Imre, A tanácsi önkormányzat [Self government of councils] (KJK 1987) and Verebélyi Imre, A tanácsrendszer önkormányzati típusú reformja [The governmental type reform of the system of councils] (Államigazgatási Szervezési Intézet 1988).

44 Fazekas Marianna, 'A közigazgatás tudományos vizsgálata egykor és ma' in Fazekas Marianna (ed), A közigazgatás tudományos vizsgálata egykor és ma. 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet [The scientific analysis of public administration in the past and today. The Institute of Hungarian Public Administration was established 80 years ago at the law faculty of Budapest] (Gondolat Kiadó 2011) 38–39.

try to establish client-friendly public administration through the continuous modification of procedural law, especially the general rules of administrative procedural law.'[45]

It may be stated that among sciences dealing with public administration it is the jurisprudence which resorts least to the analysis of practice, save the review of growing Hungarian and European case law. Regarding the analysis of case law conscious attempts have appeared: among them the JEMA periodical. In the Editorial welcome of the journal we may read: 'The mission of our journal is double: on the one hand (…) to increase the reasoning standards of legal practitioners by promoting case analyses popular in Western Europe (*Fallbesprechung*, case note) and in Hungary; and, on the other hand strengthening professional control over courts by constantly reviewing their judgments from jurisprudential aspects'.

The assessment of the experiences of the existing pilot projects and the recovery of the researches based on the utilization of the knowledge obtained this way from self-made pilot projects is also a promising development within the analysis of administrative practices in Hungary (see e.g. the results of the Ereky István Research Group of PPKE JÁK).

The fragmentation of the relationship of sciences and living law is also caused by the fact that legislative impact studies – either preliminary or subsequent (posterior) analyses (law-reviews) – are very rarely added to the detailed legal provisions. However, it is also a fact that by the time anyone could start such a subsequent impact study, the given legal instrument is not in effect any more.[46]

All in all, it may be stated that the relationship between the results of the science of public administration and the standard of legislative and law enforcement products exists, but – due to the strong politicization and the practical *lex imperfecta* nature of certain legislative rules – it is not consistent.

3. Traditional features of Hungarian public administration

3.1. Introduction

During the presentation of Hungarian public administration and administrative law – as has been mentioned before – the consideration of at least two examination aspects is necessary: first the approach sketching the main features of the law system, the broader legal system and of law enforcement practice is reasonable, second – almost as importantly – the examination which describes and assesses 'reality' in a wider social scientific framework and through (public) policy features and processes. At the same time, it makes it possible to compare the Hungarian administrative phenomena with the similar phenomena of other countries, which may provide more objective results.[47]

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[45] ibid 38.

[46] ibid

[47] See e.g. Martina Künnecke, Tradition and Change in Administrative Law: An Anglo – German Comparison (Springer 2010) 266.

Among both the general features of the legal system reflected in administrative law and in its broader public policy features there are some which are relatively stable – providing a high level of security even in case of certain political and legal changes.

3.2. The traditional features of Hungarian public administration in public policy approach

A starting point of this subchapter is that new Central-Eastern-European democracies established after 1989 did not build the political system on layered, sophisticated consultation procedures and institutional systems based on wide scale social participation, but – almost exclusively – on the Parliament-centred formation of political structures based on the principle of representation. Rezsőházy believes that one of the great problems of societies getting out from under a dictatorship is that due to the lack of civil society filling in the space between individuals and the state during their socialisation, the members of these societies could never naturally learn to incorporate the identification of problems, formulation of their interests, exchange their thoughts, the harmonisation of different opinions, due to which the various problem-handling methods were not developed, either.[48] From the public policy side it may be stated that in Hungary the legal and institutional requirements of representative democracy were fulfilled after 1990, but since then no material change has happened towards participative democracy; this means that Hungarian democracy "has frozen into" the level of representative democracy.[49]

A father tendency, a feature which may be hardly separated from the one mentioned earlier is that the all-time state – formed after the transition – imitates, reconstructs and replaces the civil sector through its conscious efforts, by this making it weaker *(more about this later).* During the analysis of this, it must not be forgotten that in the economic and sociological literature of the past one or two decades the state, by undertaking the 'replacement' and 'simulation' of the organisation of market and self-regulating social mechanisms and the political organisation of society, it eventually hampers the connection between political decision-making mechanisms and the actual fragmentation of the interests of society.

Based on the main features of public policy/administrative environment it must be stated about Hungary in advance that a) due to the traditional 'from top-down' system, a general – and tendency-like – weakness is the lack of democratic control, accountability and transparency; b) due to the politicised and unstable practice of the reconciliation of interests, the quality of the decisions made in the public sector are often insufficient, as is their execution; c) public policy has balance problems; the weight and coordination of the relevant players is disproportionate and incalculable due to the extreme politicisation, and political predominance characterises the relationship of the political-administrative system and

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[48] 'Beszélgetés Rezsőházy Rudolffal' (n. a.) [Discussion with Rezsőházy Rudolf] (2001) 6(1) Új Horizont 1, 3.

[49] Dr. Jenei György, 'Adalékok az állami szerepvállalás közpolitika-elméleti hátteréről' [Supplements to the public policy – theoretical background of state participation] in Hosszú Hortenzia – Gellén Márton (ed), Államszerep válság idején [State role in crisis] (COMPLEX Kiadó 2010) 95.

society, regardless[50]; d) the final phase of public policy is missing; public policy processes begin but they often do not get to the end. There is no evaluation phase and closure.[51] Within the scope of the latter evaluation the preliminary and subsequent (posterior) impact studies (law-reviews) are determinative, the main goal of which is grounding the decision-making situation of the legislator, in so far the analysis expands the pool of factors the consideration of which is – or should be – essential for well thought-through, grounded decision.[52]

It should also be mentioned here that in the modernization of Hungarian public administration – according to the standards of Western reform trends – the deficiencies of the balance of state and market are continuous;[53] and in the Hungarian model of public policy decision making – as mentioned before – the 'top-down' approach is dominant, in so far as the institutional mechanisms of the involvement of interest protection-integrative organisations operate only formally.[54] It is inseparable from the latter fact that the traditional features of Hungarian political culture are paternalism, intolerance and the transformation of personal relations into political ones,[55] and last, but not least the presence of corruption phenomena, which may be observed at a degree exceeding the average of the surrounding area.[56] Among the classic governmental failure phenomena – which is not traditionally Hungarian, but may definitely be observed here – the theoretical difficulties of setting and measuring public policy goals may be mentioned, as well as influence of strong interest groups, difficulties related to the size and complexity of governmental activities, and to the causal interconnection of certain public policy problems.[57]

It is also important that in Hungary '[the] all-time present seems to be outstanding because of the strong delegitimization of the all-time past, making it seem worthless, instead of focusing on its own achievements'.[58] In this field of force even the changes of the government are of the significance of 'catastrophe history'. However, attention must be also directed to the fact that the phenomena of *value crisis* known in sociology often appears in society along such fights for legitimacy…[59]

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50 ibid

51 Pesti Sándor, Közpolitika szöveggyűjtemény [Public Policy Reader] (Rejtjel 2001) 206.

52 In details see: A Közigazgatás Korszerűsítésének kormánybiztosa által készített szempontok. "Részletes útmutató a hatályos jogszabályok utólagos és jogszabálytervezetek előzetes felülvizsgálatához." [Aspects prepared by the government commissioner of the Modernization of public administration. 'Detailed guide to the subsequent review of valid laws and the preliminary review of draft laws'] (Közigazgatás Korszerűsítésének kormánybiztosa 1995) 5.

53 Jenei (n 49) 94.

54 ibid 95.

55 Kulcsár Kálmán, Politika és jogszociológia [Politics and legal sociology] (Akadémiai Kiadó 1987) 336.

56 http://www.ey.com/HU/hu/Newsroom/News-releases/global_fraud_survey_2010_pr > accessed 11 July 2013

57 Hajnal György, Adalékok a magyar közpolitika kudarcaihoz [Supplements to the failures of Hungarian public politics] (KszK ROP 3.1.1. Programigazgatóság 2008) 33.

58 Szigeti Péter, A magyar köztársaság jogrendszerének állapota 1989 – 2006 [State of the legal system of the Hungarian republic 1989–2006] (Akadémiai Kiadó 2008) 17.

59 ibid

The processes of the two decades after the Hungarian transition (1990–2010) may be exemplified with two further paradoxes:

1. The integration of the Hungarian economy to the global market happened without the whole Hungarian economy catching up.
2. The continuous weakening of the state and the lack of the material reform of the state budget together led to the result that a large, but ineffective state was established. 'The Hungarian state model is too large to be a night watch state, but too powerless to be a welfare state. This model could best be called a '*speed bump state*', because it spreads out to several fields of economy and society, but it is not there where its power and organisational skills would be most needed; regarding its intentions it protects, but in reality it holds back processes, wants to prevent bad things but eventually it may be disregarded, passed by'.[60]

Parts of public policy models and directions applied since the transition have performed rather ambiguously. Privatisation and the realisation of public procurement risks have stored up much social deficit, as has the frequent overstepping by executive power of the system of checks and balances, and the depletion of the actual and potential human resources of the public sector.[61] 'It may be concluded that the "market turn" reduced to privatisation and outsourcing did not result in real market competition at the end of the 20th century and at the beginning of the 21st. The monopoly of public institutions was often replaced by private monopoly. The privatisation of public services resulted in the establishment of the client system and outsourcing often became the source of increased corruption. (…) This way the effectiveness of public services was not significantly increased by the use of market mechanisms. The publicly known idea, according to which in public services private enterprises are more effective than public institutions, has not been proven in any countries of the modern world.'[62] The embeddedness of such ideas was strengthened by the neoclassic economic approach, according to which the state shall intervene only in the field of those activities and services – like defence, education, public and property safety, protection of the environment – where market is not efficient or does not work at all. '(…) Until very recently it was assumed in Hungary that regarding their significance, tasks performed by the state are behind the activities fulfilled by private enterprises in line with market instructions.'[63]

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60 Pulay Gyula, 'Az éjjeliőr államtól a fekvőrendőr államig. Merre tovább?' [From night watch state to speedbump state. Where to go from here?] (2010) 3(6–7) Új Magyar Közigazgatás 29.

61 Horváth M. Tamás, 'A közmendzsment változásai' [Changes of public management] in Fazekas Marianna (ed), A közigazgatás tudományos vizsgálata egykor és ma. 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet [The scientific analysis of public administration in the past and today. The Institute of Hungarian Public Administration was established 80 years ago at the law faculty of Budapest] (Gondolat Kiadó 2011) 92.

62 Jenei (n 49) 95–96.

63 Csáki György, 'A fejlesztő állam – új felfogásban' [The developer state – in new approach] in Csáki György (ed), A látható kéz. A fejlesztő állam a globalizációban. [The visible hand. The developer state in globalisation] (Napvilág Kiadó 2009) 13–14.

In the 1990s – after the transition – there was a regrettable shift: during the transition to a market economy, the state withdrew from a number of fields, but during this 'abolishment of the state' several tasks could not be exposed to the profit-oriented processes of the market. These tasks were usually incorporated to the so-called non-profit sector, which was unfortunately mixed up with the sphere of civil organisations both legally and practically: 'It often happened that in complete sectors only the signboards were repainted, shifted from state to public utility status, while the old structure, the old system of operation, state financing and the old "expert" staff remained.'[64] This environment, however, had a weakening effect on organised civil society, upholding its – unnecessarily strong – dependant status.

The result of the 'abolishment of the state' after the transition was quite odd, because for the establishment of the rule of law, the tool system of public administration was weakened on purpose, while from the other side the need for public services provided or organised by public administration did not decrease.[65] However, the 'rediscovery' of the state is not a direction to be absolutised: if the state performed all of its tasks through a central bureaucracy, it could hardly escape critical remarks about a total – and what is more important, less effective – state. Basically this is the reason why the tasks acknowledged or undertaken by the state are only partially performed by the state, in line with the principle of subsidiary, it often relies on the organisations of the economic and civil sector, as well as – with growing significance – on the assistance of church organisations.

In addition to the traditional public policy question, asking which activities belong to the catalogue of public tasks, it is also important who performs these and under what authorisation and state support. Within the scope of presenting Hungarian public administration ideas, the analysis of the staff number and number of public administration institutions of the past two decades is very important, which – often – presents these as practical competition between the aspects of efficiency and effectiveness.[66] The governmental cycle after 2010 brought about some novelties in this sense, in so far as it obviously refused some of the solutions favoured by public management: the abolition of PPP-constructions within the solutions of the performance of public services started, the obligatory private pension fund system was abolished and the sector neutral state approach came to an end, even as a sceptical approach may be observed about the outsourcing of human public services.[67]

As a summary it may be stated that in the development of society in the past twenty years the dominance of political and subjective factors may be observed, contrary to other – economic, social, legal, EU integration – factors.[68] This approach may be still upheld even though an important element of the renewal process of governmental goals and methods was the trans-

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64 Pankucsi Márta, 'Civilekkel a civilekért – Az ellenzéki szerveződésektől a minisztériumon át a Furmann alapítványokig' [With civilians for civilians – From opposition organisations through the ministry to the Furmann foundations.] in Simon János (ed), Civil társadalom és érdekképviselet Közép-Európában [Civil society and the representation of interests in Central-Europe] (L'Harmattan – CEPoliti Kiadó 2012) 144.

65 Nagy Marianna (n 3) 203–204.

66 Gellén (n 23) 14.

67 Horváth M. Tamás, 'A közmendzsment változásai' (n 61) 93.

68 Szigeti Péter, Research of society – for what? Political science – Constitutional law – Global system theory (n 12) 24.

formation of the financing system of public sector, and in general it is (was) true that public administration reforms usually start(ed) due to budget/financial reasons in Hungary.[69]

3.3. Traditional features of Hungarian public administration

The Hungarian legal system may be characterised as part of the 'Western law legal type', within which it may be put into the continental law family.[70] However, the statements of works[71] raising the issue of belonging to the so-called post-Socialist law family are also justified, in so far as operational mechanisms typical of the members of this family of law can be seen.[72]

It shall be repeatedly stated that legal approaches and analysis methods are dominant in the self-image of Hungarian public administration, in its practical operation and in its scientific description attempts.[73] It is a tendency which had existed earlier, but was strengthened by Socialism: the transformation of any social fact or conflict into one of legal nature – along with a relatively low level of legal consciousness of citizens, and strengthened by other factors – increases the richness in information of hierarchical system of relations, ensures the continuous reproduction of all kinds of dependencies and the upholding of fear/citizens' passivity, as well as the relativisation of the personal responsibility of the decision-maker/politician/law enforcer.

The Hungarian legal system, the broader legal system and legal thinking has always been characterised by strong German and Austrian orientation, due in part to the geographical features and certain cultural-historical features of Hungary. However, in addition to this, it is obvious that in the approaches of some of those dealing with the science of law or economics – from the beginning – other directions may also be observed, and therefore we may talk about French, in a given period Russian, and with periodical intensity Anglo-Saxon (American) influence. In Hungarian public law thinking a certain duality was observable for a long

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69 Péteri Gábor, 'Költségvetési és piaci megoldások egyensúlya. Területi közszolgáltatások pénzügyi szabályozása.' in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások. [Swings. Public service changes] (Dialóg Campus 2012) 30.

70 Among the characteristics of legal systems belonging to the continental law family it may be highlighted that written law has primacy over case law. The laws regulate the relations of life in an abstract way, they form a closed system. The functions of the legislator and of the law enforcer are sharply divided. The judge does not make law, but rather precedents only make the application of law clearer. This rule prevails even if some authors correctly point out the precedential features of the uniformity decisions of the Curia, i.e. that they have the characteristics of individual sources of law (see e.g. Szalma József, 'A precedensjogról' [About precedent law] (2011) 4(11) Új Magyar Közigazgatás 41.) As part of the continental legal system, the Hungarian legal system does not recognise binding precedents. However, lower courts are generally bound by the harmonised decisions of the Supreme Court/Curia ('Kúria') and of the interpretations issued by the Constitutional Court ('Alkotmánybíróság').

71 Fekete Balázs, 'A jogi átalakulás határai – egy jogcsalád születése 1989 után Közép-Kelet-Európában' [The limits of legal transformation – the birth of a law family after 1989 in Central-Eastern-Europe] (2004) 1(1) Kontroll 4–21.

72 ibid 19.

73 For more about this see: Gajduschek György, 'A magyar közigazgatás és közigazgatás-tudomány jogias jellegéről' [On the legal features of Hungarian public administration and of the science of public administration.] (2012) 21(4) Politikatudományi Szemle 29–49.

time – until 1945 – according to which there was simultaneously a strong legal conservativism, 'living in the trance of the Corpus Iuris', and an up to date transmission of the most modern European achievements in legal theory and positive law.[74]

4. Effects on Hungarian public administration

4.1. Introduction

The effects on Hungarian public administration may be outlined in two basic groups. It is worth dividing the elements of the heritage of the past which have their effects today, and the new – external and internal – challenges of the present.

4.2. Heritage of the past

4.2.1. Heritage of the far past

Sketching the (institutional) history and continuous elements of Hungarian public administration – interpreted in the broadest sense – which has a history of more than one thousand years, exceeds the scope of this work; instead of this we wish to direct attention to some significant circumstances which play important role in the scientific and political discussions of the present era:

a) the first such 'heritage-element' is *tradition*, which is kept alive by social memory and goes beyond itemised law. Today it may be observed in deep structural continuity[75], the further effects of certain civil values, and in typical ways of thinking and attitudes. This system of values is not only observable in the latest legislative instruments, but also in the sphere beyond itemised law, in the attitude and self-image of the staff of public administration, and in the social expectations placed on public administration.

b) in the second place there is the *language* (linguistic) environment, the framework which with its highly regulated nature keeps together and from several aspects determines certain features of, and the dogma of, public administration. Language, expert terminology/dogmatic continuities, and their role in influencing scientific-professional, scientific-ethical directions are impossible to overrate.[76] It is a determinative fact that the terminology of (still) valid laws – special grammatical structures or certain words and expressions – is

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[74] Szabadfalvi József, Jogbölcseleti hagyományok [Traditions of legal philosophy.] (Multiplex Média – Debrecen University Press 1999).

[75] Hankiss Elemér, Diagnózisok 2. [Diagnoseses 2.] (Magvető Kiadó 1986) 92.

[76] The National Avowal part of the document placed to the top of the hierarchy of laws states: 'We pledge to cherish and preserve our heritage: the Hungarian culture, our unique language, and the man-made and natural riches of the Carpathian Basin', and according to Article H paragraph (2) of the Fundamental Law 'Hungary shall protect the Hungarian language.'

often the last example of the old spoken language in the form of language used today. In this case the differentiation between terminology used by law and spoken language is very important, because the special terminology of law has always shown some difference from spoken language (especially when legal culture used mostly the German or Latin language) but today there is a huge gap also between grammatical structures used in the everyday Hungarian language and in legal texts which are more than 30–40 years old.

Another important relationship in this sense is that the UNESCO 'Guidelines for Terminology Policies. Formulating and implementing terminology policy in language communities', published in 2005, urging the establishment and upkeep of national terminology policy, draws attention to the fact that if the professional terminology of a language does not develop in certain subjects or the development is very slow, it may happen eventually that in today's speedy technological development material communication cannot be performed after a while in the given language in certain professional fields (this means that functional loss of language functions may occur), and this may lead to the exclusion of unilingual communities from scientific development.[77] This problem may be raised in relation with the direct use of English language terminology in the science of public administration – in the lack of Hungarian equivalents.[78]

c) as third factor we may mention the most obvious heritage-element in close relationship with the first two: *institutions which are permanently present in itemised law, those specific administrative solutions, which are stable and – in some cases – returning elements of Hungarian legal history.* Regarding the latter the issue of the historical constitution may be mentioned, which has become an exciting problem of 'living law' in Hungary with the approval of the Fundamental Law of Hungary.

Some features of the concept of historical constitution

As a feature of Hungarian history, the intensive presence of interruptions has been referred to before, which has always been a problem of legal continuity in relation with public law/administrative institutions. The Fundamental Law defines itself as a basic legal instrument restoring the historical constitution of the nation. Even though this 'historical constitution' is one of the main sources of the new structure, its meaning is defined in the preamble in an abstract way.[79] Legal historical experiences show that in the upkeep and reappearing

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[77] Guidelines for Terminology Policies. Formulating and implementing terminology policy in language communities V-VI., cited by: Bölcskei Andrea, 'A szabványügy és magyar nyelv' [Standards and Hungarian language.] Magyar Nyelvőr (2011) 135(3) 28.

[78] The conference entitled 'The Renewal of the Hungarian Language and Hungarian Legal Language', organised by Lőrincz Lajos Research Group on 5th December 2013, also drew attention to the importance of that question.

[79] As it is stated in the National Avowal: 'We honour the achievements of our historical Constitution and the Holy Crown, which embodies the constitutional continuity of Hungary and the unity of the nation' and 'We do not recognise the suspension of our historical Constitution that occured due to foreign occupation. We declare that no statutory limitation applies to the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and communist dictatorships.'

of traditional law – even nowadays – the phenomena has an important role, according to which countries which gain their independence or become autonomous somehow sooner or later will incorporate into their own 'revolutionary' program the intention to revitalise traditional law for ideological-political reasons.[80] The straightforward appearance of historical constitution in Hungary in the (new) Fundamental Law – which has become a ground for interpreting itemised law – may be evaluated as a similar development.

Another feature of this is that the historical feature of the constitution has never meant petrification, naturally; a historical constitution changes too. 'However, this change is never a violent disruption and an introduction of a new system, but a[n organic] development, further building, the [continuous] incorporation of necessary reforms into the constitution.'[81]

One possible approach to the historical constitution is the one which gives – at most – symbolic significance to the notion and phenomenon of historical constitution, stating that the relevant parts[82] of the National Avowal of the Fundamental Law and of Article R) paragraph (3) only wish to establish and strengthen respect for the achievements of the historical constitution: 'Such constitutional provisions are clearly self-impulsive norms, the role of which is to trigger the effect of strengthening social cohesion, which is a feature of the historical constitution'.[83] This is true, because the category of historical constitution – an independent type of norms – is difficult to fit in to the traditional (valid) hierarchy of norms, primarily due to its undefined content. The representatives of this approach believe that the historical constitution is much more the catalogue of the solutions of legal (public law) culture than of the sources of laws and of individual legal (political) solutions. Among the most cited authors, András Jakab also refuses the idea that within the context of the new Fundamental Law, the historical constitution shall receive more role than being a 'concept supporting reasoning'[84]. Péter Paczolay is at the same opinion: 'The Hungarian historical constitution – despite all efforts made for its justification – was a constitution of rather low value, the building of which was even more destroyed in the storms of the 20th century. Now some elements of certain, rather symbolic elements of the old Hungarian constitution may be kept. However, legal continuity is practically present only in symbolic elements today, like the coat of arms and the Hymn'.[85]

However, in addition to the above mentioned – limited – historical constitution concept we shall also refer to a more radical concept too, which views historical constitution as a way for establishing itemised law expansion, an independent (and more

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80 Kulcsár Kálmán, Jogszociológia [Legal sociology] (Kulturtrade Kiadó 1997) 129.

81 Egyed István, Az ezeréves magyar alkotmány [The thousand year-old Hungarian Constitution] (Légrády Testvérek 1941) 248.

82 According to Article R) paragraph (3) 'The provisions of the Fundamental Law shall be interpreted in harmony with their goal, the National Avowal included therein, and the achievements of the historical constitution'.

83 Csink Lóránt and Fröhlich Johanna (n 10) 98.

84 Jakab András, 'Mire jó egy alkotmány? Avagy az újonnan elkészülő alkotmány legitimitásának kérdése.' in Jakab András (ed), Az új Alaptörvény keletkezése és gyakorlati következményei (HVG-ORAC 2011) 199.

85 Paczolay, Péter: 'Alkotmány és történelem' [Constitution and history]. Lecture given at the 21st National Conference of History Teachers – 8 October 2011, Kossuth Klub, Budapest.

and more dominant) method of legal interpretation, and common political agreements. A 'domesticated' form of this concept is an idea which would make an attempt to create an expandable 'catalogue of achievements' composed of valid individual legal institutions reappearing in positive law in order to (by taking the Fundamental Law seriously) give the interpreted notion real meaning, and to prevent the unlimited, discursive formation of domestic scientific schools which do not understand each other due to the use of diverse legal categories. This opinion identifies the institutional way of getting in touch with the past as the establishment of a careful, partial material continuity. Therefore this approach may be called the concept of partial material legal continuity. However, this approach also states that the 'renationalisation' mentioned above and the adoption of certain historical legal institutions 'may be possible only in consideration of the constitutional requirements of the past period',[86] thus it considers it useful to establish some kind of a *test* in this regard.

Article 28 of the Fundamental Law refers to the obligatory (!) use of the contents of the historical constitution – not quite specified by the legislator – by the law enforcers as it states: '*In the course of the application of law, the courts shall interpret the law primarily in light of their purpose and in accordance with the Fundamental Law. When interpreting the Fundamental Law or any other law, it shall be presumed that they are reasonable and serve the public good and morally right and economic purposes.*' Based on the comparison of the cited paragraph of Article R) and of Article 28 the only possible conclusion is that during their activities based on the Fundamental Law courts shall view the achievements of the historical constitution as a starting point – in each and every case.

The outlines of the above mentioned two concepts are strengthened by the polemy which became apparent in Decision IV/2096/2012 ABH of the Constitutional Court. In the reasoning of the decision – examining the retiring age of judges – the following is stated: 'It is a minimum requirement of the consolidated interpretation of the Hungarian historical constitution to accept that the Acts of Parliament constituting the civic transformation completed in the 19th century form part of the historical constitution. These had been the Acts that had created – upon significant precedents – a solid fundament of legal institutions that served as a basis for building a modern state under the rule of law. Therefore when the Fundamental Law "opens a window" on the historical dimensions of our public law, it makes us focus on the precedents of institutional history, without which our public law environment of today and our legal culture in general would be rootless. In this situation the responsibility of the Constitutional Court is exceptional, or indeed historical: in the course of examining concrete cases, it has to include in its critical horizon the relevant resources of the history of legal institutions.' In this specific case the Constitutional Court did this, using the provisions of two laws from the 19th century as independent reasons. The separate opinion of Béla Pokol, however, sharply contravenes this new practice introduced in the examined field: 'Article R) of the Fundamental Law stipulates interpretation in light of other achievements of our historical

[86] Varga Norbert, 'Ideiglenesség és jogfolytonosság. Történeti jogintézmények szerepe a magyar alkotmányozásban' [Transition and legal continuity. The role of historical legal institutions in Hungarian constitution-making.] (2011) 5(2) DIEIP 4.

constitution as a basis of interpretation, but its present unfinished nature requires us to be careful. The present legal historical citations from these laws in the reasoning shall only be considered as partial rules of a regulation in the past. If these were considered obligatory today and normative force attributed to them against the will and laws of the present legislative majority, then we would question the concept of the changeable law. In this sense I believe that Article R) shall not be used, because it contravenes the idea of changeable modern law.'

Without analysing the relevant regulations of the new Fundamental Law it is obvious that in outlining the essence and limits of court practice 'supervising' the achievements of the historical constitution the Constitutional Court and the Curia will have great roles.

4.2.2. The heritage of state socialism

While the cooperation of the 'Western block' after the Second World War may be described as an integration based on common interests, the integration of the Eastern Bloc showed the picture of 'a unified empire', coordination put into an absolutistic centralisation.[87] The great, comprehensive unification was realised in the region by establishing similar types of states (constitutions) and administration based on central ideas. From the aspects of operation of the system, it is very important that in the Eastern Bloc common political forums worked: the main issues were treated as political, not legal [administrative] questions. Regarding the expectations of the state from public administration, the priority of state interest prevailed against the expectations popular at present (legal security, rule of law, etc.).[88]

Nevertheless, by losing its political identity, Hungary did not lose fully its legal and administrative identity.[89] We may talk about some kind of continuity not only in the sense that our public administration has kept some kind of European spirit also in the era of state socialism, but also that '[the] organisational activities of our public administration, the rules of management, its sample documents, moreover, file cover documents in 1989 are very much like the *K. und K.* administration of the era before the Great War.'[90] Lajos Lőrincz considers this – if we like, material, if we like, formal – continuity the conservativism of Hungarian public administration: '(…) the advantage of the cursed slowness of Hungarian public administration is shown now, in so far as forty years was not enough to live up to its latest idol: due to its recklessness it failed to break up all its connections to Europe.'[91]

In the previous subchapter it has been mentioned that in Hungary the certain 'deep structural' continuity of civil values was observable as well. Continuing this logic, there

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87 Tamás András, A közigazgatási jog elmélete [Theory of administrative law] (Szent István Társulat 2001) 102.

88 ibid 106.

89 ibid

90 ibid 108.

91 Lőrincz Lajos, 'Állandóság és változás a közigazgatásban' [Permanency and changes in public administration.] [1991] 41(12) Magyar Közigazgatás 1064.

are significant reasons to believe that values, attitudes and expectations of Communism have persisted after the political transformation. This 'instinctive logic' and often unwitting motivation may not only be observed on the side of administrative clients, but – as referred to before – on the side of the administrative staff, as well.

András Tamás warns from excessive generalisations about Hungarian public administration, saying, '[The] public administration of state socialism is effective and cheap in many respects, while in reality it is absolutist and less democratic: but it would be a mistake to consider it "underdeveloped".'[92]

The further existence of the practices of state socialism and its 'recanonisation' in the process of the transition are not only present in the basic elements of public law/political/state organisational establishments, but also in the sciences of public administration. *Dogmatic* and *scientific approach* continuity mean, at the same time, the presence of highly similar notions and terminology (specific linguistic expressions) appearing at the level of legal norms, and of the continuous revival of scientifically accepted approaches, paradigms, canonised by the few players who know each other well. In addition to the advantages of this (the clear, consistent, 'politics and system-independent' use of well-adaptable notions) we shall also consider certain risks: the abolishment of some traditional 'forced mechanisms' of healthy science – done in state socialism – led to the situation that from the scientific journals of Hungarian public administration, the critical attitude and remarks otherwise present in scientific disputes are missing (e.g. reviews – now traditionally – do not contain parts driving attention to the weaknesses and deficiencies of the given essay), and – with the exception of a few examples – the possibility of categorising authors into well separated scientific schools is low. It must be added that the dogmatics of public administration law is only partially worked out; the main sign, consequence and at the same time reason for which is that works meant to be scientific are often limited to the presentation of the content of laws (…).[93] Naturally, the mentioned features only show long-term directions – which may be changed by the practice of decades – while the identification of real counter-directions and conscious counter-effects is also possible.

4.2.2.1. The revival of the solutions of state socialism – mistake or necessity?

It is a fact that '[the] collapse of an empire-like public administration has a great sucking force which is able to bury a lot of things underneath'.[94] However, it may also be observed that as we are getting further away from the 1980s, instinctive opposition towards the earlier solutions is disappearing: partly the fading of memories, partly the instinct of returning the previous patterns, partly the need for adequate and practical answers given to necessities emerging from the different crises weaken the uniformity of rejection

[92] Tamás (n 87) 104.

[93] Jakab András: 'A közigazgatási jog tudománya és oktatása Magyarországon' [The Science of Administrative Law and its education in Hungary] in Rixer Ádám (ed), Studia in honorem Lajos Lőrincz (De iuris peritorum meritis 6., KRE 2010) 98–101.

[94] Tamás (n 87) 104.

which gave a definite 'no' to everything which was somehow related to the power and administrative solutions of state socialism.

In some fields the solutions of the *Kádár-era* have reappeared, even though, it must be added, not with the intention to return to Kádárism [*many of them were not even evolved (created) within the era of state socialism*], but mainly because these solutions seemed to be adequate answers to the new problems, especially in those fields where the possibility of state – and material – control significantly decreased after 1989: e.g. *in the field of public education* supervision we may experience the return of some important elements of the structure which existed till 1985.[95]

[95] Act I of 1985 on education declared the professional independence of institutions and determined the principles of divisional and institution management supervision. Until that time, the educational institutions operated under the supervision of the minister for education and the direct instruction of the authorities performing the cultural-educational tasks of the councils' executive committee. In professional issues, the institutions did not have decision-making competence; the training and educations tasks were regulated by obligatory education plans, and the issues of operation were defined in the obligatory rules. The directors of institutions were instructable in each sense. [Article 1 of statutory rule 14 of 1962; articles 2–3 of statutory rule 24 of 1965] In 1985, the authority (the general education supervision and the authority together) was abolished (today the general opinion is that this was a mistake), and instead of supervision and professional inspection a counselling activity was established which was regionally organised and operated in the competent (county, district) institutions providing pedagogic professional service. The counsellors were requested to perform the tasks by the given schools, or the maintainer commissioned them with an evaluation-analysis task; the services of the counsellors were available for fee, of course. The counsellors did not supervise, but used their professional knowledge to help and develop the work of teachers and public education institutions. The changes of 1993 and 2003 only brought about minor modifications in the system. Public law experts were selected from the list of professionals, but their professional (inspection) activities were not supervised by anyone. The clients usually accepted their opinions, but no one qualified the professional knowledge of public education experts upon a unified criteria system. On the other hand, there were no nationally unified and public guidelines, methods, tools and protocols available for experts, either, for performing their work, therefore everyone proceeded upon his (or the client's) expectations. This is also why the establishment of a new system was necessary.
From 1 January 2013 education institutions – except for kindergartens – were put under state management, as general rule. In the new system from 1 September 2013, the evaluator expert will be also evaluated after the completion of his inspection by the evaluated/inspected teacher and/or manager on a special evaluation form, which will not only be a formal gesture. The further employment, commission of the expert will depend on whether he receives at least an average 60% of the maximum score with regard to the inspections conducted within five years. In the new system there will be three separate roles. Experts will participate in the evaluation and training of teachers. Those may apply to become experts who have at least ten years of experience and are registered into the national expert register upon recommendations. They shall successfully complete the training organised for them by the Education Research Institute or the Education Office and shall update their knowledge regularly. Experts shall have up-to-date knowledge of laws, didactic and methodological novelties. The new counsellors and subject referents will support the work of teachers. There is great interest for the positions: five thousand applications arrived for the eight hundred places. Education supervisors will perform the supervisory tasks upon a nationally unified system of aspects, and the third group is composed of those participating in the qualifications, who evaluate teachers within the framework of the teacher career model. Regarding the previous practices see: Szüdi János, 'Az ellenőrzés rendszere a közoktatásban'

Within this scope, the disposition of certain tasks to unsuitable types of organisations or levels after the transition has been another reason. In this regard it is enough to refer to the notion of district; the name (and partly the institutional structure) abolished in 1984 returned to Hungarian public administration law in 2010 as an old-new institution.

In addition to professionally, properly reasoned conscious steps the – previously mentioned – unconscious mechanisms work too: earlier researchers believed that citizens favoured/favour the village meeting and the institution of community debate to a public hearing[96], the reason for which in the case of the village meeting is probably – in the opinion of the researchers – that the institution originates from the era of councils (Act I of 1975 on councils introduced it), and thus it has a tradition of several decades in villages, and has been built in to public knowledge as 'classic' legal institution.[97]

However, in summary it may be stated that a return to models and institutions similar to the administrative solutions of the *Kádár-era* does not primarily result from nostalgia for Socialism, but from two other factors: on the one hand it is the result of a special and continuous 'swinging',[98] on the other hand the forces of the global economic crisis lead to solutions which shift the diverse administrative institutions (institutional systems) towards the growing need for state control and centralising solutions. The notion of swinging refers to the phenomena that at the time of the change of regime the rejection of the solutions of the previous system showed constrained forms: staying away from the magnified disadvantages of the previous solutions understated by politics often buried the viable (partial) solutions, well-operating practices, but with regard to these the two decades which have passed clearly showed which elements should be considered really antidemocratic, contrary to real public interests, maybe restricting individual freedoms or which disregard of the requirements of basic transparency and effectiveness, and which are those the partial reintroduction of which – in line with the requirements of the rule of law (typically ensuring some kind of legal remedy) – may be reasonable.

In addition to the above mentioned information, the fact of the crisis resulted in the revival and spread of institutions – earlier linked to socialism – such as the conscious support of co-operative forms which existed before, the introduction and strong support of new forms of these co-operatives, also via organisation, coordination and information supply (naturally, not by the pattern of the forced formation of co-operatives which happened in two waves in the '50s and '60s).

[The system of control in public education.] 16 November 2008 http://drszudi.hu/2008/11/az-ellenorzes-rendszere-a-kozoktatasban/ > accessed 30 August 2013

96 Hóbor Erzsébet and Varga Tibor, 'Az önkormányzati rendeletalkotás gyakorlata és tapasztalatai Zala megyében' [Practice and experiences of the enactment of local governmental decrees in Zala county] [1998] 48(5) Magyar Közigazgatás 291.

97 Dr. Kiss Mónika Dorota, 'A helyi közakarat formálásának fórumai a Mötv. tükrében' [The forums of forming local public will in accordance with Mötv.] (2013) 6(1) Új Magyar Közigazgatás 18, 20.

98 In the field of the relationship of administrative reforms and the state Peters views the 'swinging' observed in legal literature into a broader context [Peters, B. Guy, 'The Role of the State in Governing: Governance and Metagovernance'. NIscience of public administration CEE working paper, 2008. Cited by Gellén (n 23) 139.], referring to the cyclical characteristic of administrative systems beyond political systems.

4.2.3. Heritage and consequences of the transition of 1989

However, the quick transition from state socialism to capitalism left several social questions unsolved which were present and documented already in the 1980s and generated new difficulties at the level of society. This way the less controlled and otherwise forced privatisation which affected all sectors, the radical change of consumer habits, the very fast growth of social differences and social tensions (e.g. the obvious fallback of the Roma people), and the presence of large and uneconomical social service systems which were left unchanged led to the result that – with some exaggeration – the institution of careless crediting became one of the main tools of individual and community (e.g. self-governmental) 'success', and the money was not reinvested into production and into the making of products. In short this may be summarised in a way that the 'price', a sort of political and financial cost of bloodless, peaceful transition was *the complete lack of breaking with the past* (with its institutions, prominent leaders, ways of thinking, 'permanent reaction attitudes' and surviving practices). A peculiar feature of this – legally only partial – transition is the survival of the Constitution[99] approved at the beginning of communism – in 1949 – which remained in force with completely new content, but under the same number and with the same structure.[100]

Another (further) problem of our region – related to our topic, and referred to previously – is that '[the] expansion of the capitalist economy to the public service sector and to sectors unilaterally secularised earlier which are affected by market deficiencies, happened after a mechanical withdrawal of the state. Often in an emptied, unprepared environment, which led to the formation of new market failures it seems that the political sphere sometimes underestimated the related realistic risks (e.g. the creation of new type monopolies, clientelism), while the public considered it more severe than in reality.'[101]

After 1990 the existence of the concept of '3,200 small republics' in the self-governmental sector reflected on the principle which abstains from establishing clear and direct inferior-superior relationships, and *as a counter-effect of the previous system(s)* it tried to define the new 'system' be as *emphasizing* the various *freedoms.* This approach caused more practical problems than necessary after 1990, both in the relationships of state administration organisations and local governments, as well as in the internal affairs of local

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[99] Hereinafter the word 'constitution' refers to the Constitution of the Republic of Hungary (Act XX of 1949) modified with Act XXXI of 1989 which remained in force till 31 December 2011, while the expression 'fundamental law' refers to the Fundamental Law of Hungary which entered into force on 1 January 2012.

[100] The constitution which was announced on 23 October 1989 to mark the anniversary of the revolution of 1956 was intended to be temporary (as indicated in the preamble). The establishment of the new constitution was the task of the Parliament formed as result of the free elections. However, the temporary constitution remained permanent and the new fundamental law was not created Instead, 'continuous constitution-making' was typical. During the twenty years which passed between 1990 and 2010 the Parliament modified the Constitution 25 times. Among these modifications there are some which are minor and less significant, as well as ones which may be considered partial revision.

[101] Horváth M. Tamás, 'Szempontok a területi közszolgáltatások regulációs változásainak vizsgálatához' [Aspects for the examination of the regulatory changes of regional public services] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások [Swings. Public service changes] (Dialóg Campus 2012) 13.

governments (e.g. in the relationships of the representative body, the mayor and the clerk), and in the provision of public services.

5. External effects and patterns

5.1. Introduction

As referred to previously, in general the political decision makers and the participating administrative organisations in the preparation phase of decision-making rely less and less often on the results of – partly foreign language – scientific research, often using these selectively and subsequently in order to legitimize their own decisions. Therefore there is no tight, direct and *in each case* provable relationship and *unconditional* synchrony between the administrative solutions existing in different countries and used in Hungary and the related internal and external scientific views. Nevertheless topics, models emphasized by domestic legal literature are more or less present in specific domestic solutions – this means that these constructions have definite explanatory force in the examination of domestic phenomena.

To the abovementioned factors we shall add that the results of most directions (e.g. *New Public Management*) – which today have clear contents as scientific concepts – appeared in Hungary among the rules of law usually with a certain delay, and in a fragmented way (while the description and criticism of the contents of certain directions were available in works analysing the operation of public administration).[102] The ideas, which consider the appearance of a particular (legal) institution and practice as a consequence of other similar practices which were known elsewhere may be described as classic economic mistakes, more precisely as *post hoc, ergo propter hoc* type false conclusions.[103] Regarding these contexts scientific evidences are often missing (documentations and reasoning of proposals; the existence of statements appearing in parliamentary debates or at least at conferences, showing consideration of different patterns, etc.), and if their effect may be observed in some regards, public policy programs start, but the itemised law norms aiming at their introduction are usually executed in reality as program norms or are applied – in line with the previous practice – upon the old patterns.

Since 1989, the approach of focusing on searching foreign patterns and, more and more, on the review of old (pre-1945) solutions has been dominant in the search for paths and directions to be followed in Hungary.[104] At the same time (existing at the same time) external patterns mean ideal typical models transmitted by 'international economic sciences', the suggested solutions for general (global) problems and specific (individual)

[102] E.g. Horváth M. Tamás, Helyi közszolgáltatások szervezése [Organisation of local public services] (Dialóg Campus 2002).

[103] Paul A. Samuelson and William D. Nordhaus, Közgazdaságtan. Alkalmazott közgazdaságtan a mai világban [Economic studies. Applied economy in today's world] (KJK 1990) 640.

[104] Tamás (n 87) 102.

administrative solutions, and newly created institutions (see e.g. the Tobin tax phenomena and its consequences in Hungary).

The political and political economy approach dominant from the 1980s supposed that it was possible to balance the lack of internal capital necessary for capital market economy with the 'import' of foreign investments. In addition to central legislation supporting this idea the 'economic policy' of local governments was intended to serve this for example with the forced privatisation of local public services, or with the occasional use of the property of local governments for business purposes.[105] The politicians believed to have found – partially – the proper organisational and operational frameworks and contents of the *administration facilitating economic transition* in the institutionalisation of 'new public management' (NPM) and aimed – with some exaggeration – at establishing 'company-like', not authority-oriented public administration.[106]

Nevertheless, even though *indirectly* the goals of developing an NPM-type public administration may be observed in what are referred to as government decisions for modernisation of public administration [Government decision 1026/1992. (V. 12.), Government decision 1100/1996. (X. 2.), Government decision 1052/1999. (V. 21.), Government decision 1113/2003. (XII. 11.), Government decision 1044/2005. (V. 11.), Government decision 1052/2005. (V. 23.)], formulating the public administration reform ideas (development goals), in these documents – in the opinion of Tamás Horváth M. – there is no (adequate) terminology in line with which in any cycle the managerial principle was (consistently) undertaken, let alone a public policy strategy built on this (which, with some delay, could have resembled the new public management). Moreover, the 'borrowed' notions and institutions often became sources of difficulties (e.g. even though the obligatory impact study of laws was introduced, the regulations were not enforced in reality).[107]

In certain (sub)chapters of this work, we analyse separately the administrative reforms of 2010 and of the subsequent years, their content, as possible answers which may be given to the crisis. Among these reform steps, we especially focus on the Magyary Zoltán Public Administration Development Programme published in the summer of 2011. In Hungarian legal literature, several analyses have been published which focus on the question whether the tools of the Magyary Programme are provenly suitable for establishing a state which is able to withstand the circumstances of the crisis. Within this the preconditions of the efficiency increasing measures of the Magyary Programme, the possibilities of coordination, flexibility and stabilisation which have become more valuable during the crisis, as well as their possible hampering factors.[108] The separate analysis of this instrument is reasonable also because it has become one of the frameworks, continuously renewed and 'updated' foundations of the ideas of the Hungarian government after 2010 about the *good state,* which goes beyond public administration, by making principles such as adding national aspects

[105] Kökényesi József, 'A helyi közigazgatás szervezési tendenciái' [Organisational tendencies of local public administration] in Horváth M. Tamás (ed) Kilengések. Közszolgáltatási változások [Swings. Public service changes] (Dialóg Campus 2012) 250.

[106] ibid 250–251.

[107] Horváth M. Tamás, 'A közmendzsment változásai' (n 61) 92.

[108] Gellén (n 23) 12.

into public administration, among others, equal with the requirement of effectiveness, which had been favoured before.[109]

5.2. Possibilities and effects of 'external' models

When we try to list external directions affecting Hungarian public administration – which may be considered a scientific concept – we must obviously take into account the public administration reform ideas of influential international organisations, and the administrative practices and ideas of the European Union, as an integration composed of national states.[110]

In relation with international organisations, it must be highlighted that their different funding programs – in the past two-three decades – tried to influence the administrative reforms [SIGMA (OECD) program] of recipient countries (among them Hungary), sometimes even by competing with each other. 'From the view of the role of the state, these organisations were usually interested in the transfer of tasks from the central state to the market, social players or local governments',[111] and they usually promoted the models formulating these ideas.

However, especially with regard to the *good governance* theories (and models) it is unavoidable to state that this approach does (did) not primarily react on problems originating from Western-European development, but the artificial set of requirements made for developing/catching up countries, the main goal of which (was) to increase the support-receiving and utilisation capacity of aided countries in a way that the 'proper' regulation methods of the relationship of the state and society were determined, urging the need to introduce proper market mechanisms and models compatible with those of Western democracies.[112] Nevertheless, the notion *good governance* still appears in the description attempts of the economic development features of Western (and post-Socialist) countries.[113]

One of the most delicate issues regarding the models of good governance is whether its notion shall be interpreted from the side of the result or the process; in the former case, governance which is the most effective in the distribution of public goods and the enforcement of public good is good governance, which imposes the question how to handle effective, but – in line with our present expectations – not democratic models, state formations (e.g. Singapore).[114] This dilemma is extremely relevant today – at the time of expansion of

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[109] Magyary Zoltán Közigazgatás-fejlesztési Program [Magyary Zoltán Public Administration Development Programme] (Publication of the Ministry of Public Administration and Justice 2012) 5.

[110] These ideas often appear in detail under the explanation of the expression good administration, formulating recommendations for the existence of different types of organisations and the principles of proper office operation and behaviour at the same time. (see e.g. Váczi Péter, 'A jó közigazgatási eljárás összetevői' [Components of the good administrative procedure] (2011) 4(11) Új Magyar Közigazgatás 9–22.

[111] Gellén (n 23) 13.

[112] Hosszú Hortenzia, 'Az állam szerepe a kormányzásban' [The state's role in governing] in Gellén Márton – Hosszú Hortenzia (eds), Államszerep válság idején [State role during the crisis] (Complex 2010) 53.

[113] Bevir (n 24) 95.

[114] Hosszú (n 112) 53.

neo-Weberian concepts strengthened by the crises – especially in relation with the division of public and private interests.

The most often mentioned element of the notion of good governance is the program of handling democratic deficits appearing at different stages; the main goal of the creation of the document 'On good governance' published by the European Commission in 2001 to transform the EU's governmental system in order to bring the EU's institutional system closer to citizens through the coherence of common and community policies.[115]

Even though in the primary sources of EU law the provisions which directly regulate the state organisation of member states or structures of their public administration, are rare, it is undoubted that it has 'continuous, broad and increasing effect on it: implicitly through *acquis communautaire*, community law, and *expressis verbis* through the EU law, more precisely via Article 4 paragraph (3) of the EU Treaty',[116] in so far as the latter one formulates the obligation to enforce community law (a need to provide results), which cannot be interpreted in other way than the state public administration shall be reliable, transparent and democratic.[117]

Another important issue is that the European Union tried to react on growing international economic processes – among others – with the possibility of establishing a (partially) supranational 'EU state', and some states have believed that the reorganisation of the destroyed balance of economy and state power may be possible through the creation of a 'strong nation state'. This process, which was significantly strengthened by the years around 2000 was completed by the financial crisis which started in 2008.[118]

The negative effects of globalisation happening in the world economy, financial crises and Western public power responses given to them tend to indicate that the promotion of *strict* models as the only possible solutions is less and less possible. With some generalisation it may be stated that the OECD and the World Bank have not pushed forward any specific models since approximately 2000, thus the 'context matters' approach is becoming stronger. This is true even if the (economic) policy of Hungary, called – partly officially – 'unorthodox' made several international organisations react harshly to it after 2010.[119]

One of the most important questions of the past decades was how much the narratives of the more or less unified Transatlantic legal and political trends – sometimes embodied in

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[115] Torma András, 'Hét tézis az EU és a tagállamok közigazgatása közötti kapcsolatról' [Seven theses about the relationship of the EU's and the member states' public administration] in Publicationes Universitatis Miskolcinensis, (SECTIO JURIDICA ET POLITICA Tomus XXIX/2., University Press Miskolc 2011) 325.

[116] Article 4 parapraph (4) of the TEU:
'Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.'

[117] Torma (n 115) 317.

[118] Kökényesi (n 105) 251.

[119] About this see for example Rixer Ádám, A magyar jogrendszer jellegzetességei 2010 után [Features of the Hungarian legal system after 2010] (Patrocinium 2012) 81–82.

specific administrative models – may be spread to the other two-thirds of the world. This idea has become especially relevant within expectations about the handling of terrorism with the tools of law, because – seemingly theoretical, and herein analysed – aspects, such as the maintenance of the operability of law, 'the suppression of its negotiative features', and eventually the need for 'contentual justification' has put classic, liberal legal concepts and expectations about their further expansion under extreme pressure since the beginning of the 2000s.[120] Moreover, the post-2008 crises further emphasise the sustainable and necessary nature of these needs, although we cannot make definite statements about the existence and future of unified Transatlantic narrative(s)…

Nevertheless – in summary – it may be stated that while due to the different – more and more intensive – crises occurring around the world the establishment and strengthening of catastrophe-prevention (legal) policies may be observed, and at the same time there is a greater need than ever for balance, negotiations and sustainable solutions. During severe crises discussion, partnership and de facto cooperation between determinative players are evaluated – which, obviously, has consequences in positive law.[121]

5.3. General expectations towards the state

Which are those notions and categories which are unavoidable in today's Hungarian scientific discussion when the topic is the features and contents of expectations toward state and public administration? What are the keywords which play a determinative role in the canon of the trendy paradigm?

The first part of the answer is that today we may observe basically the same notions and names used for describing complex phenomena which are determinative also in the description attempts made in the Euro-Atlantic environment. However – as we will see – in domestic scientific discussions some notions are introduced with different contents, context and interpretation than in their place of establishment.

5.3.1. The first question: type of the state

As we will see it, several attributes have been attached to the word 'state' in the preceding period, through which the state's basic, partly ideological, partly public service provider approach may be described, beyond the form of state and government. In a simplified approach we may consider this a *public administration state-type.*

a) The political and economic doctrine determining the past 20–25 years all around the world and existing in parallel with *neoconservativism* – which may be called *neoliberalism* or 'market fundamentalism' – *reinterpreted the social role of the state.*

[120] Jason Bainbridge, 'Lawyers, Justice and the State' (2006) 15(1) Griffith Law Review 170.

[121] Miszlivetz, Ferenc, 'Válság és demokrácia – 1989 öröksége' [Crisis and democracy – the heritage of 1989] in Simon, János (ed), Húsz éve szabadon Közép-Európában. Demokrácia, politika, jog [Twenty years free in Central-Europe. Democracy, politics, law.] (Konrad Adenauer Stiftung 2011) 133.

According to this interpretation the state which may be called *welfare* from the social point of view, *planning, intervening* or – through state-owned companies – *economic manager* from the economic point of view, got into crisis almost everywhere by the 1970s and has been replaced with the more effective *regulatory* state – stated Boda and Scheiring not long ago.[122] According to this approach the regulatory state tries to increase social and economic wellbeing less through direct income transfers, supports and the operation of its own businesses, but it rather aims at establishing the institutional and regulatory conditions which facilitate the emergence of the market, as the so-called most effective allocation mechanism. In this approach the increase of social welfare was to be primarily interpreted as the result of the improvement of efficiency.[123]

b) In international legal literature we may *find (state) models* which are *separated from each other through the changes of* the state – especially public administration – organisation system, and especially *the content of the cooperation with for-profit and non-profit sectors*; this way we may distinguish between, for example
   ba) the '*administrative state*' model, in which public services are realised in the form of services provided within the frameworks of a hierarchic system, through continuous direction, and typically directly by authorities or organisations established by them. In this model the role of the civil sector is limited to charity, donation, and voluntary and legal aid services.
   bb) the '*privatized state*' model, in which the network cooperation of different players is dominant and the involvement of the state is reduced to a coordinative role. Within this state concept public tasks provided through contractual relationships at the growing costs and expenses of the state are dominant. The service provider basically appears as a representative of the state (self-government), and performance expectations and effectiveness aspects are of primary importance.
   bc) the '*marketized*' state model, in which the state trusts the market strongly regulated and supervised by it with the provision of public services. At the same time, the interests of profit come into focus (the realisation of revenue becomes more important than before), as well as the aspects of social responsibility. In this approach – which is becoming more and more emphasized in Hungary nowadays – outsourcing is not a selfish goal: it may happen only if the non-state actor is able to perform its tasks under better conditions and at a higher standard.[124]

c) *The institutional peculiarities of the state* (organisational system, features of internal decision-making processes, characteristics of interest negotiation and conflict management mechanisms, separate interests of those acting in the state organisation, sources available for the state, etc.) determine whether the state is able to break

[122] Boda Zsolt and Scheiring Gábor, 'A közszolgáltatások politikai értelmezéséről' [About the political interpretation of public services] (2010) 19(3) Politikatudományi Szemle 43, 45.

[123] ibid 45–46.

[124] Uday C. Desai and Keith Snavely, 'Three Faces of the State and the Nonprofit Sector' (2012) 44(8) Administration and Society 964–970.

down the limits set by social relations and actively participate in influencing them. The majority of the answers are indicated under the so-called *developer* state tag in legal literature.[125] *For a long* time it was a widely accepted scientific and professional belief that '[in] Hungary a self-regulating, but strong developer state is needed which meets the requirements of the 21st century and performs the management of economy and society through consistent strategy planning.'[126] Upon formulating this statement, Balázs Kovács immediately pointed out that 'regarding the development policy based on strategic planning, both the European Union and Hungary are in crisis. Strategic planning does not suit challenges properly, documents of development policy prepared at this time are characterised by the lack of social consensus, and in domestic public administration the development policy approach is still rudimentary: strategies that ground planning are *ad hoc*, and in general they are not prepared in a proactive way, but upon external pressure, upon expectations coming from the European Union.'[127]

Today it may be also stated that the – above described, earlier important – *consciously restricted feature of the Hungarian state* (and through this, Hungarian public administration) *has significantly decreased*, due to the different crises. The current problems and perspectives of the developer state may be considered the consequences of the modified world economy environment and globalization. In today's world economy environment the main problematic, 'changing' areas are, for example, the maintenance of the extensive system of state subventions; operation of trade and foreign currency restrictions; material restriction of the intervention of transnational companies, restriction of foreign investors' capital market activity,[128] and nowadays the restriction of the provision and taking of credit.

The primary goal of today's developing and catching up countries to – based on Western patterns – 'provide a decent standard of living'[129] is less achievable today, or may be interpreted only through the reconsideration of the role and weight of the developed world. Naturally, from the aspects of world economic development – also to the development level of the countries of the developed centre – the significant reduction of the developing countries' severe internal inequalities, the optimisation of profit resulting from external trade relations, the use of the advantages of globalisation and the alleviation of its possible disadvantages, the developer state will remain the most viable option in the third millennium as well – states Csáki.[130]

d) We must not forget about the *rule of law* state viewed from a *legal approach*, and about the rule of law social state, when we are looking for expressions suitable for

[125] A nemzetközi fejlesztéspolitikai stratégiakészítés gyakorlata, [Practice of establishing strategy in international development policy] (Kopint-Datorg Rt. 2006) 9–32.

[126] Kovács Balázs, 'Fejlesztő állam a XXI. században' [Developer state in the 21st century] (2006) 2(4) Polgári Szemle 41. [www.polgariszemle.hu/archivum].

[127] ibid

[128] Csáki (n 63) 31.

[129] ibid 33.

[130] ibid

describing Hungarian public administration. Naturally, in the two decades which have passed since the so-called 'rule of law revolution' [Decision 11/1992. (III. 5.) AB of the Constitutional Court of Hungary, ABH 1992, 77–82] which took place around the transition, the internal balances of the notion of the rule of law state have been revised, including the neo-Weberian intents of the 're-explorers' of the rule of law state.

In this regard it must be emphasized that public administration and administrative law are not developed in a vacuum: the objective social-economic reality does not only influence the attributes of the rule of law, but also the 'self-movements' of certain authorities (special authority fields). Barnabás Lenkovics writes about changes affecting, among other things, the rule of law – as follows: 'However, it shall be stated as a fact that in the twenty-year period of transition – which has always remained within the frameworks of the rule of law – the country has shrunk into a severe, broad and deep (political, economic, financial, social, moral, etc.) crisis. This crisis was created partly by factors within the Hungarian rule of law state, and partly by external (European Union and global) circumstances. (…) Due to the significant change of the circumstances, the national, EU and global crisis management, which has been going on since 2008–2009, has taken new directions. *This process comes together with significant, unusual changes, the revision of the content of fundamental laws, the withdrawal or restriction of civil rights, imposition of burdens, focusing on individual responsibility. Quick and significant changes presented new challenges to legislation, law enforcement and governmental activities, in each field of social life. Hungarian constitution-making was going on in this environment, under such circumstances, in 2010 and as result of this, Hungary's new Fundamental Law was created. The revision of the constitutional legal system is going on nowadays within the same environment, within which we may witness again new and unusual solutions. The crisis hits the so-called second generation (economic, social, cultural) human rights (constitutional fundamental rights) especially hard. The members of society consider it as restriction of their rights, withdrawal of vested rights or the reduction of their degree. All in all it may be stated that the "rule of law social state" – due to objective and subjective, internal and external forces – is decreasing.* Throughout Europe, and also in Hungary, many consider this a crisis of the "democratic rule of law state" and of constitutionality. The borderline and the balance between stability expected from the constitution and a rule of law state (legal security, public law validity) and forced governmental measures, quick and effective changes and modifications is obscured under these circumstances.'[131]

e) It is obvious that the *crisis and political processes existing in Hungarian public administration* since 2008 and 2010 *would require the introduction of state notions*

[131] Decision of the Constitutional Court 45/2012. (XII. 29.) ABH on the unconstitutionality and annulment of certain provisions of the transitional provisions to the Fundamental Law of Hungary – the separate opinion of Dr. Barnabás Lenkovics, Member of the Constitutional Court.

with new attributes; new ones which, compared to the above mentioned, well-known notions would be able to reflect on the new contents and intentions.

'The worldwide financial and economic crisis of 2008 repeatedly, in deeper dimensions brought scientific debates about the role of the state to the surface, and within this, debates about the relationship of the state and the market, and the state and society. The majority of these debates especially target administrative-professional issues, such as basic questions like what the task of public administration is – within a broadly interpreted public administration what the desired role of the state is – what further directions the reform of public administration should take, whether the state is ready to – temporarily or permanently – take over tasks from other players, and if it does, whether it is able to perform them effectively at a proper standard.'[132]

Behind several administrative reform measures delivered due to the effect of the crisis lies the concept that in critical periods, the state remains the stable point, while in the era of prosperity, dynamic value making has primacy. By accepting this starting point it has been realised that there is a task transfer between the state, the market and civil sector, and international organisations and integrations, into which more focus is put during crises, and in some cases its certain features change, as well. From the aspects of the players, direction, content, pace of the task transfer, the key issue is the transformability and plasticity of the state's own internal organisation, of the public administration.[133]

In the case of certain reforms – as has been referred to in section a) – state-friendly, in other cases market-friendly or other theoretical (e.g. those supporting civil self-organisation) and practical solutions prevailed.[134]

Based on international literature it may be observed that *answers given to the economic crisis* show significant differences, and there is no single ideal scenario. The main solutions and governmental answers allow for the listing of some well-distinguishable – public policy strategy – types within the OECD states:[135]

ea) the '*directing state*': where the state has more active role in economic crisis management e.g. with the introduction of bank and debtor saving measures.

eb) the '*hollow state*': when traditional neoliberal, marketing and state restrictive NPM strategies are updated and strengthened.

ec) the '*local communitarian state*': in which the increased provision of advantages offered by community and charity organisations in fields where earlier direct state service provision / financing was dominant.

ed) the '*(barely) coping state*': where reforms are delayed, in addition to the lack of the transformation of large service provider systems.

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[132] Gellén (n 23) 3.

[133] ibid

[134] Gellén (n 23) 4.

[135] Leo McCann, 'Reforming Public Services after the Crash: The Roles of Framing and Hoping' (2013) 91(1) Public Administration 5, 7.

These main directions are obviously not exclusive, in most states (therefore in Hungary as well) these solutions exist all together, even though at differing degrees. However, it is obvious that nowadays almost all Hungarian authors refuse the – never expressly stated, but widely accepted – starting point that the market is almost always better and more effective mechanism than the state.[136]

5.3.2. Determinative directions. NPM and its rivals in the reflection of Hungarian science and practice

In Hungarian science one of the main issues – for almost a decade – has been the question of what replaces the *New Public Management*'s solutions and processes weakening the state and public administration in various ways – or in other words: its clear, 'classic' methodology.[137]

One of the reasons of uncertainty reflected by science is that while official policy – at the level of evasions – continuously refuses to use *clearly* market solutions in public administration, practice still shows that the majority of these practices – in some form – are present and enforced. Another firm sign of temporality is that the criticism formulated against NPM has not been collected into one comprehensive concept yet: even though there are some keywords (e.g. neo-Weberian model – see below), there are still serious doubts about their utility, as we will see later.[138]

Nowadays Hungarian legal literature has dealt more and more with the features of the main *management schools* handling the organisation issues of public services, as well as with the categorisation of the tools offered by them. As such we shall mention *NPM* and the *governance* approach strongly representing the 'horizontal reform directions' based on the criticism of NPM, as well as the *neo-Weberian* approaches already mentioned – as well as the 'well-distinguishable' market, society and state-friendly schools.[139]

The New Public Management approach expects the strengthening of accountability from the strengthening of 'consumer influence' and from expanding the opportunity to choose (from the stronger enforcement of individual interests than before), and focuses on the efficiency of control mechanisms. Among its tools there are the strengthening of competition, simulation of market relationships, demand-side financing, measuring the performance of public services, application of market motivators (e.g. performance based financing, performance based wages), 'consumer' support services, strategic planning, deregulation and application of standards, repression of the community use of service provider experts.[140]

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[136] Gajduschek György, 'A "Run Like a Business" – jelszó ideológiakritikája' [The ideological criticism of the "Run Like a Business" principle] (2010) 19(1) Politikatudományi Szemle 125–148.

[137] http://www.nki.gov.hu/files/szervezet/tevekenyseg_mukodes/Rezume_forditasai_2012_masodik%20szamig.pdf >accessed 7 July 2013

[138] ibid

[139] Gellén (n 23) 5.

[140] Radó Péter, 'A szakmai elszámoltathatóság biztosítása a magyar közoktatásban' [Ensuring professional accountability in Hungarian public education] (2007) 11(12) Új Pedagógiai Szemle 6. http://epa.oszk.

Harsh criticism formulated against NPM techniques and approaches at the end of the 2000s – following the increasingly mixed, rather negative general appreciation Polidano (1999); Denhardt-Denhardt (2000)] – clearly emphasized their failure [Hughes (2008); Lapsley (2009)], and the obvious dysfunctions – effects hampering the achievement of targets – of solutions introduced elsewhere in imitation of the Anglo-Saxon model [Cameron (2009)].[141] However, in some fields of Hungarian public administration some NPM-related techniques were introduced in the 2000s.

The majority of criticism maintains that the internal controversies of NPM cannot be eliminated, in so far as e.g. the related community decisions theory and the manager approach formulate/formulated controversial requirements in the relationship of politicians and bureaucrats, bureaucrats and service providers, and citizens which expressly contravene with each other.[142] The previous approach supports the increased control of bureaucracy, the multi-player coordination of activities and their stricter regulation, contrary to the latter one, which – in a simple way – supports the higher degree of the freedom of decision making and the deregulation of the related rules. These controversies result in these models in the spread of formally perfect, but otherwise hardly transparent 'quasi' contracts instead of real ones, and the expansion of one-target organisation reduces the controlling ability of the central government, and eventually as result of these, the operation of public administration becomes less easily monitored.[143]

Obviously it must be kept in mind that *NPM is rather a movement, or moreover: a way of thinking*, thus it does not appear to us as an exact collection of norms: its real advantage is that come of its solutions may offer a real alternative for increasing efficiency in certain fields, and its notions and solutions allow for given (public) administrative systems and subsystems to be evaluated and compared. *In several regards it cannot be answered whether within the provision of public services or in relation with the broadest sense of the provision of public services the NMP methods were applied in Hungary consciously or not; whether in reality they were incorporated into the selection of domestic methods by adapting external patterns, or they are results of 'internal self-improvement' or of 'coincidence emerging from daily political interests'.* However, knowledge about the general features of Hungarian public policy and of the legal system, the significant temporal 'delay' of the introduction of certain solutions, and the 'fragmentised, compromise-like' feature of the applied tools indicate that it would be a mistake to dedicate excessive – or maybe exclusive – attention to this approach in the description of Hungarian public administration. Nevertheless, the existence or lack of these tools – attached closely to NPM – or the time of their introduction may orientate the reader well in several fields, by this providing for the drawing of conclusions.

It is not possible to draw conclusions about the operation principles or self-picture of the state from the mere existence of NPM tools: these tools are applied by every democratic state, and significant differences may be observed only regarding their specific features

hu/00000/00035/00119/2007-12-ta-Rado-Szakmai.html > accessed 4 August 2013.

141 Rosta Miklós, Innováció, adaptáció és imitáció – az új közszolgálati menedzsment [Innovation, adaptation and imitation – new public services management] (Corvinus 2010) 107.

142 ibid 108–109.

143 ibid 109–110.

and the degree of their application. In domestic literature, NPM primarily means a way of thinking and a set of tools which may be derived from it. Domestic literature has reflected on international dilemmas related to this topic for long.[144]

After the more than one and a half decades hegemony of the NPM approach and then (during) the observation of its failures, the theory (society approach) of 'good governance' urging the change of (that) approach – more precisely, renewal *still on a liberal basis* – and favouring a network system also appeared in Hungarian theory, which in the public policy decision making processes focuses more on multi-player operation based on partnership, instead of state dominance.[145]

The developments of the first decade of the new millennium brought about a *brand-new paradigm*, when due to capital market and other crises, state-centred solutions are clearly appreciated again. The neo-Weberian approach – keeping in mind the Weberian heritage – *should be* a public law type legal certainty, a rule of law and democracy approach based on normative foundation. However, *many question* whether the practical solutions derived from this theory reflect this or not.

In domestic literature, state-centric theories are often formulated expressly against NPM,[146] 'which cannot be identified with the rejection of the everyday tools of public management (such as program planning, strategy making, tender funds, etc.), because this is a different genre with very different issues'.[147] Rejection, therefore, is an unfortunate simplification – states Tamás Horváth M. – because a social task organisation culture useful in every era and situation is sacrificed on the altar of the evaluation of state roles.[148]

By today – as referred to previously – opinions about the role of the state have strengthened which clearly favour the neo-Weberian state ideas against the *(New) Public Management state concept*: in so far as they state that instead of the aspects of cost efficiency and result orientation, and as a result of these the 'reduction' of the state, the 'loss of its magic', and the increasing outsourcing of state functions a (more) active and stronger state should be built. Since the 1970s it has become more usual that different governments financed a broad scope of welfare services, but they commissioned the real service provider role to for-profit or non-profit organisations. This way, temporarily, the expansion of welfare services was manageable without the material broadening of bureaucracy.[149] The success of the new public management was disputed already in the 1980s: some believed it was a

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144 Vass László, 'Az új közmenedzsment és a hatékonyság javítása a közigazgatásban' [New Public Management and the improvement of efficiency in public administration] (1998) 48(2) Magyar Közigazgatás 63; Vadál Ildikó, 'Korszerű közigazgatás – avagy: kényszer szülte megoldások a közszolgáltatások szervezésében' [Modern public administration – or forced solutions in the organisation of public services] (2000) 50(1) Magyar Közigazgatás 1–6.

145 Among others: Gajduschek György – Hajnal György, A gyakorlat elmélete és az elmélet gyakorlata (HVG-ORAC 2010); Pálné Kovács Ilona, 'Magyar területi reform és uniós fejlesztéspolitika' [Hungarian territorial reform and EU development policy] [2007] 10 Magyar Tudomány 1306–1316.

146 Lőrincz Lajos. 'Közigazgatási mítoszok és valóság' [Administrative myths and reality.] (2007) 1(2) Közigazgatási Szemle 7–10.; G. Fodor Gábor and Stumpf István, 'Neoweberi állam és jó kormányzás' [Neo-Weberian state and good governance] (2009) 1(7) Nemzeti Érdek 11–14; Hosszú (n 112) 50–52.

147 Horváth M., 'A közmendzsment változásai' (n 61) 87.

148 ibid

149 Lester M. Salamon, 'The rise of the nonprofit sector' (1994) 73(4) Foreign Affairs 2.

panacea, while others pointed out that with the introduction of the new theory, *at most only a small percentage of the costs of public institutions could be saved*.[150]

Newer approaches consider the maintenance of the requirements of the rule of law and the further enforcement of certain efficiency aspects important, but they also believe that the material incorporation of the elements of strategic thinking and strategic planning into public policy is unavoidable. The supporters of a stronger state – who also favour the importance of *good government* against the same of *good governance* – reason that the basic requirements of *transparency, accountability and responsibility-taking* may be possible only where the revised strategy of cooperation between state and private sector is introduced – e.g. contrary to the uncertainty of outsourcing and PPP constructions which relativised away strict limits.[151] *PPP construction proved to be especially unsuccessful in Hungary*: studies prepared by the Development and Methodology Institute of the State Audit Office of Hungary have clearly showed that for the foundation of the projects by market surveys and impact studies about the possibilities of realisation were usually missing, moreover, economic and cost comparison calculations were not made (!) at all; most constructions did not meet the basic (classic) requirements – focusing on the interests of the state – formulated towards PPP investments, in so far as during such investment the realisation (construction), stand-by and operation risks should be undertaken by the investor.[152]

The contents of the expression *'Good Governance'* is almost fully identified with the New Public Management approach and its contents in the domestic literature.[153] In addition to G. Fodor and Stumpf we may also mention Egedy[154] and Frivaldszky.[155] Hajnal and Pál indicate that in a significant part of domestic literature – *contrary to the trends in international literature* – the homogeneous conglomerate of good governance and NPM ideas are put into contrast with a raw, *simplified way* with good government ideas and the neo-Weberian approaches identified with them.[156] One possible explanation for this is quite obvious: both the NPM approach(es) and Good Governance ideas originate from (neo)liberal ideological

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150 Hosszú (n 112) 51.

151 For details see e.g. Boros Anita, 'PPP-Projekte in Ungarn' in Jan Ziekow (ed), Wandel der Staatlichkeit und wieder zurück? (Nomos 2011) 150–177.

152 Báger Gusztáv, A köz- és magánszféra együttműködésével kapcsolatos nemzetközi és hazai tapasztalatok [International and domestic experiences about the cooperation of public and private sector] (Állami Számvevőszék Fejlesztési és Módszertani Intézet 2007) 63.

153 Hajnal György–Pál Gábor, 'Some Reflections on the Hungarian Discourse on (Good) Governance' [MTA TK (Institute for Political Science, MTA Centre for Social Sciences) 2013] Working Papers in Political Science 2013/3. 3.] <http://www.mtapti.hu/uploaded_files/8519_2013_03_hajnal_pal.pdf >accessed 22 September 2013.

154 Egedy György, 'A kormányzás parancsa' [The order of governing] (2009) 5(5) Polgári Szemle 22. <http://www.polgariszemle.hu/app/interface.php?view=v_article&ID=331>accessed 6 July 2013.

155 Frivaldszky János, 'Jó kormányzás és helyes közpolitika-alkotás' [Good governance and proper public policy making] (2010) 13(4) Jogelméleti Szemle 22. <http://jesz.ajk.elte.hu/frivaldszky44.html> and Frivaldszky János, 'A jó kormányzás és a helyes közpolitika formálásának aktuális összefüggéseiről' [On the actual contexts of forming good governance and proper public policy] in Szigeti Szabolcs–Frivaldszky János (eds), A jó kormányzásról. Elmélet és kihívások. [On good governance. Theory and challenges] (L'Harmattan 2012) 51–103.

156 Hajnal and Pál (n 153) 8.

foundations, regardless of the fact that the latter also provides for the partial or full criticism and correction of NPM. If we also add that regarding all approaches mentioned in this work, their delayed, partial and often inconsistent, sudden introduction into the Hungarian environment is a fact, it becomes obvious – or reasonable – why domestic literature resorts to the tools of polarisation, simplification, unification, etc., even if they go against the narrowly interpreted erudition. Where these practices and specific solutions were finely tuned during (the last) three decades, the more precise differentiation, finely tuned separation of these theories and approaches is obviously reasonable, moreover, unavoidable. However, in cases when the certain specific features of these approaches were not introduced, or only introduced in a fragmentised form, and only at the time when it was already in decline abroad, the theoretical, rough-and-ready discussion is at least understandable.

Another exciting, seemingly controversial phenomenon may be observed in the domestic approach toward the relationship of NPM and *New Public Service* (herein after referred to as: NPS)[157] schools. Radó – like Rosta[158] – partly confronts the two approaches (as two separate approaches of public service management)[159], while Gellén considers the NPS only the counterpart, specific idea, or 'element' of NPM in the field of public services, avoiding to mention it as separate school – basically emphasizing its difference from both Weberian models.[160]

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[157] See e.g. Robert Denhart–Janet Denhart, 'The New Public Service: Putting Democracy First' (2001) 90(4) National Civic Review 391–400.

[158] 'For NPM the citizen is a "client", whose needs – at a higher level – must be fulfilled, and in order to do this choices shall be ensured for the individual. Theories exceeding NPM, primarily New Public Service, do not consider passive citizens, individuals governed by their own interests any more, but emphasizes direct state participation in the provision of public tasks, and focuses more on the aspects of public interests.' Rosta (n 141) 109.

[159] The New Public Service school stresses the fulfilment of public interests against the same of private interests, therefore instead of greater efficiency, it focuses on responsiveness. It distinguishes business techniques from 'business values' opening towards the former and refuses the latter. Obviously, due to this its set of tools is also different: forming coalitions made of community, business and non-profit participants organised along common goals, the set of tools called 'open government' (enabling citizens to participate in decision making, providing access to information, user friendly governmental services, etc.), and the value assessment of public services.
It may be observed, writes Radó, that the value background of the two 'schools' are completely different, as well as their judgement about the goal of public services and the role of citizens. *However, at the same time is is also obvious that the sets of tools of NPM and NPS do not necessarily contravene each other, moreover, for example, they intervene at different points of the accountability cycles of relationships.* Radó (n 140) 22.

[160] 'With the spread of NPM, the notion of new public service has emerged in the newer literature, the essence of which is that new public service is more democratic, more heterogeneous, and is less strict regarding organisational limits than the Weberian bureaucratic organisation. At the same time the rules based on which NPS works are a mixture of market and state management regulations, and state administration entities also apply market rules in their own operation. In this working environment, the temporarity of the relationship between the individual and the organisation is dominant, through which the strengthening of client orientation is intended to be achieved at the expense of the internal cohesion of the community of civil servants.' Gellén (n 23) 73.

6. The Future, as an important factor affecting public administration. The idea of Hungarian public administration as being directed by certain facts of objective reality.

If we should determine what the core characteristic of the 'good state' is, we could say that it is the ability to reflect on real social problems. Under ideal circumstances, we could also add that the fact and content of material response for real questions should not depend on what short-term political consequences it has for the decision maker…

It is a pre-question in the examination of public administration, positive law, the performance of public administration and the effectiveness of law enforcement that at what degree the state and society will provide answers for the urging questions of the coming years and decades.

Regarding Hungary, such questions are *demography problems*, the *Roma issue*[161] and the *possible effects of climate change*.[162]

It is indubitable that in Hungary the Roma issue is one of the most urgent and in practice least handled problems. The latter is true also because in public spheres – including the state/public administration sectors of the public – it is still not well-settled which are the legitimate and constructive forms, frameworks and wordings of raising the issue.

From the aspect of our topic it is another important context that the change of paradigms mentioned so often in relation with Roma policy shall not mean simply the numeric strengthening of the institutions of representative democracy today: in order to allow the Roma minority to become active, initiative part of the legal community in Hungary, it is obvious that the democracy concept of legal-procedural stability must be overstepped, broadening its scope and content with value-based aspects.

The protection of the interests of future generations – thus of the newer generation of Hungarian Roma people with growing significance and, based upon the demographic trend, with growing numbers – would require us to 'restrict the emergence of the will of the empiric majority by referring to an as yet non-existing population, eventually leading us to a principle which is contrary to the opinion of the current majority – expressed at political elections or through the market game of supply and demand.'[163] However, in order to operate them smoothly, the traditional principles of democratic representation and decision-making shall be supplemented,[164] these new institutionalised changes are/will be necessary. The constitutional ground of this concept may be that the new Fundamental Law stands in front of us as an 'upward open' constitution. This upward openness means that during the validity of the new Fundamental Law one of the state's (and its organisations') main tasks is to proceed during the enactment of any normative or individual regulation or

[161] See e.g. Rixer Ádám, A roma érdekek megjelenítése a jogalkotásban [Incorporation of Roma interests into legislation] (Patrocinium 2013).

[162] See e.g. <http://www.inhungary.com/budapest/desert-in-hungary.html>accessed 5 September 2013

[163] Lányi (n 27) 118.

[164] ibid

during the interpretation of Hungary's Fundamental Law by keeping in mind the interests of future generations.[165]

It will be an eminent task of science – at least partly – to elaborate these *supplementary* principles.

7. (Changes of) the norm types of public administration

7.1. Sources of Hungarian administrative law

Among the *normative* sources of Hungarian administrative law, the internal (Hungarian) and external (international) sources shall be mentioned. The review and listing of these is reasonable also because the possible types of legal source compose a closed system, and law cannot be made in any other form.

Among internal legal sources the a) Fundamental Law of Hungary, which replaces the previous Constitution as of 1 January 2012, has a central role. Further sources of internal law are b) laws, c) legal instruments of state administration, and d) certain individual decisions carrying general behavioural rules. Regarding the hierarchy of norms, the starting point is Article R) which lifts the Fundamental Law out from the pool of laws and Article T) which firstly formulates the need of harmony between the laws and the Fundamental Law, and secondly establishes the hierarchic order between laws.

a) The scope of changes possible to make to the acts regulating today's Hungarian public administration (the features and extent of possible changes) is regulated by Hungary's Fundamental Law, which is a basic norm and a tool of legitimacy. In the short run, the approval of the Fundamental Law partly definitely extends the area for movement of the political powers approving it on 25 April 2011, in so far as the values and institutions described therein definitely match the actual, main directions, political and other intentions of the management of society. Moreover – especially due to the atypical feature of the two-thirds majority necessary for amending the Fundamental Law – the Fundamental Law, which was made at time of exceptional traditional and political 'constellations' may be able to 'capture' the future – in a neutral sense – establishing a framework in Hungarian legal development which may last for decades.

In the positive law approach, the constitution is the fundamental norm of the legal system and at the same time it is part of the legal system.[166] However, it is also important how its establisher wants the Fundamental Law to be seen; how and at what level it wants to make it part of and at the same time basis of all social norms. Analysing the fundamental

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[165] See e.g. Article P) of the Fundamental Law of Hungary:
'All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.'

[166] Szigeti, 'Társadalomkutatás – mi végre? (…)' (n 12) 55.

law feature from this approach, it is obvious that the new written constitution *leads (may lead) to the strengthening of the conservative legal approach*.[167] Namely, in the view of the conservative legal approach – among others – law is subordinate to moral principles, or at least some kind of higher principles: law and morality cannot be divided so sharply as legal positivism puts it; moreover, the role of judicial case law is very significant.[168]

If we accept the separability of the political and legal approach of the development of the constitution, we may state that the advantage of 'legal' constitution approach would be relative accuracy and interpretation security, while its disadvantage is the risk that state targets and value preferences are missing.[169] Now referred to earlier – the new Hungarian political regime and the Fundamental Law itself, as well as the whole legal system have slightly moved towards spreading the primacy of principles and values, instead of the primacy (exclusivity) of regulations. With this regard, we shall also refer to the fact that Hungarian jurisdiction has always been afraid of basing a decision on directly on a provision of the Fundamental Law or to derive it directly from positive law rules, unless – based on the above-mentioned issues – the dissolution of this carefulness may be forecasted.

b) Among laws[170] we distinguish *normal laws* (acts, Government decrees, decrees of the Prime Minister, ministerial decree, decrees of the Governor of the National Bank of Hungary, decree of the head of an autonomous regulatory body and decrees of local governments) and the *extraordinary laws* (here in addition to the decrees of the National Defence Council issued in state of national crisis and the decree of the President of the Republic issued in state of emergency, the extraordinary decree of the Government issued in time of unexpected attack and the Government's decree in emergency may be mentioned[171]). We shall also point out that in the Hungarian legal system there are types of laws which are valid today but cannot be issued any more, i.e. the decree laws, which were issued by the Presidential Council ('Elnöki Tanács'), abolished at the change of regime, which proceeded instead of the Parliament.[172]

Another important supplement to those mentioned in Article T) of the Fundamental Law is that – as a new element in our domestic law – in line with Article 32 paragraph (2) of the Fundamental Law the Government Offices also received legislative competence; even though only by proceeding on behalf of the given local self-government, in extraordinary cases, under court control.[173]

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167 Paczolay (n 85)

168 The expression 'conservativism' has an important role regarding the examined processes and phenomena, but it has restricted explanatory force. For this see Balázs Zoltán, 'Menczer Béla gondolkodásának helye a magyar konzervativizmus hagyományában' [The place of the ideas of Béla Menczer in the traditions of Hungarian conservativism] (2010) 19(1) Politikatudományi Szemle 90, 94–95.

169 Szigeti (n 12) 55.

170 Article T) paragraph (2) of the Fundamental Law of Hungary.

171 Article T) paragraph (2) and Articles 51–53. of the Fundamental Law of Hungary.

172 According to section 8 of the Closing and Miscellaneous Provisions of the Fundamental Law 'The coming into force of the Fundamental Law shall not prejudice the effect of laws made, regulatory means of public law organisations and other legal instruments of state control issued, individual decisions made and international legal commitments undertaken before its entry into force.'

173 According to Article 32 paragraph (5) of the Fundamental Law:
'The metropolitan or county government office may apply to a court to establish a local government's neglect of its statutory legislative obligation. If such local government continues to neglect its statu-

c) The *legal instruments of state administration* (earlier called *other regulatory instruments of state administration* with somewhat different content) are *theoretically* different from laws in the sense that their force (legal effect) remains within the state organisation; this means that they cannot carry provisions for natural persons and their organisations. The two types of legal instruments of state administration are normative decision and normative order.

d) In addition to legislative sources of law, some other sources of law shall be mentioned which formulate general behavioural rules. Definitely such is the decision of the Constitutional Court through the announcement of unconstitutionality and the annulment of the legal instrument; the decision of the Curia related to local governments which judges the legality of the decrees of local governments; and the uniformity decision of the Curia, which is also an external normative act, in so far as the courts do not use them in their everyday activities but for composing their judgements, in a way directly affecting citizens.[174]

Regarding *international sources of law* it is important that according to Article Q) paragraphs (2) and (3) of the Fundamental Law 'Hungary shall ensure harmony between international law and Hungarian law in order to fulfil its obligations under international law' and 'Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in the form of legislation'. Due to these provisions, part of sources with international origin (features) shall be viewed as internal source of law, thus the differentiation between internal and international sources of law is of relative value.

The above-mentioned rules – supplemented with the obligations of Hungary derived from its membership in the European Union – mean that among the sources of administrative law with international origin, we may differentiate between *a)* the generally recognised rules of international law; *b)* the international sources transformed into Hungarian law, which have been promulgated in Hungary in a separate act. We may consider the primary source of EU law as such. Among the secondary EU law sources, those shall be separately mentioned which *c)* are valid and applicable in Hungary without any further transformation, and *d)* those which do not require transformation, but further domestic legislation is necessary in relation to them.

Regarding the European Union we shall mention that *by interpreting Article E) of the Fundamental Law it may be stated that there is a 'constitutional minimum' which – viewing the issue from the side of the hierarchy of norms – remains above the EU's legal system, i.e. – in other words – is untouchable by unilateral norms of the EU.*

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tory legislative obligation by the date determined by the court's decision on the establishment of such neglect, the court shall order, at the initiative of the metropolitan or county government office, the head of the metropolitan or county government office to adopt the local ordinance required for the remedy of the neglect in the name of the local government.'

[174] For details see: Jakab András, A jogszabálytan főbb kérdéseiről [On the main questions of the theory of laws] (Jog és állam 4., KRE ÁJK – Unió Kiadó 2003) 147.

7.2. The notion of administrative law and its place in the legal system

In Hungary, administrative law traditionally belongs to public law. From the dogmatic aspect several challenges have been imposed to the traditional public law/private law categorisation: among legal relationships – especially in relation with different public services – the rate of those which are 'inseparably complex' is continuously rising, and in close relationship with this, new fields of law (and at the same time new fields of the science of law) are established continuously, which are 'cross-border type', moreover, also regarding the subject and method of their regulation they are attached to public administration through myriad other pieces of legislation (e.g. the media law, the non-profit law, etc.). This division is relativised in practice by the simple fact that even relationships which may be considered clearly administrative in character – usually – go hand in hand with legal relationships regulated by other fields of law[175] (e.g. the sales contract of a property and the registration of its content in the land registry are hardly separable from each other either from legal or practical point of view).

While constitutional law, which also has public law features (characteristics), tries to define the system and method of the exercising power, the basic rules of the relationship of persons and the state, and the fundamental rights of persons, the administrative law – within a constitutional framework – regulates the expression of state will (material law), its carrier (organisational law) and its enforcement (administrative procedural law).[176] In other words: administrative law is a collection of legal norms which regulate relationships between natural persons and their organisations (subjects of law) and the state, and in the enactment and enforcement of which public administration authorities have specific roles.[177]

7.3. Features of the administrative norm and its relationship with other social norms

7.3.1. Traditional features of the administrative norm

The notion of the legal norm – and therefore the notion of the administrative legal norm – is traditionally used with double meaning: on the one hand the science of law defines the sources of law as a whole with this name, and, on the other hand, also uses this notion for the smallest individual element of law (distinguishing this latter meaning from the legal sentence or in other words legal thesis, which defines a rule which cannot be applied individually). While earlier – upon Soviet influence – the main rule, the starting point in the science of law regarding the structure of legal norms and their structural elements was a tripartite division with the principle of 'if – then – because if not' (under the names hypothesis, disposition, sanction), today many use the hypothesis (condition or statement of facts)

[175] Patyi András – Varga Zs. András, Általános közigazgatási jog (az Alaptörvény rendszerében) [General administrative law (in the system of the Fundamental Law)] (Dialóg Campus 2012) 105.

[176] ibid

[177] ibid

and legal consequence (sanction) division,[178] stating that *in reality* the disposition (provision) is dissolved into the hypothesis or into the legal consequence ('if – then').

Based on the existence of the statement of facts, the science of administrative law traditionally distinguishes hypothetic and categorical norms [even though the lack of the statement of facts is only virtual in case of the latter one, e.g. 'The administrative authority shall make a decision' expression may be completed with a statement of fact-like elements from other provisions of the given law or from other provisions of other relevant laws (in the mentioned case in a way that 'if procedure is started in front of it, it shall make a decision')].

Nowadays we may observe the earlier 'typical' – full – norm structure in its clear form mainly in law regulating rights and obligations. Regarding legal consequences, we shall state that they often appear in other (separate) laws with administrative nature, or in law belonging to other fields of law, moreover – which is typical for administrative law – in certain laws, especially in certain legal instruments of state administration, there are several norms to which legal consequence is not attached at all, not even indirectly, especially due to their recommendation or 'program norm' nature setting goals and targets.

The basic features of administrative law norm – upon which it is usually examined both from scientific and from practical, law enforcer point of view – are validity, enforceability and applicability.[179] Within the categorisation of administrative legal norms, the most general is the division of material, procedural and organisational norms.

7.3.2. On the relationship of legal and other types of norms

Within the scope of examining Hungarian public administration, we shall consider that one of the limits of the substantive (thorough) analysis of different – material, procedural or organisation-type – administrative law norms is the fact that those parallel social norms are often missing which would support the moral, ethical foundation and continuous confirmation of the former ones, and which at the same time could precisely determine the direction, feature and depth of possible needs for change.

A repeated pattern of this work is that not only our science of administrative law, but also our public administration is mainly of a legal character, which means that the need for the appearance (and description) of different principles is basically (primarily and often exclusively) specified in legislation: the need for being influenced by other norm systems and their establishment may be considered rather low level. Resulting from this feature, regarding certain fields the less consequent and sometimes clearly inconsistent regulation proves the lack of long-term principles.[180] Some areas 'traditionally' belong to the group in which the eventuality of short-term principles is shown in the permanent change of laws (e.g. human resources policy) or the fact of keeping regulations 'at a low level of the hierarchy

[178] Jakab, 'A jogszabálytan főbb kérdéseiről' (n 174) 36.

[179] In relation with the domestic interpretation of these see for summary e.g. Jakab (n 174) 68–71.

[180] Linder Viktória, Személyzeti politika – humánstratégia a közigazgatásban. PhD értekezés tézisei. [HR policy – HR strategy in public administration. Theses of Ph.D. dissertation.] (Debreceni Egyetem Állam- és Jogtudományi Doktori Iskola 2010) 13.

of laws', a good example of which is the legal material about different organisations with recommending, opinion making and consultative roles.

For the post-2010 Hungarian government it was and is extremely important, especially due to the extreme rate of legal changes, to place its legislation on firm, 'incontestable' – let us state it: moral – grounds, including the Fundamental Law. It shall be also stated that it would be a mistake to view the analysis of different fields of authority (policies) merely as issues of legal regulation. In social fields regulated by law, the material presence of another type (level) of normativity is necessary; from the general rules of social behaviour to the question of special responsibility relationships settled by political etiquette. The well-established law does not abolish the justification of individual norms, community norms and organisational norms,[181] *because the generality of law may only exist through these.*[182] Moreover, the *failure of the previous lobby act*[183] showed that in certain fields the state must not intervene even in lack of self-regulation with its substitute provisions: in some social sectors a permanent result may be reached only through the pe rmanent stimulation of self-regulating mechanisms, which is a slow, circumstantial solution, but is without any alternatives. This is why the new lobby regulation chooses – partly – the solution that it creates obligatory rules only on the side of the public servant visited by the lobbyist, and otherwise it settles for that on the one hand it creates patterns upon its own forming practice, and, on the other hand it trusts the already established criminal law limits (e.g. bribery, etc.). It also results from this that when we analyse the nature of law we shall assess how the listed norm types differ from law, in what relationship they are with law, and how much the practical applicability of law depends in the existence and establishment of other systems of rules.[184]

A reason for the phenomena of *overregulation*[185] is (among other factors) the different system logics of law and society, in so far as the (sometimes) pathologic effects of overregulation may be traced back to differences in organisational structure, motivations and rationalities, as well as to deficiencies appearing in other parallel social norm types.[186] Overregulation means the intrusion of law into certain – seemingly – autonomous social spheres, which through their own system logic partly transform law, reflect on it. The operation system of law was fundamentally modified by the fact that the course of legislation and individual decisions has become part not only of the broadly interpreted public, but also *the broadest scope of popular culture and the media also consider this as 'their own'*.[187]

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[181] Especially not the mixture of morals and politics, the convention. (See Szigeti Péter and Takács Péter, A jogállamiság jogelmélete [Legal theory of the state of the rule of law] (Napvilág Kiadó 1998) 117.

[182] Tamás (n 87) 145.

[183] Act XLIX of 2006 on lobby activities was annulled in December 2010.

[184] 'The Nature of Law' in Stanford Encyclopedia of Philosophy, <http://www.google.hu/searchsourceid=navclient&hl=hu&ie=UTF&rlz=1T4PCTC_huHU374HU375&q=An+Outline+of+Contemporary+Legal+Thought >accessed *January 4 2007*

[185] Which is reasoned by others with the dominance of 'accusing politics'. See e.g.: Pokol Béla, A jog elmélete [Theory of law] (Rejtjel Kiadó 2000).

[186] Gunther Teubner, 'Társadalomirányítás reflexív jog révén' [The management of society through reflexive law] in Cs. Kiss Lajos – Karácsony András (ed), A társadalom és a jog autopoietikus felépítése [Autopoiethic structure of society and law] (ELTE 1994) 73.

[187] Sherwin (n 17)

However, this latter phenomenon in itself does not abolish the – at least partial – pertinence of ideas about the self-referential closeness of law, in so far as through its own actions law establishes an autonomous legal reality, and regulates and manages society mainly this way, through its self-regulation, building on itself.[188]

Regarding overregulation, one of the main difficulties is that in the past several items the legislator did not assess properly whether the legal norm or some kind of other social norm is the most suitable for influencing the given relationship. Namely, finding the most suitable type of norms for regulating the given relationship meant and means today one of the most problematic legislative contexts. *The failure of the previous legal tools has been most apparent in fields influencing financial and economic relationships: e.g. the previous lobby act and the voluntary act*[189] *aiming at suppressing work in the black economy may be mentioned as a deterrent example. Even though formally these are (or were) part of the legal system, they have never been really used.*[190]

Naturally, law (administrative law) must not be 'shy' or 'reserved' in the social sphere or in interactions with other norms: law must continuously offer its results which clearly communicate the values of the majority, because '*the constitutional order's secure functioning cannot stand on a solid foundation without clearly differentiating between democracy and dictatorship, right and wrong, and good and evil*' (the previous[191] preamble of the transitional provisions to the Fundamental Law of Hungary).

In the examined scope, we shall not forget about the – earlier mentioned – specific phenomena, which by mixing up reality and law are able to present changes even in fields where no material social-economic changes happen: 'the majority of changes occurring in law are fictions from the aspects of the process of social change: these consider the law and the state changing [even] in fields where almost nothing happens'.[192] Nevertheless, the approximation of law and society, and attempts for establishing harmony of these is one of the responses of the legislator for new social and economic challenges: e.g. according to Act XC of 2010 on the enactment and modification of certain economic and financial laws certain household works[193] fall out of the tax system[194], by this recognising the fact that no

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188 Teubner (n 186) 75.

189 Act LXXXVIII of 2005 on voluntary activities in the public interest.

190 According to the statistical data of the Office of the Parliament, for example, the number of lobby events formally reported under the lobby act (Act XLIX of 2000 on lobby activities) was 20–25 (!) in a quarter of a year, which is only a fraction of those which may have been realised as lobby activity. The fate of rules prescribing the reporting of volunteers is similar: the number of reported cases may be measured in per mil (!) compared to the actually realised voluntary activities [according to Article 11 paragraph (1) the host organisation shall report it in advance to the minister responsible for the development of social and civil relationships on the Reporting form attached to the act].

191 Invalid as of 1 April 2013.

192 Sajó (n 22) 7.

193 According to the law household works exclusively are the following activities which ensure the conditions necessary for the everyday life of the natural person and other persons living in his household, as well as his close relatives: cleaning of the flat, cooking, washing, ironing, supervision of children, their home education, home care and cure, householding and garden care.

194 Remuneration outside of the legal system is money which is given to the household employee by the employer in return for the household works. In relation with this salary neither the employer, nor the

tax has been paid after them; the controllability of these activities is (traditionally) very difficult, and the fact of taxation was unfair in several aspects. This way, therefore, the change of the law only means sober adjustment to reality, with significance beyond the fact of deregulation – through some kind of legal nature perception of reality.

7.4. Some features of legislation

We shall state in advance that Hungarian legislation has experienced a shift in balance since the change of regime: while in state socialism the enactment of decrees was dominant, after 1989 the growing dominance of the enactment of acts may be observed (in 1985 only 3% of all laws was in the form of an act, while in 2005 this rate was 16%).

Based on the intensity and other measurable features, the Hungarian legal system shows 'compelling' data: between the summers of 2010 and 2011, legislation was especially 'revolutionary' in Hungary, because the approved 266 acts (95 brand-new and 171 modifications) and 172 decrees of Parliament significantly exceed the performance of the first years of the previous cycles (before and after the transition of 1990). In the previous cycle between 2006 and 2010 the numbers were only 263 (new) and 328 (modification). It is worth attention that almost one-third (!) of the acts approved in 2011 were already modified in the same year: in December, 63 of the 213 acts approved in 2011 were modified, which is a new record. Generally, the modification of acts is a usual part of parliamentary work, but it does not support the requirement of legal certainty if a newly enacted act is modified several times in the same month, especially if such modification affects a 'net' of laws, as often happens. Such quick and comprehensive flow of acts and modifications results in strong uncertainty for everyone, because they are not easy to interpret on their own, and often it is impossible to prepare for them in advance.[195]

It is also important that in December 2011 alone, 18 acts were modified which were originally enacted in the same month, 5 of them were amended several times during December. For example, the act on the modification of certain acts providing a basis for the budget was revised six times in this period. Acts on taxation, on personal income tax and on duties were modified by eleven other acts during the last month of the year. The act on public education was affected by ten acts enacted in December, while the one on higher education was affected by eight. Acts on education and on higher education were modified eight times, each, while the act on civil procedure was changed nine times.

According to the present rules, changes in the tax system shall be announced at least thirty days before they enter into force, thus the Act on the modification of certain acts on taxation and of some related acts was announced on 29 November, 'after which in December

household employee is burdened with accounting and tax payment obligation. The only obligation of the employer is to report the employment to the authorities.

[195] 'Négynaponta írták át az adótörvényeket' [Tax laws were revised every four days.] Index 18 January 2012 <www.index.hu> accessed 22 May 2013

they reconsidered it and clarified the ideas, and modified it seven more times by the end of the year'.[196]

A specific case of the modification of normative sources of law is the amendment of the Constitution. In Hungary the amending speed of the fundamental norm – concerning also basic public administration organs – is rather high in each sense: only after 2010 – till the Fundamental Law entered into force – the Constitution was modified 12 times[197], and – during its rather short history – the Fundamental Law of Hungary has been amended five times already (often quite significantly).

In relation to the mentioned phenomena we shall add that – in international comparison – it cannot be considered exceptional, only its degree and intensity may be considered excessive. We shall also state that the number of newly enacted acts significantly influences the number of other legal instruments, as well; as once the great Hungarian poet, *Miklós Radnóti* put it in his poem Phenomenon:[198]

(…)
And as law cannot stand alone
dozens of small decrees came along.
(…)

Naturally, the number of new laws in itself does not provide a full and real picture of the features of the legislative procedure; we get a more precise view if we consider the internal complexity of the legal system. A possible indicator for measuring internal complexity is the number of laws mentioned in the given law, and based on this not only the number of annually enacted laws increased significantly in the past period in Hungary, but the number of references per law also increased to 2.5 times compared to the middle of 2000s.[199] With a

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196 ibid

197 The previous constitution was modified several times also after 2010:
Act CXIII of 2010 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary;
Act CXIX of 2010 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary;
Act CLXIII of 2010 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary;
Act LXI of 2011 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary necessary for establishing certain transition provisions related to the Fundamental Law;
Act CXLVI of 2011 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary;
Act CLIX of 2011 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary;
and in the spring-summer of 2010, six more acts 'on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary' were enacted without numbering.

198 Réz Pál (ed), Radnóti Miklós összes versei és versfordításai [Poems and translations of Miklós Radnóti] [Nagy Klasszikusok (Great Classics) Szépirodalmi Könyvkiadó 1987] 296.

199 Gellén (n 23) 14.

decreasing number of administrative staff, the volume and complexity of tasks arising from the applicable law imposes significant challenge to the whole of public administration.[200]

Against the 'propagation' of laws, the need for deregulation necessarily emerges from time to time in each legal system – naturally, also in the Hungarian system – as well as for maintaining and increasing the transparency and operability of the legal system. Deregulation itself results in material capacity expansion, in so far as through the filtering of parallel, controversial regulations, the 'release' of the legal system and the mere reduction of the rules to be followed by citizens, the chances of compliance with laws increase. The validity of law – at least in sociological approach – *also* depends on the answer given to the question of what the probability is that the law will be applied,[201] and the latter may significantly depend on the 'accessibility' of law, which at the same time means transparency and clear content.

During the latest 'wave of deregulation' – based on draft no. T/6957 submitted by the Government of Hungary in April 2012 on the technical deregulation of certain laws and legal provisions necessary for the abolishment of the overregulation of the legal system – Act LXXVI of 2012 was enacted, which abolishes laws which form part of the legal system but have no material effect according to a pre-determined schedule (only from those regulating the economic system the legislator abolished 250). Some became invalid in 2012, while others will be annulled in the coming years, but there are some which will become invalid only on 1 January 2020. According to the reasoning, the government – as part of the Magyary Zoltán Public Administration Development Programme – initiated the deregulation of laws '[the] annulment of which does not cause legal uncertainty'. In order to facilitate this, the legislator stated that 'the annulment of regulations does not affect the legal relationships, rights or obligations established, modified or abolished upon them'.

7.4.1. New rules on legislation

The previous act on legislation, Act XI of 1987 (herein after referred to as: Jat.) was annulled by the Constitutional Court in December 2009 as of 31 December 2010.[202] According to the decision of the Constitutional Court, it was not possible to regulate the scope and hierarchy of laws, and the range of topics subject to the legislation of the Parliament, with acts. In the opinion of the Constitutional Court, the regulation of these issues is the competence of the valid constitution. Therefore the old act was practically a constitution-level regulation, which is incompatible with the legal order (hierarchy of laws) of the republic, promulgating the primacy of the constitution. The makers of the Fundamental Law and of the new act on legislation – Act CXXX of 2010[203] – acted accordingly.

A significant difference in the new regulation on legislation is that Act XXXVI of 2012 on the Parliament and Act CXXXI of 2010 on the participation of society in legislation got their specific role, in addition to the earlier applicable Standing Orders.

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[200] ibid

[201] Tamás (n 87) 144.

[202] Decision 121/2009. (XII. 17.) ABH of the Constitutional Court

[203] On the new Act on legislation see in details: Csink Lóránt, 'Mérföldkő a jogalkotásban' [Cornerstone in legislation] (2011) 4(8) Új Magyar Közigazgatás 2.

While the enactment of decrees is traditionally a 'typical terrain' of public administration, regarding the past period Béla Pokol[204] and György Gajduschek[205] stress the significance of the role of public administration in the preparation of laws. The post-2010 data contravene this statement only at first sight, in so far as the numeric majority of approved proposals between 2010 and 2013 were originally submitted as individual proposals of the members of the Parliament.[206] *However, it is a fact that almost all of the acts enacted upon individual proposal (members of Parliament of the governing party) – among them significant ones such as the 'nullity act'*[207] *or the media act – were prepared at one of the ministries. The primary goal of this 'method of submitting' a proposal is that by avoiding rules regarding impact studies or social participation in the preparation of laws the process of legislation may become faster – in a legal and political sense it may become clear.*

Within legislation we must not forget requirements and features resulting from membership in the European Union or from other international obligations; in relation with this we only indicate that the quality and actual application of 'internal' law is significantly influenced by the features of the adaptation mechanisms. We shall state that 'in the relationship of the adaptation of laws and internal legislation spontaneous and forced, as well as active adaptation may all be determinative'.[208]

8. Content of the notion of public administration and its fine tuning

8.1. Introduction

The scientific analysis of the whole of Hungarian public administration, or its particular authoritative or functional fields, is traditionally presented from three aspects – the performed task (performed activity), organisation and staff – regardless of the methods of which science of law are applied.[209] In the era after 1990 new emphasis was laid on constitutional and (public) policy issues and their (more) extensive analysis.

In domestic scientific literature, the scientific auxiliary notions (which does not, or not necessarily, appear in positive law, or appears there with different content) most often used

[204] Pokol Béla, Politikaelmélet [Political theory] (Századvég 2006) 262.
[205] Gajduschek, 'A közigazgatás értelmezése Magyarországon' (n 2) 39.
[206] Kökényesi (n 43) 253.
[207] Act XVI of 2011 on the remedies of convictions related to the riot controls of the fall of 2006.
[208] Szigeti, 'Társadalomkutatás – mi végre?' (n 12) 170–171.
[209] Public administration is at the same time an activity, a specific organisational structure and a 'mass' of people (staff). See: Lőrincz Lajos, A közigazgatás alapintézményei (HVG-ORAC 2005) 19.; Ficzere Lajos (ed), Magyar államigazgatási jog. Általános rész. [Hungarian administrative law. General Part.] (Nemzeti Tankönyvkiadó 1998) 7–8.; Fábián Adrián, Közigazgatás-elmélet [Theory of public administration] (Dialóg Campus 2011) 21.

in order to achieve a better understanding – or description – of public administration are *function, task and type of activities*.

Function

The word function is the most comprehensive of the three; the state or – within the state – public administration may only have a limited number of functions: basically within the context of the given era these summarise the basic functions of the given roles, which originate in its self-image and show high degree of stability.

Among the functions of the *modern state* – as interpreted today – the function ensuring *legal certainty* has a great role. This function may be described in relation to the provision of human and citizens' rights, the establishment of related guarantees, and the performance of tasks related to the protection of these rights; all together these present stability which may be the main guarantee of social-economic development. Among the functions of the state the *regulatory* function shall be mentioned at the second place. The regulatory function is the basic function which defines and determines the limits of the state activities, but also of the frameworks, directions and specific realisation methods of citizens' behaviour.[210] These two functions together point towards the third function which shall be mentioned here, *balancing*. The performance of the balancing function by the state does not necessarily aim at achieving some kind of material equality (even though in territorial approach this is also a possible and necessary aspect), but primarily means the provision of access, creation of opportunities and chances.

The above three functions may be interpreted as the basic functions of public administration, despite the fact that domestic literature operates with several classic divisions: among these the most well-known ones are those which attribute legislative, law enforcement, executive and organising functions to public administration, or another one, which lists integrative and allocative functions, in another approach.

Task

Compared to the functions of public administration, the administrative tasks are broader in a society organised by a state, and they are more changeable than functions (to which the tasks may be traced back well in each case). Several categorisations of these are known, too: firstly, the categorisation upon the direction of the performance of the task (e.g. tasks related to the operation of the state organisation, tasks towards natural persons and their organisations, tasks within public administration); sectoral categorisation (tasks related to internal-external security, economic tasks, human type tasks, etc.); classification upon the contents (e.g. work safety or taxation) or categorisation based on the subjects (whether central, regional or local organisations perform the given task).[211]

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[210] Ficzere Lajos, 'A civil társadalmi szerveződések szerepe a kormányzati döntéshozatal rendszerében' [The role of civil society organisations in the governmental decision-making system] in Ficzere Lajos (ed), Tanulmányok a közigazgatás szervezeti és jogi intézményei köréből [Essays about the organisational and legal institutions of public administration.] (UNIÓ 1995) 42.

[211] Fábián (n 209) 76–77.

József Kökényesi interprets administrative tasks in three approaches.[212] Firstly, he interprets the substantial system of administrative tasks – in a simplified way, focusing on the main features of activity types – as a complex of public power (legislation, law enforcement, management of public services, public power control) and public service organisation activities (including legal authorisation for the performance of tasks related to public services, the operation of the public service contractual system, company organisation and company management). In his opinion the other basic category of the systemisation of administrative tasks is differentiation based on the method of performing the task. In this sense we may distinguish between state administration (organised upon the principle of hierarchy) and local governmental (based on the principle of decentralisation) tasks. Finally, based on the third – organisational – approach, public administration tasks may be public power and public service organising activities performed by administrative, local governmental and non-state organisations.

The broadest meaning of *public task* includes the task of all state organisations, including the Parliament and courts. The state performs its classic (public) tasks mainly through public administration, and examining the issue only from the aspect of public administration, in a narrower interpretation – and this is what is usually used – we consider as public task performance only the activities ensuring different economic (e.g. provision of water, electricity) and human (education, health, culture, social fields, etc.) public services. This essay extends the usual interpretation, in so far as in our opinion in the broad sense the public administration public task performance includes, beyond the direct performance of public administration and local governmental tasks set forth in law – related to the provision of public services – those more general state tasks such as the optimal preparation for decision making relating to public power, the drafting of laws in line with the principles of open legislation, the supervision of the performance and execution of public tasks, the management of an indicator and information system about real social processes, ensuring the innovation necessary for the development of the processes of public task performance.

It may be generally stated that in the past three decades the catalogue, system of criteria and content of public tasks have been significantly transformed. On the one hand, the scope of community tasks has extended, which appeared in the growth of budgetary, especially social and health care expenses, and, on the other hand (up to the recent past) the role of state-governmental public service providers which earlier enjoyed a monopoly decreased, and in parallel with this decision-making and management procedures have become more open.[213] The expansion of state tasks (public tasks) – in line with international trends – has been continuous in Hungary in the past few decades, even though in certain periods due to increasing outsourcing, the addressees of laws (responsible for the provision of certain tasks) and the actual performers were significantly different from each other. The expansion, naturally, does not only mean the emergence of new tasks, but also the 'secularization' of certain tasks which had existed before but were trusted to non-profit organisations due to e.g. their marginal significance (for example, in the 2000s the protection of victims became a state task, even though in the given field the Fehér Gyűrű Kiemelkedően Közhasznú Egyesület [Fehér Gyűrű ('White Ring') Public Benefit Association] had successfully been working before).

[212] Kökényesi (n 43) 254.
[213] Péteri (n 69) 30.

Regarding the types of public task performance, it may be stated that the primary form is the activity performed in a classic organisational structure, typically with public sector civil servants. This usually targets *public power (authority) type tasks,* which traditionally mean the narrowest terrain of public administration, and the transfer of which is usually unreasonable due to the reasons of legal certainty and other guarantees. Among these we may mention the management of public registers, the issuance of permissions and certificates, and especially the direct application of force and sanctioning.

The second solution is the establishment of a so-called network of public institutions, primarily as conscious state (local governmental) step. The state creates these, because in certain fields due to the lack of expertise and other resources, separating the activities, the organisation and the staff seems to be useful. Traditionally the following may be put into this scope: *a)* public utilities (public companies), which basically provide for the performance of industrial and trade needs in the form of a business association, and are – more or less – in state or local governmental ownership; *b)* public institutions, which – typically – perform mainly the human public services already mentioned, usually with a staff of public servants, and with non-market price service; *c)* public bodies, which are organisations established by the law, performing public tasks, having their self-government and registered members (such as economic and professional chambers, wine communities, the Hungarian Academy of Sciences, etc.); *d)* public foundations, which are created for the continuous provision of public tasks; and finally *e)* non-profit business associations (the previous public benefit business association type has been abolished in the Hungarian legal system, and the already existing ones were transformed into non-profit business associations).

In this context it should be mentioned that the public institution, public organisation and public utility expressions existed *mainly* as scientific auxiliary notions until Act CV of 2008 on the legal status and financial management of budgetary organisations formulated them as sub-types of public service provider budgetary organisations. The new institutions created by the law did not prove to be successful;[214] theoretical and substantive controversies broke the act down, and it was annulled by Parliament in 2010, returning to the previous – imprecise – regulation of the Áht., in this way maintaining the dogmatic problems related to administrative legal personality.

The third form is the *commissioned public task performance*, which transfers the originally administrative tasks to market (for-profit) or non-profit (civil) organisations operating in the private sector, based on a contractual relationship. This is often called the 'outsourcing' of a task. Regarding contracts, we may traditionally distinguish between task-performance, transfer of public service provision, and concession contracts, as well as so-called *PPP contracts.* A typical example of the first one is the public education agreement aiming at operating the primary school, while the second is usually used for the realisation of large investments (e.g. highways) and/or for the maintenance or utilisation of the created works, etc., while an example of the third one is dormitory-building construction – proved to be unsuccessful in Hungary – in which the ownership rights go to the state, but in return for this it pays rental fee to the investor in the first 20–30 years.

[214] A novelty of the act was that it expressly appraised public power and public service provider budgetary organisations as separate categories.

The common feature of each solution is that the state or the local government financially participates in it, usually based on normative grounds (quota, etc.).

Market organisations are usually business organisations established based on the act on business associations (mainly joint-stock companies and limited liability companies), while civil participants are usually registered as associations, foundations (not the same as public funds), and churches.

It is an important novelty that the previous regulation regarding public benefit organisations[215] has been replaced with the act on civil organisations, and Act CLXXV of 2011 on the right to association, on the status of public benefit and the management and support of civil organisations, which did not strengthen the role of social organisations in the performance of public tasks. The change of financing rules and the introduction of *task financing* does not facilitate the spread of alternative forms, different from state sources.[216]

In addition to the public task performance of the non-profit and the private sector, we shall mention as a separate sector the public task performance activities of churches, which are primarily present in the field of human public service provision. In Central-Eastern-European states after the fall of socialism, ideological and material obstacles faded away: therefore the role of churches started to grow in the realisation of community tasks. With the help of their real estate returned to them during the restitution procedures, they relatively quickly established their network of infrastructure, with which churches are able to be present at smaller settlements as the providers of public services.[217] In the past few years – starting from 2011 – regulation has become more differentiated regarding public tasks performed by churches in several aspects, which cannot be considered neutral in any way;[218] and regarding the attitude of the state it may be considered rather a value choice (financing) model.[219]

(Type of) activities

Finally the performance and realisation of certain tasks is possible through specific – unlistably broad types of – activities, there are some categories to specify them: e.g. Zoltán Magyary categorised the administrative tasks into functional (primer) and institutional (organisational) groups; Tibor Madarász used the categories of hierarchic/non-hierarchic (distinction between inside or outside of the organisation).

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[215] Act CLVI of 1997 on public utility organisations was in effect till 1 January 2012.

[216] Horváth M. Tamás, 'Kiszervezés – visszaszervezés. Változások a magyar helyi közszektorban 2010–12' [Outsourcing – resourcing. Changes in Hungarian local sector 2010–12] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások [Swings. Public service changes] (Dialóg Campus 2012) 245.

[217] Szilágyi Bernadett, 'Az egyházi közfeladat-ellátás jogi szabályozása' [The legal regulation of the public task performance of churches] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások [Swings. Public service changes] (Dialóg Campus 2012) 292.

[218] Horváth M. Tamás, 'Kiszervezés – visszaszervezés' (n 216) 245.

[219] Rixer Ádám, 'Egyházak és vallási célú egyesületek gazdálkodása' [Financial management of churches and religious associations] in Antalóczy Péter (ed), Az állami egyházjog alapjai [Basics of state church law] (Patrocinium 2012) 223.

8.2. The notion of Hungarian public administration

Public administration is a type of administrative systems operating in a society organised by the state, an integrated system of authorities,[220] and at the same time an important subsystem of the state's public power organisational system,[221] which, as a result of the principle of the division of powers, functioning as separate power ensures the execution of the requirements of the rule of law. The expanding organisational system of public administration – incorporated between the possessor of political and constitutional power and the citizens – has a significant role both in the realisation of law and in the material creation of law.

For a long time, public administration was identified as state administration. The former socialist countries centralised all fields of public administration, and put all types of administration of public interests to the competence of central state administration. After the establishment of local governments (1990), the contents of public administration and state administration were separated from each other, in so far as the notion of public administration received a double meaning, i.e. state administration and self-governmental administration at the same time.[222] However, the terminology of positive law was lagged behind in adapting to this material change even well after the transition: laws identifying the notion of public administration with state administration were enacted even in 2005.[223]

Zs. András Varga – based on Tibor Madarász and István Ereky – provides the following definition: 'Public administration is the activity of the executive power as result of which it actually influences the behaviour of natural persons and their organisations, through the preparation of decisions, decision-making, execution and control performed in possession of state power (*imperium*), through law enforcement (execution), organisation and cooperation in legislation via a separate body of state institutions.'[224] In its complexity, the definition reflects all important elements of the notion, but at the same time it also draws attention to the weak points of other similar Hungarian definitions: firstly, where the limits of the public administration's organisational system are, and secondly – in relation to the above-mentioned information – how to handle those entities which were not established to perform public administrative tasks but clearly do so. Therefore, it may be reasonable to approach the issue from the side of the task performed, instead of focusing on separation. Therefore, the following definition may be advisable: *Public administration is an activity performing administrative tasks determined by law in possession of public power, which is realised through legislative, law enforcement, executive, organisational and other activities.*

Therefore the notion of public administration may be viewed as a complex definition composed of two large traditional (partial) fields: a combination of *state administration* and *self-governmental administration.* Some authors add a third elements to this notion with double

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[220] Ficzere (n 209) 34.

[221] Kilényi Géza (ed), A közigazgatási jog nagy kézikönyve [Handbook of administrative law] (Complex Kiadó 2008) 13.

[222] Lőrincz, 'A közigazgatás alapintézményei' (n 209) 19.

[223] See e.g. Government Decree 20/2005 (II. 11) on the budgetary support available for the employer of scholarship holders employed at central budgetary organisations, and at their regional and local branches.

[224] Patyi – Varga Zs., 'Általános közigazgatási jog' (n 175) 56.

meaning: *para-administration*, because public administration does performs its tasks not only in classic authority organisation – mostly performing public power activities – through civil servants, but also partly through organisations established or commissioned by it. In the science of Hungarian public administration, the notion of para-administration is not clarified: it appears in the most important Hungarian works with different meaning. For example, Lajos Lőrincz considers all activities not organised and performed in classic authority organisations,[225] while others exclude certain organisations (e.g. public bodies) established by the state (local governments) and other bodies, persons performing public administrative tasks based on service contract.[226]

Administrative authorities are the smallest units composing the organisational system of public administration. Administrative authorities are usually divided into internal organisational units, and the individual authorities form organisations, which eventually form the full organisational system of public administration.[227] In a narrow sense[228] only those state administration and self-governmental authorities are considered administrative authorities which perform state activities as part of the state organisation, on behalf of the state; which act individually based on laws; whose tasks and competences are determined by law in detail; which perform their tasks with the use of public power (possibility of application of legitimate force), have some kind of economic, financial management independence, may have legal personality, and are characterised by hierarchic structure (incorporated into a hierarchic lay-out), in so far as the dominant directs and the subordinate complies, and through this the power of the administrative authorities are added together. Therefore, in the case of administrative authorities – in addition to adapting to typical hierarchy – *the dominant concept is the dominance of public power type, executive-instructing activity*, contrary to the activities of other subjects of law established by them or by other state organisations, or performing administrative tasks via commission. In case of the latter, not the nature of public power, but the typically economic or human activities are dominant.[229]

The above introduced expression ('para-administration') refers expressly to the virtual and real similarity with public administration organs.

The significance of the issue is very important in Hungary, in so far as till the middle-end of the 2000s severe criticism hit the state, saying that '*the effectiveness of the organisation of the state and within this, of governmental control is low due to the prolificacy of "background organisations" and because of the permanent intention to establish para-state pseudo-civil organisations (public foundations, public bodies, public utility organisations)*'.[230] With some play on words, however, Hungarian QUANGOs[231] may be called GUANGOs – mixing the words guano and NGO – because this type of organisation traditionally 'settled on' various

[225] Lőrincz (n 209) 241–242.

[226] Patyi – Varga Zs. (n 175) 257.

[227] Ficzere (n 209) 61.

[228] In a broader sense we may consider any other organisation or subject of law an administrative authority which participates in the realisation of administrative tasks, in the execution of competences and is in organisational relationship with any organs of public administration. Patyi – Varga Zs. (n 175) 257.

[229] Ficzere (n 209) 63.

[230] Sárközy Tamás, Kormányzás, civil társadalom, jog [Governing, civil society, law] (Kossuth Kiadó 2004) 5.

[231] Quasi Non-Governmental Organization.

social needs, and beyond a certain point – making their financing and maintenance an end in itself – broke up with them (in other words: they covered the direct needs, real requirements from the external viewer), reducing the aspects of transparency, accountability and efficiency to secondary, or even lower, importance.

The expressions public administration and para-administration are not defined clearly in positive law, or – in the case of para-administration – are not mentioned at all. However, there are two categories the clear meaning of which defined in positive law assists us in the examined range of concepts: one of them is the a) *budgetary authority*, approached from a financial point of view, the other is b) the *public administrative authority*, viewed from procedural aspects.

Ad *a)* Based on Article 7 paragraph (1) of Act CXCV of 2011 on public finances (herein after referred to as: Áht.) 'The budgetary authority is a legal person established to perform public tasks defined in law or in its founding document. The budgetary authority may be central budgetary authority, local governmental budgetary authority, minority local governmental budgetary authority, *minority self-governmental budgetary authority, and public body's budgetary authority.*' According to Article 7 paragraph (2) 'The task of the budgetary authority may be a) basic task, which is set as basic professional activity in the law or founding document establishing it, and (…) non-profit activity, b) business activity, which is profit oriented, non-obligatory production, service, sales activity performed from non-state resources.'

The practical significance of state budget institutions is reflected in the rule of Article 1 paragraph (2) of the Áht., according to which 'The performance of public tasks shall primarily happen through the establishment and operation of budgetary authorities'. This is supplemented by the rule of paragraph (3) according to which 'Organisations falling outside of public finances may participate in the performance of public tasks under conditions set forth by law. The financing of the performance of the public task is realised by partly or wholly ensuring the financial cover proportionate to the performed task'.

Ad *b)* According to Article 12 paragraph (3) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services: 'For the purposes of this Act, "administrative authority" (hereinafter referred to as "authority") shall mean the following bodies vested with jurisdiction to carry out administrative actions:

a) state administrative authority;
b) the representative body (*council* of representatives of municipal governments), including the assembly of county representatives, and their organs referred to in paragraph (2) of Article 19;
c) Mayor, Lord Mayor and Chairman of the Assembly (hereinafter referred to collectively as "mayor");
d) clerk, town clerk (hereinafter referred to collectively as "clerk");
e) other organizations, public bodies or persons vested with administrative competence by an act or government decree.'

According to section e), therefore, administrative authority may be any organisation or person which (who) cannot be considered an administrative organisation in a narrow sense. These latter entities may be also called quasi-public administrative authorities.[232]

[232] Patyi – Varga Zs. (n 175) 329.

Therefore, as a conclusion we may state that when domestic literature mentions Hungarian public administration, administrative authority or the 'system of organisations'[233], it is usually – or *in a narrow sense* – about state administration and local governmental institutions participating in the provision of public services. In a *broader* interpretation we may also add those types of organisations or legal subjects which (who) are not considered primarily state administration and local governmental institutions but perform administrative tasks.

Two further remarks must be added in defining the concept of Hungarian public administration:

1. On the one hand, domestic science has not dealt *substantively* with the effect of *European public administration* (*see below*) and European administrative law made on the above mentioned traditional conceptual structures and on their certain elements. So far there has been no author who would add any EU context into his own definition of public administration.
2. On the other hand, the features of the special self-governmental and self-management issues of Hungarians living abroad, mainly in the neighbouring countries, are not part of the concept of Hungarian public administration. The emphasized analysis of this context – as well as its analysis and conscious linking with internal contexts – receives more attention only in the newer (newest) pieces of literature.

We may assume – regarding the second point, especially Article D) of the Fundamental Law and the Magyary Zoltán Public Administration Development Programme point in this direction – that the significance of these elements will increase in the future (also) during the definition of concepts and description attempts.

8.3. The concept of European public administration

The notion of European public administration has occupied Hungarian scholars for a long time.[234] In the EU the executive may be less defined as one body or system of bodies (a well definable group of bodies and people), than in the public administration of member states, especially because this executive power is exercised jointly by the institutions of the Community and the member states (this is why European public administration may be considered 'double public administration'). This means, therefore, that European public administration shall not be viewed as a well separable subsystem of the European system of organisations with public power.[235]

Based on the primary sources of EU law it is clear that in the European Union the public administration of member states (generally, regarding the specific structure) does not belong

[233] Patyi – Varga Zs. (n 175) 257.

[234] See for example: Torma András, 'Az európai közigazgatás fogalma' [The concept of European public administration] (2005) XXIII(2) Sectio Juridica et Politica 381–402.

[235] This work does not cover the administrative type of activities of EU-bodies performed in relation to each other and within the given bodies.

to the EU's legislative competence.[236] Although the separation of the European Union's and the member states' administrative system is a fundamental organization principle of the European public administration, the coordination between the two levels is essential in carrying out the tasks effectively.[237]

However, due to tasks and competences in most fields the community laws directly and indirectly *influence* the operation, activities of the public administration's system of organisations: therefore (even) in lack of *direct instructions* regarding the system of organisations (types of bodies, number of levels, names, division of tasks, etc.) there is an ongoing unification regarding the formal and substantial attributes of the public administrations of members states, which at the same time cooperate and compete with each other. The basic need of adopting well-working *best practices* is often stronger than the force coming from legal provisions…

A result of the aforementioned facts is the notion of European public administration is the collection of jointly established operational principles which shall be enforced in the public administration of member states (also in Hungary).[238] It is not a coincidence that the European Administrative Space was established, which refers to a use of this notion which is more abstract, lighter and does not depend much on rigid structures, and defines the notion of European public administration mainly as a unique administrative culture – including all of its advantageous and disadvantageous aspects.[239]

9. The transformation of Hungarian public administration

9.1. Introduction

As is well known, in the spring of 2010 the FIDESZ-KDNP gained an outstanding, more than 2/3 majority – regarding the collected mandates – at the parliamentary elections, after which within a short period of time it has performed an in-depth transformation of the whole legal system. *It is impossible to overestimate the significance of this fact*: on the one hand, the 2/3 majority established a fortunate historical opportunity for the realisation of necessary structural reforms which have been postponed in Hungary for more than thirty

[236] For details see: Balázs István, 'Az Európai Közigazgatási Tér és a tagállami közigazgatások viszonya' [Relationship of the European Administrative Space and public administration of member states] in Segédanyag Közigazgatási Jog Különös rész tárgyhoz (DE ÁJK Közigazgatási Jogi Tanszék 2012) 2.

[237] Dr. Dezső Márta and Dr. Vincze Attila, Magyar alkotmányosság az európai integrációban [Hungarian Constitutionality within the European Integration] (HVG-ORAC 2012) 492.

[238] Among the basic principles determining the operation of the member states' public administrative systems the principles of reliability, calculability, openness, transparency, accountability, effectiveness and efficiency may be mentioned.

[239] About these see for example: György Hajnal, 'Diversity and Convergence: A Quantitative Analysis of European Public Administration Education Programs' (2003) 9(4) Journal of Public Affairs Education 245–258.

(!) years, related to the great service provider systems, but at the same time it has increased the chances of legal voluntarism and of exercising power by applying only formal consultation procedures.

Within the transformation of Hungarian public administration, it became obvious after 2010 that the modification of the frameworks of certain administrative sub-systems – e.g. the local governmental system – may come to completion only together with the revision of other elements of state organisations, and together with the reform of the great service provider systems,[240] which means that only the thorough consideration of every element of the whole system – with regard to each other – may result in permanent success.[241]

Among questions most often mentioned after the change of regime, the ideas for the clarification of the role of counties must be mentioned, with special regard to the regionalisation processes and intentions. A substantial debate has been going on for more than three decades concerning whether the 'Hungarian county system, as a geographic, territorial, administrative unit is adequate to the tasks of modern public administration'.[242] Intentions striving for the rescaling of the geographic structure of public administration and of its power levels usually resorted to the concepts of small region, district, county, great county, region, self-governmental region. The literature has always insisted that decisions about the structure of levels – which have become more urgent with the passage of time – should be preceded by – thorough – analyses and model calculations, with the help of which it may be determined 'from the aspect of the infrastructure and institutional system of local governmental public service provision and their accessibility what the optimal territorial division is for the comprehensive supervision of the performance of tasks in the short and long run'.[243] Up to the 2010s, the majority of authors identified the necessary reforms from the aspects of the continuation and increase of decentralisation, while the practice of the past few years shows a completely new – centralising – tendency. The previous point of view regarding this issue is well summarised in the thought of the most cited author, Ilona Pálné Dr. Kovács: 'The reform of Hungarian territorial public administration is necessary not only because counties are small or large, but in order to create the conditions of a real, strong decentralisation.'[244]

An issue related to the above mentioned set of problems – which has existed for a decade – is that the territorial coordination of state administration is traditionally weak in Hungary. After 2010, the centralisation of the previously divided, difficult to coordinate authority system started (was completed); several originally independent authority organisa-

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[240] In addition to the above described transformation of the great systems of health care and education the new regulation of the Hungarian pension system shall be given a thought: after 1 November 2010 private pension fund contribution cannot be paid any more, while the rate of superannuation tax to be paid to the state has been increased.

[241] Dr. Bekényi József, 'Megújult a magyar önkormányzati rendszer' [The Hungarian local governmental system has been renewed] (2012) 14(1) Jegyző és Közigazgatás 6.

[242] Józsa Zoltán, Önkormányzati szervezet, funkció, modernizáció [Local governmental organisation, function, modernisation.] (Dialóg Campus Kiadó 2006) 188.

[243] Pálné Dr. Kovács Ilona, 'Középszintű reform és/vagy területi léptékváltás' [Medium level reform and/or territorial level shift] (2010) 3(1) Új Magyar Közigazgatás 13.

[244] ibid

tions integrated into the metropolitan and county government offices operating as territorial body of the Government, and another important change is that the state administration tasks of local governments are gradually transferred to the newly established administrative organisation type: on 1 January 2013 approximately 80 authority tasks were transferred from the local clerks to the new district offices.

At the same time, the aforementioned significant modifications – supplemented with the realised plan of the transfer of human public service provider institutions to state maintenance from the competence of local governments – are the most important areas of the Magyary Zoltán Public Administration Development Programme from the aspect of the client; hence the partial concentration of territorial organisations in regional government offices, the establishment of district offices, the division of local state administration tasks between the clerk and the district offices.

However, despite the aforementioned – and to be described – significant changes, it must be stated that in the literature of administrative law, some issues which seemed to be important in the past few decades (Hungary's administrative territorial division, region-county-small region problem, etc.) are partly mock issues, in so far as in a family with two children the situation of offspring may be critical, while a four-generation family living in a single household is able to provide excellent emotional, psychological and physical development and self-realisation for its members. Like the individual success of the members of a family, the functional maturity of different administrative levels and units may be guaranteed by the appropriate division of tasks and clear procedures determining their individual relationships, as well as by a network of relationships which also include accessible, conscious and emotional elements. In such an approach, there are much more important issues than the number of administrative levels: e.g. whether the proper regulation of administrative contract has been established, public procurements have been settled properly, and further – *as we have seen, not only legal* – guarantees against corruption, etc. have been created; namely whether those fundamentally significant institutions are established which are really able to support a relatively high – multi-storey and probably eclectic-style – 'building'.

9.2. The transformation of state administration

In Hungary the transformation of the system of state organisations and their tasks and competences after 2010 is most obvious in the field of public administration. Let us list the most important fields which have been briefly mentioned before:

First of all it must be clarified that the two main organisational principles of state administrative bodies are the territorial principle, according to which central, regional and local state administration organisations operate, and the functionality principle, which means that state administrative organisations have general or special competences, depending on whether their competence – as main rule – 'generally' covers the most diverse fields of public administration, or only some specific sectoral types of cases.[245]

[245] For details see: Patyi – Varga Zs. (n 175) 282–283.

9.2.1. Central public administration and its transformation

Central state administrative organisations are determinative participants of public administration. Their significance is that their competence covers the whole country, the administrative strategic and operative decision-making tasks and competences are focused in their hands, and – partly due to the mentioned features – their activity significantly exceeds the frameworks of public administration, by this significantly influencing the operations of the state and society, as well as governing activities.[246]

Decision-making about the structure of state administration – and within this central state administration – as well as about the establishment, transformation, abolition and management of certain organisations belong partly to the Parliament, exercising its constitution-making[247] and legislative powers, and partly to the Government in its executive function (in governing competence).[248]

In the Fundamental Law the Parliament directly mentioned the Government (the only central state administrative body with general competence), the autonomous regulatory body, the independent data protection authority, the Police and the state security services. The Fundamental Law expressly states that the list of ministries shall be defined by an act of Parliament: presently this is Act XLII of 2010 on the listing of the ministries of the Republic of Hungary. Furthermore, the Fundamental Law authorises the Parliament to modify, with an act with simple majority, any provisions of any acts – even if it is cardinal act to be enacted with qualified majority – regulating the indication (name) of any ministry, minister or administrative organisation (authority).

In relation to the Government it is necessary to make reference to the situation and significance of the prime minister. In the opinion of György Müller, viewing the Hungarian system from the aspect of the situation of the Prime Minister it may be characterised as a chancellor-type of governing, because the present German system and the Basic Law for the Federal Republic of Germany (Bonn, 1949) served as examples in 1990 and later, too.[249] However, it shall also be added that even though the Fundamental Law was the first to expressly state the dominant role of the Prime Minister within the government,[250] the

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[246] Fábián (n 209) 105.

[247] In the Fundamental Law of Hungary regulations directly related to central state administrative bodies may be found primarily in Articles 1, 15–23, 34, 45–46, 48–54, and in section 4 of the Closing and Miscellaneous provisions.

[248] Patyi – Varga Zs. (n 175) 279–280.

[249] Müller György, 'Állandóság és változás a magyar kormányzati viszonyokban (1990–2011)' [Stability and changes in Hungarian governmental structures (1990–2011)] in Fazekas Marianna (ed), A közigazgatás tudományos vizsgálata egykor és ma. 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet [Scientific review of public administration in the past and today. The Hungarian Institute of the Science of Public Administration was established at the law faculty of Budapest 80 years ago.] (Gondolat Kiadó 2011) 140.

[250] Article 18 of the Fundamental Law:
(1) The Prime Minister shall determine the Government's general policy.
(2) Ministers shall have autonomous control of the sectors of public administration and the subordinated organs within their competence in line with the Government's general policy, and shall perform the responsibilities determined by the Government or the Prime Minister.

primus inter pares role which may be observed in the previous Constitution, which trusted the Prime Minister almost exclusively with leading the body, did not reflect the actual situation, practical solutions in the 20 years preceding 2011,[251] which means – with some simplification – that the respective provisions of the Fundamental Law only expressed the situation which has existed for a long time.

It is very important to keep in mind that earlier there was no law characterising central state administrative organisations based on their type or listing them one by one. With this regard Act LVII of 2006 on central state administrative organisations, and on the legal status of the members of Government and the state secretaries (herein after referred to as: Játv. 1) has been extremely significant, as well as Act XLIII of 2010 (herein after referred to as: Játv. 2) – replacing the former one under similar name – which performed this task for the first time in Hungarian legal history.

According to Article 1 paragraph (2) of the Játv. 2 the types of central state administration organisations in Hungary are the following:

a) the Government,
b) governmental committees,
c) the Office of the Prime Minister,
d) the ministry,
e) the autonomous state administration body,
f) the government agency,[252]
g) the central office,
h) law enforcement agencies and Military National Security Service
i) the independent (autonomous) regulatory bodies.

Among these ministries, governmental committees, government agencies, law enforcement agencies and the Military National Security Service are under the direct or indirect guidance (direction) of the Government (the latter realised through the appointed minister); while the Prime Minister's Office[253] is under the direction of the prime minister (or a given minister), and the central offices operate under the direction of the given minister. The autonomous state administration bodies – as indicated in their name – are not under the direction of the Government, similarly to independent regulatory bodies. Regarding these two types of organisations, it is an important difference that the independent (autonomous) regulatory body possesses legislative competence.

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[251] Müller (n 249) 141.

[252] Unfortunately, the word kormányhivatal – as a legal term – has two different meanings in today's substantial law in Hungary: one the one hand it appears as a type of central state administration organisations (translated as government agency) with nationwide competence, and, on the other hand, it is the territorial (county and metropolitan) state administration organisation of the government with general competence (translated as metropolitan and county government offices).

[253] In 2010, at the time of the reorganisation of the government the political coordinative roles of the governmental centre was overtaken by the Prime Minister's Secretariat (the previous Cabinet Office of the prime Minister) from the Office of the Prime Minister, while the professional-administrative coordination of governing was transferred to the Ministry of Administration and Justice. For details see: Müller György, 'A kormányzati viszonyok változásai 2010-ben' [Changes of governmental relations in 2010] (2010) 3(9) Közjogi Szemle 22–31.

The independent (or autonomous) regulatory body is a new category in substantial law:[254] the science of public administration uses the *regulatory authority* category – a functional approach beyond the law – for the description of this type of organisations. In relation with these organisations – established as a result of the liberalisation of different (public) service provisions – it must be stressed that some of their decisions are on the border between normative and individual decisions (these two 'shift'): normative provisions hidden in individual decisions may be observed, by this establishing *quasi precedent law*, unknown in *Continental* (Civil) law.

Furthermore, it is important that beyond this exhaustive list, the mentioned Játv. 2 also contains the main rules of managing, directing and supervising state administrative organisations, which is important because the meaning and detailed content of these notions are described systematically in these legal instruments for the first time.

It is important that from the itemised listing of the types of central state administrative bodies several (body-type) organisations are missing which may also be part of the activities of central state administration: for example certain bodies (without the right to make decisions) are listed separately in the presently valid Játv. 2.

The most efficient categorization covering all types of organisations of central public administration is the level-based grouping.[255] In this approach, the following may be separated well: *a)* the level of administration, where classic, daily performance of authority tasks happens (in practice the majority of central state administrative organisations – except for the Government and government committees – belong here)[256]; *b)* the first level of coordination, in which the harmony of the activities of administrative bodies acting in specific cases is ensured, as well as the primary registration of external, social needs (among others, government committees belong here, as well as cabinets and other proposing, opinion-making and advisory bodies viewed as bodies of the Government[257]); *c)* and the second level of coordination, at which its exclusive member, the Government, ensures the 'coordination of coordination'[258], and decides about the most important political and the most specific administrative issues.

[254] According to Article 23 paragraph (1) of the Fundamental Law of Hungary 'The Parliament may establish autonomous regulatory bodies to perform and exercise particular responsibilities and competences of the executive branch by virtue of a cardinal Act.'

[255] Lőrincz Lajos, 'A közigazgatás alapintézményei' (n 209) 100–106.

[256] The Office of the Prime Minister is in a very special legal and practical situation and it is closely related to all three aforementioned central levels: Article 36 paragraph (1) of the valid Játv.: 'The Office of the Prime Minister is a working organisation of the prime minister. Unless law regulates otherwise the Office of the Prime Minister shall be managed upon rules relevant for ministries. (…) paragraph (5) The Office of the Prime Minister shall support the work of the prime minister and shall cooperate in defining the general policy of the Government.'

[257] See Articles 28–30 of the valid Játv.

[258] Lőrincz (n 209) 105.

9.2.2. The transformation of regional-local state administration in Hungary

9.2.2.1. Government offices

Due to the fact that the county level was weakened in 1990 and the regional level was established incompletely, there was no regional public administration organisation until 2010 (at least at county level) which could have been able to coordinate the territorial operation of the different sectors (authorities) *substantially and efficiently*.[259]

A very important change was brought about with the *substantial integration of territorial state administration in 2011*, which tried to provide answer to the most urging question of the past twenty years of public administration: since 1990 each government has tried to stop and reverse the high scale fragmentation of the system of territorial state administrative authorities, but before 2010 each attempt failed or resulted in only partial success.[260] For example, since 2007, without materially changing the competences, the government of the time organised the county (metropolitan) government offices – operating as territorial organisations of the government with general competence – into seven regional public administration offices with a territorial division identical to that of the statistical planning regions.[261] As a result of this solution, significant operational anomalies occurred, among others due to the parallelities.[262] The regulations did not prove to be long-lasting – besides practical weaknesses – from the legal view, either: first the Constitutional Court found the regulation of government offices unconstitutional in its Decision 90/2007. (XI. 14.) ABH, then in its Decision 131/2008. (XI. 3.) ABH it stated that the new law, government decree 177/2008. (VII. 1.) on government offices, was unconstitutional as well. It annulled the latter as of 31 December 2008, and at the same time it stated that an unconstitutional situation resulted from an omission, because the Parliament – in the act on local governments – did not regulate the legal status of government offices which exercise legal supervision over local governments.

As a next step of the legislature Government Decree 318/2008 (XII. 23.) on the general territorial state administration organisation of the Government was intended to regulate the transformation of regional public administration offices into regional state administration offices.[263] According to the new regulation the coordination of regional state governmental

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[259] For details see: Csite András and Kiss Gábor, 'A területi és helyi közigazgatás elmúlt húsz éve – reformkísérletek és szakértői elképzelések' [The past twenty years of regional and local public administration – reform attempts and expert ideas] in Csite András and Oláh Miklós (ed), Kormányozni lehet ugyan távolról, de igazgatni csak közelről lehet jól… [Governing may work from a distance, but administration needs closeness…] (Hétfa Elemző Központ 2011).

[260] Virág Rudolf, 'Az államigazgatási feladat- és hatáskör-telepítés új rendszere – a járási rendszer kialakítása' [The new system of establishing state administrative tasks and competences – the establishment of districts] (2012) 2(1) Magyar Közigazgatás 11–12.

[261] See Government Decree 297/2006. (XII. 23.) on government offices.

[262] Kökényesi (n 43) 261.

[263] The activities of state administrative offices still excluded the legal supervision of local governments, so the kind of lawsuit which could have been initiated by the director of the public administrative office (as plaintiff) against the local government disregarding the supervisory advice was 'suspended' for a long time.

organisations was the task of the Regional State Administrative Offices, but these offices did not *actually* bear the authorisation and organisational-management abilities necessary for performing this function. 'In lack of coordination, execution fell on sectoral players', which more or less completed their own tasks, but the enforcement of rights requiring joint action, as well as monitoring, were missing. This situation was *only partly changed* by Government Decree 214/2010. (VII. 9.) on metropolitan and county government public administration offices, which again set up, metropolitan and county offices as regional organisations of the government. The regional system of state administration organisations remained less transparent and burdened with parallelities.[264]

The establishment of *metropolitan and county government offices* as of 1 January 2011 ended a disintegration process of two decades (see Act CXXVI of 2010 on the metropolitan and county government offices, and on the modification of acts related to the establishment of the metropolitan (capital) and county government offices and territorial integration).[265] One main characteristic of this was the strong organisational integration of the territorial system of organisations, their integration, and the disintegration and 're-allocation' of competence areas.[266] The integration affected 14 organisations (types of organisations) and within this more than 150 bodies,[267] resulting in significant savings even in the first year.

Regarding parts of the organisational systems of the deconcentrated state administration, it may be stated that the territorial units of central deconcentrated bodies with national competence – as territorial authorities – merged into the county and metropolitan (territorial) government offices, a significant task of which is to harmonise and facilitate the territorial performance of governmental tasks.[268] However, in the case of the territorial bodies of some organisational systems of the deconcentrated state administration, their integration to the county (metropolitan) government offices did not take place. These remained independent territorial organisational systems (e.g. territorial bodies with regional competence, such as the mining district authorities of the National Mining and Geological Office).[269]

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[264] State Reform Operative Program (in Hungarian: ÁROP) 12.

[265] According to Article 3 paragraphs (1) and (3) of the act the metropolitan and county government office consists of organisational units directly managed by the Government Representative (head office/core office), specialised (sectoral) agencies (authorities) and district – and in the capital metropolitan – district offices (district offices) which form one budgetary body. The agencies of the metropolitan and county government offices, as well as the agencies of the district offices, are defined by the Government in its decree. For the listing of the specialised administrative authorities of government offices see Article 2 paragraph (1) of Government Decree 288/2010. (XII. 21.) on metropolitan and county government offices. It is important that the metropolitan and the county government office operate an integrated client service, the government client service point. On 3 January 2011 – as the first step of the establishment of the single action client service – the integrated client service offices of government offices, the Government client service points were opened in 29 settlements of the country. With the establishment of districts their number has risen since 2013.

[266] Szigeti Ernő, 'A közigazgatás területi változásai' [Territorial changes of public administration] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások. [Swings. Public service changes.] (Dialóg Campus 2012) 272.

[267] The merger affected approximately half of the 33 territorial – partly county, partly regional – state administrative bodies.

[268] Szigeti Ernő (n 266) 272.

[269] ibid 273.

With regard to this, it must be mentioned that as a main rule, the competence of the government office covers the county – contrary to the regulations valid between 2007 and 2010 – but the territorial competence of the government office regarding certain state administration tasks may differ from the territory of the county.[270]

In summary, it may be stated that the generalisation of the regional division did not meet the expectations, among other reasons, due to the fact that it did not have either a historical or sociological background. Therefore, after 2010 the territorial state administration organisations were usually organised on the basis of the counties, regional competence remained exceptionally, if necessary (state border, basin, etc.).[271]

9.2.2.1.1. Establishment of districts

A change which is closely related to the metropolitan and county government offices – as mentioned before – is that while earlier, from 1990 the legislator appointed the clerk (operating as body of the local governments) as addressee of majority of state administrative tasks and competences, the districts[272] established on 1 January 2013 as old-new[273] public administrative units realise the management of (not all, but the majority of) state administrative tasks in a separate organisation, separating *much more clearly* than before – also organisationally – state administrative tasks falling under the responsibility of the government from local governmental tasks which are responsibilities of the local self-government.[274] Earlier the state administrative competences of clerks broadened continuously, but this growth was not always followed by the facilitation of necessary financial resources and other conditions.[275] It is impossible to overestimate the significance of the statement that '(…) *contrary to the original concept*, the state administrative authorities have not been fully transferred to the districts'.[276] From 2013 175 county district offices and 23 metropolitan district offices have been operating as branch offices of the government offices. District offices manage some state administrative tasks which belonged to the clerk of the local government earlier, and they also incorporate some local bodies of the authorities of metropolitan and county

[270] Such special areas of competence – differing from the area of the county – were defined, for example, for construction offices performing the tasks of national chief constructors and for authorities performing tasks of cultural heritage protection.

[271] Patyi – Varga Zs. (n 175) 297.

[272] The Government decided about the conceptual principles of the establishment of districts with its Government Decree 1299/2011. (IX. 1.).

[273] The district system (járási rendszer), with several hundred years' tradition in Hungary, was revived after 30 years.

[274] Virág (n 260) 15.

[275] Dr. Szekeres Antal, 'A jegyző államigazgatási hatásköreinek változása' [Changes of the state administrative competences of the clerk] (2012) 14(3) Jegyző és Közigazgatás 3, 5.

[276] Barta Attila, 'A magyar államigazgatás alsó-középszintjének átalakítása 2012-ben' [The reorganisation of the lower-middle level of Hungarian state administration in 2012] (2012) 1(2) Kodifikáció és Közigazgatás 38,

government offices.[277] Some tasks are transferred from the clerks to the district offices, for example tasks related to documents (address register, passport management, vehicle registry), law enforcement tasks, child welfare, child protection and those parts of social services in which the local government does not have individual consideration rights; however, some tasks remain with the clerk, such as probate action, registry management, part of first instance construction authority tasks, industrial and commercial authorization, part of social services which is related to non-civil allowances, or local taxation.[278] However, it must also be mentioned that the revision of territorial and substantial competences was initiated regardless of the establishment of districts, it is enough to refer to the fact that from 15 April 2012 misdemeanour cases (offences) were transferred to the metropolitan and county government offices from the clerks (but later, as this measure proved to be unreasonable, and misdemeanours belong to the competence of the district offices from 2013…).

In the district offices – in addition to the head (core) offices, which are present, just as at the government offices – the following agencies operate: the district child welfare agency, district animal health and food inspection agency, district land registry, district labour office, district public health institute and district construction office (for the performance of construction supervisory authority tasks and some construction authority tasks defined in law)[279] *or* in district offices determined by government decree, the construction and heritage protection office (for the performance of construction supervisory authority tasks and some construction authority tasks defined in law, as well as of cultural heritage protection authority tasks).

In addition to the aforementioned agency (e.g. construction agency) tasks, the district office also performs other duties, such as tasks related to public health, social administration,

[277] Regarding the details of the changes see Act XCIII of 2012 on the establishment of districts and the modification of certain related acts (Jártv., which was adopted by the Parliament on 25 June 2012) and the approval and entering into force of two government decrees established for its execution, namely Government Decree 174/2012. (VII. 26.) on the modification of certain government decrees in relation with the establishment of district (metropolitan, metropolitan district) offices, and Government Decree 218/2012. (VIII. 13.) on district (metropolitan district) offices.

[278] The task of district offices is to perform state administrative tasks which shall be managed below county level; earlier these were performed by clerks, because in the past 20 years the state delegated these tasks there for 'reasons of comfort'. 90% of the approximately 12 million authority tasks managed by clerks, exceptionally by mayors, was of state administrative character, which means that this is the amount of tasks – delegated by the state – which has burdened local governments and their clerks. Due to the new division of tasks, more than 40% of all state administrative tasks were returned to district offices, as representatives of the state. Only those issues remained with the clerks to which familiarity with local conditions is essential, on which there is no unified national regulation and there is space for consideration. Such cases are, for example, local tax management, register and citizenship issues, civil protection and catastrophe management at the settlement, industry and trade management, property protection, probate action, non-subjective social care, district heating issues, protection of nature and the environment related to local protection, tasks related to the registration of dangerous dogs and kindergarten allowances.

[279] From 2013 the first instance general construction authorities receive divided competences, the most important and complicated cases (e.g. cases with significant national economy effect) were transferred to districts.

water management or branch authorization.[280] Moreover, the district authority contributes to the performance of the tasks of the metropolitan and county government office related to the realisation of governmental goals. Within this scope, the core office of the district office may perform coordinative, supervisory, IT and educational tasks as determined by the Government Representative, as well as functional tasks related to the operation of district agencies, as set forth in article 32 paragraph (4) of Government Decree 288/2010. (XII. 21.) on metropolitan and county government offices.

In addition to state administration tasks, the district offices also overtook from the mayors' offices most of those civil servants dealing with these tasks in a way that their legal relationship was transformed into a governmental service legal relationship.[281] It is a development of special importance that districts not only overtook the employees, but also the assets and real estate necessary for performing the tasks: these were transferred to the free use of the state and the government offices became property managers. *Part of this issue is that according to Article 38 paragraph (1) of the Fundamental Law of Hungary the property of the state and self-governments is national property.* In 2011 the parliament approved a cardinal act on national property (Act CXCVI of 2011, herein after referred to as: Nvtv.) and by this the field of state and self-governmental property received a unified legal regulation which was unprecedented in Hungary, and at the same time it also facilitated the 'transfer' of self-governmental property in this way. In the opinion of István Hoffmann: 'Instead of the previous strict constitutional protection with the present task-oriented approach the property of self-governments has become a kind of target property, which "moves" together with the shifting of tasks and competences, which means that if the performers of tasks change, lawful change may occur also in the property status – without any kind of compensation obligation whatsoever (towards self-governments).'[282]

The district office may perform its tasks in settlements within its jurisdiction through branch offices (*kirendeltség*ek) and settlement administrators (*ügysegéd*ek). The district office operates a government client service desk (*kormányablak*), while the Office of Government Issued Documents operates as an organisational unit of its head office and – principally – it performs tasks set forth in other law(s) in its national competence.

From 1 January 2013 everyday administration may be performed at government client service desks operating as part of district offices, open from 8 am till 8 pm all round the country, or through the so-called settlement administrators designated to the settlement. It must be mentioned that in this system the client may manage his issues not only at the seat of the district, but at any settlement which had operated Office of Government Issued Documents before. At the government client service desks, where the new system in several types of cases[283] more than 100 types of requests and modes of case management are available (at approximately 300 integrated client service desks) and in general the civil servant who gets

[280] The Jártv. defined more than 80 types of administrative tasks for districts.

[281] Jártv. Article 7 paragraph (3).

[282] Hoffman István, 'Átalakuló önkormányzati vagyon – az alkotmányos szabályok és a sarkalatos törvények tükrében' [Changing local governmental property – in reflection of constitutional rules and cardinal acts] (2012) 14(3) Jegyző és Közigazgatás 18, 20.

[283] In the summer of 2013, approximately 150 types of case belonged to the competence of government client service desks, and this number is rising.

directly in contact with the clients does not participate in the management of those cases which cannot be solved immediately; therefore the substantial management of inquiries handed in at the government client service desks happen at the competent administrative authorities.[284] However, obviously this does not exclude the possibility that the client may get in direct touch with the case manager, but may further accelerate the procedure.

9.3. Transformation of the system of local governments

Compared to the size of the country, there are too many local governments operating in Hungary, because each settlement with independent public administrative status acts as local governmental unit.[285]

In Central-Eastern-Europe, from the seven EU member countries of the region, in the Czech Republic, Hungary and Slovakia local governments of settlements operate, while in Bulgaria, Poland, Romania and Slovenia, territorial local governments covering several settlements.[286]

Local governmental bodies shall be distinguished from other self-governmental bodies, such as professional or economic chambers or other organisations operating in form of other public corporation.

The Fundamental Law of Hungary broke up with the *fundamental right* approach of the right to self-government,[287] as it was interpreted before, and wished to establish a model in closer relationship with the state administrative subsystem of public administration, a closer cooperation between state administration and self-governmental administration. In the meantime, the Fundamental Law also maintained the approach of local governmentalism common in continental systems, the one based on the *general clause of local public affairs*, thus according to Article 31 paragraph (1) of the Fundamental Law: 'In Hungary local governments shall be established to administer public affairs and exercise public power at a local level.' Local public affairs and the tasks of local governments to be performed locally are defined in an exhaustive list in Article 13 paragraph (1) of the Mötv.

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[284] This is further facilitated by the rule that the government client service desk shall transfer the inquiry or the report to the competent authority on the business day following its submission, the latest.

[285] Szigeti Ernő (n 266) 281.

[286] ibid

[287] One sign of this is that the local governmental fundamental rights set forth in Article 44/A. of Act XX of 1949, the previous Constitution, are defined in Article 32 paragraph (1) of the Fundamental Law as competences. It is also important that the Constitution attempted to define the subject of the right to local governments and the types of local governments. While the Fundamental Law does not, it allows the new act on local governments to regulate this issue. Thus, according to Article 2 paragraph (1) of the Mötv.: 'The right to local governments is the right of the community of voters of the settlement and the county, through which citizens' responsibility is expressed and constructive cooperation may be started within local communities', and according to Article 3 paragraph (1) of the Mötv. 'The right to local governing is the right of the community of voters of settlements (settlement local governments) and counties (county local governments)', and in line with article 3 paragraph (2) 'Settlement local governments operate in villages, towns, district centre towns, towns with county rights and in metropolitan districts'.

Since 1990, the notion of local government has included settlement and territorial (county) governments in Hungary.[288] It is important that nowadays the 'weak' county governments of the post-1990 period are getting weaker,[289] in addition there is still no hierarchic structure between the settlement and the county local governments. In the 2000s, local governmental regionalisation needs were raised in Hungary, as in other places; these intentions were motivated, on the one hand, by the logic of cohesion and structural funds of the EU's regional policy, and, on the other hand, by the theoretical need of reducing the competences of the central governmental level. Nevertheless – mainly due to the lack of traditions and to the uncertain political consequences – the idea faded away at every level.

A significant step in the process of transforming the Hungarian local governmental system was Act CLXXXIX of 2011 on the Local Self-Governments of Hungary – approved on 19 December 2011 (hereinafter referred to as: Mötv. – which entered into force gradually in three phases between 2012 and 2014). The main goal of the act is to establish a modern, cost efficient, task oriented local governmental system which facilitates democratic and effective operation, and at the same time – enforcing and protecting the collective right of voters to self-government – provides stricter frameworks for local governmental autonomy.[290]

In relation with this it must be mentioned that Article 8 paragraph (1) of the Mötv.[291] – in line with the approach of the Fundamental Law, which in addition to formulating the (basic) rights also mentions the responsibilities of individuals – states that in relation to the right to self-government the local citizens exercising their right to self-government also have some responsibilities.[292]

In Hungary, as an answer to the centralised system of councils, the previous act on local governments[293] practically established a separate branch of power, providing independence for each settlement with minimal central control.[294] As result of this, the operation of local governments was not effective, several settlements became indebted, and tasks were performed at a low standard: '(…) the act on local governments approved in 1990 carried especially negative effects regarding the regulations of the medium level.'[295]

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288 Article 3 paragraph (3) of the Mötv.

289 According to Article 27 paragraph (1) of the Mötv. 'County self government is a territorial self-government which performs area development, rural development, area management and coordination tasks'. The majority of these tasks are defined in details in Act XXI of 1996 on area development and area management (Tftv.).

290 Bekényi, 'Megújult a magyar önkormányzati rendszer' (n 241) 6.

291 'Members of local communities, as subjects of local governance shall:
a) mitigate community burdens by self-care, contribute to the performance of community tasks in line with their abilities and possibilities;
b) observe and enforce the basic rules of cohabitation.'

292 Nagy Marianna and Hoffman István (eds), A Magyarország helyi önkormányzatairól szóló törvény magyarázata [Explanation of the act on Hungary's local governments] (HVG-ORAC 2012) 21.

293 Act LXV of 1990 on local governments (Ötv.).

294 For details see for example: Fábián Adrián (ed), 20 éves az önkormányzati rendszer [The local governmental system is 20 years old] (Pécsi közigazgatás-tudományi közlemények 3., A 'Jövő Közigazgatásáért' Alapítvány 2011)

295 Pálné Dr. Kovács Ilona, 'A középszintű önkormányzás változó trendjei' [The changing trends of medium-level self-governmentalism] 4(10) Új Magyar Közigazgatás 25.

Based on the changes of 2010, approximately 2/3 of local governmental public services were centralised and the state administrative competences of local governments significantly decreased. Therefore, in the future much stronger central administrative control will prevail.

It is important that in Hungary the establishment of government offices, created as tools of centralisation, was followed by the consolidation of county self-governmental institutions: from 2011 the state overtook the significant debts collected by county self-governments, and later it also overtook the management of county self-governmental institutions.

An act may assign obligatory tasks for local governments, but it shall consider (take into account) the different features of local governments (financial capacities, population, size of its administrative area), by containing more differentiated task assignment for local governments in the Mötv. than before. Moreover, it is important – as mentioned before – that the majority of the previous tasks are directly ensured by the state since 2013, and the majority of state administrative tasks and competences assigned to local governments earlier were reassigned to state administration bodies. In the future, local governments will mainly (more significantly than before) ensure public services for the population which in reality require task-organisational decisions at local level.

In parallel with the reorganisation of tasks the financial system was also transformed, from 1 January 2013 a so-called task-financing has been introduced, which means the financial support complying with the public service level set forth in law for the given task. The change may be best observed in the fact that – compared to the previous system of normative contributions and support – this amount shall be spent by the local government exclusively on the expenses of the performance of its obligatory tasks. One of the formulated goals of the regulation is to force local governments to increase their local (tax) income.

In addition to the battle of the county level and regional state administrative organisational system a smaller territorial unit, larger than a settlement but smaller than a county, called *lower medium level,* received less attention in the state administrative and self-governmental structure.[296]

At the time of the change of regime, the liberal approach of local governmentalism believed that local governments ruled by self-conscious citizens would realise the performance of state administrative and local governmental tasks exceeding the responsibilities of settlements within the system of voluntary associations, defined as a basic right of local governments.[297]

The ambiguous practical experiences forced the governments to establish new and new systems for motivating task performance in associations in order to enforce the requirements of size economy and closeness to citizens (subsidiarity). In order to achieve this, the separate legal regulation of local governmental associations was a significant step in 1997,[298] which – contrary to the later and present practice – was established after thorough theoretical preparation and facilitated the application of a diversity of formally defined, free associations for the performance of local governmental and state administrative tasks

[296] Kökényesi (n 43) 262.

[297] ibid

[298] See the previous Act CXXXV of 1997 on the associations and cooperation of local governments.

affecting more than one settlement.[299] It is worth mentioning that the new act, the Mötv. also failed to introduce a general association obligation. Nevertheless, Chapter IV. of the Mötv. established a *unified* local governmental association system; an important novelty is that – contrary to the Ötv. – the legislator does not differentiate between associations based on the performed tasks. The local governmental association has legal personality, its governing body is the association council. In the new regulatory environment, according to the Mötv. the associated representative body and the common office are also association-like legal institutions.

The administrative-organisational solution between the county and the settlement level was already facilitated by the previous act on local governments by regulating that by maintaining the equality of local governments, different tasks could be assigned to certain governments based on their capacities (in a less differentiated way than nowadays, as mentioned before). This approach also provided for assigning certain elements of administration into so-called *administrative district centres* (*igazgatási körzetközpontok*).

Based on the experiences of district centre task assignment, the Office of Government Issued Documents' system was established, which ensures the decentralisation of some state administrative tasks, and was considered as a unique solution for authority administration organisation.[300]

One more novelty of those introduced not long ago in local-territorial administration must definitely be mentioned: it is a great change in the relationship of state bodies and local governments that instead of the previous – less strict – system of legal control, from 2012 the practice known as legal supervision has been introduced, which significantly extends state control.[301] Within this relationship it must be mentioned that if the local government fails to enact the local decree (to which it is obliged upon the law), the relevant metropolitan or county government office (!) shall act instead, following the relevant decision of the Curia.[302]

It must be also mentioned that in Hungarian regional-local administration, in addition to the previously analysed 'classic' types of bodies, a 'middle', neither state administra-

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[299] Kökényesi (n 43) 263.

[300] ibid

[301] Article 34 paragraph (4) of the Fundamental Law of Hungary introduced the legal supervision of local governments as of 1 January 2012, in harmony with Article 8 of the European Charter of Local Governments. The detailed regulations are defined in chapter VII of Act CLXXXIX of 2011 on Hungary's local governments.

[302] Till the summer of 2013 this happened only one time: the Local Governmental Council of the Curia stated in its decision Köm. 5.064/2012/3. that the Local Government of Foktő Village had failed to meet its legislative obligations originating from article 91 paragraph (1) of Act CXCV of 2011 on state budget, because it failed to approve the municipal final account report about the execution of the budget of 2011. The Local Governmental Council of the Curia called upon the Representative Body of the Local Government of Foktő Village to comply with its regulatory obligations by 31 December 2012. As this deadline passed without any actions, in its decision nr. 5.009/2013/3. the Court ruled – in addition to publishing the decision in the Official Journal and within the following eight days announcing it in a way usual for the announcement of local governmental decrees – that the leader of the Bács-Kiskun County Government Office shall enact the final accounts report about the execution of the budget of 2011 of Foktő Village on behalf of the body of representatives of the condemned village by 30 May 2012.

tive, nor self-governmental type of organisation, the type of *atypical mixed bodies* has had increased significance lately.[303] These shall not be identified as quasi public administrative authorities [Article 12 paragraph (3) section e) of the Ket.] because these (the *atypical mixed bodies*) were established for the purpose of performing public administrative tasks. They are always syndical bodies, their establishment is special compared to the bodies of the two large organisational sub-systems, while they are closely related to both. It is generally true that the main reason for their existence is that the simultaneous presentation of general and local interests, expectations would not be efficient or reasonable at other forums and scenes. They mostly lack organisational independence, but they are usually independent in performing their tasks and competences.[304] Among others the following bodies may be considered as such:

- previous regional development councils;
- regional health councils;
- regional youth offices and councils;
- regional social policy councils;
- county/metropolitan state administrative boards;
- regional project councils;
- regional tourism committees.

9.4. Main theoretical issues and practical approaches of the organisation of public services

9.4.1. Transformation of the global environment of public services

In Europe the continuous growth of state budget expenses and the growing indebtedness of the public sector, coupled with the effects of the financial crisis necessarily led to the need to fundamentally transform the system of community expenses and revenues. This force also resulted from the fact that the previous balance of economic liberalism and the public service systems using the service-organisation solutions building on this liberalism but in the meantime spreading the idea of achieving social goals has been shaken.[305] In reality the search for the new balances of solutions built on the traditional values of market and public sectors have been going on since the oil crisis in the early 1970s.[306]

In the majority of today's European states the traditional, direct state (self-governmental) organisation of public services – in several fields – has been replaced by a system of services based on the division of service provision roles[307], while the conditions of services

[303] See Patyi – Varga Zs. (n 175) 329.

[304] ibid

[305] Péteri, 'Költségvetési és piaci megoldások egyensúlya' (n 69) 30.

[306] ibid

[307] Hoffman István, 'A területi közszolgáltatások európai szabályozási modelljei az egészségügyben' [European regulatory models of territorial public health care services] in Horváth M. Tamás (ed) Kilengések. Közszolgáltatási változások [Swings. Public service changes.] (Dialóg Campus 2012) 196.

are usually – still – regulated by the central government (state administration) or the various local governments (authorities), and the public administration organisations directed by them control (supervise) compliance with the regulations.[308] The Hungarian professional literature has extensively reviewed the European models of the organisation of public services, including their comparison with Hungarian solutions.[309]

In this regard the European Union defines its expectations within the constitutional limits determining its competences, by setting forth the frameworks defined by fundamental principles and structures, through which it forces the member states to establish more transparent, more precise and more effective regulation on public services and to provide them effectively in practice.[310]

In Central-Eastern-Europe the aforementioned procedures started and were realised with some delay: on the one hand, it is a result of the pace of the spread of innovations, and, on the other hand, it was consequence of the features of market expansion.[311]

In the time of the transition, Hungary suddenly had to face the introduction of market solutions in public services, as well as the (partial) integration of certain elements of public management approaches which had been realised before – in other countries – and their adjustment to Hungarian circumstances.

The transformation of the state-budget role(s) fundamentally determining the features and content of public services has a direct relationship also with the changes of the social-economic environment. Among the conditions changing the budget system the following are determinative:[312] 1) *economic conditions and ownership relations*[313] and the element which is strongly related to these 2) *the transformation of the system of public service provisions and its regulation*, where – in Hungary in the time of the transition – the most important change was the division between the service provision responsibility and the actual forms of services. Furthermore, among features causing the changes the 3) *political and public administration system*, must also be mentioned, as well as the transformation of mechanisms working inside them, with special regard to the aspects of publicity and direct participation of society. 4) The fourth factor is the scope of changes which occurred in the system of social values, which may be observed also in the direct control of decisions related to public finances and generally in the strengthening of the principle of accountability. 5) In the next

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308 Horváth M. Tamás, Közmenedzsment [Public management] (Dialóg Campus 2005) 120–121.

309 For example: Horváth M., 'Helyi közszolgáltatások szervezése' (n 102); Kende Tamás, Küzdelem és káosz a közszolgáltatási szektor állami támogatásával és finanszírozásával kapcsolatban Európában [Battle and chaos in relation with the state support and financing of the public services sector in Europe] [Dphil. thesis, ELTE 2006); Hoffman István, Önkormányzati közszolgáltatások szervezése és igazgatása [Organisation and management of local governmental public services] (ELTE Eötvös Kiadó 2009); Valentiny Pál, 'A hálózatos közszolgáltatások szabályozási reformjáról' [On the regulatory reform of network public services] in Valentiny Pál and Kiss Ferenc László (eds), Verseny és szabályozás [Competition and regulations] (MTA KTI 2007).

310 Heike Schweitzer, 'Services of General Economic Interest' in Marise Cremona (ed), Market Integration and Public Services in the European Union Oxford (Oxford University Press 2012) 50–51.

311 Péteri (n 69) 30.

312 ibid 32–34.

313 Among conditions the existence and scope of community resources should be also mentioned – with special regard to traditional and alternative forms of financing and their ratio compared to each other.

group of external factors those objective elements [beyond the direct economic conditions] may be observed which are factors resulting from the transformation of – for example – demographic trends or the natural environment, significantly affecting the transformation of public administration (for example, in case of Hungary preparations for the forecasted desertification). 6) Finally, as a last individual factor – which is somewhat related to all of those mentioned before – is the *effect of the EU made through the development policy and the support system.*

9.4.2. Notion of public service

Even though the definition of public service has not been clarified yet in Hungarian law, as a broad starting point it can be accepted that 'public service(s) refer to the provision of tasks which under the given circumstances, up to a certain level, require community organisation and aim at satisfying common social needs'.[314]

The catalogization of public services may be easier if we list the groups of tasks which are generally considered as ones belonging to this scope. Such tasks may be:[315]

a) public utility services (network services, other settlement management services),
b) public education and cultural services,
c) health care and health insurance services,
d) settlement and area management and development services,
e) social services (personal, financial and in-kind services, social flat management),
f) non-centralised law enforcement (public relations of local governmental law enforcement, civil protection, civil guard, private protection and security services), official supervisions,
g) higher education,
h) local and long distance public transport, local traffic management,
i) organisation of authority (state administration) services.

Hungarian professional literature often uses the expression communal services, which primarily refers to public services related to settlement management (public cemetery management, placement of wastes, waste transportation, chimney sweeping), and services related to public transport.[316]

[314] Horváth M. Tamás (n 102) 15.
[315] ibid 23.
[316] Előházi Zsófia, '"Házon belüli" beszerzés a helyi közüzemi és kommunális szolgáltatások szervezésében' ['Internal' acquisition in the organisation of local public utility and communal services] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások. [Swings. Public service changes.] (Dialóg Campus 2012) 175.

9.4.3. Practical developments in Hungary

9.4.3.1. General approaches to the provision of public services

Following the change of regime, services operating with nationwide networks – earlier state monopolies – such as railway transport, postal services, media and energy supply, were *privatised* in the form of services of public interest, after their transformation to liberalised services. Health care, social and education services were realised mainly under the responsibility and organisation of the state, and the county and settlement local governments, depending on the level of services.[317] After 1990, the Hungarian financing system of multi-sectored, decentralised public services was completed by the establishment of more or less sector-neutral financing solutions for the support of alternative service-providing institutions.[318]

There is a *tendency* that the participants of the private and non-profit sector, business associations, social cooperatives, foundations and associations have also been integrated into the provision of public services, in addition to the budgetary authorities.[319]

However, the more or less classic forms of outsourcing have been significantly limited by the valid legal regulations, in so far as, for example, the Nvtv. introduced the category called transparent organisation.[320] In addition to this, the present Hungarian tendencies show that in the organisation of public services, business associations in the exclusive ownership of state and/or local governments have become significant, which means that the role of private and mixed businesses has decreased in the provision of local public services.[321] Regarding civil organisations sectoral rules and the Nvtv. regulate the procedures and conditions of the conclusion of contracts much more strictly than before, thus those based on which civil organisations may participate – among others – in the provision of public services of the local governments.

With regard to this it must be stated that nowadays in the organisation of Hungarian public administration the German NPM-based model of the 1980s and 1990s, the *das neue Steuerungsmodel* (NSM) may be observed. The NSM wanted to preserve state property, but instead of the previous public law solutions (public institutions, public companies), it used private law solutions: business associations in exclusive or majority ownership of the state or self-government, in case of which acts regulated the exclusive or majority ownership of the state or self-governments. Presently we are witnessing the spread of a *similar* model in Hungary. It is enough to think about Article 41 paragraph (8) of the Mötv., the exclusive state or local governmental business activities of the Nvtv., expanded state non-profit business associations and local governmental holdings.

In order to perform tasks belonging to its competence, the representative body may establish a budgetary authority, business association, non-profit organisation or other or-

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317 Kökényesi (n 43) 264.

318 Péteri (n 69) 35.

319 Böszörményi Judit – Nagyné Véber Györgyi, Az önkormányzati feladatellátás alternatív megoldásainak jelene és jövője [Present and future of the alternative solutions of local governmental task performance] (SALDO 2008) 9.

320 Előházi (n 316) 177.

321 Kökényesi (n 43) 266.

ganisation (herein-after jointly referred to as: institution), and may conclude a contract with natural or legal persons or organisations without legal personality. A novelty of the Mötv. defines that certain public services may be provided only by budgetary bodies (authorities) established for this purpose, by legal person business association in state or at least majority local governmental ownership in which the state or the local government possesses at least majority influence or by legal person business associations or local governmental partnerships in the majority ownership of the aforementioned business association and under its at least majority influence. Such a legal provision is the rule of the act on waste management, which allows the issuance of certain waste management permits only to companies in majority state or local governmental ownership.[322]

It seems that changes started in the period of economic recession starting in 2008, when several conditions affecting the operation of local governments were modified at the same time. In Hungary the political environment changed at this time and an environment supporting centralisation has existed since then. However, the indebtedness of the whole governmental sector and the strengthening of general criticism against market type service organisation solutions are parts of a longer process.[323]

The possible advantages of the previous, strictly centralised local public service provision system were only partly enforced, among the reasons of which underfinancing, continuously shrinking budgetary sources of the past decades shall be mentioned.[324] In the new local government finance system, due to the decreasing own and shared incomes, dependence on central support will probably be more significant.[325]

In general we are witnessing a process in which regulations strictly react on previous outsourcing attempts, allowing the participation of non-state actors in the provision of public services and the financing of these activities, or other kind of resource allocations. Some objections related to these may be justified up to the level of certain 'diversions', such as corruption, downgrading or 'transfer' of public property or other criminal acts. Even though these do not have much to do with real outsourcing, based on this idea, the attempt to 're-do' all the controversial procedures may be observed in the strengthening of state roles at local-regional level. At the same time, however, within public administration state roles are strengthened compared to local governmental ones.[326]

9.4.3.2 Changes in certain areas of service provision

In this subchapter, some humane public service fields will be presented in order to reflect on certain important and specific tendencies in the sphere of Hungarian public service provision. One of the *possible starting points for this is the brief review of the change processes which happened in the field of social insurance in Hungary*: the model and concept

[322] Dr. Rixer Ádám and Dr. Hoffman István and Dr. Szilvásy György Péter, Közigazgatási jog [Public administration law] (Jogi szakvizsga kézikönyvek, Novissima Kiadó 2013) 56.

[323] Péteri (n 69) 29.

[324] ibid 47.

[325] ibid

[326] Horváth M. Tamás, 'Kiszervezés – visszaszervezés' (n 216) 245–246.

changes which happened in this area well indicate the challenges and the catalogue of popular modern answers.

Social insurance (state insurance) is an autonomous sub-system of the national economy which is based on separate social risk sharing, operates upon the principle of solidarity with a state guarantee and has its own financial bases.[327] It is important to mention here that following the previous *mixed system* in 2010, the Hungarian legislature established a social security system with *state dominance*: a public law, 'law enforcement' type change took place.

Since the 1980s, social insurance has been changed several times. In 1984 the management of social insurance – which practically covered the whole population – was taken over by the state from trade unions. In the same year, the National Social Insurance Directorate (OTF) was established. The Social Insurance Fund, which was separated from the state budget in 1989, was divided into two parts by the legislature: the Health Care Fund and the Pension Fund were established. Their management was taken over by the self-governments organised at each fund, which means that the self-governmental Bismarck-model was applied. In 1993 the Health Care and Pension Insurance Self-Government was established, through which the National Social Insurance Directorate was abolished. With the establishment of the self-governments, the second largest distribution system of the country was – with some significant limitations – under self-governmental management and control. The Self-Governments were abolished in 1998 and funds now are under direct Government supervision.

Marketing intentions were realised in the introduction of the multi-pillar pension system in 1998.[328] This pension system consisted of 3 pillars: 1) state (*pay as you go*) pension system, 2) obligatory private pension system, and 3) voluntary pension fund system.

The next big step was – by setting a deadline – that the legislator made the members of obligatory private pension funds to chose: either to return to the state pension system or they remain in one of the pension funds which became voluntary. This means that – according to the official statement – by the abolishment of the second pillar the legislature tried to correct the serious deficiencies of the state pension system which occurred due to the introduction of the obligatory private pension fund system in 1998.

In the field of *health insurance* after the transition the government of József Antall re-introduced insurance-based health care financing (contrary to the previously applied health care treated as citizens' right), but it did not return to the insurance company system which operated more or less successfully before the war: instead the National Health Insurance Fund Administration (OEP) was established to perform insurance tasks as a state organisation, which finances health care services from the Health Insurance Fund (Egészségbiztosítási Alap) managing its finances from contributions and other incomes. Part of the costs of several health care services are traditionally paid directly by the patient (e.g. the costs of pharmaceuticals, baths, certain dental services, work place health care), this part is the *co-payment*. A radically new element of this system was the visit fee introduced on 15 February 2007, and in case of hospital stay its counterpart, the hospital daily

[327] http://www.oep.hu/portal/page?_pageid=34,32914&_dad=portal&_schema=PORTAL >accessed 11 July 2013

[328] Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services and its executing Government Decree 195/1997. (XI. 5.), and Act LXXXII of 1997 on Private Pension Funds and Private Pension.

fee. Neither of these was able to remain in the Hungarian environment for long: as result of a 'social referendum' (9 March 2008) initiated by the opposition, both were abolished after one year of existence.

It must be stressed that with the appearance of supplemental insurance and healthcare insurance companies, the private insurance element was introduced into this system more than a decade ago. However, these insurance companies primarily provide health maintenance and favourable taxation options, because a 'simpler way to get hopefully better health care services is to pay a gratuity'.

During the public service provision reform of 2011/12 in the field of *territorial health care public services,* Hungary established a centralised, state administration centred model which is similar to the Austrian model.[329] Departing from the previous regulation, the organisational system of state administration first overtook the in-patient institutions (and the integrated out-patient organisations) maintained by the counties, then those maintained by the local governments. According to the health care state secretariat, patient care becomes more efficient this way, as everyone will have equal access to hospitals. In line with the new regulation local governments are responsible only for basic health care services and exceptionally for certain specific special forms of care. In the new system, all the aforementioned health care institutions were placed under the financial management and operative supervision of the National Institute for Quality- and Organizational Development in Healthcare and Medicines (GYEMSZI), a central office managed by the Ministry of Human Resources [EMMI, earlier Ministry of National Resources (NEFMI)].

After the change of regime – in the examined area – a settlement-centred model was established in Hungary in the field of service responsibility, in which the service provision responsibility of counties was subsidiary. After strong decentralisation, the reforms mentioned chose completely different directions: one of Europe's most centralised systems was established, which is very similar to the Austrian model.[330]

Extremely important changes have taken place in the field of *educational public services,* in Hungarian public education;[331] in connection with this, the most often mentioned topic is the centralisation of public education, the process which has been simply called 'nationalization'. On 1 January 2013, the institutions of public education maintained earlier by local governments were transferred – as a *general rule*, except for kindergartens – into the management of the state.[332] Local governments had to declare by the end of September 2012 whether they were able to maintain the institutions in the future; eventually 2,670 institutions were transferred to the state. State management *basically* means professional guidance and the partial provision of financial needs: including the central provision of the salaries and contributions of teachers and those directly supporting caretaking and educa-

[329] Hoffman, 'A területi közszolgáltatások európai szabályozási modelljei az egészségügyben' (n 307) 203.

[330] ibid 209.

[331] Changes which happened in Hungarian higher education are not covered in this work, regarding those see for example: Lakner Zoltán: Main actors and their strategies in Hungarian higher education. Acta oeconomica 2013/2. 201–224. and Magda Sándor: Merre tovább, felsőoktatás? [Which way, higher education?] Magyar Tudomány 2014/2. 140–150.

[332] For details see Act CLXXXVIII of 2012 on the takeover of municipality-maintained schools by the state.

tion, the financing of their salaries, provision of education materials and the support of external professional control (education supervision).

For a long time it seemed that the state would take over all institutions of public education, but the approved legal regulation – by dividing responsibilities and resources, *as a general rule* – instead of full socialization, reallocates tasks related to operation (maintenance) to local governments *(while it fully takes away from the local governments the possibility of contributing to the narrowly interpreted educational-professional issues).* According to Article 4 of Act CXC of 2011 on national public education: 'Operator means the local government which manages the movable and real estate property related to the performance of the state's public education task in the real estate in its ownership.'

It is an important element for the operation of the system that on 1 September 2012 the Klebelsberg Institution Maintenance Centre (KIK), a central office under the management of the Ministry of Human Resources, was established, which performs its tasks through educational districts. Since 1 January 2013, the country has been divided into 198 educational districts (19 county and 179 district units). The director of education is the financial manager of schools, the Klebelsberg Institution Maintenance Centre (KIK). The directors of educational districts exercise the delegated powers of the president of the KIK.

By taking over the financial management tasks in the public educational system the state – according to the official statement – has abolished those differences which emerged between local governments mainly struggling with the lack of resources and with different material possibilities and the standards (level) of services provided by them. Therefore – according to the official statement – the larger state involvement, the new division of tasks provides more security for children and their parents, as well as to teachers.

Those opposing the aforementioned changes and those criticising certain elements of the reform believe that in the new system there is a great distance between the location of the problem and the theoretical location of the solution of the particular problem, which may result in the danger that each school's institutional procedure, each conflict resulting from cultural differences may become a legal problem.

Centralising, concentrating techniques which also indicate cost efficiency as an objective always carry the increased *risk* of inflexibility and insensitivity to local needs which are favourably presented also by local governments: in order to compensate this problem, the answer is usually a more detailed, extensive and deep legal regulation, which may lead to over-regulation and to the inflation of laws.

However, the transfer of tasks or the change of the person of the financial manager or operator *in itself* does not result in substantial and permanent changes with regard to public services, which is also true for public educational services. For such result *the change of other framework conditions is essential.* A more stable financial background is 'useless' if in the meantime segregation targeting for example Roma students is still increasing in Hungary – according to the latest research this is due to the 'escape route' of free school choice.[333] In the public education sector, the intention of the government to handle this issue

[333] Kertesi Gábor–Kézdi Gábor, 'School segregation, school choice and educational policies in 100 Hungarian towns' 2013/12 BUDAPEST WORKING PAPERS ON THE LABOUR MARKET, BWP http://www.econ.core.hu/file/download/bwp/bwp1312.pdf >accessed 11 July 2013. A significant statement of the research is that even though local education policy influences the division of students between

in a complex way is shown by the introduction of a career model – paired up with increased performance requirements – which is tied to a one-time, average 34% salary increase in 2013, which – according to the plans – will be followed by more substantial increases beyond the rate of inflation by 2017.

The review would be incomplete without sketching the theoretical and practical issues of a special type of public services, *law enforcement*, especially because the perennial dysfunctions of public administration and its manifested operational problems usually become most obvious in this field, and at the same time attempts for making some changes are usually confronted with reality in this field for the first time.

The events of September and October 2006 in the streets of Budapest clarified the old truth – which has been justified also in other contexts – that it is impossible to leave our past behind 'with one big jump'. 'The frequency of protests, their violent or peaceful occurrence, and the application of sanctions by the authorities, especially the police against the protesters, and police violence may be signs of the stability of democracy, the institutionalisation of the right to assembly and the freedom to express opinion.' (Máté Szabó, ombudsman)

It may be stated that the attempts to ensure the democratisation of the police by means of law, politics and publicity have failed in Hungary after the change of regime (as confirmed by the events of 2006). This statement may be upheld even if it is obvious that a most neuralgic point of law enforcement is the obligation to follow – even unlawful – orders, which results from military principles.[334] It is not a coincidence that the actions of the European Union in the field of law enforcement mainly target the enforcement of fundamental rights,[335] the strengthening of their guarantees, and abolition of possible legal and organisational obstacles.

As existentialist philosophy assumes the real personality of the individual is – often – shown only in border situations at the edges of life; similarly, the real democratic commitment of certain law enforcement structures and the participating persons may be measured only in unplanned, sudden – sometimes cataclysmic – events requesting immediate reaction. Each such situation is a great opportunity for organisational learning and for gaining individual experiences in terms of basic rational and moral truth. From another perspective, continuing the thought of Elemér Hankiss according to which in the deep structural continuity of certain civil values may be observed also in the decades of state socialism[336] it may be stated that certain signs of the continuation of long respected values are still observable – as a heritage of state socialism. As stated by Péter Kántás (in a totally different theoretical approach): 'Undefined notions of law in the field of law enforcement – such as public order – have survived the police state and due to their substantial uncertainty they

schools, there is a much stronger effect, namely that 'middle or upper class parents take their children away from the schools of the settlement'.

334 Christián László, A rendészet alapvonalai, önkormányzati rendőrség. [Basics of law enforcement, municipal police] (UNIVERSITAS – Győr Nonprofit Kft. 2011) 135.

335 Nowadays several authors include into the elements of the notion of the state – in addition to territory, population and central power – as fourth element the criteria of enforcement of fundamental human rights norms.

336 Hankiss Elemér, Diagnózisok 2. [Diagnoses 2.] (Magvető Kiadó 1986)

may become dangerous weapon in the hands of law enforcers even within the framework of *rule of law* (type) public administration.'[337]

In summary it may be stated that the regulation of law enforcement and especially of law enforcement procedure(s) in Hungary is – still – well behind the regulatory state of the substantial and procedural law of other fields of administration.[338]

Establishing and maintaining public safety and public order is the exclusive right and obligation of the state in each European country. Voluntary, civil participation of citizens in this task is a goal which is acknowledged and supported by the state, while it also defines the frameworks and conditions of this activity. In Hungary, within civil law enforcement the civil guard (militia) is very significant. These are unique organisations among which the first started operating just after the change of regime in 1990 as local movements directly supported by the Government, at that time mainly without legal recognised organisational form and legal personality. By 1992, their county level and national level organisations were established and the majority of local movements were also organised into civil guard associations. In the lack of independent local governmental law enforcement policy, their cooperating partners are police bodies and they receive financial support from the state.[339] In addition to their crime prevention activities, these entities also perform law enforcement and community organiser tasks in Hungary. In 1996 – for the first time in Europe – an act was approved about the civil guard, acknowledging their social role and significance.[340]

However, by using the name civil guard some organisations[341] were established before the parliamentary elections of 2010 which indicated the restoration of public order as their objective, although their activities led to the emergence of social, sometimes specifically ethnic conflicts. As a reaction to this new phenomenon the latest legal regulations not only cover the activities of the civil guard, but provide detailed regulations also about their organisations and their operation, thus preventing illegal activities carried on under the cover of civil guard tasks, as well as the abuse of the right to assembly.[342]

Within the field of local law enforcement public services it is another important fact that they *typically* operate free of charge and are non-profit, which means that they are realised through the cooperation between the local government and the state, and through the conclusion of agreements with civil organisations, and therefore competitiveness is missing.[343]

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[337] Kántás Péter, A közrend elleni jogsértések természetéről (Dphil. thesis, ELTE 2010) 2.

[338] About this see for example: Szikinger István, 'A rendészeti eljárásról' [About law enforcement] (2011) 1(2) Rendészet és emberi jogok [Law enforcement and human rights] 29–35.

[339] The National Civil Guard Association, the national organisation of civil guard associations received 700 million HUF in state support from the budget of 2012 according to Act CLXXXVIII of 2011 on the 2012 state budget of Hungary.

[340] Madai Sándor, 'A rendészeti feladatellátás, mint közszolgáltatás' [Performance of law enforcement tasks, as public service] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások. [Swings. Public service changes] (Dialóg Campus 2012) 225.

[341] See for example the case of Hungarian Guard (Magyar Gárda).

[342] ibid

[343] ibid.

In Hungary one of the main directions of scientific initiatives,[344] legal[345] and practical changes observable in the examined field aims at the continuous renewal of the tasks of local governments related to public safety and of the possible ways of performing their tasks.

Despite conscious attempts for legislation,[346] the legal environment – regarding the possible forms of organisation, the possible enforcement tools, as well as regarding the available material resources – is incomplete and fragmented, and results in controversial practices, even though the legal policy objective is to significantly increase the opportunity for local communities to take part in defining local public safety priorities.[347]

It must be mentioned that in addition to human public services the public utility sector has also witnessed a great change. In the *performance of energy, water and public drainage service provision, of waste and settlement management, of public road maintenance and of local public transport* tasks, the roletaking of the state has become more and more significant.[348] One of the institutionalised forms of this involvement is *Act XXII of 2013 on the Hungarian Energy and Public Utility Authority, which established the central state administrative office*, which – according to the preamble of the act – was realised in order to facilitate strong market regulatory roletaking of the state providing the supervision of the main sectors and service providers of the primarily public utility provision activities based on unified legal practice, and to protect consumers.

Another important development is that based on article 16 of the Mötv. if there is a real risk of late performance regarding an obligation towards the European Union or other international organisation, the Government may ensure the realisation of the investment – related to the obligation – within its own competence, and it shall deliver a decision about it. The related decision-making process, and the tasks and competences of the system of organisations participating in the realisation of certain projects, are regulated by Government Decree 170/2012. (VII. 23.) on actions necessary for the realisation of investments related to obligations towards the European Union or other international

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344 See the cited work of László Christián (n 333).

345 Article 17 of Mötv.
(1) The municipal and metropolitan local government may ensure local public safety, the protection of its property or other valuables by establishing an organisation to which law has given the right to apply enforcement measures.
(2) The organisation defined in paragraph (1) shall perform its basic duties based on the written cooperation agreement concluded with the county (metropolitan) police authority competent on the territory of the settlement and the capital, under the professional supervision of the police.
(3) Tasks which may be performed by the organisation defined in paragraph (1), as well as available enforcement measures, rules of the cooperation agreement and the operation of the organisation, and staff requirements of the community organiser tasks task performers shall be defined by law.
(4) These provisions shall be applied accordingly if the government does not establish separate organisation for the performance of tasks defined in paragraph (1) herein.

346 See for example Act CXX of 2012 on the activities of persons performing certain law enforcement tasks and the modification of certain acts in order to ensure efficient measures against truancy.

347 For details see: Kiss Bernadett, 'Új lehetőségek előtt a településrendészet?' [New possibilities for municipal law enforcement?] (2013) 61(4) Belügyi Szemle 49–60.

348 Horváth M. Tamás, 'Kiszervezés – visszaszervezés' (n 216) 245.

organisations and by Government Decree 117/2013. (IV. 23.) on actions necessary for the realisation of investments transferred by the Government into the competence of the minister for national development, related to obligations towards the European Union or other international organisations and on the facilitation of priority procedures related to the aforementioned.

These provisions were applied several times in the past period in several aspects, regarding certain important public services:

a) *Provision of drinking water*

In Hungary the underground water reserves available for consumption often do not comply with the water quality requirements set forth in Directive 98/83/EC of the European Union, which was incorporated into the Hungarian legal system with Government Decree 201/2001. (X. 25.) on the quality requirements of drinking water and the order of inspection.

From those geologic components which are excessively present in our waters, direct health risks are caused by the effects of arsenic, boron and fluoride on health. Regarding the parameters set forth by the EU, Hungary received two derogation deadlines in the accession agreement concluded with the European Union, then in 2009 Hungary requested another 3 years of moratorium from the European Commission. With its Decision C(2012) 3686, the European Commission allowed (further) temporary derogation for Hungary based on Directive 98/83/EC of the European Council on the quality of water used for human consumption, but only till 25 December 2012. Due to this, the further acceleration of the advancement of the Program for Improving the quality of Drinking Water – initiated in 2001 – became an urgent issue: the Government voted for active involvement and decided to realise 29 investments for improving the quality of drinking water by 30 April 2013 – while the provision of healthy drinking water has been *basically* the task of local governments.

b) *Sewage disposal and cleaning*

In order to comply with Council Directive 91/271/EEC concerning urban waste-water treatment and to meet the deadlines undertaken in the Contract of Accession, a National Settlement Sewage Disposal and Cleaning Program has been approved and its execution decree was established. Government Decree 25/2002. (II. 27.) on the implementation of the Directive. Government Decree 25/2002. (II. 27.) sets forth derogation deadlines, which were (are) 31 December 2008, 31 December 2010 or 31 December 2015, depending on the type of agglomeration.

In January 2012 the Government approved a set of actions in order to realise sewage disposal and cleaning as soon as possible. As part of this, in Government Decision 1050/2013. (II. 12.) the minister for national development responsible for development policy was appointed for the execution of governmental actions related to the projects, and 58 projects were indicated regarding which realisation shall be transferred into governmental competence.

9.5. Civil service

Unified and firm civil service requires unified and transparent legal background[349] which, due to its features[350] – as independent civil service law – may be separated well from the 'general' labour law regulations.

The legal status of the state budget/civil service sector was regulated by 12 separate acts not long ago (acts on public servants, cabinet civil servants, non-cabinet civil servants, civil servants, military service, state leaders, judges, prosecutors, judicial workers, mayors, parliamentary and local governmental representatives, etc.), but constitutional provisions, the act on local governments, the premium years program and the organisational acts on the legal status of certain budgetary bodies (authorities) also contained relevant employment regulations. The majority of the provisions of the mentioned acts were not results of a centrally harmonised, conscious development, therefore the sets of provisions were characterised by significant internal controversies, disproportionalities and unreasonable parallelities.[351] There were some – partial – attempts to filter these controversies in the 2000s, but none of them succeeded. Among them there were some – e.g. the one attached to the name of Gábor Szetey, the human resources state secretary of the previous Prime Minister's Office – complex human resources programs between 2006 and 2008 which were not in line either with a) the traditional, internal rules of Hungarian public administration, b) with other elements of the legal and regulatory environment, or c) with international trends, and thus their political failure and the quick abolition of the bigger part of the introduced regulations and institutions was foreseeable. The Szetey reform aimed at – among other things – significantly strengthening market-like employment elements and increasing (introducing) the role of objective elements in the performance evaluation process.[352] Not only these plans were rejected by the public administrative sector (the 'staff'), but it is also important that they aimed at introducing market-based 'NPM techniques' at the time when they were under severe criticism in national and international literature.

Between 2010 and 2012, civil service was re-regulated several times, which resulted in major changes. With Act LVIII of 2010 on cabinet civil servants (herein after referred to as: Ktjt.) the Parliament established the legal status of the cabinet civil servant. Among several novelties related to the legal relationship of cabinet civil servants, the introduction of termination of their relationship without obligation to provide reasons must be mentioned, which later failed the test of constitutionality,[353] in so far as even in case of ordinary employ-

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[349] Hazafi Zoltán, 'Egységes és stabil közszolgálat' [Unified and firm civil service] (2010) 3(3) Új Magyar Közigazgatás 17.

[350] For the features of this regulatory field see for example: Patyi – Varga Zs. (n 175) 338–340.

[351] Hazafi (n 349) 17.

[352] In most areas Szetey's reforms (contrary to the set objectives) pushed the civil service system closer to the closed, achievements-based model than ever before. Especially: (a) instead of selection the appointment of leaders fully based on the "autocracy" of the leader of the organisation (which was the practice before and again since the reforms) he introduced a centralised, objective selection system; (b) made the performance-based remuneration system more objective, and (c) activated the institution of reserve staff in so far as he made selection from this staff obligatory.

[353] For details see for example: Kocsis Miklós, 'Alkotmányellenes a kormánytisztviselők jogállásáról szóló törvény' [The act on the legal status of civil servants is unconstitutional] (2011) 4(1) Közjogi Szemle 68–69.

ment relationship, the former Act XXII of 1992 on the Labour Code[354] (herein after referred to as: previous Mt.) Article 89 paragraph (2) obliged the employer to provide reasons in case of termination and defined further substantial and procedural guarantees related to the termination in its Article 89 paragraphs (3)-(5). In general, the regulation of the termination of the legal relationship of civil servants, supported by guarantees (e.g. the relative legal restrictiveness of termination) is often interpreted in a way that ensures further rights to the civil servant compared to an ordinary employment relationship because in return there are several extra obligations burdening the civil servant. Therefore, as result of the aforementioned modification, civil servants were lacking even the basic guarantees which entitle all employees in general.

In its reasoning related to this change the Constitutional Court concentrated on the fact that the rule of law principle not only regulates the principle of legality in relation with the actions of public administrative authorities, but the requirement of legality in relation to public administration also covers all actions of public administrative bodies in which public administration delivers decisions affecting the fundamental rights of those concerned. Therefore, one of the main requirements resulting from legality is that the substantial framework of the employer's decisions is regulated by act.

According to the reasoning of the modification of the act approved half a year after the establishment of the new government it '[provides] opportunity for establishing quality expert staff and for increasing the standard of work performed for the benefit of the public'. The reason of those opposing the modification – beyond legal reasons – was that the act prepares the flow of the governing political forces' supporters into the public sector, while it paralyses older civil servants, forcing them to be (or to become) servile.

In its Decision 8/2011. (II. 18.) ABH the Constitutional Court considered this provision unconstitutional – as the only one among the several disputed provisions of the Ktjt. – analysing the issue broadly and objecting to this provision from several aspects: the Constitutional Court found that Article 8 paragraph (1) point b) of the Ktjt. is unconstitutional, violates the rule of law principle set forth in Article 2 paragraph (1) of the Constitution, as well as the right to work set forth on Article 70/B paragraph (1), the right to hold public offices ensured in Article 70 paragraph (6), the right to court set forth in Article 57 paragraph (1), and the right to human dignity regulated in Article 54 paragraph (1) of the Constitution, and therefore annulled it. The similar rule of Act XXIII of 1992 on the legal status of non-cabinet civil servants (herein after referred to as: Ktv.) [Article 17 paragraph (1) of the Ktv: 'The employer may terminate the public service relationship without obligation to provide reasons'] was abolished by the Constitutional Court later, in its Decision 111/B/2011 ABH. However, it must be noted that the problem itself was not eliminated perfectly by the decisions of the Constitutional Court, in so far as in the new act – Act CXCIX of 2011 on civil servants – the 'indignity', the 'loss of the boss' trust'[355] as undefined reasons for termination practically empty the aspects of the rule of law and right to remedy. It is not a coincidence that Jácint Ferencz states that the loss of trust is an 'objectively indefinable' notion, which

[354] In the meantime Act I of 2012 on the Labour Code was approved which – in line with international trends – alleviated the rules of terminating the employment relationship by the employer.

[355] See Article 63 paragraph (2).

has '[n]o place within the scope of the most severe sanction related to the employment relationship, the termination of the employment relationship'.[356]

The relevant chapter of the Magyary Zoltán Public Administration Development Programme approved in 2011 formulated the need for a unified and simplifying regulation, and its goals are *mainly* defined in the provisions of Act CXCIX of 2011 on civil servants. This set of regulations replaced the previous – divided – regulation about cabinet civil servants and non-cabinet civil servants, '[ending] the dogmatically unreasonable and arbitrary distinction between the two types of legal relationship'.[357] It is a fact that formal unification has been established, but it must also be stated that the internal structure of the new act still reflects the previous division, in so far as the longest part is the one about cabinet civil servants, and not the one with the general provisions.

It must be also pointed out that the interpretation of the staff of public administration in classic categories of the science of public administration, in public service models including selection, advancement, etc. (closed career-system and open system) has become quite difficult by today: these notions may serve as starting points, but in practice their specific features have been mixed up 'inseparably'.

We also direct attention to the fact that this sector has some features which may be interpreted correctly exclusively within the context of the traditions and culture of Hungarian civil service law. One of these features, for example, is the fact that '[the] right of civil servants to the collective enforcement of their interests is extremely limited in Hungary'.[358]

Regarding the staff number of Hungarian public administration, there is a twofold process going on: on the one hand, the staff number of state employees within 'classic legal relationships' shows a slight decrease, but on the other hand, public employment has increased.[359] All in all, slight growth may be observed regarding the number of staff employed by the state (local governments).

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[356] Ferencz Jácint, 'Jogszerű jogbizonytalanság?' [Lawful legal uncertainty?] (2012) 7(1) Miskolci Jogi Szemle 103.

[357] Dr. Nacsa Bea, 'Foglalkoztatás jogi szabályozása a közszférában. A jogi szabályozás két neuralgikus pontja: az állásbiztonság és a kollektív alku.' [Legal regulation of employment in the public sector. Two neuralgic aspects of legal regulation: job security and collective bargain.] 2013/9. Budapest Working Papers On The Labour Market (BWP) 9.

[358] Several authors complain because the valid regulations do not comply with the relevant provisions of the ILO and of the Social Charter. See for example: Dr. Nacsa Bea, 'Foglalkoztatás jogi szabályozása a közszférában' (n 357) 4.

[359] See for example: Munkarő-piaci folyamatok 2012 [Labour market processes 2012] 2013/18. Statisztikai Tükör 2. <www.ksh.hu>accessed 2 September 2013.

10. Principles of public administration

10.1. Introduction to the principles of public administration

In the formal approach, compared to the most general principles of public administration, the principles of administrative law are in a whole to part relationship, they are kind of tools, and at the same time the principles of certain fields of public administration are even more tool-like. However, the value of distinguishing between the principles of public administration and administrative law – as will be shown – is highly relativised by the fact that the most general principles of public administration often appear directly in legal instruments.

The present chapter chooses the simplified and 'naive' starting point according to which the changes, specific shifts happening in the given legal system – in this case Hungary's – may be interpreted as the specific realisation forms of national and international[360] *ideas related to good state and good governance. In this chapter we attempt to present the legal materials related to public administration and certain elements of the transformation of the broader state and legal system in a generalised way; as principles, legal or functional principles, which at the same time reflect the 'self-picture' of the state, as well as its approach towards society and law. The practical significance of principles – at least partly – is that a well defined and thus recognisable and identifiable system of principles may be a certain summary of the state's goals, operational forms and modification/change directions. Principles show a close relationship to the all-time functions of the state, and within it of public administration. Naturally, not only the mere existence of the principles, but the actual enforcement and priority of certain principles is also a determinative feature of the characteristics of – in this case Hungarian – public administration,*[361] *in so far as development calculable also at social scales may only be ensured by the existence and clear communication of long-term professional principles of certain fields of administration, provided that their validity may not be swept away by a change in the government.*

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[360] *Based on the relevant document of the UN (www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/govenance.pdf.) – from among all relevant international documents – among the principles of 'good governance', the principles of participation, state of law, reactivity, striving for consensus, reasonability, efficiency and effectiveness, as well as accountability may be mentioned. It is also important that the effects of the principles of 'good governance' on administration appear in a legally relevant form in the Charter of Fundamental Rights of the European Union (Article 41), but are detailed only in the 'European Code of Good Governance'. The Code basically covers the bodies of the European Union but through the European Administrative Area it has also 'sneaked into' the public administration of member states.*

[361] Balázs István, A közigazgatás alapelvei és azok hatása felépítésére és működésére [Basic principles of public administration and their effect on its structure and functioning] (DE ÁJK Közigazgatási Jogi Tanszék 2012) 16.

10.2. Definition of principle

In relation with the principles of public administration it is a pre-question whether these will reflect on reality or present its criticism and need for correction. The approach of Lajos Lőrincz, by viewing principles as standards, aims at 'balancing' these two approaches: in his opinion, first of all, the realisation of socio-political goals may be checked in relation with these, and, secondly, most of these may be found in laws, thus within the scope of the application of laws, they receive interpreting and stopgap functions.[362] As he puts it, principles are scientific constructions with political content, which summarise the essence of social expectations related to public administration.[363]

It is also important to state that the word 'principle' is used in a narrower sense: it is not extended to (basic) principles which *during regulation* shall determine its specific subject, scope, method, etc. To present this with a specific example: during the establishment of the Ket. one of the main starting points was to create through the approval of the act a primary source of law which would be governing in majority of public administrative authority procedures, and in addition or against which specific public administrative issues may be regulated only in extraordinary ways, in cases and through methods set forth by the procedural act. Therefore, similarly to the previous procedural acts (Et., Áe.), the Ket. did not make attempts to provide detailed regulations for all types of procedures. This would be impossible, because the goals and tasks of public administration change constantly, and with an overdetailed regulation the most important requirements set forth 'against' public administrative actions – quickness, effectiveness and proper adaptation ability – may be reduced.[364] This essential 'basic principle' – as we will see – is not present within the listed basic principles of the Ket., while it may be clearly observed from it (as a whole). *Naturally*, the majority of principles considered during the establishment of the contents of the regulation (may) appear in the given law, indicated clearly as basic principle(s), by this strengthening the original will of the legislator for the law enforcer.

10.2.1. Relationship of basic principles and legal principles

Within normative provisions a logical distinction can be made between basic principles and rules. The difference between these two may be explained in a way that while the given rule either applies to the specific situation or not, in the case of the basic principle (legal principle) the question is at what degree it shall be enforced and in case of several relevant legal principles at what degree it should be applicable.[365] The 'most exciting' related question is whether the basic principles are only (primarily) the bases, tools of the interpretation of rules (thus if there is more than one meaning, opposite interpretations of a rule, the law enforcer

[362] Lőrincz (n 209) 57.

[363] ibid

[364] Fazekas Marianna – Ficzere Lajos (ed), Magyar közigazgatási jog. Általános rész. [Hungarian Administrative Law. General Part.] (OSIRIS 2006) 390.

[365] Jakab András, A magyar jogrendszer szerkezete [Structure of the Hungarian legal system] (Dialóg-Campus 2007) 52.

shall choose the one which may be reasonable derived from the basic principle), *or they are independently (directly) suitable for regulating behaviours, thus whether it is possible for the law enforcer to directly justify its decision with these.* If in the given legal system – in this case in the Hungarian one – the law enforcer often applies this latter solution, it may in itself indicate that we are facing the correction of positive law, the transformation of moral considerations, and eventually an independent and accentuated mechanism of a specific development of law by law enforcers.

However, so far this has not been the case: even though, for example the Appellate Court of Budapest in its decision 4.Kf.27.745/2010/7. considered the identification of obligations not originating from substantial law based on the basic principles and objectives of the regulation instead of a specific rule of the Rttv. or the Ket., later in this case the Curia – with its judgement Kfv.III.37.400/2011/8. – annulled the mentioned decision. There are some similar decisions, but from the aspects of legal practice they may be viewed as isolated cases, both separately and together.[366]

The majority of legal principles – which have made it through the basic filters and partly institutionalised control mechanisms of rule of law, legal security, etc. – are also present in substantial law, indicated as such (i.e. typically as basic and legal principles), in accentuated sections, in preamble, general parts, but there are also some which shall be found or discovered by law enforcers and the representatives of (legal) science in substantial law. Nevertheless it must be stated that the use of legal principles and basic principles in the application of law which are *fully independent* from substantial (positive) law – even in natural law approaches – is completely impossible.

In theory, in a scientific approach the basic principles of public administration and the legal principles affecting public administration may be distinguished from each other, in so far as basic principles attempt to describe the essence, operation and the relevant requirements not necessarily from a legal approach. However, in practice legal principles and basic principles may be linked together well, because – continuing the above thoughts – the most important basic principles of public administration cannot work without the 'support' of principles described in or originating from law (even if majority of basic principles function as objectives motivating, orientating future). It is also very important that basic principles – ideally – are in close connection with the general moral principles of society – suiting the all-time spirit – as well as with the related basic principles which may be found in laws.

10.3. Types of basic principles

Basic principles may be distinguished upon large areas of public administration,[367] *as there are operational-procedural principles,*[368] *as well as those civil service principles which af-*

[366] A classic case of the latest Hungarian legal development is the 'case of the Romanian truck driver' (KGD 2007. 269 or BH 2008. 32).

[367] Balázs István, 'A közigazgatás alapelvei és azok hatása felépítésére és működésére' (n 361) 16.

[368] Basic principles regulated in the Ket.:
1. Legality and rule of law
2. Reasonability of exercising competence, prohibition of the abuse of rights

fect human resources. Moreover, the general (basic) principles of establishing the structure of public administration may also be described.[369]

A kind of segmentation may be also observed in relation to certain authority fields; sectoral acts contain several basic principles[370] *and the acts of functional areas*[371] *also offer such. Still, it is possible to select some comprehensive principles which pervade public administration as a whole. Traditionally, such principles, among others are legality of public administration, justness, effectiveness, efficiency, expertise, democracy, etc.*[372] *Based on this differentiation the general and specific basic principles of public administration and public administrative law may be also described.*

Naturally, basic principles may also be categorised based on the feature and level of legal sources in which they appear. In this approach there are constitutional basic principles of Hungarian public administration, part of which are 'general' constitutional (fundamental) basic principles (and as such they affect also public administration), while others emerge directly in specific state operations and public administrative activities, originating from the Fundamental Law. With regard to the latter ones it is worth noting that these basic principles have been formulated – at least partly – as rights (entitlements).[373] *For example, Article XXIV paragraph (1) of the Fundamental Law contains, without expressly mentioning it, the basic principle of fair procedure, according to which* 'Every person shall

3. Protection of rights acquired and exercised in good faith
4. Equality before the law and prohibition of discrimination
5. Principle of free evaluation of evidence
6. Ex officio procedure
7. Right to a fair procedure and to decision within a reasonable period of time
8. Liability of the public administrative authority for damages
9. Right to information
10. Principle of acting in good faith
11. Principle of cost efficiency and quick action
12. Principle of electronic correspondence
13. Principle of the use of language

[369] Tamás András, 'A közigazgatási jog elmélete' (n 87) 326. András Tamás considers basic principles, such as: hierarchic structure, centralisation, integration, the defined division of tasks and competences of the executer, the generality of the organisation of offices, the defined content of activities, and the avoidance of unnecessary repetition, as well as the changeability of tasks and competences.

[370] For example in Article 2 paragraph (2) of Act LXXXIII of 1997 on the services of obligatory health insurance the following rule is defined as basic principle: 'Health insurance services – unless this act stipulates otherwise – shall be resorted to in proportionate with the financial contribution payment obligation to be performed to the health insurance fund.'

[371] For example in Article 12 of Act CXCVI of 2011 on state budget (herein after referred to as: Áht.) the principles of budget planning appear as such.

[372] ibid

[373] Regarding the 'fundamental' feature of these rights, which may be considered as basic principles of public administration, it is not necessarily important whether there are any subjective rights originating from them (whether they may be considered basic rights) or not (constitutional rights which are not basic rights). It is also important that in addition to rights constitutions also define so-called state objectives, among which basic principles may also appear. For details see: Balogh Zsolt, 'Általános rész' [General part] in Schanda Balázs – Balogh Zsolt (ed), Alkotmányjog – alapjogok [Constitutional law – basic rights] (PPKE JÁK 2011) 26–29.

have the right to have his or her affairs administered by the authorities in an impartial, fair and reasonably timely manner'.

These comprehensive principles – which are present not only in constitutions, but also in EU-instruments, acts, and rarely in decrees – are constantly in change, just like social expectations towards public administration. Some principles – even though considered central ones in the given era – may disappear from the list of principles. For example, Article 2 paragraph (1) of the previous procedural code, Act IV of 1957 on the general rules of public administration procedure, which was approved during state socialism, stated that during their actions public administrative authorities shall consistently enforce – among others – the requirement of humanity. Since the change of regime, both the all time legislator and the representatives of science consciously avoid using this notion due to its negative connotations.

10.3.1. Main basic principles of today's Hungarian public administration

However, the shift between basic principles is continuous

As a starting point it is worth reviewing the traditional basic principles of public administration which are observable as general principles also in scientific description attempts and in laws: Lajos Lőrincz, the most prominent representative of the near past of the science of Hungarian public administration, mentions two comprehensive basic principles: democracy[374] *and efficiency*[375]. However, the shift between and moderate fluctuation of basic principles is continuous. The Magyary Zoltán Public Administration Development Programme has become one of the frameworks – going beyond public administration – continuously refreshing and 'updating' a core of ideas about the good state for the new government (after 2010), which started focusing on striving to form public administration along national ideas, in addition to, for example, the principle of efficiency, which has been favoured before;[376] announcing

[374] Democratism primarily means the functioning of public administration within limits, under control mechanisms. Lőrincz (n 209) 59. The direct form of this is participation in decision making and in the performance of public tasks, and the openness of administrative careers. Among indirect tools compliance with the requirement of public the interest, subordination of public administration to laws and eventually transparent functioning must be mentioned.

[375] The principle of efficiency may be interpreted partly as internal efficiency (the objectives and results of functioning, applied systems and financial, work organisation, performance evaluation, etc. reforms may make different institutions and practices comparable also at an international level), and partly as external efficiency: this latter one may be observed in social satisfaction. The individual presentation and evaluation of both aspects are complicated because they are politically influenced. Therefore due to the political factor we shall be satisfied with stating – with regard to efficiency – that in relation with public administration the merely economic efficiency concept may never be realised. Lőrincz (n 209) 60–61.

[376] 'According to our intentions the word "national" has a double meaning. On the one hand it expresses that public administration not only has administrative clients defined by law, but during a measure the Hungarian nation is a kind of auxiliary client, all of its members in an unlimited way in time and space, and their interests shall be considered properly. In Europe the fact of belonging to a nation – not exclusively – is able to transmit and define – in line with special national interests – other community and human values and interests; in our view, for example, also those aspects of international society –

the realisation of these two basic principles – i.e. the establishment of efficient national public administration – as the most comprehensive objective of the Program.

In the following let us review those 'uncertain' basic principles which appeared next to the abovementioned ones in the last period, or existed before but recently receive more attention:

A) The *basic principle of stability* – a basic principle of growing importance

Regarding Hungarian legislation in the past 25 years it may be stated that 'Obviously we are living in a changing world, in which law is less and less a tool of setting some kind of agreed tradition. From the always existing duality according to which law, on the one hand, is the guardian of the all time *status quo*, but, on the other hand it is an implicit tool of social dynamism, of novelty, more and more the latter is put into focus.'[377] To rephrase: the two significant expectations towards law are a high level of (formal) permanence and reacting sensitivity towards social interests.[378] In this regard it is an obvious threat that – as András Sajó has pointed it out – '[in] today's society fear of real change raised [at least seeming] adaptation to new to official value and requirement'.[379] Professor Lajos Lőrincz said at a meeting once that the most significant value of Hungarian public administration and of public administration in general is permanence, and he added that leaving some stable institutions untouched always – or almost always – justifies the previous self-restriction eventually. Naturally, not permanency – in itself – is valuable, but the calculability, reliability and finely tuned operation which result from it. Eventually the principle of stability may be observed in this way of thinking; therefore it shall be treated as new principle with growing significance.

Based on this approach, the most important statement regarding the notion of stability may be that the value and permanency of the 'quickly reacting stability', established by the culture of public politics which balances and 'wipes out' certain negative social and economic effects with immediate and permanent legislation, may be strongly questioned.

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operating with the participation of Hungary – which form foundation of the UN, the EU or the NATO. The essence of the second meaning originates in the temporal permanency of national existence. The nation, as community, is a transmitting medium, material of its own state building capacity, which shall include its existing knowledge, organisational values and constitutional traditions. Hungarian public administration is not only the shaper and framework of the presently living community, but its present system, which has been formed over the course of centuries, is the heritage of our predecessors, while the public administration development measures of these days will have great effect on the Hungarian nation of the future, on the lives of coming generations from state organisation aspects.' – this is stated in subsection 2.2.2. of the Magyary Zoltán Közigazgatás-fejlesztési Program [Magyary Zoltán Public Administration Development Programme] [Publication of the Ministry of Public Administration and Justice], Budapest, 2012. 18 p.

377 Varga Csaba, 'A jog és a jogfilozófia perspektívái a jelen feladatai tükrében' [Perspectives of law and legal philosophy in reflection of the tasks of the present] (2008) 49(1) Állam- és jogtudomány 27, 29.

378 Niklas Luhmann, 'A jog mint szociális rendszer' [Law as a social system] in Cs. Kiss Lajos – Karácsony András (eds), A társadalom és a jog autopoietikus felépítése [The autopoiethic structure of society and law] (ELTE 1994) 65.

379 ibid

B) The *strengthening of the natural law approach* and the incorporation of Christian values into the legal system. The positioning *of basic principles with* at least partial *religious origin*

The certain change of basic principles necessarily results from the changes of legal and social approaches, therefore this work cannot avoid dealing once more with the natural law transformation of the legal system, namely with the new tendencies of legal theory focusing also on background values and interests instead of specific expectations defined in rules which may be turned directly into action.

In today's globalised world – in European democracies and also elsewhere – the features of centralising, zero tolerance and catastrophe preventing politics (policies) may be observed in several areas, such as regarding freedoms – e.g. the freedom of assembly and of expression – as well as economic and social rights, labour law, access to welfare services, or right to accommodation, third generation rights, data protection and freedom of information or the right to a healthy environment and sustainable development. These disputes have formulated important challenges regarding the situation of various groups of society, mainly of vulnerable groups in democracies in crisis. The strengthening natural law approach of law may be viewed as a *relative natural law system of reasons* which is strongly formalised in space and time, in so far as its direct point of reference is often the direct pressure imposed by the crisis, i.e. the financial and other (e.g. natural[380]) crises ongoing since 2008.

However, it must be noted that different natural law principles and approaches did not appear in Hungarian law/legal life longer than just in the past few years; it is a phenomena which shall be viewed as a process and which has become 'more significant' in the reviewed period, mainly after 2010. The Hungarian restitution process was realised along the 'actualisation' of certain natural law principles[381]*, in so far as the partial correction of the previous lawful decisions became possible because they were unjust, realised 'arbitrary deprivation' in a lawful way.*

Despite the process-like, gradual and 'periodic' features of the realisation of this new Hungarian legal and normative development (and also in the narrowly interpreted public administrative law) there is a slight possibility for a positive law – relative natural law – Christian natural law 'line'. The newest – on a possible Christian basis and with such content – is new because it does not trace back the provisions of positive law exclusively to the establisher of the substantive law or to the 'historical' principles, but considers the general principles and certain specific expectations of the given – in Hungary Christian – system of beliefs – with wide-scale social support – as a direct justification and necessary origin of a given rule. The appearance of rules directly referring to Christianity, or originating from it or having Biblical background

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[380] The so-called red mud catastrophe of Kolontár has been the most serious environmental catastrophe of Hungary: on 4th October 2010 approximately 700 thousand m3 strongly corrosive dangerous sludge covered Devecser, Kolontár, Somlóvásárhely, Tüskevár, Apácatorna and Kisberzseny, because a supporting wall of the red mud storage basin of the privately owned aluminium factory in Ajka broke.

[381] For details see: Dr. Prugberger Tamás – Dr. Szalma József, 'A természetjog és polgári jogi kodifikáció' [Natural law and the codification of civil law] (2003) 50(3) Magyar Jog 129–139.

is registered in Hungarian substantial law, with special regard to self-definition and to the form of program norms.[382]

In addition to substantial law appearances, it must be also noted that today's majority approach remained unchanged, in so far as it does not identify different effects of desecularization and the establishment of the post-secular society (Habermas) in general as result of a kind of religious renaissance or a renewed religious life,[383] but *as consequence of strong political efforts which define religious requirements and expectations in the public sector, in different spheres of the public*[384] *and – let us not forget – in the constitutions*. Today's Hungarian legal system – presently – is not a system of Christian natural law, but the interpretation of certain provisions of the Fundamental Law, of certain other instruments and institutions of the legal system by the Constitutional Court and in any other way, as well as the increase of provisions within the legal system with consciously and definitely Christian origin (features) may be viewed as a clear shift.

How – through which techniques – is it possible to incorporate the principles of Christianity into substantial (public administrative) law? Not directly (with identical text, taking and adapting the verses of the Bible), obviously. Is it possible to facilitate the acceptance and expressing of these values in a way that the regulation generates certain institutional scenes where these values may be presented? It may be stated that *entry*-type regulations are counterproductive. It is important that, for example, even though certain elements of the Roma issue – which is extremely serious and timely in Hungary – are strong in their appearance and the majority of the problems have been formulated, but regarding Hungarian society as a whole it may be stated that in relation with this issue, those institutionalised and informal mechanisms which would enable the enforcement of social solidarity and participation and the (more) conscious realisation of coexistence are largely missing.

We shall refer to János Farkas, who writes that '[the] author of a play has no problem writing into the script (screenplay) that "gravediggers come on stage and entertain the audience for 10 minutes". The instruction is simple, but the problem is bigger, namely how and with what the attention of the audience may be attracted? (…) i.e. finding the technology of issues is the most difficult task.'[385] The situation is the same in the case of incorporating (basic) natural law principles (and in certain cases those of Christian natural law) into the legal system: their presence (presentation) obviously does not depend on the content of law or on finding the proper solutions of legal technique (e.g. incorporating new principles into the general part of certain laws); it depends much more on the features of the selection of values beyond law and of the operational mechanism of social integrative institutions.

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[382] Adam Rixer, Features of the Hungarian Legal System (Patrocinium 2012) 41–43.

[383] Nigel Biggar – Linda Hogan, Religious Voices in Public Places (Oxford University Press 2009) 58.

[384] Bassam Tibi, 'The Islamist Shari'atization of Polity and Society. A Source of Intercivilizational Conflict?' Paper submitted to the Conference 'Religion in the Public Space' (CEU, Budapest, 2010) 1.

[385] Farkas János, 'A "szürke zóna"' [The grey zone] (Disputa Könyvek 1992) 24.

C) *The principle of public interest*

If we review valid Hungarian laws along aspects offered by this work – i.e. along the ways of movement of the state at fundamental principle level, we may observe a double tendency: on the one hand we are witnessing the expansion of state roletaking,[386] and on the other hand the other tendency supplements and counter-balances it, somewhat, partly relieves the intentions of a more active state. This tendency is shown in the more precise, more exact definition of individual and community responsibilities and obligations. The latest legislation obviously aims not only at the isolated handling of individual phenomena; as a framework of certain *rules of responsibility* (see below) we may observe the new concept of *public interest*; which – according to the intentions of the legislator – is less and less defined as the uncertain sum of individual aspects.

Obviously the specific content and possible scope of public interest may receive its final and complete meaning only after comparison with EU law. It is important that the negative integration form characterizing the EU – which aims at reducing the barriers between member states – due to its features cannot accept definitely national interests or can do so only in a limited way, i.e. EU and national public interest may be separated from each other and may conflict with each other. The significance and complexity is further increased by the fact that there are significant differences between the public interest interpretation of the Commission and the Court.

Main directions of public interest in Hungary – after 2010:

ca**)** *Extension of the notion of public interest*

Among these the regulation (or deeper regulation) of those areas from which the state refrained before (or which it did not regulate in details) may be mentioned.

caa) For example *the definition of the support of* '*foreign currency debtors in need*' *with state tools within the field of public interests*, in parallel with the more thorough regulation of financial organisations may be considered as such. An important and new attempt is Act LXXV of 2011 on the fixing of the repayment exchange rate of foreign currency loans and the order of forced sale of properties and a new Act of 2011 on the final repayment of foreign currency loans – and on the modification on certain acts related to home protection – which provided for the (final) repayment of foreign currency loans at 180 HUF/CHF and 250 HUF/EUR exchange rate. The codification of these ideas means that the state overwrote the private contracts, signed earlier by banks

[386] After 2010 the area for movement of the state was extended (also) because the – primarily health care and educational – institutions providing humane public services, managed by local governments were (mostly) transferred to state management by law. In parallel with this the centralisation earlier fragmentised, hardly coordinated authority system may also be witnessed; several authorities which were independent before are now integrated into the metropolitan and county government offices, functioning as regional bodies of the government. Another important – future – change is that the state administrative tasks of local governments are gradually transferred to the newly established bodies; on 1 January 2013 approximately 80 type of cases were transferred from local (governmental) clerks to the new district offices.

and debtors, with retroactive effect. On one side there are the requirements of financial stability and legal security, while on the other side the frameworks of *a sort of public interest seem to be observable*, which explains the unusually wide scale and deep state intervention with significant changes of circumstances after the conclusion of the contract which is also recognised by law and which would make the performance of obligations almost impossible;

cab) *Increased protection of community values*

Act XXX of 2012 on Hungarian national values and 'hungaricums' defines that special collections and national values and different types of collection of their data, so-called value collections are established, which provide a new framework in the identification, systematization of national data, as well as in the registration and continuous updating, management of their data.

cac) *Definition of public interest as national interest*

Let us mention only one example (of many). The preamble of Act CXCIX of 2011 on civil servants states the following: 'The strong state, which is not bigger than necessary, which is able to adapt to changes quickly and flexibly – focusing on national interests – may be based on public service which bears the public trust of society, is effective and cost efficient, democratic, politically neutral, operates legally, and whose members have up-to-date professional knowledge, serve the interests of Hungary and the public good impartially and with loyalty. Therefore our goal is to facilitate the establishment of a public employee career based on strong national beliefs and values.'

cb) *Making public finances more transparent and placing further barriers in front of the use of public funds* (see at the principle of responsibility)

cc) *Limiting the non-core content of (fundamental) rights*

A further form and direction of expressing public interest and strengthening protection mechanisms for the public interest is the gradual limitation of the 'non-core content' of certain fundamental rights with regard to the public interest.[387]

cca) A good example for the increasing intervention of the state is the red mud catastrophe of Kolontár. On 4th October 2010, approximately 700 thousand m3 strongly corrosive dangerous mud covered Devecser, Kolontár, Somlóvásárhely, Tüskevár, Apácatorna and Kisberzseny, because a supporting wall of the red mud storage basin of the privately owned aluminium factory in Ajka broke.[388] The seriousness of the situation is well indicated by the fact that first the government declared, and then – upon the decision of the Parliament of 18 October 2010 – extended state of emergency until 31th December 2010 in Vas, Veszprém and Győr-Moson-Sopron counties. Due to – one of – the normative answers of the government given to the

[387] In its Decision 22/1992. (VI. 10.) ABH the Constitutional Court – in line with its consistent practice – stated that 'the restriction of a fundamental right remains within constitutional limits only if the restriction does not affect the core content of the right, if it is unavoidable, i.e. happens with a forcing reason, and if the scope of restriction is not disproportionate compared to the target to be achieved'.

[388] These settlements are located in the north-western part of Hungary.

aforementioned events, Act CV of 2004 on *national defence* and the *Hungarian Army* – within the scope of extraordinary measures available in case of natural disasters – was supplemented with the following article 197/A:

'*197/A. § (1) The operation of a business association may be brought under the supervision of the Hungarian State – in line with those set forth in paragraph (3) herein, and ordered by decree. (2) The minister responsible for state budget or a government commissioner shall act on behalf of the Hungarian State. (3) The person defined in paragraph (2) a) reviews the financial situation of the business association, b) approves, countersigns the financial obligations of the business association, c) in relation with the direct prevention of a situation making the extraordinary measures necessary and with the mitigation of its consequences may make decisions in cases belonging to the competence of the main decision making body of the business organisation (…).*'

It shall be also mentioned that the provisions of the new act shall be applied also in ongoing cases. According to the reasoning of the draft law its goal was to establish the possibility of the most effective governmental intervention for efficient actions in catastrophe situations emerging in relation with the activities of private businesses and for mitigating their negative effects. In order to facilitate this, the law provided for the possibility – *beyond the earlier, rather liberal legal concept* – to supervise the operation and activities of related businesses by the minister responsible for state budget or by government commissioner, based on the decision of the government.

ccb) Based on Article 46 paragraph (7) of Act CXC of 2011 on national education, while exercising his rights a student shall not violate the interests of his peers and the community. Based on this not detailed interest, the right to participation in education may be limited unilaterally. The fact that this is not only a theoretical opportunity is shown by the rule that those students may also be banned from school who are under the (obligatory) upper school-age limit.

ccc) In addition to stressing individual rights, the aspect of operability[389] is focused on – by stressing state interest and public interest.

[389] In its Decision 41/2005. (X. 27.) ABH the Constitutional Court stated that it has obligations for the protection of organisations with autonomy originating from the Constitution. It clearly stated that 'such legal regulation cannot be considered constitutional which regulates the organisation of local governments in a way that it limits the core content of the right to form organisation, leads to emptying the right to local governments, its withdrawal, and makes the local government unable to decide about the issues of its own organisation in a responsible way'. Therefore, for example, the Constitutional Court recognised the autonomous operation of higher education institutions as a constitutional value. However, in the opinion of László Kiss, Member of the Constitutional Court, who attached a separate opinion to the decision, 'it is a right and at the same time obligation of the state to facilitate the "operability" of the system of higher education. In this approach, operability – regarding practises legitimised by the state – is more than institutional existence in a way that it makes the everyday life of the community and of citizens more "bearable".' For details see: Kiss László, 'Jogállam és/vagy élhető állam' [Rule of law state and/or sustainable state.] in A demokrácia deficitje [The deficit of democracy] (PTE ÁJK – Pécs-Baranyai Értelmiségi Egyesület 2008) 142.

D) *Principle of responsibility*

It is important that in addition to the further extension of the catalogue of fundamental rights – especially of those specific civil rights related to social issues, health care and education – or perhaps instead of it, '[in] Hungary the strengthening of the old forms of obligations, prohibitions and responsibilities has been in focus, as well as the introduction of their new forms and guarantees. The framework of this is the declaration of responsibility as a constitutional value'.[390]

Based on the previous welfare concept the government (public administration) has financed a wide scope (scale) of welfare services, but the actual service provider activity was often entrusted to for-profit or non-profit organisations (outsourced). This is how the extension of welfare services was possible without increasing bureaucracy.[391] Today, partly by overstepping the New Public Management approach, the state – in Hungary, as well – is able to maintain or in some cases increase, the role it plays even with decreasing resources if at a certain part, within areas of larger service provider systems it rules with the paradigms of *self-care and new type of responsibility taking*.[392]

With some simplification, the key element of conservative and neo-conservative paradigms is responsibility, moreover, the '*revolution of responsibility*', contrary to other – previously dominant – concepts absolutising freedom.[393] In this new approach, the citizen and the given community do not dominate primarily as beneficiaries of rights and exemptions, and not as consumers, but their presentation as responsible citizens and responsible social actors (also in the expectations of laws) is much more important, which happened in the latest Hungarian laws by the more thorough, more precise definition of responsibilities.

In general, responsibility is the continuous conscious acknowledgement of the rules of social relationships, proper behaviour; responsibility for behaviour and its suitability

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390 Ádám Antal, 'A végrehajtó hatalom és a közigazgatás a magyar alkotmányos jogállamban' [The executive power and public administration in the Hungarian constitutional state of law] in Dr. Csefkó Ferenc (ed), A közigazgatási szervezetrendszer átalakítási kísérletei [Attempts for the reformation of public administrative organisational system] (A 'Jövő Közigazgatásáért' Alapítvány 2009) 17–19.

391 Lester M. Salamon and Helmut K. Anheier, Szektor születik II. [The emerging sector II.] (Non-profit Research Group 1995) 137.

392 The speciality of the regulation is that according to its goal it appears at each possible level and in each possible form, moreover, at each scene and within each life situation it consciously tries to increase expectations: e.g. within the scope of state responsibility, in addition to increasing the role of the state in the performance of public tasks it introduces the notion of damages caused by legislation. Even though prohibitions regarding public finances may be interpreted mainly with regard to state bodies, the extra taxes introduced in 2010 and afterward regarding market organisations, in the financial sector, the energy sector and the telecommunication sector may be also mentioned here. And this new legal concept clarifies individual responsibility in many ways, beyond making self-preservation a tendency. For example it defines the content of parental responsibility in a clearer way.

393 Barát Tamás, 'Felelősség – társadalmi felelősségvállalás' [Responsibility – social responsibility taking] in Társadalom, gazdaság, jog, politika [Society, economy, law, politics.] [XXI. Század – Tudományos Közlemények, ÁVF 2012 (27)] 47.

into social relationships; and compensation obligation for antisocial behaviour.[394] The next specific feature of today's Hungarian legal system which cannot be separated from the earlier analysed – moral – issues is the *new, systematic concept of responsibility*.

The specific feature of the regulation is that it aims at appearing at each possible level and in each possible form. Moreover, it consciously increases expectations at all scenes and in all fields of life: e.g. within the scope of state responsibility in addition to increasing the role of the state in the performance of public tasks, it introduces the notion of damages caused by legislation. Even though prohibitions regarding public finances are usually interpretable in terms of state bodies, the extra taxes introduced in 2010 and afterward regarding market organisations in the financial sector, in the energy sector and in the telecommunication sector may be also mentioned. This new legal concept clarifies the responsibility of individuals and different communities from several aspects beyond establishing a tendency for self-care, e.g. it defines the content of parental responsibility more precisely.

Let us review certain spheres of responsibility in an organised way, with examples:

I. *The responsibility of the state*

In relation with the abovementioned 'Kolontár mud catastrophe', the review, reconsideration and more precise determination of the responsibility of the state and its bodies have become an extremely urgent task. In our opinion at least three aspects of the responsibility of the state may in general be mentioned that are difficult to separate:

a) failure of legislative bodies to act (in forms of responsibility for delayed performance of obligations or e.g. for non-performed or partly performed control and supervisory actions in cases where there was legal obligation);
b) in the form of responsibility for failures of legislation, for missing laws and for dysfunctional legal environment;
c) as an issue of responsibility regardless of and beyond the existence and content of laws: by examining the existence of certain kinds of moral and ethical responsibility referring to the extra responsibility of entities, institutions and persons acting on behalf of the all-time central power in a centrally organised society. From the existence of such responsibility c1) political responsibility or c2) a form of compensation may be derived which do not have legal basis but originate from the basic expectations of social solidarity raised to the level of state politics.[395]

The latest Hungarian legal development performed the following clarifications regarding the responsibility of the state:

a) The expansion of the scope of activities to be performed by the state;
b) The clarification of responsibility for state finances;
   ba) It is stated in Article N paragraphs (1)-(3) of the Fundamental Law:

[394] ibid

[395] Rixer Ádám, 'A vörösiszap-katasztrófa miatti felelősség' [Responsibility for the red mud catastrophe] in Szécsi Gábor (ed), De iuris peritorum meritis 7 – Studia in honorem Endre Tanka (KRE ÁJK 2010) 27–28.

(1) Hungary shall enforce the principle of balanced, transparent and sustainable budget management.

(2) Parliament and the Government shall have primary responsibility for the enforcement of the principle set out in paragraph (1).

(3) In the course of performing their duties, the Constitutional Court, courts, local governments and other state organs shall be obliged to respect the principle set out in paragraph (1).

Those set forth in Article 36 paragraph (4) of the new Fundamental Law may be interpreted as attempts towards a growing state influence in state finances and reliable – i.e. responsible – state functioning: '*The Parliament may not adopt a State Budget Act which allows state debt to exceed half of the Gross Domestic Product.*'

bb) From those acts defining the (financial) legal guarantees of the efficient use of public funds the following shall be mentioned (from the latest legal regulations): Act CXCV of 2011 on state budget, Act CVIII of 2011 on public procurement, Act CXCIV of 2011 on the financial stability of Hungary, and Act CXCVI of 2011 on national property.[396]

c) Expanding the scope of responsibility and defining specific actions:

ca) Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders [Hungary's Fundamental Law, Article D)][397]

cb) In relation with public funds Article 37 paragraph (6) of the Fundamental Law[398] states the following: *'As long as the state debt exceeds half of the Gross Domestic Product, whenever the State incurs a payment obligation deriving from a decision of the Constitutional Court, the Court of Justice of the European Union or any other court or an organ which applies the law, and the amount previously earmarked by the Act on the Central Budget for performing such obligation is insufficient and the missing amount cannot even be supplied out of another amount earmarked by the Act on the Central Budget for other purposes without violating the requirement of balanced budget management, a special contribution to covering common needs shall be established, exclusively and expressly related to the performance of such obligation in terms of scope and designation.'*

II. *Deepening responsibility through new expectations towards self-governments*

Within the basic principles of the new self-governmental system the main target is to increase the responsibility and self-preservation of local communities through, for

[396] For details see: Pfeffer Zsolt, 'A közpénzek hatékony elköltésének pénzügyi jogi biztosítékai' [Financial law guarantees of effectively spending public funds] (2012) 18(1) JURA 88–93.

[397] Naturally, this provision of the Fundamental Law does not result in extra-territorial effect. About this see: Lóránt Csink, Balázs Schanda, András Zs. Varga (eds), The Basic Law of Hungary. A First Commentary (Clarus Press 2012) 47.

[398] Earlier Article 29 of the Aár. contained similar provision. Article 37 paragraph (6) was introduced by Article 17 paragraph (2) of the fourth modification of the Fundamental Law (25 March 2013).

example, the introduction of the new public employment system or task financing, as well as through the limitation of crediting and the prohibition of planning operational (operating) deficit.[399]

III. *Declaration and strengthening of the responsibility of communities*

a) According to the last sentence of article U) of the Fundamental Law '*Political organisations recognised legally during the democratic transition as legal successors of the Hungarian Socialist Workers' Party continue to share the liability of their predecessors as beneficiaries of their unlawfully accumulated assets*'.[400]

b) Initiating attractive models for self-provision of smaller communities, e.g. by strengthening of social cooperatives.[401]

IV. *The responsibility of market organisations*

a) The social responsibility of market organisations, and taking social responsibility has in general been limited to CSR (Corporate Social Responsibility), until very recently, and it was generally used in a rather limited sense: it was meant to refer to donations, charity activities and sponsorship, all offering competitive advantage.

A specific field of the responsibility of market organisations is supporting culture, and within this, sports. In the field of culture, a multi-channel financing system is operated nowadays in Hungary: in addition to central and local governmental budget support – through direct and indirect tools (e.g. tax allowances) – the players of the business and civil sectors also take a significant role in patronage. Without going into details about the valid legal regulations, we only point out a significant novelty in this context: since 1 July 2011 a specific regulation has been in force, according to which in the form of a tax allowance companies and entrepreneurs subject to corporate tax may support 'spectator sports', among them football, up to 70% of the amount of their corporate tax.[402] Through this form of funding Hungarian football receives significant sources for development. Lately this financing model has also appeared in other fields of culture – interpreted in the widest scope – e.g. in form of tax allowance for supporting performing-art organisations.[403]

b) In the examined scope, the post-2010 Hungarian regulation introduced a new form of the general and proportionate sharing of taxation – more equal than before, in line with real financial results and possibilities – by so-called extra taxes established in 2010 and after in the financial sector, the energy sector and in the telecommunication sector.

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[399] For details see Hoffman István, 'Átalakuló önkormányzati vagyon – az alkotmányos szabályok és a sarkalatos törvények tükrében' [Changing local governmental property – in reflection of constitutional rules and cardinal acts] (2012) 14(3) Jegyző és Közigazgatás 18–20.

[400] Earlier the Aár. contained similar provision, mentioning the Hungarian Socialist Party.

[401] For detailed rules see Act X of 2006 on cooperative associations and Government Decree 141/2006. (VI. 29.) on social cooperative associations.

[402] For details see Articles 22/C and 23 of Act LXXXI of 1996 on corporate tax and dividend tax.

[403] For details see Article 22 of Act LXXXI of 1996 on corporate tax and dividend tax.

V. *Increasing individual responsibility*

a) Making self-preservation a tendency

According to article O) of the Fundamental Law '*Every person shall be responsible for his or herself, and shall be obliged to contribute to the performance of state and community tasks to the best of his or her abilities and potential*'. *This is closely related to the intention to end the false common understandings of decades: it may be mentioned that in the newer regulation – since July 2012 – the employment relationship may be terminated during sick leave, which ends the decades-old false practice (common understanding) of escaping to sick leave – and to state funding.*

b) Increasing special individual responsibility (related to a given role)

ba) for example, within increasing the limits of responsibility Article 9 paragraph (3) section g) of Act CCXI of 2011 on the protection of families regulates as parental responsibility that parents shall supervise their children – in line with the provisions of a separate act – when the child is in a public place or at an entertainment facility at night, and in line with paragraph (4) '[the] parent shall spend the funds received after the child on the caretaking and raising of the child'.

bb) A specific case must be mentioned within the compass of special individual responsibility for the community, namely that for applicants who were admitted to state-funded courses or courses partly funded through a state scholarship (starting in September 2012) a condition for getting the financial support was to sign the contract which was concluded between the student and the Education Office acting on behalf of the Hungarian state. In this contract the state undertook to partly or fully take over (in form of state scholarship or partial state scholarship) the costs of the students' education, while the students agreed to earn their degrees within a defined period of time and – in addition – work in Hungary for a duration twice that of their education period within 20 years after they received their degree, i.e. 'they obliged themselves to work (also) for the Hungarian economy in a certain period of their lives'. The background of this special, rather new approach – *which has been mitigated regarding the obligation of students recently* – is the consideration that the state finances the education of these students (the professionals of the future), and therefore it is the 'obligation' and responsibility of the beneficiary towards the state and the community to provide part of its results to the sphere which supported and 'trained' him/her.

E) ***The new basic principle of cooperation***

Regarding this basic principle[404] *it may be mentioned again that in the modernisation of Hungarian public administration – based on the measures of Western reform trends*

[404] At this point the cooperation obligation is viewed at a narrower sense than defined in Article 1 paragraph (2) of the Ket., moreover, it is interpreted as consultative mechanisms, draft law preparation activities operated by public administration.

– the deficiencies of the state-market balance are continuous;[405] *and in the Hungarian model of (central) political decision-making, the 'top-down' approach is still dominant, in so far as the institutional mechanisms of the incorporation of interests protected and integrated by non-governmental organisations are mainly operated only formally.*[406]

Among the tools for including society, or more precisely those concerned about specific issues into decision making the post-2010 government – despite two new acts on legislation and the inclusion of society into it – does not prefer the ones with legal a nature (*i.e. those establishing direct obligations on the side of the government*); rather, those solutions are focused on which are beyond or at the borders of the legal system. Therefore the new trend referred to as national consultation – among others, i.e. in addition to sectoral, professional and other forums of consultation[407] – established a political technique which was unknown in Hungary before: within two years – via post – every voter received several individual surveys with multiple-choice questions,[408] and – a method less used in Hungary before – an information brochure was sent to every voter about the latest legal developments.[409] *The framework of the different consultations is the political declaration of National Cooperation made in 2010, which established the System of National Cooperation. Beyond political catchwords and emotional appeals, it may be clearly observed that the post-2010 Hungarian government expects the establishment of deepening social consultation (cooperation) (also) from the establishment of crowdsourcing methods (which are well established in other countries), from online consultations and from the forming of new platforms (scenes) of communication.*

Regarding the basic principle of cooperation, it is important that one of its main sources in Hungary is the 'sense of justice [related to the near and far past], which is a great community value the [establishment and] protection of which [in itself] requires the cooperation of many'.[410] Among the reasons for legal and institutional changes which have taken place since 2010 we may definitely site the needs formulated after the political and street events of 2006, which also bore the characteristics of a kind of

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405 Dr. Jenei György, 'Adalékok az állami szerepvállalás közpolitika-elméleti hátteréről' [Supplements about the public politics-theoretical background of the state's participation] in Hosszú Hortenzia – Gellén Márton (eds), Államszerep válság idején. Magyary Zoltán emlékkötet [State role in crisis. In memoriam: Zoltán Magyary] (COMPLEX Kiadó 2010) 94.

406 ibid 95.

407 An example of such may be the National Cooperation Forum of Local Governments, which is a body performing official negotiations between the Government and local governments.

408 For example question 16 of the survey called 'National Consultation 2012' read as follows: 'There are some who believe that the government should maintain the spending power of pensions also in times of crisis. Others believe it is impossible. What do you think?' The following three options were offered as possible answers for this question:
'– The government shall continue to maintain the spending power of pensions;
– In crisis it is not possible to maintain the spending power of pensions;
– I cannot assess the issue.'

409 Such information was displayed for example in the letter 'Job protection action 2012' sent to all voters in the summer of 2012.

410 Takács Veronika, 'A polgári engedetlenség mozgalma' [Movement of civil resistance.] (2004) 5(7–8) Köz-politika 5–6.

collective sense of justice, resulting in a landslide victory for FIDESZ-KNDP at the Hungarian parliamentary elections of 2010.

F) ***The principle of simplification***

Simplification is a principle to be interpreted within quality legislation, the final aim of which is to increase the efficiency of law by decreasing unnecessary limitations and burdens on the side of both the clients and public administration, and the abolition or replacement of formally or substantially disturbing elements. The special feature of this principle is that it is strongly 'cyclic'; sometimes it is in focus, then it is pushed into the background: it may be observed that – broadly interpreted – simplification and – narrowly interpreted – deregulation procedures are conducted every few years (usually every 3–5 years).[411]

Simplification cannot be a target itself. In order to achieve permanent results the performance of previous (and subsequent) *impact assessment* shall be important, as well as – partly within the before mentioned – consultation with those concerned.[412] Ilona Pálné dr. Kovács considers it one of the greatest general mistakes of domestic reform attempts and new administrative organisational solutions that they are rarely based on systematic, empirical analyses – either regarding local governments or in other fields.[413] It may be also observed in part of the previous simplification attempts that they appeared as politically motivated measurement packages (often) without substantial preparation.

Simplification has been a priority also for the EU. It has been going on since 2005 as several initiatives of the Commission have been made to facilitate it.[414] In the EU, one tool of simplification is annulment. In order to make legal acts clearer and more understandable the Commission recommended the abolition of 1,300 legal acts in 2009, which equals to 10% of the *acquis*.[415]

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411 *Among the legal instruments of simplification attempts the following may be mentioned as examples: Government Decision 1004/1995. (I. 20.) on reviewing laws upon deregulation requirements, Government Decision 1058/2008. (IX. 9.) on the government program for the reduction of administrative burdens of market and non-market players and for the simplification and speeding up of procedures, Government Decree 112/1994. (VIII. 6.) on the tasks of the government commissioner for the modernization of public administration, Government Decree 149/2005. (VII. 27.) on the annulment of certain laws and legal provisions, and the already mentioned Act LXXVI of 2012 on the technical deregulation of certain laws and legal provisions necessary for terminating the overregulation of the legal system.*

412 Dr. Drinóczi Tímea, Minőségi jogalkotás és adminisztratív terhek csökkentése Európában [Quality legislation and the reduction of administrative burdens in Europe] (HVG-ORAC 2010) 86.

413 Pálné dr. Kovács Ilona, 'Magyary Zoltán öröksége és a közigazgatási reformok' [The heritage of Zoltán Magyary and the public administrative reforms] in Dr. Gellén Márton and Hosszú Hortenzia (eds), Államszerep válság idején. Magyary Zoltán emlékkötet. [State role in crisis. In memoriam: Zoltán Magyary.] (COMPLEX 2010) 138.

414 Such initiative for example is the action plan of the EU for reducing administrative burdens [COM(2007) 23]. For further details see: Dr. Drinóczi Tímea, 'Minőségi jogalkotás és adminisztratív terhek csökkentése Európában' (n 412) 85.

415 Working document of the Commission – Third report in the results of the strategy aiming at simplifying the regulatory environment [COM(2009) 15 final] [COM(2009) 16 final] [COM(2009) 17 final].

It must be added, however, that while the EU-goal of simplification may be achieved by the rationalisation of secondary legal acts, the 'unavoidable complexity' is mainly caused by the case law of the Court.

I. Main (target) fields of simplification and the related goals:

fa) Application of suitable norm types in the regulation of life situations

With regard to this, it must be stressed that legal simplification also serves the regulatory goal of politics, namely that the use of legal acts is justified only if there is no more efficient tool for regulating life.[416] This means that in those fields in which life conditions may be regulated by *self-regulation* or *co-regulation*, 'withdrawal' may be reasonable – trusting the regulation of life to other forms of normativity (morals, religion, customs, etc.) instead of or in addition to the rules of law.

The technique of *self-regulation* is spreading in several fields. For example, in order to increase consumers' trust, strengthen the client-centred market, facilitate the grounded decision-making of consumers, and make services more transparent, agreements formulating responsible service provider behaviour – concluded within market self-regulation – are getting more significant. Primarily the concerned institutions and organisations representing professional interests participate in the establishment of agreements, or in other words codes of conduct, concluded within self-regulation (or unilateral undertakings). There are some fields of management in which self-regulation is dominant (e.g. sports administration[417]) contrary to other fields of administration.

Regarding the notion of *co-regulation,* it shall be mentioned that it is a rather new 'set of legal institutions'. It is important that the White Paper on European Governance published by the European Commission mentions co-regulation as an example of better and faster regulation.[418]

Co-regulation – regardless of its field – builds on the cooperation of state, market and other players and contains a mix of legal and non-legal elements, focusing on the previous ones only if the latter ones alone cannot achieve the set target: co-regulating systems are usually based on self-regulation, the results of which are continuously supervised, and if necessary corrected by the state.[419] The main aim of co-regulation is to channel the activities of self-regulating organisations – usually beyond substantive law – into public power procedures.

During co-regulation public power – normatively – sets achievable targets and self-regulation fills these with content. Co-regulation makes it possible to transfer the goals set by the legislator to *interest representative organisations* acknowledged

[416] Dr. Gyergyák Ferenc, Dr. Kiss László, Általános jogalkotási ismeretek. Tankönyv a köztisztviselők továbbképzéséhez. [General legislative studies. Textbook for the education of civil servants.] (KSzSzK KK 2007) 207.

[417] For details see: Princzinger Péter, 'Sportjog I.' [Sports law I.] (ELTE Eötvös Kiadó 2010) 33.

[418] Csink Lóránt, Mayer Annamária, Variációk a szabályozásra [Alternatives to regulation] (Médiatudományi Intézet 2012) 62.

[419] ibid 63.

at the given field ('regulated self-regulation'), by this facilitating the channelling of self-regulatory initiatives.[420]

This way of regulation is common mainly regarding different industries and service areas, but it may also be possible to introduce and use its set of tools in other areas. *For example, in Hungary it is extremely important to establish cooperation partly (co-regulation) with cultural, educational, social and other service provider organisations, as well as with those cooperating in the identification, presentation and representation of Roma (Gypsy) interests.*[421] However, the differentiation of the notions of co-regulation and co-decision seems to be unavoidable in this area.[422]

Considering a real administrative example, based on Article 190 paragraph (1) of Act CLXXXV of 2010 on media services and mass communication (herein after referred to as: Mttv.), co-regulation is realised in the cooperation of the Media Council and self-regulating organisations (e.g. media service providers, program transmitters, professional organisations of press publishers) 'for making the public power law enforcement system of media management more flexible'.[423] The Mttv. gives dual purpose to co-regulation. On the one hand, regarding authority competences Article 191 paragraph (1) of the Mttv. provides that – within the scope of certain case types – the self-regulating organisation may perform self-regulating tasks (e.g. preliminary dispute resolution). On the other hand, self-regulating organisations may assist in the operation of the Media Council in substantial matters in relation with the basic principle level regulations of Act CIV of 2010 on the freedom of press and the basic rules of media contents (protection of human dignity, the prohibition of the abuse of making declarations).[424]

From a scientific approach to public administration, the co-regulation system of the Mttv. realises *functional decentralisation* regarding the media management tasks and competence which may be delegated to self-regulating organisations, therewith that media co-regulation provides for participation in public task performance not for public-law legal persons but for private entities (such as self-regulating organisations like associations). However, it is still important that the media co-regulating organisation does not perform, not even indirectly, public power or authority activities.[425]

fb) Simplification of the legal language

Laws and other legal texts are extremely important tools for forming social narratives also in spheres with significant information demand, and therefore the formulation and comprehensibility of language contents is a very important factor.

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[420] ibid 62.

[421] Rixer Ádám, A roma érdekek megjelenítése a jogalkotásban [Presentation of Roma interests in legislation] (Patrocinium 2013) 155–159.

[422] ibid. 159–163.

[423] Csink, Mayer 'Variációk a szabályozásra' (n 418) 66.

[424] ibid

[425] ibid 67.

It is an important fact – as mentioned above – that the language of the (presently) valid laws is often the last form of appearance of the older spoken language – let it be special grammar structures or certain words or expressions. At this point, differentiation between the 'formally used' and spoken language is important, because the special language of law shows some kind of difference from spoken language (especially when legal culture was mainly in German or Latin…), but the difference between presently used general Hungarian grammatical structures and the grammatical structures used in 30–40 year old substantial law texts is also huge. Based on this phenomenon the danger of the decrease of language capacities may be raised; simply the difference between the unchanged reality of legal terminology (fixing decades-old language conditions) and the daily reality of today's general language may be described as the growing distance of an opening scissor. Solutions and the possible changing and modification tendencies are obviously not limited to the incorporation of anglicises and the elements of British/American legal terminology, or the expressions originating from the special language of the European Union,[426] *in the medium run probably the renewal of the Hungarian legal terminology and of language in general would be timely.*

At this point it must be mentioned that the simplification of legal terminology is very difficult at the level of the European Union, because for example the 'long sentences' of the Court are needed because the unification and 'simplification' of the applied legal terminology would be limited especially because the difference between the legal systems of the member states.

The UNESCO 'Guidelines for Terminology Policies: Formulating and implementing terminology policy in language communities' published in 2005 urging the establishment and maintenance of a national terminology policy draws attention to the fact that if the professional terminology of a language in certain fields develops slowly or does not develop at all, it may happen due to the present pace of technological development that no substantial communication may be conducted in the given language in certain professional fields (thus the loss of linguistic functionality may occur), and this may lead to the exclusion of monolingual communities from scientific and economic development.[427] It is important that laws (and individual decisions put down in writing) are also significant elements of a collective social (community) memory. Maurice Halbwach's concept of collective memory basically refers to the social feature of remembering: to the fact that remembering is a collective interpretation, i.e. a reconstruction process. It is a question that in what personal scope and at what level this reconstruction may be realised if linguistic abilities (e.g. on the understanding of the text of laws) are available in a limited way. Within the scope of certain social units the examinable

[426] See also: Láncos Petra Lea, Nyelvpolitika és nyelvi sokszínűség az Európai Unióban [Language policy and linguistic diversity in the European Union.] (Dphil. Thesis, Pázmány Péter Katolikus Egyetem Jog –és Államtudományi Doktori Iskola 2012) /draft/

[427] Guidelines for Terminology Policies. Formulating and implementing terminology policy in language communities; V-VI., reference: Bölcskei Andrea, 'A szabványügy és magyar nyelv' [Standards and the Hungarian language] (2011) 135(3) Magyar Nyelvőr 28.

collective memory is a phenomenon strongly tied to time and environment. In the life of smaller groups – therefore also in families – there are common stories; 'each family has its own special spiritual life; memories cherished only by it and secrets which are only known by its members'.[428] This statement may be justified not only at the level of families but also of society as a whole. 'The events of the past play a fundamental, crucial role in our lives, giving shape and form to our experiences. Without stories our experiences would be mere amorphous, undifferentiated flows of events. Storytelling and story – synonyms of our knowledge of the world and our daily experiences get meaning through them, and we formulate our future expectations through our stories expressed in words.'[429] Who would deny that in a society organised by the state, shared and interpretable stories may be reconstructed quite often from written legal norms… and in this sense the renewal of the Hungarian legal system carries the need for a kind of change in narrative.

Attempts at creating new legal terminology in Hungarian legal language (and in legal sciences) may be observed nowadays: for example the previous act on legislation (Act XI of 1987 on legislation) regulated – in addition to acts – the *other legal instruments of governance*; in contrast, the new act on legislation – leaving behind the terminology introduced in state socialism, carrying a sort of paternalist 'atmosphere' – introduced the term *legal instruments for state administration*. It would be a natural need to avoid naming phenomena and institutions appearing in the same field but with different content the same way. Hungarian public administrative law offers several unfortunate examples: e.g. government office (*kormányhivatal*) refers to a type of central state administrative bodies as well as to the territorial bodies of the government.

A special border between written and spoken forms of the language is so-called SMS (texting)-language. Its unique features appear also in laws, in so far as different abbreviations and 'structure-shifts' – which may be considered serious linguistic mistakes – are present in the latest legal instruments. *The incomplete structures of the spoken language may be traced back to the simultaneity of expression and reception: the sending and receiving of the message have the same context.*[430] Let us present a specific example of the spreading of SMS-language in our legal system: after one of the modifications of the previous Constitution in 2010, Article 61 paragraph (3) received the following text: 'In the Republic of Hungary public media services contribute in preserving and fostering national identity and European identity, *Hungarian and minority languages*, in strengthening national togetherness and in satisfying the needs of national, ethnic, family and religious communities.' The serious mistake is not apparent in the spoken language, but it is unacceptable

[428] Andó Éva, 'A történetmondás kulturális szerepéről' [About the cultural role of storytelling] in Vállalkozás, személyiség, kultúra.[Business, personality, culture.] [XXI. Század – Tudományos Közlemények, ÁVF September 2010 (24.)] 55.

[429] ibid

[430] Andó Éva, 'E-nyelv, netbeszéd' [E-language, net-talk.] in E-világ [E-world] [XXI. Század – Tudományos Közlemények, ÁVF 2010 April (23.)] 33.

in writing; correctly it should have been written (…) *the Hungarian language and the minority languages* (…), because 'Hungarian languages' do not exist.

Another new example is the text of the preamble of Act CCXI of 2011 on the protection of families modified with Article 152 of Act CXXXIII of 2013: '*The protection of families and the strengthening of their well-being is the task of the state, of local governments, civil organisation, media service providers and the economy's participants*'. In this case we may face a 'simplified', incomplete grammatical structure resembling everyday language, from which possessive suffixes are missing (because the state or civil organisations do not have 'participants').

It is very interesting to examine when the linguistic revision of Hungarian public administrative legal documents will happen, with regard to the aforementioned fact that certain words and expressions present in the valid provisions have disappeared from everyday language. Civil law and criminal law have some advantage in so far as these have codes of substantial law (which are at the same time also new), and they have been linguistically revised upon the conscious intentions of the legislator.[431]

In relation to deregulation, in order to facilitate easier and more efficient law enforcement, for the 'detoxification and clarification' of the legal system in 2010 the Ministry for Justice and Public Administration together with the Balassi Institute, employed so-called *language guards* working for the government, guarding the comprehensibility and linguistic precision of laws.

fc) Improving access to 'law', increasing the accessibility of public administration

Citizens shall be allowed to be in touch with public administration substantially and continuously, which is a fundamental precondition for enforcing the rule of law, the realisation of constitutional rights, especially of the right to due process.[432] In Hungary the accessibility of laws through a governmental website, the establishment of district offices and the development of one-site and electronic case management definitely serve the achievement of these goals.

Direct access is greatly increased by the transparency of the organisation and functioning of public administrative bodies, which is ensured also by the latest elements of legal development which regulate the use and content of websites. Last but not least, the existence and features of applied responsibility bearing and supervisory techniques is of great importance in the public sector – also from the aspects of corruption, especially regarding the use of public funds.[433]

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[431] See for example the reasoning of Article 219 of the new Criminal Code: '[…] in order to achieve the goal of simplification the Submission related to the crimes of rape and sexual harassment provides a new title which covers both and is obvious also for civilians. The new name of the crime is sexual violence, which is simpler and more modern.' In addition to the article mentioned, the legislator also changed (abolished) the names of other prohibited sexual acts, with regard to the fact that in everyday language they had received uncertain content or they had been abandoned.

[432] Lőrincz Lajos (ed), Hogyan korszerűsítsük a közigazgatást? A követendő út. [How to modernise public administration? The road to follow.] [Translation of the Modernising Government publication (OECD 2005), MTA JI 2009)] 51.

[433] ibid 201.

fd) Simplification of processes, mainly by reducing direct administrative burdens[434]

The simplification of procedures primarily means the reduction of administrative burdens (e.g. reduction of procedural steps, of the length of documents, abolition of unnecessary documents, obligation to harmonize various pieces of information, publication of understandable case descriptions, increasing the scope of electronic public services, reduction of the frequency of reporting, reduction of other – similar – burdens). *Through these, naturally, the reduction of direct and indirect costs and other expenses is also an objective.* The spreading method of measuring administrative costs in Hungary is the Standard Cost Model (SCM) which facilitates the establishment of standardised cost data about resources used at companies for the enforcement of certain legal regulations.[435]

It must also be taken into consideration that measures for simplification (e.g. the radical and quick reduction of administrative burdens on entrepreneurs) not only result in narrowly interpreted direct financial savings – both for entrepreneurs and for the state – but also in broadly interpreted economic and political costs, which must also be calculated. In case of certain simplification steps, the run of all costs of the 'whole system' must be also considered, in our case, for example, the financial (one-shot, large amount severance pays) and political (procedures of interest representations) 'costs' of possible governmental cut-back.

Simplification, however, cannot always be considered the only, or the most effective tool. Referring to the previous example *at the time of recognising the need for simplification,* possible alternative solutions (e.g. motivation of civil servants to provide better services to entrepreneurs, introduction of tax allowances) must also be examined.[436] The latter may be realised through the opportunity-cost analysis.[437]

II. Tools of simplification

Based on Hungarian literature *the tools of simplification* may be categorised in several ways, on a legislative basis and also upon the content of the regulations:[438] Regardless of the categories such tools are for example:

a) Deregulation

Deregulation as concept means the annulment of certain regulations of substantial law, as well as its formal and material simplification. It is very important to limit the

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434 Dr. Drinóczi (n 412) 27.

435 ibid 32.

436 Obviously, nothing hampers the simultaneous or gradual realisation of these steps (measures), but in practice there may be several political, budgetary and other difficulties.

437 For details see: Paul A. Samuelson, William D. Nordhaus, Közgazdaságtan. II. Mikroökonómia. [Economics II. Microeconomics] (KJK 1990) 667–671.; Vigvári András, 'Drága-e a magyar közigazgatás? Néhány szempont a közigazgatás költségeiről szóló diskurzushoz.' [Is Hungarian public administration expensive? Some aspects for the discussion on the costs of public administration.] in Lőrincz Lajos (ed), Látleletek a magyar közigazgatásról [Statements about Hungarian public administration] (MTA Jogtudományi Intézet 2007) 169.

438 Dr. Drinóczi 'Minőségi jogalkotás és adminisztratív terhek csökkentése Európában' (n 412) 28–29.

mass of laws in our continental legal system which strives to fully regulate all life conditions.[439] One of the main reasons for the gap between civilians and professional legislature, and law enforcement and of mistrust towards law is the mass of laws impossible to handle for individuals, which is unsuitable for individual orientation due to its quantity and to the real or assumed internal complexity of it.[440]

The two basic forms of deregulation are technical deregulation and material deregulation. The former serves the annulment of unused rules, thus increasing the transparency of the legal system, while the latter has actual relevance, making the regulatory environment simpler.[441] It shall be noted that the notion of deregulation may be extended to (individual) acts too, not only to normative regulations.[442]

b) Re-regulation (maintenance and continuous revision of existing rules) and *consolidation* (repeated enactment of the given law in more interpretable, 'handier' form with different content)

c) Rationalisation (application of horizontal legislation instead of sectoral, vertical legislation, through which the filtering of parallelities and inconsistencies is possible)

The *target group* of the reduction of administrative burdens is typically the citizen appearing as client, as well as the entrepreneur (business), but lately mainly non-profit organisations and churches have also appeared in this scope.[443] It is important that public administration and its staff may also be the subject and eventually the beneficiary of measures aimed at reducing costs and achieving optimal use of resources. Among these, the governmental integration answer given to large scale segmentation under the aegis of government offices may be mentioned as a typical example.

However, it must be stated that the simplification of the legal and institutional system at excessive speed (and degree), making them 'more applicable', may violate (constitutional) rules and principles of guaranteed value, even though behind the new regulations is the intention to adjust them to the traditional and actual practices. The previous separate act on cabinet civil servants (Ktjt.) introduced the rule according to which the dismissal of a governmental servant did not have to be reasoned. According to the reasoning, the new regulation 'provides an opportunity for establishing quality staff and for increasing the quality of work performed for the public', thus for terminating the contract of unsuitable government servants 'easily'. However, the Constitutional Court did not accept this need, and in its Decision 8/2011. (II. 18.) ABH – as mentioned previously – it considered the provision unconstitutional for several reasons.

[439] Dr. Gyergyák – Dr. Kiss 'Általános jogalkotási ismeretek' (n 416) 207.
[440] ibid 208.
[441] ibid 207.
[442] ibid 208.
[443] Dr. Drinóczi (n 412) 30.

III. Latest developments in the simplification of Hungarian public administration

In Hungary the so-called *Simplification Program* is part of the public administrative program. It was started by the new Government in 2010 as part of the Magyary Zoltán Public Administrative Development Programme.[444] The Government wished to simplify the life of citizens by 2014 – gradually – in approximately 230 types of cases (in some types in several points).[445] The direct and primary goal of the Simplification Program is to review authority procedures affecting the population and reduce administrative burdens of citizens which are related to the management of the different cases. 'During simplification unnecessary bureaucracy is excluded from procedures and the goal is to assist citizens through less paperwork, fewer documents, less queuing and simpler case management procedure, and at the same time to speed up public administration itself.'[446] The goal is to increase the number of those types of cases '[in] which citizens may observe the reduction of bureaucracy in case management process, in the reduction of the length and costs of procedures'.[447]

In parallel with changes occurring from the Simplification Program, other client-friendly measures have been taken too: for example, since July 2011 clients may

[444] See Government Decision 1304/2011. (IX. 2.) on the approval of the Simplification Program of the Magyary Program. Based on its Annex 2 the simplification of procedures shall be realised by achieving one or more targets from the following ones:
a) termination of cases;
b) fusion of cases with other cases;
c) reduction of case management time;
d) development of communication between the client and the office, extension of a client-friendly information system;
e) reorganisation of the procedures of the case;
f) reduction of the number of those participating in the management of the case;
g) increasing the online administration of cases;
h) reduction of case documentation and its information needs;
i) preparation of a handbook for participating administrators;
j) preparation and publication of short and understandable case descriptions for clients.

[445] Practically every ministry has been participating in the realisation of the program since 2012, reviewing the procedures in its competence from the aspect of further possible simplification, mainly regarding family and children; in the field of employment, unemployment support, social services, taxation, agricultural issues, public and higher education, issues related to property, authority administration in traffic issues, pension, marriage administration and health insurance services. Among the already realised measures it may be mentioned that**,** requesting motherhood allowance (TGYÁS) and child care contribution (GYED) has become simpler as result to the fact that in addition to the reduction of the number of necessary documents the previous 30 days administrative deadline was reduced to 18 days. But for example the deadline for issuing agricultural producer identification card was also reduced to 18 days from the previous 30. Another material simplification is that instead of the previous three authorities, only one acts for example in assessing reduced working abilities and health damages, and a similar easement is that in case of inquiries related to accommodation allowances, there is no need for the notary to act any more; everything may be managed at the Hungarian Treasury. Among the developments of online administration it may be mentioned that due to the program decision-making about family allowance and child support (GYET) has been accelerated by an IT development.

[446] http://magyaryprogram.kormany.hu/egyszerusitesiprogram >accessed 31 July 2013

[447] ibid

automatically receive email or SMS messages about the completion of their document. It may also be mentioned that since January 2011 authorities shall calculate deadlines in calendar days, not in business days, thus restoring the previous practice. The most significant change is undoubtedly the establishment of Government Offices and the start of one-site case management and its continuous extension to new and new case types – in this way facilitating the management of several cases at one place. The establishment of the National Unified Card is also a step forward, allowing for the retrieval of several different – parallel – types of documents.

In addition to the Simplification Program reducing the administrative burdens of the population, several measures aim at reducing the administrative burdens of domestic businesses, primarily within the framework of the Simple State Program. Part of this has also aimed at reviewing authority procedures.[448] Simplified company registration, public procurement procedures, and investment permissions, and the tenders of the New Széchenyi Plan may also significantly assist the participants of domestic economy. All in all, due to dozens of measures – defined also in the Széll Kálmán Plan – the burdens of entrepreneurs have been reduced.[449] It must be mentioned that earlier there was a similar program resulting in a mass of law changes related to businesses: the 'Tuned for Business' program was announced by the Ministry of Economy and Traffic in October 2006 and several laws were modified in relation with the program (reducing the burdens of businesses by making the establishment of businesses easier, reducing the circular debts of businesses, increasing the rate of electronic trade or by increasing the value limit of obligatory audit). Also important in international context from the standpoint of business simplification is the implementation of Directive 2006/123/EC on Internal Market Services,[450] aimed at reducing barriers to the movement of services.

G) Strengthening justice (legal protection) in public administrative cases

Regarding legislation it may be stated that 'The legislator makes the general rules and several life situations are not covered by them. One of the possible, though scary solutions is casuistic law, when the legislature tries to regulate all possible situations in advance. The other possible answer is the constant modification of laws, which contradicts the requirement of the rule of law about stable, or at least permanent laws formulated by John Locke. The third solution – obvious and desired by conservative

[448] See Government Decision 1405/2011. (XI. 25.) on the Simple State medium term governmental program for the reduction of administrative burdens of businesses and Government Decision 1406/2011. (X. 1.) on the modification of certain tasks of the Simple State medium term governmental program for the reduction of administrative burdens of businesses, annulling the former decision.

[449] *See: the details of the program realised in the coordination of the Ministry for National Economy at the* www.egyszeruallam.hu *website >accessed 31 July 2013.*

[450] See the framework law implementing the service provision directive, Act LXXVI of 2009 on the general rules of starting and performing service provision activities. The aim of the directive is to establish a real internal market for services by reducing legal and administrative barriers in front of the development of service provision activities between member states.

legal approach – is the development of law by courts.'[451] *The present Hungarian legislature seems to have started out in all three directions at the same time.* The continuous increase of legislative products, the extremely intensive modification of laws, and the *appearance of case law* at a certain degree are justified tendencies based on the new legal instruments. With regard to the latter – as mentioned previously – there is a timely question of whether theoretically the parallel existence and application[452] of a specific precedent law and codified law is possible beyond the precedent-like uniformity decisions of the Curia, or not.

Among the general reasons of the growth of the role of justice, the increase of the value[453] of court activities and the narrowly interpreted administrative justice the following factors must definitely be mentioned:

ga) Establishment of several layers of law. The disturbance of coherence resulting from the counter-effects of EU law, international law and internal law requires the courts to take on increased roles. This is an international tendency. From the standpoint of the EU therefore, the activities of courts are valued more and the possibilities of the legislature shrink.

gb) Faster legislation and quickly aging legal acts. Controversies regarding the real content of law may not occur only upon the counter-effect of the layers of law as described above, but at the same time the exceeded modification of the otherwise coherent rules and the increasing speed of their modification also increases the value of judges applying the law.

gc) Due to the high level of fusion between the legislative and executive power the role of justice – as counterbalance – increases. Even though different judicial reform have made attempts to extend political and legal control, the relative independence[454] – avoiding direct pressure in individual cases – still exists in Hungary.

gd) In our opinion Article 28[455] of the Fundamental Law (may) encourage(s) the law enforcer (judge) to refer to the Fundamental Law (also) directly. *Focusing on the objective teleological interpretation* may push the judge – as decision-maker – into the position of a quasi legislator, or at least of the 'developer of law'. Article 32/A of the previous Constitution did not place the right to interpret laws exclusively to the Constitutional Court, and based on Articles 70/K and 77 paragraph (2) judges might have the possibility to refer directly to the Constitution, even though ordinary courts usually rejected those lawsuits which were exclusively based on the violation of constitutional rights, requiring other reference to acts or laws to deal with

[451] Paczolay Péter, 'Alkotmány és történelem' (n 85)

[452] Szalma József, 'A precedensjogról' (n 70) 37.

[453] See for example http://www.birosag.hu/media/aktualis/ujszeruen-parositott-birosagok-megalakult-kozep-magyarorszagi-kozigazgatasi-es >accessed 25 July 2011

[454] In this regard I view independence as organisational (corporate) independence, which means the independence of the judiciary as a whole within the system of powers, its separation from the other branches of power.

[455] 'During the application of law course shall interpret the text of laws primarily in harmony with their objective and the Fundamental Law. When interpreting the Fundamental Law and other laws it shall be assumed that they serve a reasonable, moral and economic objective in line with public good.'

the case on its merits.[456] The issue of the horizontal direct effect of fundamental rights has been an important question in domestic literature. It is important that until the aforementioned article of the Fundamental Law, the interpretation of 'ordinary law'[457] in light of the constitution was not a generally followed method.[458] Naturally, several factors seem to contradict the aforementioned: the socialisation of the majority of law enforcers as jurists, the limited professional independence within the organisation, and the closely related performance evaluation aiming at 'objectivity', which go against independence and 'creativity', which in addition to the excessive repression of subjective elements prefers indicators such as the number of annulments and the speed of completing cases. These are specific 'organisational' barriers, which are in front of the increase of the role of the judge, otherwise facilitated by the legal system. Another important issue is that Hungarian legal education has not necessarily educated students about this legal concept.

ge) The *preliminary* '*pricing*' *of basic principles as principles and tools of interpretation* modified in the legal system – and especially in the Fundamental Law – *is less possible* (e.g. regarding the behaviour warning about the achievements of the historical constitution, as expectation, by keeping in mind the interest of the next generation; the consequent enforcement of reasonability, etc. the uncertainty of law enforcement practice may increase and not only because these are relatively new elements in the legal system and in legal life: it seems as if the legislator consciously widened the scope of aspects which may be and shall be considered during the application of law, thus extending the area of movement of judges). At this point it must be mentioned that the opposers of moral, value-based interpretation usually refer to the widely spread reason according to which by this interpretation judges present their own moral beliefs as part of the constitution.[459] A real danger may occur if '(…) behind the mask of morality the politicization of law is taking place'.[460]

gf) *With the introduction of real constitutional complaint, i.e. the possibility for directly objecting to public power decisions and announcing them as unconstitutional, specific, individual level legal protection has become more effective.* In addition to quasi-normative uniformity decisions, this is the first time in Hungarian legal history when the individual decisions of courts may be brought to the Constitutional Court.[461] The Constitutional Court received the opportunity to annul only the given

[456] Gárdos-Orosz Fruzsina, Az emberi jogok alkalmazásának lehetőségei a rendes bíróságokon, különös tekintettel a magánjogi jogvitákra [Possibilities of applying human rights at ordinary courts, with special regards to civil law legal disputes] (Dphil. thesis, SZITE ÁJK DI 2010) 11–12.

[457] Herbert Küpper, 'Az Alkotmány, a törvény és a(z alkotmány)bíráskodás – magyar kihívások és német tapasztalatok' [Constitution, act and (constitutional) adjudication – Hungarian challenges and German experiences] (2013) 2(1) Kodifikáció és Közigazgatás 8.

[458] Tóth J. Zoltán, 'A jogértelmezéshez használt módszerek a mai magyar felsőbírósági gyakorlatban' [Methods of the interpretation of laws used in today's appellate court practice] (2012) 58(4) Magyar Jog 198.

[459] Csink – Fröhlich, 'Egy alkotmány margójára' (n 10) 82.

[460] ibid 83.

[461] Küpper (n 457) 14.

court decision in individual cases instead of the applied law (without becoming part of the ordinary court system). It is a valid point that as result of this constitutional principles and values directly affect the whole legal system.[462]

gg) The improvement of the conditions of court activities increases the quality and speed of law enforcement and deepens public trust. On 28 November 2011 two laws were adopted which placed the Hungarian court system on new grounds: Act CLXI of 2011 on the organisation and management of courts (Bszi.) and Act CLXII of 2011 on the legal status and remuneration of judges. Undoubtedly the most significant change happened in the administrative system: the National Judicial Council (OIT) was replaced by the National Office of the Judiciary and its more effective decision making mechanism. In the previous system the practice of the distribution of judge statuses was extremely problematic and institutionally limited, resulting in the development of huge differences (!) in Hungary between the case load of different courts, at the expenses especially of the previous Metropolitan Court of Budapest and the Pest County Court.[463]

gh) Based on Article 19 paragraph (1) of Act CLXI of 2011 on the organisation and management of courts among courts of first instance – in addition to district courts and county courts – there are separate administrative and labour courts, as separate courts. Even though this solution did not restore the complete independence of the Royal Administrative Court as it was before 1949 (its independence from ordinary courts), the long-desired increased independence of administrative adjudication has been realised at the lowest level of the court system.

gi) The number of the types of cases belonging to the competence of administrative and labour courts is rising. For example, in legal disputes related to associations, administrative and labour courts shall proceed based on the rules of Mötv. modified in December 2012. In practice it means a change of approach, because the previous, consistent case law considered these cases clearly as civil law, contractual legal disputes, and therefore at first instance – based on the value in subject – city courts, as predecessors of district courts or county courts, as predecessors of regional courts had the right to proceed (see judgements. 5.Pf.20.332/2008/4. and Pfv.X.20.104/2009/4.).[464] However, this increase is not a new phenomenon; the 'jump' was most significant after the transition. In state socialism the control of state administrative decisions was realised within public administration, judicial review was exceptional. This situation changed upon Decision 30/1990. (XII. 22.) ABH of the Constitutional Court, due to which by modifying the Áe. the Parliament introduced the general rule of court review of decisions upon the violation of law.

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462 Csink – Fröhlich (n 10) 100.

463 Osztovits András, 'Az új magyar bírósági szervezetrendszer' [New Hungarian court system] in Rixer Ádám (ed), Állam és közösség. Válogatott közjogi tanulmányok Magyarország Alaptörvénye tiszteletére. [State and community. Selected essays for the celebration the Fundamental Law of Hungary.] (Lőrincz Lajos Közjogi Kutatóműhely – KRE ÁJK 2012) 381.

464 Rixer Ádám, Dr. Hoffman István, Dr. Szilvásy György Péter, Közigazgatási jog [Public administrative law] (Novissima Kiadó 2013) 64.

H) Basic principle of establishing national public administration

The efforts to give national features to public administration may be observed in at least four approaches in practice after 2010 in Hungary:

firstly, the intention to strengthen large Hungarian businesses (large domestic companies) and the establishment and strengthening of the dominance of financial institutions with a Hungarian background, the preference and intensive support of domestic small and medium size enterprises; in relation with this, increased state participation in the provision of public services and in the maintenance of their standard, partly directly at the costs of public utility companies in foreign majority ownership and other service providers.

secondly, beyond the most general community and human values, the intention to present, represent and institutionally protect certain special, traditionally Hungarian values and value carriers – eventually in a form showing intention to preserve national identity;[465]

thirdly there is a public policy approach which ties the notion and scope of the 'management of public' to the existence of linguistic, cultural and other identity forming elements beyond the usual territorial and citizenship aspects of the state – in a much more stressed form than in the previous practices;

fourthly the establishment of a committed – and well-prepared – staff with national beliefs and proper attitude appears as a clearly communicated need, basic principle.

Regarding the third item, several tasks were added to the list of state tasks which place partly new, moderately significant extra burdens to Hungarian public administration. Mentioning two examples: as of 1 January 2011, the simplified nationalisation request for dual citizenship may be filed, which was requested by more than 300 000 petitioners in the first period. Moreover, in the latest Hungarian legal development – contrary to the previous regulation – the legal basis was established for Hungarian citizens' (typically those living in the neighbouring countries) participation in parliamentary elections without Hungarian residence.[466]

Among the significant management cirsumstances – within and across the borders – those must also be mentioned which allow for persons and organisations across the border to receive some kind of financial assistance. Therefore according to Act CLXXXII of 2010 on the Bethlen Gábor Fund a separate state financial fund was established for facilitating the prosperity of Hungarians living abroad in their homeland and the preservation and development of their diverse relationships with Hungary,

[465] See for example the provisions of Act XXX of 2012 on Hungarian national values and 'Hungaricums'.

[466] According to Article 12 paragraph (3) of Act CCIII of 2011 on the election of the members of Parliament voters without residence in Hungary may vote only on party list (i.e. not on individual candidate).

and for strengthening their Hungarian national beliefs. A change of *paradigmatic importance* is that from the resources of the National Cooperation Fund operating as the main financial resource of Hungarian civil associations not only domestic organisations, but – if they meet basic requirements[467] – also (Hungarian) civil associations operating abroad may benefit.

Moreover, it is also important that according to the provisions of Act LXII of 2011 on Hungarians living in the neighbouring countries – who possess *Hungarian identification card* or *Hungarian relative identification card* – may receive educational, cultural, community cultural, health care, travel and other allowances, benefits and services.

Another instrument the significance of which goes beyond the mere amount of support is the one aiming at supporting Hungarian religious legal persons and votaries in neighbouring countries, through which the government and the religious legal person operating in a neighbouring country may conclude an agreement about the supplementary funding of church servants serving in Hungarian in settlements of less than 5,000 Hungarian inhabitants.[468]

Furthermore, among the most narrowly interpreted public administrative contexts the issue of institutionalised border cooperation must also be mentioned, which is a form of growing significance of cultural, economic-business and other relationships with Hungarians living 'on the other side' of the border. *European groupings for territorial cooperation*, EGTCs,[469] which kept their English abbreviation even in Hungarian texts, present the most innovative and most promising form of cooperation of (self-)governments along the border, and in this regard both in neighbour policy and in Hungarian policy, Hungary's and Hungarian settlements' and communities' initiative role is significant.[470]

I) Principle of (introducing) electronic procedures

The objective of establishing e-administration in Hungary is to realise a modern, efficient state focusing on the interests and comfort of the population instead of the old, slow, sometimes bureaucratic state. E-administration may result in a higher level of client satisfaction, a change of approach, cost efficiency, the improvement of the quality of services, and the automatisation of procedures – as referred to by the *2010 e-Government* action plan of the European Commission.

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[467] See for example Article 59 paragraph (4) of Act CLXXV of 2011 on the right of association, non-profit status, operation and support of civil organisations.

[468] The legal basis of agreements is – among others – Government Decision 2172/2004. (VII. 12.) on the conclusion of agreements between the Office of the Prime Minister and twelve church legal persons operating outside of the borders of Hungary about the supplementary funding of church servants serving in Hungarian in the sporadic settlements of less than 5,000 Hungarian inhabitants.

[469] Regulation 1082/2006/EC about the European Grouping of Territorial Cooperation. The original name (European Grouping of Territorial Cooperation, in short: EGTC), which was overtaken by the implementing law, Act XCIX of 2007, and finally Decree 16/2010. (XII. 15.) of the Minister of Public Administration and Justice simplified it to 'European territorial association' (ETT).

[470] Magyary Zoltán Public Administration Development Programme (n 109) 35.

The traditional development levels of the e-administration – introduced by the EU – are the *information* level, where online information is provided, the *interaction* level, where one-sided interaction is possible, i.e. documents may be downloaded and printed, the *transaction* level where documents may be filled in and filed online, the *transformation* level, where the complete case management process is managed electronically (full scale interoperability is realised) and the *targetisation* level, at which proactive management attitude is dominant which approaches the target groups.[471] Regarding the question of how well the information society and public administration in general are developed in Hungary, several indexes have been established [the former one is usually assessed from the integrated data of the level of WEB services,[472] the features of the ICT telecommunication infrastructure and the quality of human resources, while regarding public administration, the extremely complex figures (e.g. DBI, WGI, WCI, EFI, PERF)[473] are often described as the summary of dozens of aspects among which the ones measuring the possibilities of electronic administration are becoming more and more significant]. In the EU context, Hungary is somewhere below average.

In Hungary the theoretical[474] and practical[475] frameworks of electronic administration are established, even though – especially in the field of data protection – they require further development.[476] In case we look for break-out points, presently the exploitation of technological opportunities lying in mobile devices (establishment of m-government), the establishment of the possibilities of communication through digital interactive television (establishment of t-communication), extension of electronic signature, and on the medium run the establishment of Internet voting or the issue of outsourcing electronic public services must be definitely mentioned.[477]

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471 Tózsa István, 'Az elektronikus közigazgatás helyzete' [Situation of electronic public administration] (2012) 4((5) Új Magyar Közigazgatás 3.

472 ibid 9.

473 Budai Balázs Benjámin, 'A közigazgatás és az elektronikus közigazgatási fejlesztések hatékonyságának mérése napjainkban' [Measuring the effectiveness of public administration and of electronic public administrative developments nowadays] (2010) 2(5) Új Magyar Közigazgatás 15.

474 Basic principles of electronic administration are defined by Article 160 of the Ket.

475 For example the Ket. made online administration equal to traditional administration, the notion of services related to electronic administration was introduced [Article 172 section d) of the Ket.] and the relevant execution decrees have been prepared; furthermore, the Central Online Service System has been established and the act regulating the freedom of online information has been enacted. Certain important rule of online administration – among others – are contained in chapter X of the Ket. modified by Act CLXXIV of 2011, in Act CXII of 2011 on the right to information self-determination, and in Government Decree 83/2012. (IV. 21.) on regulated online administrative services and services to be provided by the state, Government Decree 84/2012. (IV. 21.) on the appointment of certain organisations related to online administration, and in Government Decree 85/2012. (IV. 21.) on the detailed rules of online administration.

476 Balázs István, 'Magyarország közigazgatása' [The public administration of Hungary] in Szamel Katalin et al. (eds), Az Európai Unió tagállamainak közigazgatása [Public administration of the member states of the European Union] (COMPLEX 2011) 754.

477 About this see: Digital Agenda (communication of the European Commission in the European digital schedule), as part of the Europe2020 strategy.

The State Reform Operative Program (ÁROP) 1.2.10 project aimed at the review of the regulatory environment of online administration for the comfort and protection of clients. Among the results of the project phase which ended in the summer of 2013, the formulation of specific recommendations may be mentioned regarding shortening administrative deadlines, unified opening hours, online client services, simpler identification and smoother administration without difficulties. In the Magyary Zoltán Public Administration Development Programme the extension of the scope of online administrative services and the improvement of their quality is very important.[478] The main participant of this is the Central Office of Online Public Services (hereinafter referred to as: KEK KH), the aim of which is to strengthen the client-focused approach, fast and credible information and high quality administration in compliance with laws, as well as related safe and precise data management. The KEK KH has a double task: on the one hand, as administrative body it performs authority tasks, and as a service centre provides support for the task performance of other organisations: it manages registers, issues documents and provides data.

It must be stressed that the realisation of the aforementioned goals is supported by the Electronic Public Administrative Operative Program. Another important development is that in the summer of 2013 electronic document management system was introduced in central public administration (in the eight ministries, at the Central Office of Public Administrative and Electronic Public Services and at the Bethlen Gábor Alapkezelő Zrt.). The Ministry for National Development also published the first, commentable version of the development strategy of the info communication sector for the period between 2014–2020 under the name *National Info-Communication Strategy*.

11. Change of features and weight of principles of the organisation of public administration and of administrative competences

11.1. Introduction

Among the organisational solutions, main administrative organisational principles ensuring the performance of public tasks and the provision of public services, usually centralisation, decentralisation, concentration, deconcentration, integration and subsidiarity are mentioned.

There are issues the management of which is unified throughout the country and may happen in the same procedure and upon the same principles of consideration – if we accept this, we formulate the need for centralisation. If we state that some administrative issues may be managed only by taking into account the settlement, geographic, professional, linguistic, cultural, religious, etc. differences of citizens, by adapting to these differences – we arrive to the need for decentralisation. In centralised public administration the decision making power (with legal terminology: competence) is mainly centralised in the hands of the government.

[478] In details see: Magyary Zoltán Public Administration Development Programme (n 109) 41–45.

The degree of centralisation may differ, based on the number of transmitting levels and the complexity of administrative tasks:

1. a) if medium levels do not participate in the preparation of decisions, and in decision-making, and in addition to the transfer of 'orders' they only supervise execution, the principle of concentration prevails;
2. b) the other solution – deconcentration – is the delegation of some of the decision-making powers in the hierarchical system, while the right to decision-making remains withdrawable, or later the decision may be revised at a higher level. An important feature of deconcentrated local organisations is that their leaders are appointed by the central administrative organs.

Based on the above mentioned factors, it may be stated that centralisation is the most important principle of the organisation of state and administration, while concentration and deconcentration are the practical forms of appearance of this principle. Centralisation has several administrative advantages, such as the concentration of available resources, effective answer in extraordinary situations, management of complex (costly) tasks, etc.

From the aspects of the theory of power, centralisation is a system of exercising power in which strategic decisions related to social and economic processes, more precisely the right to define interests and the public interest (public good) are centralised in a vertically organised system which cannot be supervised from below. In a broader sense, centralisation means the upward organisation of the social system wherein the state is not established from the political life of society but is built on certain fields of social reproduction. One of the main features of centralisation – viewed from the aspects of government capacity – is that mechanisms which may serve as alternatives against the coordination performed by the state (e.g. political participation, civil initiatives) may only operate as correction mechanisms, and only if they do not question the centralisation of strategic decisions and the definition of the public interest.

One of the new issues of the 1980s (and it has been actual ever since) was whether hierarchic coordination is able to perfectly perform the integration of developed societies. At this point the issue of the relative autonomy of the state was raised, and this was the time when the neo-Weberian notion of the 'active state' reappeared in public knowledge. The essence of this is that the state is not only a scene for the battles of the different forces of society, and not only some kind of accumulation of the relationships of society (scene and framework of the fights of other players), but the state itself is (or may be) an active player in social and economic events. Naturally, it depends on the institutional features of the state (organisational system, features of internal decision-making processes, characteristics of interest negotiation and conflict management mechanisms, separate interests of those working in the state apparatus, resources available for the state, etc.) whether it is able to rise above the limits set forth by the social relationships and participate actively in shaping them.

11.2. Changes in today's Hungary

In relation with the principles of the organisation of public administration, we may accept the hypothesis according to which some countries of Central-Eastern-Europe which have joined the EU (among them Hungary) provide an answer to the new conditions, the consequences of

different crises with the concentration of state power and the further centralisation of public administration. The property crediting and bank crises of the fall of 2008 drew attention to the vulnerability of global markets and to the necessity of strengthening – primarily national state characteristic – supervisory roles.[479] By establishing the 'strong state', transforming the state organisation which shows traditional 'liberal' features, strengthening the economic roletaking of state administration the ruling political elite and the 'national capital' aim at battling the negative effects of globalisation (e.g. purchase of markets, withdrawing added value from national economy, speeding up the debt spiral, increasing the price of public services, etc.).[480] In the centre of the 'state administration reform' necessary for achieving this there is – it seems – the establishment of a more centralised public administration directly managed by the government, which allows less space for local autonomies.[481] This direction has been strengthened – in addition to the 2/3 majority of the ruling political group – also by the fact that due to the crises the need for the economic neutrality of the state has been decreasing at territorial levels.[482] Therefore, the territorial organisational frameworks and contents of the public sector are transformed in a way that the role of local governments, bearing public power, has become relativised. The non-decentralised form of state solutions and roles has become more significant also at territorial level:[483] as referred to earlier, the clear integration and centralisation of the previously fragmented system of authorities – which were difficult to coordinate – is happening in Hungary; several originally separate authorities have been integrated into the metropolitan and county government offices operating as territorial organs of the Government, and majority of the local governments' state administrative tasks has been transferred to the newly established district offices. After 2010, the area for movement of the state has been broadened also due to the fact that some institutions operating under local governments, providing human – mainly health care and educational – public services were (mainly) transferred to state management through regulations of acts.

The transformation of the functions of Hungarian local governments (the further decreasing significance of originally weak county self-governments, 'return' of several state administrative tasks of settlement local governments to the state administration organisation, establishment of an old-new level of state administration, the district, partial 'return' of local public services, etc.) points in the direction that 'there is ever growing governmental power in the field of local-territorial public administration'.[484] Naturally, the description, analysis and evaluation of the ongoing *re-centralisation* process will be the task of empirical research in the coming years.[485]

However, among the background reasons, at least the intention must be mentioned which aims at establishing more direct, targeted, active state intervention possibilities than before – at least – in those fields where the state has been present already as significant financer or

[479] For details see: Horváth M. Tamás, 'A közmendzsment változásai' (n 61) 91.
[480] Kökényesi, 'A helyi közigazgatás szervezési tendenciái' (n 43) 251.
[481] ibid
[482] Horváth M. Tamás 'Szempontok a területi közszolgáltatások regulációs változásainak vizsgálatához' (n 101) 19.
[483] ibid
[484] Kökényesi, 'A helyi közigazgatás szervezési tendenciái' (n 43) 251.
[485] ibid

background subject of responsibility. In these fields, instead of the dominance of controlling-type rights, the dominance of supervisory-type rights, or instead of supervisory-type rights the tendency toward the strengthening of management rights may be observed in Hungary.

This work has referred several times to those hardly transparent, institutionalised solutions – outlining the mesosphere between state (self-governmental) and non-state (not self-governmental) – in case of which *the clarification of the relations of responsibility, the reliability of financing, and the real efficiency of the use of public funds have been significantly missing.* In addition to hierarchic and merely market mechanisms, several other horizontal, coordinative and service providing mechanisms have been established which led to the spread of different autonomous structures in (among other places) Hungary – usually of low efficiency.[486] The strong decentralisation efforts of the not-so-distant and of the recent past, the administrative solution preferring network systems,[487] the relative weight of the network relationships of globally organised economy,[488] and those intentions which aim at increasing the role of autonomous structures in future public administration[489] did not fade away, drop or disappear from one moment to the other, but their 'loss of significance' may be observed well. This also means that in the provision of public services the state administrative forms of territorial organisation, the self-governing solutions of self-financing and institutional autonomy[490], and the previously mentioned possibilities of the what is referred to as *functional decentralisation* still appear as specific complementary elements.

Let us add, however: the new solutions of the organisation of services are not forced only by external conditions and market anomalies which may be summarised in the word 'crisis', but – beyond these, and partly regardless of these – by the traditionally low efficiency of old previous state/self-governmental institutions.[491]

However, these processes cannot be described on a scale defined only with the notions of centralisation-decentralisation. The change in the role of local governments does not necessarily strengthen centralisation; it is only one possible result,[492] because it is also possible that self-governments with a 'clear profile' will be more efficient than the previous ones and will concentrate on real local tasks.

Moreover, it is also important that the *centralisation efforts show some kind of* '*pulsation*'; for example in 2012 tasks were shifted from county self-governments to the organs of state administration, but with regard to some of these, another 'self-governmentalisation' took place in 2013, as – among other things – county museum and library services were transferred from

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[486] For details see: Bevezetés [Introduction] in Szamel Katalin et al. (eds), Az Európai Unió tagállamainak közigazgatása [Public administration of the member states of the European Union] (COMPLEX 2011) 31.

[487] Hosszú, 'Az állam szerepe a kormányzásban' (n 112) 52.

[488] Horváth M. Tamás 'Szempontok a területi közszolgáltatások regulációs változásainak vizsgálatához' (n 101) 19.

[489] Szamel Katalin, 'A közigazgatás jövőjéről és a jövő közigazgatásáról' [About the future of public administration and the public administration of the future] in Imre Miklós, Lamm Vanda, Máthé Gábor (eds), Közjogi tanulmányok Lőrincz Lajos 70. születésnapja tiszteletére [Public law essays for the 70th birthday of Lajos Lőrincz] (Corvinus Egyetem – KRE – MTA JI 2006) 379.

[490] Horváth M. (n 101) 19.

[491] Józsa Zoltán, Önkormányzati szervezet, funkció, modernizáció [Local governmental organisation, function, modernisation] (Dialóg Campus Kiadó 2006) 78.

[492] Horváth M., (n 101) 19.

the maintenance of the County Institution Maintenance Centres (MIK) to the maintenance of county self-governments.

11.2.1. The principle of subsidiarity

The original notion of subsidiarity means that decisions and execution shall be placed at the territorial level which has the broadest view and competence for realising the task. Organs at a higher level of the hierarchy shall not act in cases when the given aim may be achieved at a lower level. The principles of subsidiarity and decentralisation are primary, basic principles of the EU's regional policy, because through these the responsibility of local levels increases and several local-regional ideas (needs) and at the same time resources may be activated. Earlier the concept of subsidiarity was used almost exclusively in relation to territorial aspects.[493] However, the notion of so-called functional subsidiarity should be used more frequently; thus this 'subject of responsibility' aiming at getting closer to the people should not be established only choosing from certain territorial levels, but 'between certain social spheres the institutional guarantees of respecting the "reasonable and public benefit" autonomy, thus the *functional subsidiarity* of the other spheres of social life should be established. The lack of this may be the cause of severe organisational and operational problems'.[494]

Generally, subsidiarity in practice may be interpreted rather as 'forced subsidiarity', which means that theoretically it prevails, but in practice it does not, from several aspects, as community-based logic is often subordinated to market logic, e.g. to the logic of *forum shopping*, also in the subsystems of public administration. Several measures of the legislature taken after 2010 in Hungary may be viewed as answer for the latter one.

It is important that in relation with basic management-organisation models related to certain public utility services, not only elements resulting from substantial law regulations (level of centralisation, possibility and actual realisation of the division between service provision responsibility and the actual forms of care-taking) are essential, but also those 'traditional' *governance* factors, which define the *actual effectiveness* of the provided services: the structure of existing interests, responsibility and accountability relationships (including their social dimensions beyond law) must be considered as such, as well as the clear, transparent legal environment and the level of legal certainty.[495] One form of appearance of these changes is that the executive power increases its role in the organisation of local services (e.g. centralisation

[493] The principle of subsidiarity means that decisions shall be made at the lowest possible level, closest to those concerned, and higher levels shall deal with the problem only if it cannot be solved efficiently at lower levels. Based on this, the Treaty of Maastricht included the concept of solidarity into the community decision making process, stating that decisions shall be made at community level in a certain case only if the set target cannot be reached properly at national level, or if the recommended step – due to its sizes, effects or cross border feature – may be better realised at community level.

[494] Győrffy Gábor, 'Szabadságunk gyermekei' [Children of our freedom] (2004) 1(1) Civil Szemle 46.

[495] Hegedűs József, Tönkő Andrea, 'A területi közszolgáltatások szabályozási modelljei vagyongazdálkodási szempontból' [Regulation models of territorial public services from property management aspects] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások. [Swings. Public service changes.] (Dialóg Campus 2012) 65.

of the regulation of the system of fees and conditions of residential public services). In addition to the centralisation of regulation, another new process is the 'retaking' of partly or fully privatised (alternatively organised) local public services from the private sector, which results in new administrative behaviours and organisations in local public administration.[496]

All this means that – with the restriction of local autonomy and *subsidiarity* – the institutions providing public services, overtaken by the state were mainly transferred to the deconcentrated territorial public administration instead of decentralised territorial public administration, primarily county self-governments, which used to play significant role in the organisation of – mainly human – public services. Instead of self-governmental county, the 'state administrative county' has been strengthened.[497]

Therefore, based on the valid Fundamental Law and the new act on self-governments a strong territorial state administration has been created, which is much stronger than before, along with a weakened territorial self-governmental public administration system which lacks many of its previous functions, by placing several self-governmental tasks and public services in the hands of the state.[498]

[496] Kökényesi, 'A helyi közigazgatás szervezési tendenciái' (n 43) 251–252.

[497] Szigeti Ernő, 'A közigazgatás területi változásai' [Territorial changes of public administration] in Horváth M. Tamás (ed), Kilengések. Közszolgáltatási változások. [Swings. Public service changes.] (Dialóg Campus 2012) 275.

[498] ibid

Part II.

ADMINISTRATIVE SCIENCES IN HUNGARY

The Science of Public Administration, and the Study of Administrative Law in Hungary

Introduction

Complete and detailed description of the science of public administration, the science of administrative law is a challenging task.[1] The present review focuses on, *inter alia*, the presentation of graduate, postgraduate education issues and operation and the results of professional, scientific workshops. This chapter will not delve into the relationship between the science and practice of public administration and its role in the preparation and implementation of different government initiatives, only refer to it briefly.

1. Heritage and Tradition of the Past

The present state of Hungarian science of public administration has gained its image through a long string of historical development. Its features have been determined by the challenges of different historical eras, more or less, and by the inner specificities of the institutionalisation and development of the science itself.

The first period of public administration in Hungary took place in the period between 1777 and 1849. It was the area of '*Kameralistik*', so the scientific content of public administration was greatly dominated by the approach developed by the theorists of German speaking part of Europe. The next part of public administration in Hungary can be placed in the period between 1850 and 1930. The most important feature of this area was the growing importance and dominance of administrative law as disciplinary approach within the field of public administration.

The institutionalisation of science was hampered by the lack of solid state and legal theoretical funds thus the first attempts were not systematic jurisprudential works but collection of legal norms of administration.

The Hungarian science of bourgeois administration was launched as a science of administration due to its German influence and, with a few exceptions, has kept this feature.

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[1] Due to the available information the author could only provide a snapshot of this comprehensive topic.

The first representatives of the legal direction of administration did not perform legal scientific examinations and results; their monographs were handbooks and textbooks without any theoretical aspects. Alongside the interpretation of basic concepts, the legal positivist approach attempted to methodize substantive law. Since the 1920s the main task of representatives of legal dogmatism in administration was the theoretical analysis of administrative institutions. Zoltán Magyary was the most significant, internationally recognized character of the Hungarian bourgeois science of administration in the first part of the 20th century who sought to help the unfolding of a creative, servicing and a satisfying administration. Throught international experiences, he elaborated a program to rationalize Hungarian administration and hastened the increase of efficiency in line with the preservation of the rule of law.

The period of 1945–1990 was not favourable for the practice and expansion of an independent science of public administration as in the spirit of state unity, the state and party governance did not need the theoretical-scientific foundation of the executive power, the public administration. Nevertheless, along the path of slow, often interrupted liberalisation, the foundation of new institutions[2] and launching of significant research programs[3] or professional monographs[4] alluded to the changes in the social status of science of public administration.

The centre of research in administrative sciences and education was the Hungarian Academy of Sciences along with state administration departments of Law Schools (Budapest, Pécs and Szeged) with some outstanding scholars[5] in the focus.

Scientific works and articles usually examined a specific topic (council administration, authority procedure, administrative jurisdiction) but comprehensive and systematic studies were missing as descriptive textbooks with multiple authorship dominated. Scientific qualification was centralised and the Hungarian Academy of Sciences decided upon awarding candidate degrees.

Among a few professional journals with scientific level, it is *Állam és Igazgatás* (State and Administration) which is worth mentioning, although it primarily stood for an ideological and theoretical support for the one-party state, and ceased publishing after the change of regime.

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[2] The College of Public Administration was established in 1977 to replace the Council Academy in educating clerks.

[3] Government decision No. 1012/1972. (IV.27.) on the complex scientific examination of the development of public administration.

[4] E.g. Lajos Lőrincz, A közigazgatás kapcsolata a gazdasággal és politikával [The relation of Public Administration with Economics and Politics] (KJK 1981).

[5] Sándor Berényi, Lajos Szamel and János Martonyi.

2. The path searching period: from 1990 until nowadays

Although the new constitutional and public law frames were developed relatively early after 1990, the adequate substantive change[6] it is sure, needed a lot more time[7] as the procedure was hindered by bypasses and contradictions.

The replacement of the centralised, hierarchical state administration with a democratic one[8] is such a monumental task that it requires, even in a politically stable and predictable situation, decades of organization and needs significant efforts and wide social support to achieve.

Following the change of regime, the altered political, economic, social and cultural conjuncture has ensured favourable circumstances to the practice of science and thus to the science of public administration as well. It seemed that the hazard of direct ideological and political manipulation and the risk of orders serving current aims hade started to recede.

Looking back from a perspective of almost twenty-five years, the overvaluation of changes would be a mistake as well as their underestimation. Today it is unquestionable that one cannot speak about a clear slate (*tabula rasa*) due to the heritage of the past which still has effects on today on the one hand and on the other hand, because of organisational and personal continuity.[9] This change should not be called[10] transition in the meaning used by the philosophy of science. The Hungarian science of public administration has always been person-centred with some outstanding researchers whose interest field and orientation determined not only the characteristics of education and research but the line of the professional resupply.

The autonomy of the science of public administration is not without limits it is determined by internal and external conjunctures. Science must not be separated from the conjunctures of social reality. The science of public administration shall serve public interest

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6 Political and economic systems often change must faster than the individual institutions and administrative structures of which they are composed. A. Rosenbaum, 'Central and Eastern Europe: Much Accomplished but What Have We Learned?' in M. Vintar et al. (eds), 'The Past, Present and The Future of Public Administration in Central and Eastern Europe' (NISPAcee 2013) 81.

7 Democracy cannot be installed by legal norms; it is kind of culture.

8 In an international perspective what is called administration in Western Europe did not exist in the former socialist countries. Its implication to the on-going processes in Middle and Eastern European states is that a new system of administration shall be established instead of reforming the former one. Tony Verheijen 'Public Administration Reform: A Mixed Picture' in Bíró András, Kovács Péter (eds), 'Diversity in Action' (LGI-OSI 2001) 31 or Klaus H. Goetz, 'Making Sense of Post-Communist Central Administration: Modernisation, Europeanization or Latinization?' 8 Journal of European Public Policy 6. 1032–1051.

9 Significant personals of the Hungarian science of public administration represented continuity even in different institutional and organisational frames.

10 Katalin Szamel, 'Rendszerváltás a magyar közigazgatás tudományában' [Transition in Hungarian Science of Public Administration] in: Nótári Tamás-Török Gábor (eds), Prudentia Iuris Gentium Potestate Ünnepi Tanulmányok Lamm Vanda tiszteletére [Prudentia Iuris Gentium Potestate. Liber Amicorum hommage à Vanda Lamm] (MTA Jogtudományi Intézet 2010) 455–471.

in a general meaning[11] and social development, thus its efficiency and utility can only be judged by its role in serving of practical goals and solving of problems.

Circumstances mentioned above imply that even in the favourable circumstances generated by the political transformation, no spectacular break-through unfolded to help the of satisfactory development of research conditions.

Although, the frames of the scientific, its institution and organisation have been expanded by the growth of legal educational institutions and by the almost unlimited freedom of scientific research, the application of scientific results and achievements in a clear and prior way has rather stayed an exception than became a tendency.

Nevertheless, governments changing in a rotation system[12] assign, by different goals and variable methods, the general social role and functions of administration due to political and other[13] priorities instead of the current position of social development and objective consequences.[14]

All this has made relative the applicability of scientific results of administration in the view of public opinion and it also has negatively influenced the prestige of the profession. This particularity explains that the state-political practice not only failed to hinder examinations of the different segments of administration but, though selectively, used[15] the science if its aims and interest needed so. Nothing proves this better than the fact that numerous government decisions[16] defined different goals and tasks from term to term, even though they contained common recurring items.

The *Magyary Zoltán Public Administration Development Program* aiming to reorganise the Hungarian state and administration started in the spring of 2010. The program,[17] in harmony with the new *Fundamental Law* adopted in 2012, forms a new framework for administration, determines its goals and makes the necessary tools, powers and scope of action available for making achieves. The implementation of the program is still ongoing thus its evaluation will only be made from a historical perspective, in the future.

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[11] András Sajó highlighted the negative effect of both the evanescence of public interest and the lack of agreement on the content of public interest on the functioning of the state and pointed out that it relatives the value scientific results. Sajó András, 'Az állam működési zavarának társadalmi újratermelődése' [On social reproduction of the functional embarrassment of the State] (2008) 4 Közgazdasági Szemle 691–692.

[12] Except for a short period of time, since 1990 political parties with different political orientation have changed each other in every four year.

[13] In many cases, reform initiatives of all types (political-institutional, economic and administrative) are driven by ideology and political preference and not so much by evidence and knowledge. Before 2004, for example there was a decisive factor to fulfil the requirements of the European membership.

[14] In most of the cases the lack of a real situation and of diagnosis necessarily leads to the failure of realisation, or at best, to a partial success.

[15] The unsuccessful attempt of social-liberal government (2006–2010) to introduce NPM methods sets for example.

[16] Since 1990 until now more than 50 government decrees was accepted on the modernisation of Hungarian public administration.

[17] The program was named after the classical scholar of Hungarian science of administration, Zoltán Magyary (1888–1945) who based his ideas aimed to be applied to the functioning of administration on the wide range of national and international experiences.

3. Professional Infrastructure

Professional infrastructure determines the practice, development and efficiency of science. In the lack of necessary conditions the science of public administration cannot fulfil its basic task namely the foundation of state-political decisions and the promotion of their effective enforcement. A professional background is important for the social role and rank of administration beyond being the guarantee of common values, norms and tradition (professional culture).

Infrastructure, in a narrow sense, consists of a system of physical and material conditions allowing the function of science and the network of institutions, organizations and people related to it. In a wider sense, it includes the above-mentioned professional culture so as the tools, procedures and methods etc. applied during research. Optimally, a favourable system of conditions opens new perspectives again and again thus providing incentive.

Section No. IX. of Hungarian Academy of Sciences is the mother board of the science of public administration as any other scientific areas. It hosts scientific sessions, inaugurals and memorial meetings, gives opinion on general science political and science organisational questions, and on cases involving scientific supplies, too. The independency of the *Committee on Public Administration* among the frames of the Section indicates the strengthening of professional weight and influence of administration not to mention that the Committee also has coordinative and leading role. The number of academic scholars and doctors of science of administration is not only an indicator for the level of science but also that of its social recognition.

Beyond institutions belonging to the network of the Hungarian Academy of Sciences, departments of Universities conducting basic research also play an important role in academic life.

The *Institute for Legal Studies of Centre for Social Studies of the Hungarian Academy of Sciences* is the base of basic and applied research in the field of law and political sciences. The *Centre for Economic and Regional Studies of the Hungarian Academy of Sciences* also conducts interdisciplinary research in social sciences. Researchers examining different areas of administration (the system of state administration; regionalization, self-governments) have active role in both institutions.

The program entitled *'Local Government and Public Service Initiative'* by the *Open Society Institute* based in Budapest examines the development of democratic and effective administration and local administration through public policy tools. The publications of the Institute (monographs, journals, papers) cover a broad thematic *repertoire*.

The *Hungarian Institute of Public Administration* meant a significant intellectual centre for the Hungarian science of public administration from the middle nineties until 2006 and continuously monitored the actual questions and problems of Hungarian administration. Between 2007 and 2011 the *Government Centre for Public Administration and Human Resource Services* played its part and after, in 2011 the *Government Centre for Public Administration and Human Resource Services* was set up. The centre is for the methodology of professional training systems and further trainings; it is a knowledge centre but it also takes part in development programs for administration and with its expert network relying on national and foreign academic and university research centres, it provides for active support for the realisation of the development of public administration. The *Public Administration Academy*

a department of the *National Institute of Public Administration* constitutes the institutional frames of professional further training.

The *Academy of Századvég Foundation (End of the Century Foundation)* concentrates mainly on the political analyses of Hungarian governmental practice. Beyond this, it examines particular problems of domestic administration and formulates recommendations for political, social and science aspects of public administration. Its administrative and public policy statements are published in a review called *Nemzeti Érdek (National Interest).*

Scientific journals have a key position in the maintenance of a healthy 'blood circulation' in science. They link the single think thanks and professional workshops and ensure the publication of new scientific results.

The *Magyar Közigazgatás (Hungarian Public Administration)*, as the legal successor of Állam és Igazgatás (State and Administration), being the professional-scientific journal of the Ministry of Home Affairs at that time, played an important role in the exchange of scientific opinions, professional debates and the promoting of communication between practice and theory. In addition, it coordinated the current reforms (public service improvement and modernization of procedural law) and also paid attention to new phenomena such as the effects of European integration, quality guarantee, etc. The periodical had a practice of publishing thematic issues on the occasion of major anniversaries.

It was replaced by *Közigazgatási Közlöny (Journal of Public Administration)* and *Nemzetközi Közlöny Közép-Kelet Európai Közigazgatási Folyóirat* (*International Journal of Public Administration in Central and Eastern Europe*) in 2007. The latter is a bilingual (English and Hungarian) forum for essays working up common problems of public administration in states from Middle and Eastern Europe. After a few issues, both journals ceased due to financial problems. The professional review of the *Hungarian Academy of Sciences*, the *Közigazgatás-tudományi Közlöny (Journal of Science of Public Administration)* was also an ephemeral legal issue.

The *Új Magyar Közigazgatás (New Hungarian Public Administration)* was published in November 2008, after one and a half year of *interregnum*, on the proposal of the NGOs of the profession of administration and with the financial help of *Complex Kiadó Kft.* (*Complex Publishing House Ltd.*). It aims to process the events influencing the development of administration, government decisions, experience of the legislation and it serves as a rigorous scientific guidance to understand in which direction public administration is going.[18] The heading of the renewed journal with its examinations of judicial decision on higher level helps the practice of law and the analytical and valuating work in a constituent way.

The first issue of *Pro Publico Bono*, the journal of Faculty of Public Administration of Corvinus University, was published in 2011. Soon, the National University of Public Service took it over and under the name of *Pro Publico Bono Magyar Közigazgatás* (*Pro Publico Bono Hungarian Public Administration*) and to achieve the aim to spread knowledge for the development of the level of quality of administration, society and state theory.[19]

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[18] Verebélyi Imre, 'Beköszöntő az "Új Magyar Közigazgatás" első számához' [Editorial Note to the First Issue of the 'Új Magyar Közigazgatás'] (2008) 1 Új Magyar Közigazgatás 1–3.

[19] Patyi András, 'Köszöntő' [An Introduction /to the first Issue of the Periodical 'Pro Publico Bono'/] (2013) 1, Pro Publico Bono 2–3.

The *Közjogi Szemle (Public Law Review)* is a quarterly published professional journal supported by the *Magyar Hivatalos Közlönykiadó (Publishing House of Hungarian Official Journal)* and *Pécsi Alkotmányjogi Műhely (Constitutional Law Workshop of Pécs)*. It publishes articles on the actual problems of administration, constitutionalism and international relations so as it integrates scientific results of different legal areas (public and private law). A further aim of the journal of academic background and edition is to report the requirements of constitutionality and self-governance to the practice in a useful way.

A different feature and a concentrated profile characterize *Comitatus*, the review of society of county local self-government. Articles of the journal cover topics related to small-regions, territorial and local administration and the past of self-governance, and also publish writings about the current issues of public policy. Due to financial troubles, since 2008 the publication has been ensured by a social research association and foundation which make strong efforts to preserve the traditional features of the journal.

The tasks of the representative bodies of professional interest are mainly done by *Jegyző és Közigazgatás* (*Clerk and Public Administration*) which is quarterly review dealing with practical questions and actual cases of public administration. The legal journal called *Önkörkép (Self-image)* started in 1991 with the aim of helping those local councillors who have different qualifications to be able to prepare for their task.

Beyond the above-mentioned significant professional journals providing for professional publicity, other social scientific reviews might publish writings on science of public administration such as *Jogtudományi Közlöny (Journal of Legal Studies*), *Magyar Jog* (*Hungarian Law*), *Magyar Tudomány* (*Hungarian Science*), *Közgazdasági Szemle* (*Economic Review*), *Tér és Társadalom* (*Space and Society*) and *Jura*.

Financial support of the research of science of public administration is ensured by grants. Among them, the *Országos Tudományos Kutatási Alap* (*National Scientific Research Fund*; abbr. *OTKA*), Bolyai and Magyary Zoltán Scholarships stand out. All of them are for individual and team research backgrounds.

The Branch of *Hungarian Cabinet Civil Servants* as a representative body of professional interest aims to take part in the preparation and the commenting of legal norms related to them since the 1st July, 2012. Other national interest groups of self-administrations, besides performing other tasks, have similar function.

In summary, the infrastructure of science, similarly as administration itself, has been continuously changing in the last nearly a quarter of a century. Sometimes it shows weakening and reduction, sometimes it strengthens and grows. The available sources,[20] the different conceptions concerning the social role of science,[21] or the organization of science itself, the circumstances of management decisively influence the conditionality of science. Cessation and rebirth of journals or starting a new one, source removal and their concentrated granting later, elimination and establishment of institutions all belong to the chronicle of the last twenty-five years so do the upswing, stand still, changing of direction of science and its starting along new targets and values.

[20] The support of Comitatus ceased due to financial crisis of county self-governments.

[21] The expansion of professional background of the science of public administration was not always the priority on the decision-makers agenda.

4. Education of public administration and the science of public administration

The strong relationship between science of public administration and education looks back on a long history as the work of classical personalities of administrative science (Móric Tomcsányi, István Ereky, Zoltán Magyary etc.) included the organic connection of tutorial and scientific activity.

The transfer of basic theoretical and professional skills of science of public administration and administrative law is realized in the frames of training of law and political sciences. Beyond the traditional educational institutions (Budapest, Pécs, Szeged), the number of faculties of law and political sciences has increased spectacularly in the last two decades and it has also implied the expansion of institutional background of the law and science of public administration.

Among universities, the *National University of Public Service* has an outstanding role. The university was set up in 2011 by significant governmental finances to merge the training of non-cabinet civil servants, protection of public order defence and home-defence into a single body. Due to its institutional and personal capacities and, last but not least, its financial support, it might be an acropolis for national training of professionals for public administration.

Without the full review of the activity and the structure of institutions teaching public administration law and science of public administration,[22] it can be stated that, recognizing the growing role and importance of the science of public administration in society, beside universities, courses belonging to the frames of science *Basics of Administration, Introduction to Public Administration*) are found in the training program in the majority of institutions educating social sciences.

Despite the expansion of the institutional network of education and training, it is the university where the independent foundation of science of public administration can be realized as it ensures the best conditions for autonomous, constructive, critical thinking and professional work.

The profile of science of public administration reflects the specificities of public administrative culture in Hungary. The legal aspect dominates in the teaching of the science of public administration. It is reflected by the thematic side of public administration departments at law faculties and also by the methods applied in education.

In the education of public administration law the basis is the called general part[23] which is overlaid by the topics belonging to the specific part (consumer protection, indus-

[22] Institutional and organizational education questions of the science of public administration is detailed in: Hajnal György- Jenei György, 'Közigazgatási rendszerek, valamint közigazgatás-, illetve közmenedzsment- tudomány és képzés Európában és Magyarországon' [Administrative Systems, Administrative Sciences, and Public Management Studies and Training in Europe and Hungary] (2008) 4 Közgazdaság 31–34.

[23] Fazekas Marianna-Ficzere Lajos (eds), Magyar közigazgatási jog. Általános rész [Hungarian Administrative Law: General Part] (Osiris 2006)

try management, traffic management, communication management, environmental and administration of protection of public order).

At most of the faculties, legal-normative approach is not the only way to examine and analyzing the practice and real process of public administration law. In most of the cases, there is a basic course,[24] and after that in favourable cases a seminar that focuses on the main questions concerning organization, personnel, functioning and financing. This proves that the need for interdisciplinary and multidisciplinary approach and examination is also present in education; however the playground and possibilities of endeavour are restricted by traditions of the faculty, physical and technical limits and the limits of the syllabus and professional and personnel facilities.

The educational program of law faculties is lasts several semesters with successive disciplines adopting different points of view and methods, which does not support the critics[25] contention that knowledge transfer and training is exclusively characterised by unilateral (legal-normative) approach. There has also been a change in the teaching of science of public administration beside the fact that legal-normative aspect has determining dominance as it is adequate with the nature of legal training.

Beyond the adjustment of the continuing expansion of educational programs to the variegation of public administration practice, it ensures favourable opportunities to integrate new scientific results. This way a more informal and closer relationship might be forming between the scientific research and its practical utilization.

The methodology of education and training is outstanding in higher education changing into mass education. The dominance of traditional and rigorous great lectures based on passive reception also adversely affects the efficiency of knowledge transfer and education of public administration law. A practical course requiring the exchange of ideas, consultation and continuous presence and ensuring the continuous exchange of ideas and consultation would better serve the transfer of deep professional knowledge and the rising of interest for public law[26] disciplines.

Due to the growing number of training institutions[27] and strong institutional interest, the palette of trainings has become wider as along with full time training, other type of training (correspondence training, night training, postgraduate training etc.)[28] have spread like wildfire.

To evaluate the relationship[29] of public administrative law education, training and the science of public administration, on the base of the above schematic snapshot, the following statements can be highlighted:

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[24] E.g. Basic Institutions of Public Administration, Introduction to the Science of Public Administration, Organization and Management of Public Administration, History of Public Administration etc.

[25] Hajnal-Jenei (n 22) 32–33.

[26] Basic studies of constitutional law usually the education of public administration law thus the public law background of the functioning of executive power can be considered to be known.

[27] Currently, nine institutions have legal training.

[28] Correspondence and other types of training, primarily serve financial purposes and rarely fulfil quality requirements, although they testify to the same qualification as full time training does.

[29] Optimally, the higher education of administration and science of public administration is the hall of science.

The pursuit[30] of the utilisation of scientific knowledge and results is perceptible at universities. The practitioners of Hungarian administrative science are open to new waves (international trends, theories, research methods etc.) and it serves favourable conditions to adaption together with professional motivation with foreign language knowledge and international relationship.

However, the incorporation of scientific results into legal training and education is relatively slow,[31] sometimes a potential one depending on circumstances and subjective decisions. The operation of formal and informal networks and the relationship of knowledge transfer are determined by many factors (sources, professional and personal momentum). The line of adaption of scientific results is hardly predictable thus the application of up-to-date knowledge often delays.

The professionals of both theory and practice share the same recognition concerning the necessary task of updating and modernising of science of public administration education[32] as aims and expectations concerning public administration have always been amending. This challenges not only education but research and science as well. At last, the quality of the science of public administration teaching influences the officials at administration, the prestige of the field, and finally the quality[33] of the branch of non-cabinet civil servants and the general social opinion on public administration.

5. Topics, methods, results

Due to historical traditions, the public administration law approach is determinative in the Hungarian science of public administration. It had significant influences in the beginning of the 20th century, except for the short period of Magyary school in the thirties; and legal-normative approach dominated again after 1945 in the era of the unfolding socialist science of public administration that was just seeking for its place and role.

As the centre of the the profession, the state administration, public administration law departments also prefer the legal approach. It is not only for professional and personal reasons rather this method is in harmony with the features and traditions of legal training.

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30 Public Administration Law Departments try to boarded knowledge and to help the students in the preparation of exams by publishing own lecture notes.

31 It is related to the fact that the results of social scientific researches are utilized after a relatively long period in contrast to the new results of researches of natural science.

32 In the words of Lajos Lőrincz: 'If the basic legal training aims to have regard to the knowledge needs of an official of today, beyond the enrichment of economic knowledge it has to strengthen the education of science of administration and the science of management and organisation.' Lőrincz Lajos, 'A magyar jogászképzés néhány gondjáról' [On some troubles of the Hungarian education of Law Students] (2003) 53 Magyar Közigazgatás 6, 324.

33 Even in the lack of information concerning path tracking it is well known that most graduated law students are employed in public administration.

The advantages of the legal-normative approach and culture are obvious: they emphasise the relative stability of public administration, the enforcement of formal requirements, and the collateral nature of civil rights even in the period of political changes.

However, the approach operating with the principle of separation of powers and the classical means of state science and focusing on classical institutions of representative democracy (parliament, government, and ministries, local and regional authorities) does not take notice of those political and economic changes which contributed to the alteration of solid boundaries between state and society. By the 21st century, a new system of networks and relationships has been established which is hard to be describe and interpreted in the context of classical hierarchic systems of control and responsibility. The formation of government into governance[34] has placed on the agenda the thematic changes of science of public administration as well as the attitudinal changes of it.

The thematic and methodological transition cannot be characterized as a consistent, linear process. Primarily, it is the aspiration of the second and third generation of university departments and the staff academic scientific institutions that hallmarks the changes of the agenda of traditional public administration law and thinking.

The above-mentioned changes illustrate that the science of public administration did not remain insensitive to social correlations and the representatives of science have recognized the imperative of the age: the variegation and diversity of the science must be examined with a similar, rich conceptual and methodological apparatus and a new approach.

In the Hungarian science of public administration the activity of school-building professors embraces the high-level research of single specific legal areas but their opinion on science organisational issues is also normative.

Nowadays the dominant trend of public administrative law has a wide spectrum. The range overarches research with a constitutional and public law dimension, examination of constitutional basis and theoretical relationship of public administrative law as well as problems related to the inquiry of local authority proceedings and judicial ones.

Modernisation of the governmental system and its functioning in line with changes in public law and constitutional situation, revision of the system and operation of ministries and local organs and their examination in an international context also form the organic part of scientific research.

In the servicing practice of a modern state, public institutions, local public bodies have many public functions in the frames of the system of public administration. The studies on the topic play an important role in solving practical and regulatory problems related to the exercise of state supervision.

Representatives of legal dogmatism examine the questions of administrative sanction (the way of regulation, function etc.) and responsibility system to facilitate the foundation, legality and efficiency of the application of public administration law.

Problems of self-government system, the antagonism of power and function locating so as the open questions of local self-government keep challenging the professionals who,

[34] The state is not the only actor as it used to be in the past but completes its public task with the help of private and non-profit organisations and other formations of civil society using the different tools of coordination (hierarchy, market, and cooperation) as well as their combination.

beside their analysing and evaluating work, play an active role in modernisation of the legal norms of local authorities.

It is the result of cooperation between science and profession[35] that the Act of 2004 on the *Act on General Rules of Administrative Proceedings and Services* was adopted as a significant contribution of the representatives of science in preparation, drafting and in the release of contradiction arising in practice and interpretation was added to the work of practitioners.

The publication of *Közigazgatás nagy kézikönyve* (*Great Handbook of Public Administration*) is a monumental production of representatives of the legal direction. The authors[36] created a work which encompasses the material, procedural and organisational regulation as well as the specific, thematic part of public administration law.

The work is about the regulatory, supervisory and controlling function of economy administration in transition influenced by the circumstances of a market economy and covers the main areas and functioning of macro economy and the most important tools and methods of administration of different fields in national economy.

Research concentrating on the spatial structure of power has significant results such as the analysis exploring the correlations between self-governments and civil society.

Many scientists have examined the dynamism of the self-government system and the specificities of local politics in a political scientific and social view to shade the static, sometimes schematic image created by the exclusivity of legal perspective.

Examinations concerning different aspects of settlement public services form an independent research field in the research of self-governments. They have concentrated on financing public services, the discovery of advantages and disadvantages of different forms of services, the exploration of unwanted effects of privatisation and the size and efficiency of public administration. The complex and multi-threaded analysis of contradictions in management of self-administration, financial issues and legislation have the same importance.

Representatives of science of organization and management approach examine not only the sub-systems of public administration but the specific features of public bodies and the optimal organizational form of the realization of public services in a legal, sociological and dogmatic etc. view.

The direction examining the possibilities and application field of the electronic method of organisation of public administration is a dynamically developing area with a bright vision.

E-administration might strengthen the servicing part of administration, improve the efficiency and increase customer satisfaction. As a consequence, these changes might have a positive influence on public opinion concerning public administration.

The comparative researches on the science of public administration has been significantly appreciated since the change of regime as in the science of public administration there is a natural desire to discover other systems and their features and to explore the possibilities

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[35] Government decree No. 1052/1999. (V.21.) disposed on the establishment of codification committee for the preparation of the law on administrative proceedings.

[36] István Balázs, Gábor Bende Szabó, Ferenc Bérczesi, István Gelencsér, Imre Ivancsics, Pál Kara, Géza Kilényi, Viktória Linder, András Torma.

of their application. The accession to the EU and the compliance of requirements (openness, efficiency, transparency, effectiveness and accountability) resultant of membership provided a strong impetus for new research.

Integration into international circulation put the contextual examination of convergence- divergence of administration on the agenda in many aspects. According to research results, the structure and function of Hungarian administration, just like that of other states, has path dependency[37] which means that it is determined by historical and cultural traditions, institutional practices and pre-established values and norms. Modernisation is the order of our time, but as for its possibilities and alternatives, no successful and exclusively independent model or sample exists.

Comparison is part of a conscious, purposeful and methodically based research work which might enrich and expand knowledge of administration. Modern information and communication techniques and the dynamical development of international relations have a positive influence on these examinations.

Comparative examinations certainly do not allow one to ignore the real processes of and deep immersing in domestic administration, they should instead strengthen the motivation and incentive by exploring the experiences of other states. Values principles and good practices meaning the content of the frames of European Administrative Space mean only orientation points and not ready-to-use solutions for administration of Member States.

Following international cooperation and the transfer of knowledge (World Bank, OECD and SIGMA), post- socialist states in transition made an attempt to adopt, in different areas and at varying degrees, the methods and procedures of New Public Management.[38]

New developments of the turn of the century (globalization, terrorism, migration, epidemics, etc.) dramatically highlighted the untenable paradigm[39] of a vacated, weakened and hollow state and threatened the omnipotence of New Public Management which had been seemed to be unshakable.

The intellectual answer for the failure of state administration and public service is the Neo=Weberian theory, which proposes, beyond the maintenance of professional public service, the strengthening of state and the re-establishment of legality in administration.

According to experiences, in Central and Eastern European states with continental traditions the *New Public Management* had several negative impacts[40] due to the lack of pre-conditions (well-functioning democratic system of institutions, stable and predictable environment and legal system). The state, state regulation and its control is needed as the

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[37] Path dependency refers on the available political and professional options for decision-makers of administration. Reform strategies are embedded into the system of dominant values, norms and practices thus systems already functioning has more significant effect on the reform ideas than the preferable model.

[38] See C. Hood, 'A Public Management for All Seasons?' (1991) 69 Public Administration 3–19.

[39] The neoliberal state concept was the dominant theory of the socialist-liberal democrat governance in Hungary.

[40] It revitalised dominance, the control of politics over public service contradicts the preferable development and the professional and personal stability. In Hungary the political governance announced in 2002 and the view of the liberal, economic and market approached public service practice have already had countless examples: the disturbances of the health care system and the educational system, anomalies of the public procurement etc.

regulation of economic and social processes cannot rely exclusively on the market. András Sajó[41] illustrates the necessity of returning to the Weber-basics as he discusses in detail the reasons for breaching of norms and their consequences such as their social impacts.

Despite the critical statements, the spectrum of administration management or public management has expanded by presenting their political, economic, cultural background, state specific forms and system of tools. *New Public Management* as the paradigm of public service management pointed out, among others, that, although the functioning of public institutions is basically regulated by legal norms, complex political, economic and management aspects are also present during the real processes of function.

Empirical tools are essential for the exploration and cognition of the reality of administration. Sociological methods have already been incorporated to administrative–scientific examinations. The science of administration has no independent sociological branch but several generations are at home in the world of empiricism and take its methods for granted.

Public policy analyses bring new colours to the Hungarian administrative sciences. Focused examination of the Hungarian reality of public policy making and management might lead to information on the reasons of state failures and their forms of manifestation.

The spread of statistical approach and the planning of financial processes and policy-making so as the preparation of regulatory conception is the narrowest cross-section of administration. According to experience, politics is ahead of professional arguments, and organisational interests overrule intentions to meet real needs. In the recent period, even if professional conceptions had been made, they have not unified into an integrated strategy. During the process of conceptualisation, no appropriate fundamental research, surveys and examinations have been made to give a real view of the system of problems and objectives. In the lack of monitoring and feedback, the aspects of executions have not incorporated into the system and thus the result could not meet the modified needs.

The problems of the personnel system of civil servants is a traditional and always timely research topic in Hungarian science of public administration. More aspects, individually or in context, are examined: the form of selection, the advantages and disadvantages of the chosen model, the questions of the training and further training. Nowadays, that mainly those empirical researches has been evaluated which is not satisfied with the analysis of one model; it is focuses on dimension of efficiency by putting the output in focus.

6. Summary

The Hungarian science of public administration has significantly modified in the last two decades on the path of social needs and self-development and it has still been in formation and got a new design.

Among changes, the most important is a thematically one. Although all the three subsystem of administration (central, regional and local bodies) have different preferences, they form the subject of research and examinations. Beyond this, the research on the national

[41] Sajó (n 12) 405–409.

and international relationship, the modernisation of administrative work, the diminution of bureaucracy, the servicing and electronic administration, the questions related to installation and application of modern informational technology devices, the problems of human relations management, etc. is also on the agenda.

The openness and problem sensitivity of Hungarian science of public administration has improved thus it is able to react[42] relatively early to international trends, new waves, theories, and paradigms. Their exploration, processing and systematisation usually get realised with more or less delay. Nevertheless, this reactive tracking of actualities involves the possibility to make a distinction[43] between useful theories and fleeting fashionable directions.

The international relations and reputation of research needs development; however positive changes have also happened in this field. At the moment, relationship means participation in editing committees of professional reviews, cooperation with the directory board of professional organisations (NISPA, IIAS, EGPA). Participation at international conferences has become a natural element of professional work such as regular publication. It is promising that more and more Hungarian scientists have also reached status in thematic research of international scientific groups.

Beyond the spectacular development of research spectrum, the improvement of methods of science of public administration is conspicuous. Beside the legal-normative direction and approach, research concerning science of management, principle of organisation, sociological, political, public policy and comparison, etc. have gained ground. The complex and combined examinations often with sophisticated methods are significant steps toward a better comprehension of the processes of the Hungarian administration. The '*Sollen*' vision of science of public administration is more complete due to the '*Sein*' approach. Change in vision and methodology leads to the strengthening of critical function,[44] which promotes the evolution of scientific debates.

Even in view of presented fragments of research topics and directions, it is obvious that the science is gradually getting multi-and interdisciplinary. The former exclusive role of legal direction of administrative law has weakened, and schools and institutions are recognized in the profusion of methods and techniques. However, this positive development has not yet involved the integration and synthesis of partial results that is the science of public administration is still the ensemble of partial sciences that examine administration with different scientific methods. This way the normative sociological and statistical analysis of public service law and research of international aspects coexist well even if the applications of different methods sometimes lead to different results.

The learning and exchange of ideas on scientific results and research experiences such as their application in education and practice would be facilitated by a regularly and

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[42] This fact is in connection with the endless possibilities of information and communication devices, the dynamical development of international relations and last but not least the changing attitude of the representatives of the science.

[43] This possibility has been mainly idle; it is rather the desultory takeover of different models and certain elements that has happened.

[44] Jakab András, 'A közigazgatási jog tudománya és oktatása Magyarországon' [The Science of Administrative Law and its Education in Hungary] (2010) 2 Új Magyar Közigazgatás 9–10.

scheduled relationship between the different workshops of the science of public administration (departments, institutions, etc.). Their compliance would lead to an optimal usage of professional, personnel and financial sources and it would also make a profit of advantages of the institutional forms of cooperation and coordination. The future is promising as the extensive use of modern information and communication techniques create the possibility of direct contacts and the development of the new forms[45] of cooperation.

Relationship between education, research and science shall have a stronger relationship with the practice of Hungarian administration. In doing so, knowledge of real processes might become more accurate and grounded. The spread of empirical and comparative studies may cause a qualitative change in the relationship between theories and practice so as in the methods and results of science.

However the practice still focuses on politics[46] as many times in the past, but is does not mean the rejection and implementation of the necessity of theoretically grounded modernisation programs[47] even if the dynamism of the sub-system of administration is different from that of science.

Overall, the two spheres gradually converge which not only ensures the planning of researches (adequate hypotheses, determination of methods etc) but increases the likelihood of the success of its realisation.

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[45] Video conferences or common preparation, modernisation and practical use of electric textbooks might be the break point.

[46] The low number of subscribers to professional journals is one of the characteristics of this situation.

[47] The most important example could be the so called 'Magyary program', which is a quite comprehensive development initiative.

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Some features of the foreign language literature of Hungarian public administration in the past quarter century

1. Introduction

In 2010 a project was completed under the supervision of academician and professor Lajos Lőrincz, which aimed at analysing the public administration of each EU member state based on previously selected aspects [the result of the research is the following work: Szamel Katalin – Balázs István – Gajduschek György – Koi Gyula (eds), *Az Európai Unió tagállamainak közigazgatása* [Public administration of the member states of the European Union], (Complex 2011)]. A 'reasonable', logical continuation of this great challenge is an English publication presenting Hungarian public administration as a whole and in its complexity, which will receive the title *Hungarian Public Administration and Administrative Law* and will be realised with the cooperation of the National University for Public Service and the Lőrincz Lajos Public Law Research Centre.

It is fortunate that the preparations of this volume coincides with the decision of the 9th Economics and Law Section, Sub-Committee on Public Administration of the Hungarian Academy of Sciences made in April 2013, which starts a survey about the current situation of the science of Hungarian public administration, mainly by reviewing legal literature in the field of public administration, and by mapping the active schools and scientific research centres which undertake research in the area of public administration.[1]

This chapter seeks to contribute to both projects with the review of – mainly English language – scientific works about any aspects of Hungarian public administration published in the past 25 years.

The preparation of the *Hungarian Public Administration and Administrative Law* is especially reasonable, because no book presenting Hungarian public administration as a whole and from the aspects of several fields of science has been published in English or any other foreign language before.[2] In the examined time period certain small monographs

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1 Sketching the limits of public administration and of its science is not the subject of this work, but the basic character of the research requires the analysis of these notions in the broadest possible scope: not excluding, if possible, any of the works exploring the diverse phenomena of Hungarian public administration with scientific thoroughness in a foreign language.

2 This is important also because it may be seen that the number of such works – providing reviews and describing national public administrations – as well as the demand for such works have risen lately at international level. See for example Saltanat Liebert, Stephen E. Condrey and Dmitry Goncharov

or lengthier chapters[3] only dealt with the description of the main public administration institutions[4], the place of public administration in the state organisation[5], the sub-systems – sectoral or functional – of public administration[6], and the main material changes of administrative law[7]. Furthermore, it shall be stated – as a welcome fact – that in the past few years the number of works increased among Hungarian publications which describe different – mainly European – public administration systems.[8]

There are several explanations for the lack of a comprehensive work presenting the Hungarian situation. Among these the most obvious is the one which assumes the relative isolation of the science of Hungarian public administration, and supports its findings mainly with the internal structure of the science of public administration, with the traditional and significant relationship of public administration to a specific form of state, and with reference to linguistic limits.

It was Lajos Lőrincz who pointed out that a (legal) institution may become the subject of material comparison and conclusions only through the thorough examination of the legal and social (historical, cultural) context: 'However, we shall state that it is dangerous to talk about international tendencies and useful examples, "best practices" in general, in so far as the limit of comparative legal analysis is that these concern the examination of only certain legal institutions, legal solutions or structures, and by this they contravene the requirement that social phenomena shall be analysed thoroughly each time, in their complexity.'[9] If we consistently hold on to this idea, it becomes obvious that for the introduction of Hungarian public administration to non-Hungarian readers, at least one basic work is necessary which, for the analysis of any public administration issue, is able to provide, in addition to the definition of the most general notions and the description of the general features of the legal system, access to the details of the related area, including the accessibility of the relevant – foreign language – legal literature. A conclusion which has been confirmed several times is that in the case of Hungarian authors writing in English the use of any – basic, elementary – notion (e.g. client in administrative proceedings) requires separate explanation and description: it is often necessary to give a detailed description of the same concept used in the given target language or in the legal system related to the transmitting language.

(eds), Public Administration in Post-Communist Countries. Former Soviet Union, Central and Eastern Europe, and Mongolia (CRC Press 2013).

3 Among short but comprehensive works see for example: Lőrincz Lajos, 'Administrative Law. Introduction to Hungarian Law' in A. Harmathy (ed), (Kluwer 1998) 39–50.

4 Csink Lóránt, Schanda Balázs and Varga Zs. András (eds), The Basic Law of Hungary – A First Commentary, (Clarus 2011).

5 Balázs István et al., The Hungarian Public Administration in the System of State Organs (Miniszterelnöki Hivatal 1997)

6 Dr. Vadál Ildikó, Die Verwaltungsorganisation in Ungarn: Vergleichendes Verwaltungsrecht in Ostmitteleuropa, (Verlag Österreich 2004); L. Bokros and J-J. Dethier (eds), Public Finance Reform During the Transition: the experience of Hungary (The World Bank 1998).

7 Rixer Ádám, Features of the Hungarian Legal System after 2010 (Patrocinium 2012).

8 See for example Fábián Adrián (ed), Válogatott európai önkormányzati modellek [Selected European local governmental models] (Dialóg Campus 2012).

9 Lőrincz Lajos, Összehasonlítás a közigazgatás kutatásában [Comparison in the research of public administration] [Székfoglalók [Inaugural Speeches] Volume 5, MTA 2000) 1–13.

One of the significant advantages of such work is that it allows for the longer exposition of the 'objective' features of the given public administration system, thereby providing general background and framework for detailed research, at the same time giving clear distinctions through conscious comparison with other legal and public administration systems. The present literature of international public administration gives several examples in this field which show the way forward.[10]

In our view a similar work – as described above – may play great role in a sort of linguistic approach to attempts at describing Hungarian public administration in English and in establishing a more unified English vocabulary; this will be able to improve the accessibility of certain institutions of Hungarian public administration, and through this it may become a popular subject of analysis.

2. Main features

2.1. Basic peculiarities of the use of language

Since the 1980s Russian language literature – works published by Hungarian authors in Russian – has started to fade away[11], and at the same time the traditional German orientation – which emerged during state socialism as a tendency – as well as publication in German has been replaced with works published in English. However, we shall state in advance that – as will become apparent later – there are some (partial) fields (e.g. some issues of administrative proceedings) in which the dominance of German remained in the attempts at description in foreign languages.

It may seem to be a minor, but extremely significant fact that for example the Hungarian journal of the Hungarian Academy of Sciences, Institute for Legal Studies (today the Centre for Social Sciences of the Hungarian Academy of Sciences, Institute for Legal Studies) originally contained French and Russian resumes, which have been replaced exclusively with English summaries since 1991.

Reviewing of foreign language literature available about Hungarian public administration it may be stated that Hungarian authors have published articles in the languages of the surrounding countries, and the domestic scientific literature of these countries also provides

[10] See e.g.: Martina Künnecke, Tradition and Change in Administrative Law: An Anglo – German Comparison, (Springer 2010).

[11] Works published after 1990 by Hungarian authors in Russian – focusing on Hungarian public administration – may be considered exceptional; their citation data supports this statement. See e. g.: Bándi Gyula, 'Otvestvennost i sankcii, ugolovnaya otvestvennost v Vengrii ' in O.L. Dubovik, Francuana Komt and Ludwig Krämer (eds.): Ekologicheskaya prestupnost v Evrope/Environmental Crime in Europe (Gorodec 2010) 141–158. This was/is basically a self-exciter process: for example, majority of the Russian public law and administrative law journals which were available earlier is not accessible in any Hungarian libraries (the Gossudarstvo i Pravo is only available in the CEU's library; in the Library of the Parliament there are only issues published between 1946 and 2001).

examples of works related to or analysing an aspect of Hungarian public administration. Still, in general the quantity (and scientific value) of Serbian, Ukrainian, Slovakian, Czech[12] and Romanian[13] language literature significantly falls behind the works prepared in the transmitting languages – typically in English – which were written in the same scientific research centres. In connection with this it must also be mentioned that even though the most widely interpreted administrative disciplines (basics of management, public administration law, etc.) are present at courses of the neighbouring countries conducted in Hungarian (or are available in Hungarian, as well)[14], it may be observed that the results of publication activities of researchers – with Hungarian as their mother tongue – teaching and living there are available mainly in English language publications.

Therefore it may be concluded that while becoming a transmitting language English overtook the previous role of Latin, German and Russian not only in communication with the neighbouring nations, but also in various fields of sciences, among them in the science of public administration (although it has not of course replaced other languages entirely).

In the examined area, regarding linguistic formulation it may be stated that – even though most works rely on the cooperation of linguistic and professional editors – the terminology of these is very diverse even in case of similar subjects. In some cases in the translations of the most basic notions (The Fundamental Law of Hungary; direction, supervision, inspection) the lack of unified terminology is stunning, as well as the commutability of similar words with different meaning. This 'diversity' which often makes domestic scientific dialogue and the understanding of foreign readers difficult has several reasons.[15] Among them we shall mention the difficulties of drawing a parallel with Anglo-Saxon legal terminology, the deficiencies of EU terminology[16], and also the fact that there is no English-

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[12] For example: Halász Iván and Koi Gyula, 'Partnerství veřejného a soukromého sektoru v Madarsku' in Tomaš Louda–Jiři Grospič (eds), Partnerství veřejného a soukromého sektoru: Právní a ekonomické aspekty (Ústav státu a práva AV ČR 2010) 218–222.

[13] E.g. Irina Sorică, Răspunderea disciplinară a salariaţilor [Disciplinary liability of employees] (epub – eBook, Wolters Kluwer 2010) – It contains a comparative chapter about the disciplinary liability of employees, among them state employees; Habil. Horváth László–Papp Lajos László, 'Controlul transportului internaţional de bunuri şi pasageri la frontiera comuna dintre România şi Ungaria' [The supervision of international transport of goods and persons at the Romanian-Hungarian border] (2010) 1 Dreptul 27–48.

[14] E.g.: Babeş-Bolyai Science University Faculty of Law (Cluj Napoca); Selye János University Faculty of Economics (Komarno); Novi Sad University Faculty of Economics (Novi Sad); College of Nyíregyháza Faculty of Economics and Social Studies Berehove Campus (Berehove). Regarding certain relations of Hungarian erudition abroad which exceed the limits and subject of this essay see: Fábri István, 'Magyar nyelvű felsőoktatás and tudományosság a Kárpát-medencében' [Higher education and erudition in Hungarian in the Carpathian Basin] (2001) 8(4) Régió 132–158.

[15] The diversity of the foreign language translation of Hungarian words and expressions is due to the fact – beyond the narrowly interpreted linguistic and language use difficulties – that political decision makers and law enforcement authorities do not rely enough on the results of scientific research during the preparations of decision making, often they only use them selectively and subsequently in order to legitimize their decisions.

[16] In this regard the practice of supranational courts (ECHR, ECJ) greatly contributed to the unification of terminology, especially with the establishment of a 'more international' language use, which goes beyond Anglo-Saxon legal institutions. Nevertheless in the precise description and use of 'local'

Hungarian and Hungarian-English legal/administrative dictionary which could be used well in the everyday scientific and/or authoritative activities, reflecting the widely used artificial words and the presently valid law, using clear definitions. This is especially surprising in light of the fact that on the market there are about a dozen (!) such publications, including electronic dictionaries, glossaries and databases.[17]

The need for the existence and continuous updating of professional dictionaries is significantly and continuously supported by the terminology and translation uncertainties surrounding the old-new (e.g. district, administrative court) and brand new names of the public administration's institutional system.[18]

It would be useful to examine this question broadly – even though it would exceed the limits of this work – in reflection to the transformation and development tendencies of Hungarian legal and administrative terminology: thereby assessing the main features of the intervention of foreign terminology in the general Hungarian language, as well as into legal/administrative technical expressions. Linguist Béla Pomogáts directs attention to an important context when he states: 'Since the middle of the 1980s (therefore not only since the transition) a large-scale civilization transition has been going on in Hungary (…) and this has affected the history of the language, too.'[19] It would be extremely exciting to analyse through which mechanisms the new domestic phenomena of the expressions and institutional solutions originating elsewhere receive their linguistic form in today's Hungarian scientific environment/legislation, with special regard to the rate of foreign expressions and *half-Hungarian* words made upon the grammar rules of other languages. Pomogáts summarises the significance of this issue and the possible solutions of the problems as follows:

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specialities – which reflect on the real meaning of words – there are still deficiencies and significant parallelism.

17 See for example: Angol – Magyar jogi, kormányzati and politikai értelmező szótár – magyar-angol szószedettel [English-Hungarian legal, governmental and political dictionary – with Hungarian-English glossary] (PANEM 2006) 711 p.; Magyar – Angol – Magyar jogi szakszótár [Hungarian-English-Hungarian legal dictionary] (KJK-KERSZÖV 2005), 399 p.; dr. Hazafi, dr. Kovács, dr. Németh, dr. Szász, dr. Takács, Tóth, Négynyelvű közigazgatási and Európai Uniós szótár [Administrative and European Union dictionary in four languages] (KJK-KERSZÖV 2003) 246 p.; Mag. Franz Heidinger, Andrea Hubalek, Dr. Bárdos Péter, Dr. Bárdos Rita, Angol-amerikai jogi nyelv: Angol-magyar, magyar-angol szakszótár [English-American legal language: English-Hungarian, Hungarian-English professional dictionary] (HVG-ORAC 1999); Kiss Eszter, Piliskó Szilvia, Az Európai Unió intézményrendszere and jogi terminológiája angol nyelven: Institutions and the Legal System of the European Union in English (KJK-KERSZÖV 2003) 227 p.; Móra Imre, Angol-magyar jogi szótár [English-Hungarian legal dictionary] ('MENTOR' professional dictionaries, Adecom Kommunikációs Szolgáltató Rt. 1997) 327 p.; Bokorné Szegő Hanna, Böszörményi Jenő, Kemenszki Ágnes, Nemzetközi kapcsolatok alapszótár [International relations basic dictionary] (Aula 2003); and in addition to electronic databases international and EU language databases are also available freely (e.g. IATE). In German also see: Ary Ildikó, Molnár Lászlóné, Jenőfi György, Német-magyar, magyar-német közigazgatási szótár [German-Hungarian, Hungarian-English administrative dictionary] (Paginarum 2002) 370 p.

18 Dr. Kovács Tímea, A bíróságok új elnevezései angol nyelven, [New names of courts in English] http://www.jogiforum.hu/blog/5/57> accessed 11 April 2013.

19 Pomogáts Béla, 'A nyelvstratégiától a kulturális stratégiáig' [From language strategy to cultural strategy] in Hódi Éva (ed), Nyelvstratégia and nyelvművelés [Language strategy and the development of the language] (Szarvas Gábor Nyelvművelő Egyesület 2011) 77.

'Naturally, it is necessary to take in foreign words and expressions, but only if there is no Hungarian word available for a new concept, phenomenon or tool, or we cannot create one with some ingenuity for the development of the language. Therefore it is certain that a new language renewal or at least language protection movement is needed, just as in the era of Kazinczy, or later that of Kosztolányi.'[20] The question may be formulated: is a conscious 'language renewal' is possible in case of Hungarian legal or administrative technical expressions, and if yes, at which fields and at what degree?

2.2. Some features of foreign language works, with special attention to the analysed topics

Immediately in the years after the transition, some works were published which contained references to the changing circumstances and new requirements of a changing era[21], and through non-Hungarian authors they documented the starting processes of the transition well.[22]

In the past quarter of a century it may be observed that certain fields of Hungarian public administration – at least partially – have become 'exciting' and therefore worth comparison through their post-socialist state.[23] It may be also observed that the majority of international comparative works – materially dealing with administration issues – present Hungarian features among the post-Socialist countries, together with them, by comparing Hungarian data with their data.[24] The significance of this method is magnified by statements about the existence of a post-Socialist legal family,[25] which attempt to present the specific working mechanisms – typical for the members of this legal family – as part of the 'Western law legal type'.[26]

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[20] ibid 78.

[21] Lőrincz Lajos, 'On the economic and political determinants of public administration' in Szoboszlai György (ed) Politics and Public Administration in Hungary (Akadémiai Kiadó 1985) 71–107; Bándi Gyula, 'The system of legal responsibility in environmental protection' in Tamás András, Lodner Dorottya (eds), Environmental control and policy (Discussion papers, Proceedings of the Hungarian – Polish Seminar on the Theoretical Problems of Environmental Control and Policy, Pécs, October 29–30, 1985; Centre for Regional Studies of Hungarian Academy of Sciences, 1988) 111–122; Kilényi, Géza, 'Ungarn schreitet in Richtung Rechtsstaatlichkeit' (1989) 23–24 Europäische Grundrechte Zeitschrift 513–518.

[22] Anis Khobani, A study on the Local Government Councils (Candidate Dissertation, Államigazgatási Szervezési Intézet 1989) 219 p.

[23] See for example: Gérard Marcou, Verebélyi Imre (eds), New Trends in Local Government in Western and Eastern Europe (IIAS 1993).

[24] Denis J. Galligan, Richard H. Langan, Constance S. Nicandrou (eds), Administrative Justice in the New European Democracies: Case studies of Administrative Law and Process in Bulgaria, Estonia, Hungary, Poland and Ukraine (Centre for Socio-Legal Studies, University of Oxford – COLPI 1998) 652 p.

[25] Fekete Balázs, 'A jogi átalakulás határai – egy jogcsalád születése 1989 után Közép-Kelet-Európában' [Limits of legal transition – the birth of a family of law after 1989 in Central-Eastern-Europe] (2004) 1(1) Kontroll 4–21.

[26] ibid 19.

During the time of the transition, several monographs were published in English; these mainly focused on the latest (public) policy developments related to human rights, influencing the operation of the state, on the changes of the state structure,[27] on the future of great provider systems and public services,[28] and provided descriptions of the new rules about economy opening towards the West;[29] often by publishing the – sometimes full-length – translation of such laws.[30]

From the books published in this period the ones edited by Klára Takács and Tamás Horváth M. must be mentioned, which, even though they do not dare to provide a thorough review – containing data for public policy environment, institutional system, and the trendy organisational principles in an itemised way – still try to list the main changes in the books published by the Hungarian Institute of Public Administration in three years in a row.[31]

It may also be observed that after the transition of 1989 the number of works presenting the Hungarian situation[32] – most often favourably – increased directly before[33] and after the accession of the Republic of Hungary to the European Union. At the same time, the 'demand' for such works also increased abroad. Since 2004 – in line with current trend and expectations – more and more relevant, shorter or longer works have dealt with the general issues of the obligations of EU states, the execution and enforcement of EU law, and with specific cases related to certain areas of public authority – in fields in which this is feasible.[34]

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[27] E.g. Navracsics Tibor, 'Public Sector Reform in Hungary (1990–1995)' in Ágh Attila and Ilonszki Gabriella (eds), Parliaments and Organized Interests: The Second Steps (Hungarian Centre for Democracy Studies 1996) 280–307; Máthé Gábor (ed), Freedom of Information Towards Open Governments in the New Democracies (Államigazgatási Főiskola 1992) 97 p.

[28] Concept for Higher Education Development – Hungary. (Co-ordination Office for Higher Education 1991) 81 p.

[29] E.g. Kilényi Géza, Lamm Vanda (eds), New Tendencies in the Hungarian Economy (Studies on Hungarian State and Law 2., Akadémiai Kiadó 1990).

[30] E.g. Kilényi Géza, Lamm Vanda (eds), Democratic Changes in Hungary: Basic Legislations on a Peaceful Transition from Bolshevism to Democracy (Studies on Hungarian State and Law 3., Public Law Research Center of the Hungarian Academy of Sciences 1990).

[31] Horváth M. Tamás (ed), Public administration in Hungary: A collection of studies published by the Institute in 1993 in English and French language (Hungarian Institute of Public Administration 1994) 259 p.; Takács Klára (ed), Public administration in Hungary: Collection of studies published by the institute in 1992 in English and French language (Hungarian Institute of Public Administration 1992), 216 p.; Takács Klára (ed), The reform of Hungarian public administration. Collection of studies published by the Institute in 1991 in English and French language (Hungarian Institute of Public Administration 1991) 226 p.

[32] Lamm Vanda (ed), Transformation in Hungarian Law, 1989–2006: Selected Studies (Akadémiai Kiadó 2007) 230 p.; Boros Anita, 'Europeanization of Administrative Law with a View to Hungary' (2010) 27(4) The Romanian Review of European Governance Studies 19–35.

[33] See for example: Lőrincz Lajos, 'European integration – Hungarian public administration' in Studies on Common European Administration (2000, 321–336; Jon Fájl, Leo Goedegebuure (eds), Real-Time Systems. Reflections on Higher Education in the Czech Republic, Hungary, Poland and Slovenia (CHEPS – VUTIUM 2003) 246 p.

[34] E.g. Fehér István, 'Meeting EU standards in Eastern Europe: The case of the Hungarian agri-food sector' (2002) 4(2) Food Control 93–96.

In several fields – e.g. in public procurement law – where the EU is present as regulator with its directives, a case emerging in Germany, Spain or France is not only relevant for the domestic law enforcer or researcher, but also for that of other member states of the EU.

The majority of the latest domestic – partly comparative – works presenting Hungarian public administration in English or in other foreign languages are mainly of *country report*, no matter whether these only present certain fields[35] or administrative aspects[36] or they are comprehensive works analysing the most important basic data. Among these there are several works prepared or ordered by state organisations, mainly with general information purposes.[37]

Comparison is often not limited to confronting national circumstances with institutions and practices observable in foreign countries in similar areas, but the exploration of discrepancies between national legal regulations and actual practices is also a significant issue.[38]

Fortunately there are also some comprehensive – and lengthy – works available which – based on the examination aspects determined by the given scientific field – present all significant 'subsystems' of Hungarian public administration.[39]

Among the 'trendy issues' we shall definitely touch upon the subjects of regionalism,[40]

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35 See for example Richard Leyrer, 'Finding the Right Path of Policing in Hungary' in Gorazd Mesko et al. (eds), Handbook on Policing in Central Europe (Springer Science – Business Media New York 2013); Szabó Eszter, 'Contributions to the Hungarian legal aspects of the protection of cultural heritage' (2009) 39(1) Juridical Current.

36 See for example Koi Gyula, Torma András, Varga Zs. András, 'Public-Private Partnership in Hungary' in François Lichére (ed), Partenariats public-privé: rapports du XVIIIe congrès de l'Académie Internationale de Droit Comparé/Public-Private Partnership: Reports of the XVIIIth Congress of the International Academy of Comparative Law (Bruylant 2011) 353–395.

37 E.g. Csapody Pál (ed), Rules on the Auditing at the State Audit Office of Hungary (State Audit Office 2004) 90 p.; Annual Report of the Parliamentary Commissioner for Data Protection and Freedom of Information – 1999 (Office of the Parliamentary Commissioner for Data Protection and Freedom of Information 2000) 138 p.; Innovation Policy of the Hungarian Government (National Committee for Technological Development 1993) 85 p.

38 Hajnal, György, 'Interactions between the Study and the Practice of Public Administration in Hungary' (2006) 18(1) Transylvanian Review of Administrative Sciences 49–67.

39 Hajnal György–Jenei György, 'The Study of Public Management in Hungary: Management and the Transition to Democratic Rechstaat' in Walter Kickert (ed), The Study of Public management in Europe and the US (Routledge 2008).

40 Pálné Kovács Ilona, 'Top down regionalism – EU adaptation and legitimacy in Hungary' in Lütgenau S. A. (ed), Regionalization and Minority Policies in Central Europe: Case Studies from Poland, Slovakia, Hungary and Romania (Foster Europe – International Studies 1., Studien Verlag 2011) 113–127; Enyedi György–Pálné Kovács Ilona, 'Regional changes in the urban system and governance responses in Hungary' (2008) 1(2) Urban Research and Practice 149–163.; Pálné Kovács Ilona–Horváth Gyula–Christos J. Paraskevopoulos, 'Institutional "legacies" and the shaping of regional governance in Hungary' (2004) 14(3) Regional and Federal Studies 430–460.; Enyedi György–Tózsa István (eds), The Region: Regional Development, Policy, Administration, E-government (Akadémiai Kiadó 2004) 480 p.

self-governmentalism,[41] non-central state administration,[42] territorial inequality, territorial planning, which are overrepresented among works published either in Hungarian or in any foreign language.[43] Similarly, the number of works published in English, presenting issues related to different public services,[44] revealing the control mechanisms of Hungarian public administration,[45] or describing the human resources issues of public administration is quite

[41] See for example: Verebélyi Imre, 'The main characteristics of the Hungarian system of local government' in Patrice Gélard, Gérard Marcou (eds), L'état et le droit d'est en ouest: Mélanges offerts au professeur Michel Lesage (Société de législation comparée 2006) 537–547; Patyi András, 'The Authonomy of Local Governments and the New Constitution' in Hulkó Gábor, Patyi András (eds), Public Finances – Administrative Autonomies (Universitas-Győr Nonprofit Kft. 2012) 549–561.; Horváth M. Tamás, 'Humpty Dumpty': Problems of Globalization Issues Illustrated by Local Self-Government Development' (2007) 1(2) Nemzetközi Közigazgatási Szemle/International Journal of Public Administration in Central and Eastern Europe 2–19.; Pálné Kovács Ilona, 'Local governance' in Henderson K, Pettai V, Wenninger A (eds), Central and Eastern Europe Beyond Transition: Convergence and Divergence in Europe (European Science Foundation 2012) 51–54.; Steiner Erika and Darázs Ida, The Characteristics of the Hungarian Local Authority System and the Municipal Economic Management (ÖNkorPress Kiadó Kft. 2005) 54 p.; Hoffman István and Veres Enikő, 'Some thoughts on the collegial leadership of the local governments' (2013) 22(3) Journal of Public Law and Policy 157–177; Pálné Kovács Ilona, The Basic Political and Structural Problems in the Working of Local Governments in Hungary (Discussion Papers, 14., Centre for Regional Studies 1993), 36 p., Tamás M. Horváth, 'Le cas de la modernisation administrative dans les collectivitand locales hongroises' in Marcou, G. and Wollmann, H. (eds), Ou en est la gestion locales? (CNRS Editions 2008) 225–242.

[42] Barta Attila, 'New Trends in the Territorial Representation of Governments on the Recent Transformation of Hungarian Territorial State Administration' (2012) 27(1) Juridical Current 75–84.

[43] Kuttor Dániel, Analysis of the territorial disparities in the Visegrad Four Countries – Measurement and visualisation of territorial processes at regional level in Central Europe (Conference paper, International Conference on 'Regions: The Dilemmas of Integration and Competition'; 27–29 May 2008, Prague, Czech Republic, Regional Studies Association 2008).

[44] Hoffman István, 'Some Thoughts on the System of Tasks of the Local Autonomies Related to the Organisation of Personal Social Care' (2010) 8(10) Lex Localis – Journal of Local Self-Governments 323–343; Boros Anita, 'The implementation of the Services directive in Hungary' in Ulrich Stelkens, Wolfgang Weiss, Micael Mirschberger (eds), The Implementation of the EU Services Directive. Transposition: Problems and Strategies (Springer 2012) 283–309; Paulovics Anita and Szabó Annamária Eszter, 'Hungarian Cultural Administration' (Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica, Tomus XXIII, Miskolc University Press 2005) 371–379.; Sárközy Tamás, 'Regulation in sport as a borderline case between state and law regulation and self-regulation' (2001) 42(3–4) Acta Juridica Academiae Scientiarum Hungaricae 159–180.

[45] See for example: Dr. Rozsnyai F. Krisztina, Anderungen im System des Verwaltungsrechtsschutzes in Ungarn [Die Öffentliche Verwaltung, May 2013, Heft 9 (Sonderdruck)] 335–343.; Tamás András, 'Control of Public Administration' in Imre Miklós, Lamm Vanda, Máthé Gábor (eds), Közjogi tanulmányok Lőrincz Lajos 70. születésnapja tiszteletére (Budapesti Corvinus Egyetem – Károli Gáspár Református Egyetem – MTA Jogtudományi Intézete 2006); Varga Zs András, Alternative Control Instruments over Administrative Procedures (Schenk Verlag GmbH 2011) 64 p., Patyi András and Gellén Márton, 'Efficiency and Judicial Procedures – Friends or Foes? Analyzing the Relationship of Efficiency and Judicial Procedures in Theory and in Practice' (2011) 22(4) NISPACEE Journal of Public Administration and Policy 67–85.; Patyi András, Protecting the Constitution (The Characteristics of Constitutional and Judicial Review in Hungary 1990–2010) (Schenk Verlag 2010) 63 p.; Harmathy At-

high in the past period.[46] Certain procedural law issues also belong to the popular topics – mainly in essays published in German.[47] The number of works dealing with the subject of public procurement has increased,[48] several among them focus especially on the Hungarian appeal practices of public procurement-concession contracts.[49]

A further tendency – which may be especially observed more recently, since the emergence of the economic crisis – is that numerous works examine the topics of public finances[50] and corruption.[51] Other 'current' topics are Roma self-regulation,[52] minority local governments,[53] presentation of the results of legislation related to Roma people[54] and of the

tila (ed), International conference on institutional guarantees of the safeguarding of constitutionalism (Hungarian Academy of Sciences, Research Centre for Political Science 1990) 270 p.

46 Horváth István, 'Actual questions of public service labour law: Legislative recommendations in Hungary' (2008) 7(2) Pécsi Munkajogi Közlemények 7–27; Gerencsér Balázs Szabolcs. 'Ethics in autonomous public service' (Schenk Verlag 2011) 52 p., Gajduschek, György and Hajnal, György, Civil Service Training Assistance. Projects in the Former Communist Countries: An Assessment (LGI Publications 2003), György Gajduschek, György Hajnal, Evaluation of the Hungarian General Civil Service Training Program (Discussions Papers No. 16., Open Society Institute 2000) 33 p.

47 Rozsnyai Krisztina, 'Europäisierung des ungarischen Verwaltungsverfahrensrechts' in W. Heun – V. Lipp (eds), Europäisierung des Rechts: Deutsch – Ungarisches Kolloquium 2007 (Universitätsverlag Göttingen 2008); Fazekas Marianna, 'Die Erneuerung des Verwaltungsverfahrens in Ungarn' in H. Hill and R. Pitschas (eds), Europäisches Verwaltungsverfahrensrecht (Duncker&Humblot 2004); Boros Anita, 'Verwaltungsverfahren im Vergleich zwischen Deutschland und Ungarn – die wichtigsten Unterschiede im Bereich der Verwaltungsgrundsätze und des Grundverfahrens' in Christin Schubel, Peter-Christian Müller Graf, Oliver Diggelmann, Stephan Kirste, Ulrich Hufeld (eds), Jahrbuch für Vergleichende Stats- und rechtswissenschaften – 2012, (Nomos 2012) 147–160.

48 See for example Boros Anita and Gajdos Róbert, 'Public Procurement in Hungary and the past fifteen years of the Public Procurement Council' (2012) 4(1) Public Procurement Law Review 30–50.

49 Barabás Gergely–Nagy Marianna, 'Le contentieux des contrats publics en Europe – Hongrie' (2011) 43(1) Revue Francaise de Droit Administratif 47–53.

50 Hulkó Gábor, Patyi András (eds), Public Finances – Administrative Autonomies (Universitas Győr Kht. 2012) 817 p.; Péteri Gábor, Charging Local Government Services in Hungary (Working Paper 01–2008, Institute of Local Public Finance 2008), 23 p.; Kopányi M., Wetzel D., Dahwr S. (eds), Intergovernmental Finance in Hungary – a Decade of Experience 1990–2000 (Washington, Local Government and Public Service Reform Initiative 2004) 629 p.

51 See for example: Corruption Risks in Hungary National Integrity System Country Study (Part One): Hungary 2007 (Transparency International 2007); Péteri Gábor (ed.), Finding the Money: Public Accountability and Service Efficiency through Fiscal Transparency (LGI – OSI 2008) 235 p.

52 Aladár Horváth, 'Gadjo Nation – Roma Nation?' http://www.errc.org/cikk.php?cikk=2655> accessed 2 May 2012.

53 Andrew Burton, 'Minority Self-governance: Minority Representation in Flux for the Hungarian Roma' (2007) 17(1) Ethnopolitics 67–88; R. Katalin Forray, The Situation of the Roma/Gypsy Community in Central and Eastern Europe (Master Thesis, CEU 2006).

54 Dr. Toso Doncsev, President of the Office for National and Ethnic Minorities (ed), Measures taken by the state to promote the social integration of Roma living in Hungary (Published by: Dr. Rudolf Joó, Deputy State Secretary at the Ministry of Foreign Affairs 2000).

discriminative practice of Hungarian public administration against Roma people[55], as well as the social relations of public administration[56], and the various consultation mechanisms.[57]

It may be observed that in the examined area the possibilities, limits and development directions of cooperation of public administration with market players are not only issues belonging to the focus of scientific research,[58] but they are also typical and renewing subjects of the English or German language publications of certain – e.g. investment motivating – authorities and other organisations.[59]

From the latest works the field of e-government shall be highlighted, as well as works analysing the regulatory problems of electronic sites with real scientific thoroughness.[60]

Naturally, there are many works in fields with international relevance and elements – beyond EU issues – such as the administrative relationships of the classic areas, namely customs administration, border administration and administration of immigration or in a wider sense environmental law and the protection of the environment.[61]

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55 Kertesi Gábor, Kézdi Gábor, School segregation, school choice and educational policies in 100 Hungarian towns (BWP 12., Institute of Economics, Hungarian Academy of Sciences – Department of Human Resources, Corvinus University of Budapest 2013) http://www.econ.core.hu/file/download/bwp/bwp1312.pdf>accessed 11 July 2013; Hungary (2010) December, European Anti-Discrimination Law Review 60–62; Kertesi Gábor, Kézdi Gábor, The Roma/non-Roma Test Score: Gap in Hungary (BWP 10., Institute of Economics, Hungarian Academy of Sciences – Department of Human Resources, Corvinus University of Budapest 2010); Kézdi Gábor, Surányi Éva, Sampling and Methodology in the Evaluation of the National Education Integration Program, and the Conclusions of the Evaluation/ Mintavétel és elemzési módszerek az oktatási integrációs program hatásvizsgálatában, és a hatásvizsgálatból levonható következtetések (BWP 2., Institute of Economics, Hungarian Academy of Sciences 2010); Pál Tamás (ed), Final report: 6. Hungary. Inclusion and education in European countries (INTMEAS Report for contract – 2007- 2094/001 TRA- TRSPO. DOCA Bureaus 2009).

56 Ágnes Jenei (ed), Communication with the Public from the Local Government Perspective (Corvinus University of Budapest 2012) 251 p.

57 Héthy Lajos, 'Negotiated Social Peace: An Attempt to Reach a Social and Economic Agreement in Hungary' in Ágh Attila and Ilonszki Gabriella (eds), Parliaments and Organized Interests: The Second Steps (Hungarian Centre for Democracy Studies 1996) 147–157; Ladó Mária, 'Continuity and Changes in Tripartism in Hungary' in Ágh Attila and Ilonszki Gabriella (eds), Parliaments and Organized Interests: The Second Steps (Hungarian Centre for Democracy Studies 1996) 158–171.

58 For this see for example: Czeglédi János, Public administration rated fit for private investment (Tekintet 2005) 128 p.

59 See for example the annual publications of the Hungarian Investment and Trade Agency (HITA) named Investing Guide Hungary and Doing Business in Hungary.

60 Bordás Mária, 'Application of Cloud Computing in the Public Sector in Hungary' (2012) 9(5) Journal of US-China Public Administration 534–551; Budai Balázs Benjámin, Tózsa István, The Current Breakthrough Points in Public Administration (Corvinus University of Budapest 2012) 368 p. (See also their earlier work published in the similar field: Tózsa István, Budai Balázs Benjámin, M-government – T-government: Latest technological trends in public administration (M-Government Study Group 2006) 138 p.; Klein Tamás, Regelung der eletronischen Presse in Ungarn (ELTE ÁJK 2012) 88 p.

61 Bezdán Judit Anikó, 'The Conceptual Definition of Hunters' Societies' (2011) 6(10) Journal of Agricultural and Environmental Law 3–24. http://epa.oszk.hu/01000/01040/00010/pdf/agrar_es_kornyezetjog_Epublic administration01040_2011_10.pdf> accessed 3 January 2013; Julesz Máté, 'Civil Society and Environmental Protection' (2012) 14(2) JURA 71–79; Bándi Gyula, 'The Definition of Waste from a Legal Point of View' (2005) 20(2) PERIODICA POLYTECHNICA-SOCIAL AND MANAGEMENT

Those works are especially important which examine public administration as a whole or one of its aspects by using the approaches and methods of certain 'co-sciences'. Methods of political sciences[62] and sociology have an extremely broad literature in relation our topic.[63]

Those essays which are at the borderline of law, political sciences, sociology and everyday publicism may be put into a separate category. These have been published mainly after 2010 and their common feature is the more or less consistent 'constitutional law' and 'fundamental law' approach. These – usually scientifically valuable – works often give comprehensive analysis of institutions and phenomena such as government, constitutionality of public administration, politicization of public administration, etc.[64]

The number of those works which examine and analyse the public administration relations of certain fundamental rights in detail is also rising, albeit slowly.[65]

Those printed works which are published in bilingual form (usually English-Hungarian, sometimes German-Hungarian) may be put into a separate category. Among these – beyond the publications funded by the EU and (other) governmental organisations – there are several works published by non-governmental international entities (typically human rights legal aid networks) or by civil/non-profit organisations registered and operating only in the given country,[66] as well as essays published by Hungarian authorities, often as annual reports.[67]

SCIENCES 169–180; Paulovics Anita, Problematical aspects of legal regulations concerning animal protection (Bíbor Kiadó 2003) 200 p.; Approval and Implementation of International Conventions on Environmental Protection and Nature Conservation in Hungary (Hungarian Ministry for Environment and Regional Policy 1996) 140 p.; Bándi Gyula, Environmental law and management system in Hungary: Overview – perspectives and problems (EMLA 1993); Kilényi Géza, 'Environmental policy in Hungary: Environmental legislation' in Don Hinrichsen, Enyedi György (eds) State of the Hungarian environment (Statistical Publishing House 1990) 35–45.

62 See for example parts about public administration in the following works: András Körösényi, Csaba Tóth, Gábor Török, The Hungarian Political System (Hungarian Democracy Series, Hungarian Center for Democracy Studies 2009) 304 p.; Lengyel György, Rostoványi Zsolt, The Small Transformation: Society, Economy and Politics in Hungary and the New European Architecture (Akadémiai Kiadó 2001) 672 p.

63 For the use of examination methods and results of various social sciences see e.g.: Gombár Csaba et al. (eds), Question Marks: The Hungarian Government, 1994–1995 (Korridor Centre for Political Research 1995) 373 p.

64 From the latest publications see for example: Bánkuti Miklós, Halmai Gábor, Kim Lane Scheppele, 'From Separation of Powers to a Government without Checks: Hungary's Old and New Constitution' in Tóth Gábor Attila (ed), Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law (CEU Press 2012) 570 p.; Jan Wernermüller, 'The Hungarian Tragedy' (2011) 58(2) Dissent 5–10.

65 See e.g.: Szabó Máté, Human Rights and Civil Society in Hungary (1988–2008) (OBH 2009); Pap András László, 'Human Rights and Ethnic Data Collection in Hungary' (2008) 31(9) Human Rights Review 109–122.

66 A vasfüggöny léte és vége – Bau Und Fall Des Eisernen Vorhangs: 20 éves a határnyitás – 20 Jahre Grenzöffnung (Hans Seidel Stiftung 2010) 60 p.

67 See for example Pichler Ferenc (ed), Bankruptcy, liquidation and privatization (State Property Agency 1994) 126 p.

Among the bilingual works there are some publications presenting the regulations of the given public authority (authority forum system, main material and procedural rules),[68] as well as some which do not contain the Hungarian and the English version in the same publication, but in two separate issues.[69] There are bilingual periodicals which – in addition to the Hungarian text – publish the English translation of the full essay in order to introduce it to the international circulation.[70]

A specific feature of bilingualism is the rather general practice which publishes the summaries of the articles, essays of Hungarian journals (placing them in front of or behind the text, or simply at the end of the publication).[71]

However, there are some fields regarding to which the volume of the available English literature is rather low (e.g. the topic of central public administration[72] or the so-called administrative criminal law[73]) or is completely missing (e.g. the analysis – or systematic presentation – of the proposer, coordinative or opinion-shaper institutions of public administration beyond their consultative functions).

In general, it may be stated that the interest of authors is directed mainly towards the mapping of the present structure and the commenting on the latest developments; the number of works examining the history of public administration was quite low in the given period.[74]

Moreover, relatively few works were published which dealt with the science of Hungarian public administration, its present features, external determination[75] and main

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[68] Fischl Géza, Pandula András, Akadálymentes építészet – Accessible Design (Labor5 2002) 102 p.

[69] Bódi Ferenc and Fábián Gergely (eds), Helyi szociális ellátórendszer Magyarországon, [Local Organization of Social Services in Hungary] and Ferenc Bódi and Gergely Fábián (eds), Local Organization of Social Services in Hungary (Debreceni Egyetemi Kiadó 2008).

[70] There are several works in the subject of public administration in the Agrár- és Környezetjog/Journal of Agricultural and Environmental Law. The It is a bilingual online journal of the CEDR Magyar Agrarjogi Egyesulet/CEDR Hungarian Association of Agricultural Law. http://epa.oszk.hu/01000/01040/00012/pdf/agrar_es_kornyezetjog_Epublic administration01040_2012_12.pdf

[71] See for example 'Cikkek angol nyelvű összefoglalói' [English summaries of articles] (2011) 42(3) Vezetéstudomány [Management Review] 59–60.

[72] See for example: Hajnal György, 'Agencies in Hungary: Uses and misuses of a concept' in Laegreid, Per and Koen Verhoest (eds), Governance of public sector organizations: Autonomy, control and performance (Palgrave Macmillan 2010); Müller György, 'Evolution Of The Government System After The Political Change In Hungary (1990–2009)' (2010) 27(1) Curentul Juridic 31–39. http://revcurentjur.ro/arhiva/attachments_201001/recjurid101_3F.pdf; Zoltán Szente, 'Intersection of Politics and Public Administration: Recruitment of Ministers and State Secretaries in Hungary (1990–1998)' (1999) 13(Summer) Századvég 3–51.

[73] Máthé Gábor, Kis Norbert (eds), European Administrative Penal Law (ELTE 2004) 184 p.

[74] See for example Julesz Máté, 'A short history of public health law in Hungary' (2010) 4(2) De Iurisprudentia et Iure Publico 19–22; Horváth Pál, 'Öffentliche Verwaltung des Ungarischen Volksdemokratischen Staates 1944–1945' (1988) 30(February) Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica 119–122.

[75] Koi Gyula, 'Scholars and Community. Foreign Influences in Hungarian Administrative Sciences with Regard to Municipality' in Eva Zatecka (ed), COFOLA 2012: The Conference Proceedings [Masaryk University Faculty of Law 2012 (Compact Disc)] 425–434.

directions.[76] Similarly, it is not easy to find works about legal theory or longer essays about the theory of public administration.[77] The organisational theory of public administration appears only in those works which do not focus exclusively on the analysis of state (administrative) institutions.[78]

There is rather low number of English works available which analyse international trends which cannot be tied to only one administrative field, and the Hungarian appearance of such trends.[79]

Furthermore, it must be stated that among books – describing public administration(s) – used especially in graduate education and in doctoral programmes, there are only few written in a language other than Hungarian.[80]

2.3. Works prepared within international cooperation

Among works presenting Hungarian public administration – written by foreign authors, or involving foreign authors – the 'country report' type works are dominant: the typical ones are those which compare a larger or smaller number of countries from one or more aspects, typically financed by international organisations, at a length of 15–50 pages.[81]

Several books have been published which aim especially at presenting and developing cooperation in international public administration, beyond the framework of regionalism. In the field of public administration education and training several works express itemised facts and conclusions, as well as a vision for the future, sketching the possibilities of cooperation.[82]

A necessary element of the notion of erudition is internationalism (the presence of an international aspect), the most obvious signs of which are works prepared – under close

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[76] See for example: Hajnal György, Pál Gábor, Some Reflections on the Hungarian Discourse on (Good) Governance [Working Papers in Political Science 2013/3., MTA TK (Institute for Political Science, MTA Centre for Social Sciences 2013)] http://www.mtapti.hu/uploaded_files/8519_2013_03_hajnal_pal.pdf>accessed 9 June 2013; Jakab András, 'Wissenschaft vom Verwaltungsrecht: Ungarn' in Armin von Bogdandy, Sabino Cassese, Peter M. Huber (eds), Ius Publicum Europaeum IV. (CF Müller 2011) 365–396.

[77] Among the few exceptions see e.g.: Tamás M. Horváth (ed), Decentralization and Reform (LGI 2000) 424 p.

[78] See e.g.: Balaton Károly, Organizational strategies and structures following the system turnaround (Akadémiai Kiadó 2007) 179 p.

[79] Hoós János, Global Governance (Akadémiai Kiadó 2006) 321 p.

[80] For example: Dr. Paulovics Anita (ed), The preservation of natural and architectural environment in an international aspect (Bíbor Kiadó 2006); Dr. Vadál Ildikó, Das System der Verwaltungsorganisation (University publication for PhD students, PTE BTK 1999).

[81] Towards Better Measurement of Government (Working Paper Edition 1, GOV/PGC(2006)10, OECD 2006); Republic of Hungary – Public Administration: Country Profile. Division for Public Administration and Development Management (DPADM) Department of Economic and Social Affairs (DESA) (United Nations 2004) 18 p.; Newland, Chester, Jenei, György, Suchorzewski, Leszek, 'Transition in the Czech Republic, Hungary and Poland: Autonomy and community among nation states' in Kickert, Walter J. M. and Richard J. Stillman (eds), The modern state and its study: New administrative sciences in a changing Europe and United States ('Central and Eastern European Countries', Edward Elgar 1999).

[82] Verheijen, Tony, Nemec, Juraj, The Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee 2000) 345 p.

Hungarian surveillance – through the cooperation of scientists, academic institutions, scientific schools and universities, or other organisations operating in international space (e.g. foundations).[83] One of the latest of such results is a publication prepared in Croatian-Hungarian cooperation, which contains separate governmental, public administration chapter in a way that the essays – e.g. on the introduction of Croatian and Hungarian institutions of local governance – were written jointly by Hungarian and Croatian authors.[84]

Within the examined scope of works a separate segment is the pool of (conference) publications which are published in the aftermath of – often quite significant – events, international conferences held in Hungary, thereby significantly strengthening Hungarian erudition.[85]

The publication of a bilingual journal called Nemzetközi Közlöny Közép-Kelet-Európai Közigazgatási folyóirat / International Journal of Public Administration in Central and Eastern Europe by the Magyar Közlöny Lap- és Könyvkiadó – striving consciously to get into the circulation of English language public administration literature – was an attempt to take a step forward in 2010–2011, but only few issues were published.

In international relations, country profiles prepared by the OECD and the WB must be mentioned, in so far as in several comprehensive, thematic reviews Hungary receives greater attention. At the same place quantified data collections and databases presenting the government and providing opportunity for comparison are also important. We must especially mention the Government at a glance series of OECD, the Good government indicators of the WB, and the largest data collection of the past times, the CoQ.

2.4. The authors – who cite and who are cited

Those works are extremely important which come from foreign authors who deal with the Hungarian legal system, public policy or specifically public administration,[86] but at

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[83] See for example Lician Chiriac, Szabó Zsuzsanna (eds), Proceedings of the Conference on Economics, Law and Management (Volume 1, Law and Administrative Sciences, Petru Maior University 2007); Max Barlow, Lengyel Imre, Richard Welch, Local development and public administration in transition (József Attila University 1998) 226 p.; Rüdiger Pintar (ed), Reforms of Public Services: Experiences of Municipalities and Regions in South-East Europe (Friedrich Ebert Stiftung, Zagreb Office 2003) 100 p.

[84] Drinóczi Tímea, Mirela Zupan, Ercsey Zsombor, Mario Vinkovic (eds), Contemporary Legal Challenges: EU – Hungary – Croatia (SUNICOP 2012) 792 p.

[85] See for example Jenei György, 'Challenges of public management reforms: Theoretical perspectives and recommendations' [Selected papers from (IRSPM VIII) the eighth International Research Symposium on Public Management, 31 March – 2 April 2004, University of Economic Sciences and Public Administration 2004] 423 p.; Jenei György, Hőgye Mihály (eds), New trends in public administration and public law [EGpublic administration yearbook: Annual Conference, Budapest, 1996, European Group of Public Administration (Brussels) – Budapest University of Economic Sciences 1997] 449 p.

[86] See for example: Herbert Küpper, 'Hungarian Administrative Law 1985–2005: The Organization of the Administration' in Jakab András, Takács Péter, Tatham Allan F. (eds), The Transformation of Hungarian Legal Order 1985–2005: Transition to Rule of Law and Accession to the European Union (Kluwer Law International 2007) 109–122.

the same time are familiar with the Hungarian situation and Hungarian legal literature, especially if these are of monographic character.[87]

Similarly, works of acknowledged foreign authors published in Hungarian legal (social scientific) periodicals are also considered seminal and are cited more often, regardless of being published in English[88] or in Hungarian.[89]

As a matter of fact, it is obvious that there are typically synthetic works – usually prepared in Western-Europe, less often in the United States – which are frequently cited in Hungarian legal literature, and significantly determine 'professional directions' and opinions.[90] From those works which are able to directly influence (in a measurable way) Hungarian public administration – or at least the science of public administration – several

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87 Judy P. Jensen, Whose Rules? (ISES Publications, TETI 2008); Chris Pickvance, Local Environmental Regulation in Post-Socialism: A Hungarian Case Study, Hampshire (Ashgate 2003) 185 p.; Dupré, Catherine, Importing the Law in Post-Communist Transitions: The Hungarian Constitutional Court and the Right to Human Dignity (Hart Publishing 2003) 217 p.

88 Dr. Thomas Perroud, 'Local governments and the provision of public services in France and the United Kingdom' (2013) 6(1) Új Magyar Közigazgatás 33–41.

89 An example for the latter is the essay of Rinaldo Locatelli, 'A helyi önkormányzatok 10 éve Magyarországon' [10 years of local governments in Hungary] (2000) 50(9) Magyar Közigazgatás 513–516.

90 David Levi-Faur (ed) Oxford Handbook of Governance (Oxford University Press 2012); Schwarze Jürgen (ed), Europaisches Verwaltungsrecht. Entstehung und Entwicklung im Rahmen der Europaischen Gemeinschaft (2nd edition, Verlag Nomos 2005); Public Administration after 'New Public Management' (OECD 7 June 2010) 114 p.; Chandler J. A. (ed), Comparative Public Administration (1st edition, Routledge 2000); Paul Craig, EU Administrative Law (Academy of European Law/European University Institute – Oxford University Press 2006); Mark Bevir, Key Concepts of Governance (SAGE 2009); Fromont, Michel Droit administratif des États européens (Presses Universitates de France 2006); Gabriel W. Oscar, Knopp Sabine (eds), Die EU Staten im Vergleich (Strukturen, Prozesse, Politikinhalte) (3rd edition, Verlag für Sozialwissenschaften 2008); Demmke, Christoph Moilanen Timo, Civil Services in the EU 27: Reform Outcomes and the Future of the Civil Services (Peter Lang 2010); Didier Blanc, Giude du droit de l'Union Européenne (Ellipses 2008); Demmke Christoph, European Civil Services between Tradition and Reform (EIpublic administration 2004); A. W. Bradley, K. D. Ewing, Constitutional and Administrative Law, (Pearson Education Limited 2003); James L. Perry (ed), Handbook of Public Administration (Jossey Bass Publishers 1996); Dreschler Wolfgang, 'The Reemergence of "Weberian" Public Administration after the Fall of New Public Management: The Central and Eastern European Perspective' (2005) 18(6) Haldus-kultuur; Osborne David, Gaebler Ted, Reinventing Government (Penguin 1993); Pollit Christopher, Bouckaert Gert, Public Management Reform: A Comparative Analysis (Oxford University Press 2000), Louis Dubouis, Claude Blumann, Droit matériel de l'Union européenne (Moutchrestien 2012) 805 p., Jürgen Schwarze (ed), L'état actuel et les perspectives du droit administratif européen: Analyses de droit comparé (Bruylant 2010) 364 p.; Jacqueline Dutheil de la Rochére (ed), L'exécution du droit de l'Union: entre mécanismes comunautaries et droits nationaux (Bruyland 2009) 298 p.; Page, E. C. Jenkins, B., Policy Bureaucracy: Government with a Cost of Thousands (Oxford University Press 2005); Shafritz, J.M., Riccucci, N.M., Rosenbloom, D.H., Hyde, A.C., Personnel Management in Government (Marcel Dekker 1992).

are available in Hungarian translation,[91] and the Hungarian book reviews of Hungarian periodicals present them in length.[92]

Among the foreign scientific periodicals the most often used and cited ones – but less often targeted as contributor – by Hungarian authors are the German Verwaltungsrundschau, Zeitschrift für Gesetzgebung (ZG), and Zeitschrift für Neuere Rechtsgeschichte (ZNR), French Revue francaise de Droit Administratif and La Revue Administrative, Slovenian Lex Localis – Journal of Local Self-Government, American Administrative Law Review and Administrative Science Quarterly, as well as Public Organization Review, the International Review of Administrative Sciences/Revue internationale des Sciences Administratives published in English and French by the Brussels-based International Institute of public administration (IIAS/IISA), and the Public Administration, the Administration & Society, the Zeitschrift für Osteuropa and the Transsylvanian Review of Administrative Sciences. It may be also stated that the various electronic periodical databases and online libraries have become the real 'primary' sources of getting familiar with external and foreign language legal literature (EBSCO, HeinOnline, Westlaw, BeckOnline, and Questia[93]).

The rate and appearance of foreign language works prepared in the field of public administration, published in Hungarian legal journals present a mixed picture. Even though more and more journals – focusing on broadly interpreted social sciences – publish foreign-language essays together with the other works or in separate column, and there is also an English-language legal periodical (Acta Iuridica Hungarica),[94] as well as other English language social sciences journals regularly publishing essays in the field of public administration,[95] it may still be stated that among the authors of – the not very numerous – works from the area of the narrowly viewed legal science of public administration the rate of Ph.D. students or colleagues who just received their Ph.D. is rather high.

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[91] See for example: D. Osborne, T. Gaebler, Új utak a közigazgatásban [New ways in public administration] (Kossuth Kiadó 1994); Alberto J. Gil Ibanez, A közösségi jog ellenőrzése és végrehajtása [Supervision and execution of community law] (Osiris Kiadó 2000); Parkinson, C. Northcote, Parkinson törvénye vagy az Érvényesülés Iskolája [Parkinson's rule or the school of success] (Minerva 1990); Stiglitz, Joseph E., A globalizáció visszásságai [Thwarting of globalisation] (Napvilág Kiadó 2003); Hogyan korszerűsítsük a közigazgatást? A követendő út [How shall we modernise public administration? The path to follow] [ed. Lőrincz Lajos; translated: Kincses László, Koi Gyula, Linder Viktória, MTA Institute of Legal Studies 2009] – Originally: Modernising Government: The Way Forward (OECD, 2005); Sartori, G., Összehasonlító alkotmánymérnökség: A kormányzati rendszerek struktúrái, ösztönzői, teljesítményei [Comparative constitution engineering: Structures, motivators and performances of governmental systems] (Akadémiai Kiadó 2003).

[92] See for example: Koi Gyula, 'Közigazgatás-egyszerűsítés: ábránd vagy valóság? (Simplification administrative: leurre ou réalité? Arséne Declerc ed.)' [Book review] (2007) 1(2) Nemzetközi Szemle 106–112.

[93] http://www.questia.com> accessed 2 May 2013.

[94] Beyond the publication of the results of Hungarian legal science and the presentation of Hungarian legislation and legal literature nowadays the periodical also publishes the works of foreign authors in order to provide a review of the whole Central-Eastern-European legal science.

[95] Society and Economy in Central and Eastern Europe, Journal of the Corvinus University of Budapest.

However, the fact must also be mentioned that among doctoral dissertations (Ph.D. dissertations) there were not many works prepared in foreign language (in English, French or German) in the field of public administration in the past two decades.

Regarding the analysis of our specific topic it may be also important to examine the acknowledgement (citation) in which Hungarian authors may be considered outstanding[96] in international scientific life, in so far as their research qualities, the features of topics analysed by them and their role in certain international projects may significantly determine the external characteristics of the science of Hungarian public administration, as well as its appreciation.

3. Closing remarks

In general it may be observed that in the examined field the multi-authored works and books of studies are dominant: there are only few monographs written by a sole author.

It is also observable that in case of multi-authored – English language – books or issues linguistic unification, the more or less identical use of terminology by different authors is often missing, or is not consistent: the need for preparing – in addition to the publication mentioned in the Introduction – a well-usable (and really used) Hungarian-English public law/public administration law/public administration dictionary is evident.

It must be also mentioned that in the foreign language – scientific – description attempts of the institutions of Hungarian public administration the use of language is somewhat determined by the 'language choices' of publications which contain the reports of large international organisations about Hungary, as well as those Hungarian institutions [parliamentary commissioner(s), State Audit of Hungary, etc.] which usually publish annual reports in English or otherwise present the organisational system of Hungarian public administration (authority forum system) or the main rules of taxation – with the aim of motivating trade and investments [HITA (earlier ITD Hungary), etc.].

As a general conclusion it may be further stated that among the works which present Hungarian public administration in foreign language, as well as within certain works, descriptions and parts focusing on organisational law, describing or explaining positive law 'in itself' are overrepresented; contrary to this the expectation of the 'outside world' – palpably – is rather the analysis of legal practice and the presentation of phenomena which are at least partially independent from legal regulation, in so far as certain legal institutions remain 'inaccessible' without this. In general, works listed in this essay may also be suitable to support certain critical remarks[97] regarding the – broadly interpreted – science of

[96] Even though for answering this question the 'raw' citation data – the mere number of international citations – in itself provides a starting point with only relative value, in case of some authors it is undoubted that their continuous and broad international presence is 'well documented'. Such authors are, for example, Verebélyi Imre, Horváth M. Tamás, Hajnal György, Pálné Kovács Ilona, and Jenei György.

[97] Gajduschek György, 'A magyar közigazgatás and közigazgatás-tudomány jogias jellegéről' [About the legal features of Hungarian public administration and its science] (2012) 21(4) Politikatudományi Szemle 29–49.

Hungarian public administration, in so far as, for example, the legal-descriptive approach (starting point) may be observed also in the writings of non-jurist authors.

The conclusions of several scientific works – often directly, sometimes indirectly – draw attention to the need to improve dogmatics of Hungarian administrative law, namely that the coherent (legal) terminology of public administration, which is clear and transparent also in its internal relations, is a precondition of more useful participation in international scientific circulation. Without this getting to know the foreign – mainly English – terminology does not offer professional advantage, moreover, it may lead to dysfunction. András Vígvári wrote the following in 2002: '(…) The supervisory activities of state institutions are presently characterised with terminology chaos, which is further increased by the proliferation of Anglo-Saxon expressions.'[98]

It is a tendency of the past years that works written by Hungarian authors about the Hungarian state's organisation and about certain legal institutions are increasingly published by foreign publishers.[99] This tendency will probably become more significant in the future.

The appearance in the EBSCO, etc. systems is rare: it should be a warning sign that only 20–30% of – Hungarian – works mentioned in this essay are available in electronic databases and on the Internet [in some cases under different title or with a later publication date, or only in some elements (through essays, chapters, etc.)].

It is desirable to strengthen international cooperation, including the results of researches conducted within such cooperation, and the increasing number of joint works of authors coming from different countries.

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[98] Dr. Vígvári András, Az ellenőrzés fogalmához [To the notion of control] (2012) 2(12) Magyar Közigazgatás 754.

[99] E.g.: Hermann Z., Horvath M. T., Péteri G. and Ungvári G., Allocation of Local Government Functions: Criteria and Conditions. Analysis and Policy Proposals for Hungary (The Fiscal Decentralization Initiative for Central and Eastern Europe, FDI-CEE 1999) 170 p.

Part III.

PUBLIC ADMINISTRATION'S LEGAL GROUNDINGS AND EXTERNAL CONNECTIONS WITHIN HUNGARY

The constitutional basis of the Hungarian public administration

Introduction

Each country's public administration is determined (broadly the entire state organization and legal system) on the highest level by the country's constitution. Written constitutions – so long as in a country such exists[1] – almost every time provide the fundamental issues of the central and local administration of the country. In this case all constitutions – in detail or less detailed[2] – contain the consistence, competences, the rules of establishment and the termination of the head of the central administrative body[3].

The Constitution of Hungary entered into force on 1st January 2012 – which is currently referred to as the 'Fundamental Law'[4] rather than the 'constitution', as it was previ-

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1 Some states of the world have no written constitution even today. They have no single constitutional document but rather what is known as an unwritten or uncodified constitution, which embodies written and unwritten (common) sources adopted during certain levels of historical evolution, in constitutional statutes enacted by the Parliament and also unwritten sources. England has such an uncodified constitution, but until the adoption of the written soviet-style Constitution in 1949, the Hungarian Constitution was also referred to as a historical, unwritten constitution.

2 Only a few states can be found in Europe whose constitution regulates the detailed rules of public administration in an explicitly separate structural unit including central public administration. Thus, the Constitution of Austria and Greece include regulations in a chapter on administration, in the Constitution of Finland there is a separate chapter about public administration and local government, the Constitution of Poland includes a separate chapter about the Council of Ministers and government administration, and the German fundamental law (Grundgesetz) regulates the enforcement of federal laws and the federal administrations. The Italian, Spanish, Portuguese and Slovenian Constitutions regulate public administration formally. Cserny Ákos – Temesi István, 'A központi közigazgatás' [Central administration] in Patyi András – Téglási András (eds): Államtan és a magyar állam szervezete. [Studies on the State and the Organ of the State of Hungary] (Nemzeti Közszolgálati és Tankönyvkiadó 2013) 133.

3 According to the type of government and the governmental regime, this body can be the government (in the parliamentary form of government) or the President (in the presidential form of government), or both (in the semi-presidential form of government).

4 This constitution was originally adopted in 1949, during the Soviet occupation of Hungary. In 1989, during the change of the political system, the legislature approved a total amendment of the constitution, though formally (de iure) Hungary remained the only one among the former post-socialist countries that had not adopted a new constitution after the fall of Communism by 2011. In spite of these facts, we refer to the Hungarian constitution between 1989 and December, 2011 as a 'new' one, because in the sense of it content, it became a 'rule of law constitution'.

ously called[5] – also contains provisions in separate structural units for the government[6], local governments[7], the Hungarian Defence Forces,[8] the police and national security services.[9]

This paper does not intend to focus on these substantive constitutional provisions on the organizational structure of public administration,[10] as they may (also) differ by country or constitution, but seeks to represent the constitutional requirements of the operation and activities of Hungarian public administration. According to our firm belief, there exists some sort of uniform European minimum standard in this area, and Hungarian constitutionality corresponds to this European level (as well). The constitutionality of public administration needs to have two pillars in a modern, democratic state, with constitutional rule of law in our opinion. On one hand, *effective judicial control (review) over the functioning of public administration*, on the other hand *(Constitutional) court control over the legislation of public administration.* These requirements are declared in certain provisions of the Hungarian Constitution (at the moment in the Fundamental Law),[11] on the other hand, certain requirements can be derived from the principle of rule of law.

In our paper we wish to present the enforcement of these two fundamental requirements in the current Hungarian constitutional law. The Fundamental Law of Hungary in force and the current Hungarian constitutional system are essentially based on the 1989 Constitution and the more than two decades of jurisdiction of the Constitutional Court built on that. Therefore we consider it to be essential to present the main thesis of these decisions, in case they have been (or could be) maintained after the Fundamental Law entered into force in 2012.

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5 The Hungarian terminology for constitution is 'Alaptörvény', which has been modelled on the German term 'Grundgesetz', translated in official English as 'Fundamental Law', or in some scientific publications as 'Basic Law'. For the entire translation of the Fundamental Law of Hungary, see the homepage of the government of Hungary or the Constitutional Court of Hungary. (www.kormany.hu/download/e/2a/d0000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf, www.mkab.hu/rules/fundamental-law), furthermore Csink Lóránt-Schanda Balázs-Varga Zs. András (eds), The Basic Law of Hungary: A First Commentary (Clarus Press 2012) Appendix 295–340.

6 In the Fundamental Law of Hungary there is a separate sub-heading in chapter 'The State' in articles 15-22. In addition, provisions related to the government see also, inter alia, in the provisions for the National Assembly [for example in Article 3 subsection 3.]

7 In chapter The State in the Fundamental Law of Hungary under separate sub-title are stated the provisions for the local governments in articles 31–35.

8 Article 45 of the Fundamental Law.

9 Article 46 of the Fundamental Law.

10 The description of the provisions concerning the government and the local governments in the Fundamental Law of Hungary see in English: Kis Norbert, – Cserny Ákos, 'The Government and Public Administration' (Chapter VIII) in Csink Lóránt-Schanda Balázs-Varga Zs. András (eds), The Basic Law of Hungary: A First Commentary (Clarus Press 2012) 254 – 280.

11 See: Kis Norbert, – Cserny Ákos, 'Public administration in the Basic Law' in Csink Lóránt-Schanda Balázs-Varga Zs. András (eds), The Basic Law of Hungary: A First Commentary (Clarus Press 2012) 280 – 292.

1. The effective judicial control over the functioning of the public administration in Hungary

1.1. The subordination of public administration to law as a requirement deriving from the rule of law

The Hungarian Constitutional Court started to operate in 1990 and set the fundamental requirements for the operation of the Hungarian public administration from the general principle of rule of law. The permanent practice of the Hungarian Constitutional Court considers *the subordination of public administration to law* to be an essential element of the rule of law for more than two decades.[12] One of the fundamental requirements of the rule of law is that organisations that exercise executive powers act within organisational structures that are defined by law, following rules of operations that are defined by law and within limits that are regulated by law in a foreseeable manner. The Hungarian Constitutional Court deduces the subordination of the public administrative operation to law (or to statute – according to the phrase amended later by the Constitutional Court itself) from the constitutional principle of rule of law, stipulating that the rules of the Constitution pervade the entire legal system.

Thus the subordination of the administrative act to law means that these administrative acts and actions are subordinated to the whole legal system, and primarily that of the constitutional rights.

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[12] Constitutional Court decision 56/1991. (XI. 8.) AB, ABH 1991, 454, 456.; Constitutional Court decision 31/2010. (III. 25.) AB, ABK March, 2010., 247, 253–254., Constitutional Court decision 29/2011. (IV. 7.) AB, ABH 2011, 181. 200. [The summary of the last decision see in English: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2011-2-004?fn=document-frameset.htm$f=templates$3.0]. These and most of the rest of the further on presented Constitutional Court decisions were implicitly based on the former Constitution of Hungary until January 1st 2012, not on the current Fundamental Law. Although the constituent power repealed those Constitutional Court decisions which were taken into an effect before the adaptation of the new Fundamental Law, but the Constitutional Court held that it is allowed to use the arguments, legal principles and correspondences of the annulled decisions during the examination of the constitutional complaints in the new cases if the contents of the given section of the Fundamental Law is consent with the Constitution, the textual consent of the entire Fundamental Law, the rules of interpretation of the Fundamental Law are taken into consideration and according to the specific case there is no obstacles of appliance and it seems necessary to imply them into the opinion of the court. {Constitutional Court decision 13/2013. (VI. 17.) AB, Reasoning [32]}. The Constitutional Court held that the declaration of rule of law in Article B subsection 1 of the Fundamental Law has the same content as section 2 of the former Constitution, thus there is no difference between the former standpoint of the Constitutional Court and the interpretation of the rules of the Fundamental Law. {Constitutional Court decision 32/2013. (XI. 22.) AB, Reasoning [70]}. Therefore we maintain the application of the arguments and legal principles, constitutionality correspondence of the former decisions of the Constitutional Court.
The practice referring to the Constitutional Court decision 56/1991 (XI. 8.) AB has been expressly ratified after the Fundamental Law entered into force by the Constitutional Court decision 5/2013. (II. 21.) AB (Reasoning [36]).

By the interpretation of the Hungarian Constitutional Court the requirement of the subordination of the administrative activities to law means that public power possessing administrative bodies, intervening into social relationships, may make their decisions within the organizational framework of law, governed by procedural law, and within the framework set by substantive law.[13]

The Hungarian Constitutional Court defined the requirement of the subordination of public administration to law primarily the public power possessing administrative decision-making procedure bounded by law.[14]

The Constitutional Court's three most important decisions related to judicial control were in connection with the review of administrative decisions. Constitutional Court decision 32/1990. (XII. 22.), decision 63/1997. (XII. 12.), and decision 39/1997. (VII. 1.) are subject to the control and review of administrative authority decisions. Constitutional Court decision 32/1990. (XII. 22.) holds that the judicial review *comprehends to all types of administrative decisions*, even those that do not give rise to a claim for infringement of a fundamental right or arose not in connection with the fulfilment of obligation. This Constitutional Court decision annulled the regulations of the act and ministry decree which stipulated the judicial review of public administrative cases in a narrow range list. According to this highly important decision, the provisions permitting the judicial review of the Council of Ministers'[15] decree are not unconstitutional in general. However it is unconstitutional if the review is allowed only in the enumerated administrative decisions provided by this legislation. According to Constitutional Court decision 32/1990. (XII. 22.), the National Assembly finally adopted the *Act XXVI of 1991 on the extension of judicial review of administrative decisions*. However, the act left the infraction decisions and procedures 'untouched', with the exception of reassignment of fine to imprisonment decision did not allow bringing an action against the legally binding infraction decisions before a court. However, the Constitutional Court held that 'the misdemeanour authorities are public administrative authorities, the infringement decisions are public administrative decisions. If the content of the decision of misdemeanour authority or according to the statutory statement of facts an anti-administrative behaviour is ordered to punish, the opportunity of the verification of the legality of the decision may be according to the rules of administrative judicature.'[16]

The Constitutional Court however also enhanced that subordination to law as the element of the rule of law shall prevail not only in public administrative acts, but this requirement extends on any act of the administrative organisations in which their decision influ-

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[13] Constitutional Court decision 56/1991. (XI. 8.) AB, ABH 1991, 454, 456.

[14] Constitutional Court decision 8/2011. (II. 18.) AB, ABH 2011, 49, 79. [The summary of the decision in English see: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2011-2-003?fn=document-frameset.htm$f=templates$3.0]

[15] The Council of Ministers in Hungary, during the socialist era, was the supreme body of administration which was liable for its management to the National Assembly.

[16] Constitutional Court decision 63/1997. (XII. 12.) AB, ABH 1997, 365, 368.

ences a fundamental right of the recipients.[17] Other constitutional conditions also determine how this statutory framework of subject matter should be formed. Thus, in particular the fundamental rights laid down in the Constitution. Hereinafter these are described briefly.

1.2. A fundamental right to a fair official administration

Article XXIV section 1 of the Fundamental Law guarantees the right to a fair administration as a fundamental right to everyone, which means that 'the authority shall arrange the proceeding impartially, fairly and within a reasonable time'.

Thereby the principles of administrative procedure have been raised to constitutional level by the Fundamental Law. Thus, the Fundamental Law has started with the fair public administrative procedure of the *European Code of Good Conduct,* adjoined to the process of the European Union principle requirement by the *Charter of fundamental rights with the Treaty of Lisbon*.

The basis of the fair authority administration can be found in the commencing part *'Avowal of National Faith'* of the Fundamental Law (in the preamble): 'We hold that democracy exists only where the State serves its citizens and administers their affairs in an equitable manner and without abuse or partiality.' Accoring to Article R) subsection 3 of the Fundamental Law the Avowal of National Faith is not only a declaration, but an interpretation frame for the rest of the regulations with normative power.[18]

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[17] In connection with this, the Constitutional Court ruled that the person exercising the rights of the employer on behalf of the public administration authority making a decision about the release of public officials or government officials that infringes their constitutional rights. Against this decision there is a requirement arising from the subordination of administrative law, that law shall define the substantive legal framework of the employer's decision. There are obligations delivered from the administration being bounded by law in connection with the regulation of the officers performing administrative tasks. The assurance of the legality of administrative decisions requires the legislative power to establish those guarantees during the regulation of the labour law aspects of decision-maker officer's, which ensure that officials acting on behalf of the administration make their decisions professionally, independently of any political party, without any influence, impartially and solely according to the law. One element of this guarantee system is the assurance of the relative stability of the public relations. According to this the Constitutional Court held that the opportunity of the employer to make decisions without reasoning violates the requirement of the subordination to law, which is a basic principle of the rule of law in Article B subsection 1 of the Fundamental Law. Constitutional Court decision 8/2011. (II. 18.) AB, ABH 2011, 49, 79–80., confirmed after the Fundamental Law taken into effect by the Constitutional Court decision 5/2013. (II. 21.) AB, Reasoning [37]. The opportunity of release without reasoning endangers the party policy neutrality of administrative orders, the independency from any influence, impartiality and may endanger legality. See the Constitutional Court decision 29/2011. (IV. 7.) AB, ABH 2011, 181, 200.

[18] According to the Article R) subsection 3 of the Hungarian Constitution 'The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, with the Avowal of National Faith contained therein, and with the achievements of our historical constitution.'

1.3. Right to a court hearing

The right to a court hearing is also part of the principle of rule of law, and Article XXVIII subsection 1 of the Fundamental Law expressly declares it as well. Thus, 'Everyone shall be entitled to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial conducted by an independent and impartial court established by an Act.' This provision is the 'mother right' of the judicial review of administrative decisions, which has a direct impact on the method of regulation of public proceedings.

The Constitutional Court held in 1997 that it is a constitutional requirement at the regulation of the judicial inspection of the legality of administrative decisions, that the court shall take the rights and obligations into the trial to be judged according to the requirements of a fair procedure and merit. The rule regulating the public administrative decision-making power must represent an appropriate criterion or standard so that the legality of the decision may be reviewed by the court.[19]

However, the Constitutional Court also pointed up that due to the legal certainty the right to bring a public administrative legal action shall be bound by a *time-limit*.[20]

Further on the judicial review power of the courts referring to the public administrative orders will be explained in greater detail.

1.4. The authorities' obligation of reasoning in the Fundamental Law

A necessary condition for the control of due process and for avoidance of arbitrariness is the reasoning for decision to the bodies of law.[21] The Fundamental Law of Hungary raises the fair administrative procedure to the constitutional level and also the obligation to state reasoning. According to the second sentence of Article XXIV subsection 1 of the Fundamental Law, the authorities are obliged to give reasons in their orders pursuant to the law. This means that in case of not reasoning their decisions, authorities not only break the law, but also give rise to unconstitutionality, which may be eliminated by an action brought not just by the ordinary court but in the last resort by the Constitutional Court.

Furthermore, reasoning is important also due to the predictability of future judicial decisions,[22] i.e. it enforces legal certainty (and therefore the rule of law).

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19 Constitutional Court decision 39/1997. (VII. 1.) AB, ABH 1997, 263.

20 Constitutional Court decision 2218/B/1991. AB, ABH 1993, 583.

21 Győrfi Tamás – Jakab András, 2. § ['Alkotmányos alapelvek, ellenállási jog'] [Basic principles of the constitution, the right of resistance] in Jakab András (ed), Az Alkotmány kommentárja [Commentary to the Hungarian Constitution] (Századvég 2009) 164.

22 Győrfi-Jakab (n 21) 164. footnote 127.

1.5. The constitutional principle of public authority liability

Since the wording of Albert Venn Dicey, a component of rule of law is the obligation of the State that is accountable before the court if it has caused harm to individuals.[23]

The rule of liability for damage was raised to constitutional rank with the entering into force of the Fundamental Law of Hungary. The Fundamental Law states that everyone shall have the right to be compensated in the manner laid down in an Act, for any damage unlawfully caused by the authorities in the performance of their duties.[24] The liability is not objective; it is based on the culpableness (imputability), but in case of establishing unlawfulness, if the exculpation with the duty of care is unsuccesful, the compensation for damage is unavoidable.

1.6. The judicial review of administrative orders by the Constitution and the Fundamental Law

According to the Fundamental Law, the public administrative authority orders – with narrow statutory exceptions – may be reviewed by the courts, which means that the courts with judicial power[25] judge the legality of public administrative orders.[26]

During the period between 1949 and 1989, the constitutional system of the Hungarian socialist state was based both on the organizational and in substantive total denial of public administrative jurisdiction, and also the constitutional foundation of the institution was lacking in: the rule of law, the constitutional right to judicial protection, the separation of state powers.

The constitutional amendment in 1989 enacted the provision in the Constitution that 'the court shall review the legality of public administrative orders.'[27] It is important to emphasize that at the time this provision was enacted to the Constitution, judicial review was available only in a limited scope of public administrative cases determined only in

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[23] The idea of the rule of law in Albert Venn Dicey's phrasing has spread all round in the world, thus also in Hungary. According to Dicey, three main components are recognizable in the definition of the rule of law, as mentioned below. On one hand the government has no arbitrary power, which means that the law is primary to power and that requires institutional guarantees. On the other hand everybody is subordinated to the common law used by the ordinary courts, which means that all are equal before the law (neither are officials exempted from accountability before the ordinary court and according to this there is no separate administrative court to judge their orders). Thirdly, the general rules of constitutional law arise from the general rules of the state, which means that the constitution (before the courts) is a result of the struggle for individual rights. Albert Venn Dicey, 'The rule of law' in Takács Péter (ed), Joguralom és jogállam [The rule of law and the state functioning under the rule of law] (ELTE 1995) 21–31.

[24] Article XXIV subsection 2 of the Hungarian Constitution.

[25] Article 25 subsection 1 of the Hungarian Constitution.

[26] Article 25 subsection 2 point b) of the Hungarian Constitution.

[27] Act XX of 1949 on the Constitution of the Republic of Hungary section 50 subsection 2. The whole text in English: http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf

decrees of the Council of Ministers, i.e. by the executive power (as it was already mentioned earlier).

In the context of this provision, the Constitutional Court foreshadowed the need for detailed, content-filling interpretation: '*It is therefore necessary that the content of this provision of the Constitution shall be expanded and specified by laws on one hand and on the other hand adapted by the organs of the public authorities and the courts*.'[28]

The rule ordaining the legal control over public administrative decisions by the courts in the Constitution – and also in the Fundamental Law – may be found in the chapter on the courts. About this rule the Constitutional Court declared – in relation to the former Constitution – that 'the constitutional provision on the judicial review of administrative resolutions regulates the function of the courts in checking public administration in order to define the relationship between the individual branches of government.'[29] In other words, Constitutional Court decision 1254/B/1993 AB also held that: 'the constitutional provision for judicial review of public administrative decisions is a term of reference about the relation of the powers to each other for the courts.'[30] According to the Constitutional Court, this constitutional provision provides the basis of legal control by the judiciary power for the administrative decisions belonging to the executive power, and to determine the infringement of the law.

According to a later Constitutional Court decision, the constitutional provision of the 'legal control of administrative decisions' determines the function of the judicial review.[31] This means, in our opinion, that the scope of the review is legal.

The separation of powers in the former Constitution did not exist textually; it was conducted by the Constitutional Court essentially to the rule of law or rather deduced from the rule of law.[32] Thus, beyond the separation of powers, the Constitutional Court concerned the judicial legal control of the public administrative decisions to the other essential fundamental principle, the subjection of public administration to law: 'This rule of the Constitution[33] is the most essential constitutional guarantee for the legal operation of public administration, which assigns the legal control of public administrative decisions to the courts exercising judicial power independent from public administration.' Relating to the rule about the competence of control of the courts on the public administrative decisions,

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[28] Constitutional Court decision 994/B/1996. AB, ABH 1997, 675, 676.

[29] Constitutional Court decision 953/B/1993. AB, ABH 1996, 432, 434.; uphold the Constitutional Court decision 829/E/1993. AB, ABH 1996, 427, 431.; Constitutional Court decision 39/2007. (VI. 20.) AB, ABH 2007, 464, 496. [the whole text of this last decision in English see on the official homepage of the Constitutional Court: http://www.mkab.hu/letoltesek/en_0039_2007.pdf]

[30] ABH 1996, 471, 472.

[31] Act XX of 1949 on the Constitution of the Republic of Hungary section 50 subsection 2. See the Constitutional Court decision 272/B/2006. AB, ABH 2007, 1971, 1973.

[32] The Constitutional Court inheres from the beginning the division of power to the principle of legal certainty and rule of law. Sólyom László, Az alkotmánybíráskodás kezdetei Magyarországon. [The Beginnings of Constitutional Jurisdiction in Hungary] (Osiris 2001) 709. Elsewhere is mentioned that it was connected with the rule of law only once (Sólyom (n 32) 721). The Fundamental Law textually contains the principle of separation of powers. According to Article C) subsection 1 of the Fundamental Law the functioning of the Hungarian State is based on division of powers.

[33] That is Act XX of 1949 on The Constitution of the Republic of Hungary section 50 subsection 2.

the Constitutional Court also held that it not only creates but at the same time *restrains* the competence of the courts against the public administration: the 'court authority of legal control also restricts the frame of the authority in public administrative cases.'[34]

This starting point built on the principle of rule of law may suggest a wide range of judicial control. Compared to this, the Constitutional Court restatements might allude to the restriction of the control. 'The right of legality control means that the competence of the courts in public administrative cases extends to examine whether the organs of public administration exercised their authority within the framework of law according to decision-making power, whether the effective provisions of the law were complied during the activity of applying the law.'[35] The Constitutional Court confirmed several times that judicial control over public administrative decisions extends *solely to the legal examinations of those*.[36]

As we referred earlier in the section about the fundamental right of the judicial procedure, the Constitutional Court decision 39/1997. (VII.1.) AB declared a constitutional requirement according to the regulation of judicial control over the legality of public administration decisions (that is primarily in case of the reviewable decisions and the adopted legislation procedure). Thus 'it is a constitutional requirement that the court shall judge the right and obligations in the judicial procedure on merit accordingly to the right of fair procedure. The rule stating the scope of public decision-making power must include an adequate reason or measure as evidence so that the court may review the legality of the decision.'[37] The Constitutional Court also held that 'the procedure on review of the public administrative decision must lead to the effective "judgement" of the court on the right and obligations accordingly to the claim in the judicial procedure.'[38] The real meaning of the phrase 'the court examines' is that the rights and obligations remaining in the public administrative decision (that is, the legal effects of the decision) are 'judged by the court'. The Reasoning of the Constitutional Court decision implies that when the 'final, right assessed decision, on merit' is mentioned. It reasonably arises from this that (a) the judicial examination of the legality of public administrative decisions may not be restricted to the formal examination of legality; (b) in the public administrative judicial procedure the court is not bound by the statement of facts reported in the public administrative decision; (c) and the court may supervise the appreciation of the public administrative organ according to legality as well.

The Constitutional Court's starting point is that the Constitution subordinates the interpretation of law by the public administration to the control of the neutral judicial power. The scope of judicial control means at least the power of annulment of the public administrative decision that is contrary to law. The only opportunity that arises as a requirement from the Constitution is for the judicial power to impede public administrative decisions that are against the law.[39] An impediment to getting into effect is factual, on the merit ques-

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[34] Constitutional Court decision 272/B/2006. AB, ABH 2007, 1971, 1973.

[35] Constitutional Court decision 272/B/2006. AB, ABH 2007, 1971, 1973.

[36] Constitutional Court decision 1133/B/1998. AB, ABH 2005, 844, 863.

[37] ABH 1997, 263.

[38] ABH 1997, 263, 272.

[39] Constitutional Court decision 953/B/1993. AB, ABH 1996, 432, 435.; reinforced the Constitutional Court decision 54/1996. (XI. 30.) AB, ABH 1996, 173, 197.; Constitutional Court decision 42/2004. (XI. 9.) AB, ABH 2004, 551, 583–584.

tion according to the confirmative Constitutional Court decision 54/1996. (XI. 30.) AB: 'the execution secured in advance, that is, the statutory regulation about the ignorance of delaying force is not contrary to the Constitution as this requirement is fulfilled with the exhaustion of the necessary (one instance) remedy according to the Constitution; the opportunity of judicial suspension of the execution is secured by law in this case, as well. The judicial review is absolutely not formal but is based on merit, since it impedes the unlawful decision to become effective.'[40]

The Constitutional Court laid down further requirements in this decision: those legislations which reject or restrict the court during the review of the public administrative decision to judge the legal dispute on merit are against the Constitution.[41] 'Regarding this reason not only that regulation may violate the Constitution, which expressly rejects judicial review beyond the legal question or allows such weak scope against the public administrative appreciation that we cannot talk about the case "judged" on the merits within the appropriate constitutional guarantees, but even that legislation which gives unlimited right of appreciation to the administration but contains no legality standards for judicial decision, either.'[42]

However, the decision left no doubt about the requirements arising from the principle of right to fair trial.[43]

1.7. The constitutional guarantees of public administrative procedure

Constitutional Court decisions considering a very large number of constitutional problems relating to substantive public administrative legislation and the number of decisions concerning expressly procedural legislation are relatively small, although the role they play in the legal systems and in the administrative procedure of law is determinative. For example, the judicial review of public administrative decisions, the recodification of civil infractions, the genuine and effective legal remedies against the silence of the authority have been enforced by the Constitutional Court.[44]

Also, Constitutional Court's decision held the case of legal remedy system that *formally* enabled judicial control issue but *restrained* meaningful and effective remedies.[45]

Several decisions of the Constitutional Court affected the conceptual scope and progress of administrative case that is the material scope of the authority procedure.

It also has to be handled as a constitutional question that the cases administrated by subject (according to their characteristics) are not put under the force of the Act on authority procedure by the legislative body. This constitutional issue, though, may arise from the legal misinterpretation of the authorities, or during the judicial review of the courts. The

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40 ABH 1996, 173, 197–198.

41 With Section 57 subsection 1 of the Constitution of Hungary.

42 Constitutional Court decision 39/1997. (VII. 1.) AB, ABH 1997, 263, 272.

43 Herbert Küpper – Patyi András, 50. § ['A bíróságok feladatai és függetlenségük'] [The duties and independence of the courts] in Jakab /ed/ (n 21) 1763.

44 Constitutional Court decisions 32/1990. (XII. 22.) AB, Constitutional Court decision 63/1997. (XII. 12.) AB, Constitutional Court decision 72/1995. (XII. 15.) AB.

45 Constitutional Court decision 39/2007. (VI. 20.) AB.

opportunity of effective constitutional review has been created with the introduction of the 'real constitutional complaint' – as a new authority of the Constitutional Court – by the Fundamental Law (see next section).

As we have severally indicated, in the operation of the Constitutional Court essential requirement of the *legality of the public administration* is that it shall operate within a *statutory* procedural framework, within the framework of law, and the authorization to legal restrictions may be stipulated accurately by law.[46] The legality of the decisions of public administration is *an interest of the rule of law,* and procedural law has to be appropriate for that, moreover *irrespective of the client's interest.*[47] The adjudication of public administration means not only the protection of individual interest protected by substantive and material rights, but the enforcement of the legislation created to serve the common interest protected by law, or a right or legal interest of a community, and such generally protected legal subjects like the protection of public order or public safety, the protection of each person's life, physical integrity, safety, or rights. So if a decision violates the law, not only the right of the person entitled to file a complaint for judicial remedy has been infringed, but also common interest and the rights protected by material law. Properly unlawful decision violates the Constitution itself, since according to the Constitution there is no authorization for adopting a decision contrary to the law. The non-statutory decision means that the public administration in that decision has acted in a way not subordinated to the law.

These two aspects, i.e. public and private interests may also collide, since a decision advantageous for the individual but contrary to law may be adopted.[48] 'The decision that favours the client, but is unlawful, may infringe on public interest, others' rights protected by public administrative law, or their legitimate interests (for example, building permission granted in ignorance of the environmental regulations violates the rights and legitimate interest all those whose health are intended to be protected by environmental regulations).'[49]

Public administration is obliged in cases expressed by the law *to make a decision,* with reference to the *deadline* ensuring predictability, and this deadline shall be kept.[50] In public administrative procedure *guarantees of fair procedure* may be prevailing thus particularly the authority cannot be a client for itself; the two roles shall be separated.[51] The concerned party shall be listened to (in case if she/he wants to exercise this right) etc. These guarantees are softer than in the procedure of the court, but the basic guarantees shall be prevailed in the public administrative procedure.

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[46] Constitutional Court decision 6/1999. (IV. 21.) AB, ABH 1999, 90, 94.; Constitutional Court decision 19/2004. (V. 26.) AB, ABH 2004, 321, 353.

[47] Constitutional Court decision 2/2000. (II. 25.) AB, ABH 2000, 25, 28–29.

[48] Küpper-Patyi (n 43) 1779.

[49] Constitutional Court decision 2/2000. (II. 25.) AB, ABH 2000, 25, 28.

[50] Constitutional Court decision 72/1995. (XII. 15.) AB, ABH 1995, 351, 354.

[51] The Constitutional Court decision 10/2001. (IV. 12.) AB, ABH 2001, 123, 147. [The summary of the decision see in English: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2001-1-004?fn=document-frameset.htm$f=templates$3.0]

But conversely, besides the principles of procedural guarantees and of legality of public administration, the protection of the enclosed legal relation with legally binding decision according to the requirement of legal certainty shall be accounted.[52]

1.8. A new legal remedy on the constitutionality of the authority's application of law: the constitutional complaint

The Hungarian Constitutional Court was given a new, formerly unknown authority when the Fundamental Law was put into effect: the constitutional review of the interpretations of court decisions.[53] Until January 1st, 2012 the Constitutional Court had the right only to review the applicable law in a concrete (public administrative or other) case. Since the Fundamental Law entered into force, the person or organ concerned with a concrete case has had the right to submit a constitutional complaint against a judicial decision if the decision on merit or other decision enclosing the judicial procedure violates the petitioner's rights guaranteed by the Fundamental Law and the possible judicial review is exhausted or no judicial review is assured for her/him. From the aspect of public administration all of the above means that the opportunity of constitutional control by the Constitutional Court already exists not only against the legislative activity of public administration, but also against the decisions of authorities who apply the law, or rather the legality review of judicial decisions. The Constitutional Court in case of an annulment of a judicial decision may also annul the reviewed public administrative decision.

In the previous section we have already mentioned that we regard it as a constitutional issue if regarding the content (based on features) of cases of an official nature, the legislature do not act in the scope of the Act on administrative procedure, or if the authorities and the – official decision reviewer – courts due to their false (restrictive) interpretation the subject is not classified as administrative legal relation. With this the judicial review based on merit against public administrative decisions may also be excluded. However, to eliminate such unconstitutionality in the frame of the real constitutional complaint – since the Fundamental Law entered into force – is possible, and the Constitutional Court has already used this possibility.[54]

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[52] Constitutional Court decision 349/B/2001. AB, ABH 2002, 1241, 1273.

[53] Before 2012 the Constitutional Court overruled a concrete court decision only once at the beginning of its operation, despite its lack of legal competence at that time. [The summary of the decision in English see: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-1991-c-001?fn=document-frameset.htm$f=templates$3.0] The Constitutional Court decision 57/1991. (XI. 8.) AB received a lot of critiques in legal literature. see: Pokol Béla, 'Bevezető megfontolások a jogforrások jogelméleti elemzéséhez' [Introductory considerations for the legal theoretical analysis of the sources of law] (2000) in *Jogelméleti Szemle/Journal of Legal Theory http://jesz.ajk.elte.hu/*].

[54] Constitutional Court decision 3/2013. (II. 14.) AB annulled the judgement of the Metropolitan County Court. One opposition party wanted to hold a memorial celebration and according to the act on freedom of assembly, they registered it at the police. The police rejected the claim, and stated their lack of competence. A judicial review was brought against this decision by the party, but the Metropolitan County Court held that since the police did not reject on the merit of the claim and did not prohibit

2. The (constitutional) court control in the legislation of the public administration

Public administration is entitled to adopt basically two kinds of legal norms: legal regulations, which are generally binding rules of conduct, and legal instruments of state administration.[55] Legal regulations of public administration can be distinguished from the legal instruments of state administration as they are basically compulsory to everyone, and they refer outside the organ (or organization) of public administration. (The situation may be complicated by the fact that lots of public administrative legal regulations are expressly applicable only by public authorities).[56]

Owing to the principle that public administration is bounded by law, the legislative body is bounded not only procedurally but also by the content according to principle of the hierarchy of the source of law.

In Hungary the control of the legal norms issued by the public administration is primarily the Constitutional Court's authority. This review covers both the legislation and the public organization regulatory assets conformity with the Fundamental Law and international treaties.

During the examination of the legal norm's 'conformity with the Fundamental Law' the Constitutional Court rules unconstitutionality not only in case of the violation of a fundamental right or other constitutional regulation infringement found to be contrary to the Fundamental Law, but also in case a legal regulation at a lower level conflicts with a higher legal regulation, or if an implementation (enforcement) decree exceeds the scope of the authorization given by a statute.

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the assembly, there is no legal ground for judicial review. Against this ruling the party turned to the Constitutional Court for review. The Constitutional Court held that the police decision about the lack of competence in fact is such an 'authority' – (public) administrative decision, in which the police stated that the subject of the case is not a public administrative legal relation. Otherwise the police should have considered on the merits or should have referred to the competent public administrative organ but neither of these was done.

Thus the police made a decision on the merits: the notification was rejected on the merits, and the judicial review cannot be refused against a decision on the merits. *Tóth J., Zoltán,* 'A "valódi" alkotmányjogi panasz használatba vétele: az Abtv. 27. §-a szerinti panasz első két éve az Alkotmánybíróság gyakorlatában' [The practice of the 'real' constitutional complaint in its first two years in the jurisprudence of the Constitutional Court of Hungary] Jogtudományi Közlöny May, 2014. 233.

[55] These are merely internal provisions, organisational and operational rules relating solely to the issuer or subordinated bodies or persons. Therefore normative decisions and orders cannot determine the rights and obligations of citizens. These instruments of state administration cannot conflict with other legal norms either.

[56] *Act CXXX of 2010* on Legislation changed the socialist statutory phrase of 'other regulations and acts' to the phrase of 'public authority regulatory asset'. According to Constitutional Court decision 121/2009. (XII. 17.) AB there is no opportunity to issue not compulsory legal guidelines, thus solely (only) two such legal measures are kept: the normative decision and the normative instruction. Only such formats contain binding normative regulations by the state authorities and the local representative bodies for themselves and the subordinate bodies.

The constitutional ground for this constitutional authority is based on the rules of the Fundamental Law, that expressly state, which legal regulation shall not be contrary to which legal regulation of other type.[57] So if a lower legal rule is contrary to a higher one that means not only the violation of the higher law, but also the violation of the Fundamental Law.[58]

The only exception is the review of local government decrees, which has become the task of the 'normal' (ordinary) judicial forum, the Curia, after the Fundamental Law entered into force. According to this, examination of the conflict of local government decree to any other type of legal regulation is in the authority of the Curia. However, to examine the conformity of local government decree to the Fundamental Law henceforward is the authority of the Constitutional Court.[59]

The Constitutional Court has stated several requirements since its more than two decades of establishment. Many of these have been deduced from the principle of the rule of law.

Thus, the requirement for getting acquainted with the norm is outstanding.[60] According to the Constitutional Court it is contrary to the principle of legal certainty if – continuing

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[57] According to the Fundamental Law:
– the decree of the government shall not be contrary to statute;
– the decree of the Governor of the Central Bank of Hungary shall not be contrary to statute;
– the decree of the Prime Minister and Members of the Government shall not be contrary to statute, to government decree or to the decree of the Governor of the National Bank of Hungary;
– the local government decree shall not be contrary to any other rules of law.

[58] In case of the public authority's regulatory assets the restraint of conflict of laws is declared not by the Fundamental Law but by the Act on Legislation (Act CXXX of 2010). The public authority regulatory assets are not regulated in the Fundamental Law. The Constitutional Court held in decision 121/2009. (XII. 17.) AB, that the existence of these legal rules – independently from their title – is not contrary to the Fundamental Law, moreover in a country of rule of law it is necessary because only legal means are allowed in leading the public administration, also in the regulation of the relations between the authorities. Several regulations of the Constitution (effectively the Fundamental Law) contain their constitutional ground. Thus inter alia that constitutional regulation that the Minister shall autonomously direct the sectors of state administration within his competence and the organs subordinated to him [The Constitution of Hungary section 37 subsection 2, Article 18 subsection 2 of the Fundamental Law of Hungary], or the Hungarian Defence Forces, the police and the national security services shall operate under the direction of the Government. [The Constitution of Hungary section 35 subsection 1 point H, Article 45 subsection 2 and Article 46 subsections 2 and 4 of the Fundamental Law of Hungary]. However, the Constitutional Court also held that such inner public administrative regulations shall not be contrary to rules of law and may not contain compulsory norms to those who are out of the administrative organization.
[Constitutional Court decision 121/2009. (XII. 17.) AB, ABH 2009, 1013, 1033. The summary of the decision see in English on the official homepage of the Constitutional Court of Hungary: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2009-3-007?fn=document-frameset.htm$f=templates$3.0] Hereby this requirement – beyond the itemized rules of the Act on Legislation – also turned into a constitutional requirement i.e. violation results in unconstitutionality.

[59] The Constitutional Court examines the compliance of the local government decree to the Fundamental Law only in case the object for examination is solely to state the government decree's compliance with Fundamental Law, without the examination of compliance with any other legislation. See Act CLI of 2011 on the Constitutional Court section 37 subsection 1.

[60] This requirement was held by the Constitutional Court not only regarding the legislative procedure of the public administrative bodies but also to all legal acts.

the practice formed in the socialism[61] – the public organs (usually public administrative organizations) try to assess compulsory legal interpretations to their subordinate organs in *real acts* (i.e. in such form, which is theoretically not suitable for enforcing legal effect, such as informative letters). This is essentially *hidden legislation*.[62] It shall be examined in the concrete case whether the informative letter is only informant (factual), or contains legal interpretation regardless of its title.[63]

The Constitutional Court stipulated that *the organs of the public administration are usually entitled to the interpretation of the public law compulsory to the administration*, and these activities, as all other administrative activities, shall be directed by the authorized bodies. *The restriction is the priority of judicial interpretation*.[64] The examination of the legality of public administrative decisions is the competence of the Courts, so the public administration's interpretation shall follow the judicial interpretation practice.

According to the Constitutional Court, the so-called 'legal guidelines' remained in force until 2010, and though lacking legally compulsory power, arising from the superior body, they acted like compulsory regulations; accordingly the existence of such legal guidelines – although not legally binding in practice, they acted unavoidably as quasi legal regulations – violated legal certainty.[65] All these made reasonable that the Constitutional Court annulled the provisions of the legal guidelines in the previous Act on Legislation[66] regarding the violation of the requirement of *the public administration bounded by law* in

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61 See Kiss László, 'Einige aktuelle Fragen der Rechtsetzung und des Rechtsquellensystems in der Ungarischen Volksrepublik' (1989) 1 Deutsche Verwaltungsblätter 920; quoted by Győrfi-Jakab (n 21) 177. footnote 169.

62 According to the Constitutional Courts, judicial practice documents with informal interpretation of the law – for example the ministry directive about the implementation of the legislation [Constitutional Court decision 47/1991. (IX. 24.) AB, ABH 1991, 438., 441.; Constitutional Court decision 60/1992. (XI. 17.) AB, ABH 1992, 275., 279.], ministry statement in an individual case (Constitutional Court decision 581/B/1990 AB, ABH 1992, 645., 647.), ministerial motivations of the act (Constitutional Courts decision 161/B/1993 AB, ABH 1993, 888., 889.), furthermore the ministerial and deputy state secretary briefing [Constitutional Courts decision 50/1993. (IX. 14.) AB, ABH 1993, 410., 411.; Constitutional Courts decision 36/1998. (IX. 16.) AB, ABH 1998, 263., 293.] – are not part of the other regulations and acts. The Constitutional Court also held that interpretations of law and points of view of application in these documents have no binding power and since they are issued by the central public administrative authorities, they are capable of baffling the consignees who will follow them as compulsory standards. Such guidelines may easily turn into supplementation of the legal regulation, a managing instrument to derogate the enforcement of legislation. Regarding this, the Constitutional Court held that the issuance of ministry and other central state authority decrees containing legal guidelines, directions, instructions and other informal interpretations which are adopted with dismissing the Act on Legislation are against the principle of the rule of law, thus the practice of guidance with such issues is against the Constitution [Constitutional Court decision 60/1992. (XI. 17.) AB, ABH 1992, 275., 277., Constitutional Court decision 37/2001 (X. 11.) AB, ABH 2001, 302, 305.] see in Győrfi-Jakab (n 21) 177. footnote 169.

63 Constitutional Court decision 45/2001. (XI. 17.) AB, ABH 2001, 727, 732.

64 Constitutional Court decision 121/2009. (XII. 17.) AB, ABH 2009, 1013, 1034.

65 Constitutional Court decision 121/2009. (XII. 17.) AB, ABH 2009, 1013, 1034–1035.

66 Act XI. of 1987 on Legislation. Annulled by Constitutional Court decision 121/2009. (XII. 17.) AB. Abrogated since 31. December 2010.

the constitutional principle of the rule of law. This principle requires that *the organs of the public administration shall be directed by legal means*.

Public power bounded by law also includes the need for stating *the scope and limitations* of the authority of legislation regarding to the legislative power for legal restriction, the discretionary legal power in such issue may not be guaranteed, since it may cause legal uncertainty.[67] On the other hand, *the grounding of the authorization* has to be named either in the authorized regulation.[68]

According to the practice of the Constitutional Court, if the frames of authorization are exceeded in such a way that results in unconstitutionality,[69] the formal unconstitutionality results in the infringement of the requirements of the rule of law as well.[70] Similarly to this, if any authorization is unlimited, it also violates the rule of law.

[67] Constitutional Court decision 6/1999. (IV. 21.) AB, ABH 1999, 94–54, 97., Constitutional Court decision 19/2004. (V. 26.) AB, ABH 2004, 352, 354.

[68] Constitutional Court decision 57/2003. (XI. 21.) AB, ABH 2003. 871, 886.

[69] Constitutional Court decision 19/1993. (III. 27.) AB, ABH 1993, 431, 433.; Constitutional Court decision: 551/B/1993. AB, ABH 1995, 840, 841–842.; Constitutional Court decision: 467/B/2005. AB, ABK 2007. January, 69, 71.

[70] Constitutional Court decision: 27/1997. (IV. 29.) AB, ABH 1997, 122, 127–128.; Constitutional Court decision: 70/2002. (XII. 17.) AB, ABH 2002, 409, 414., Constitutional Court decision: 45/2007. (VI. 27.) AB, ABH 2007, 946, 951.

Administrative justice in Hungary

Introduction

The 'October Diploma' – a Habsburg imperial decree allowing Hungary independence in internal affairs – proved to be a structural reform of the judiciary. The Hungarian Royal Curia regained its lawful powers and reputation. The first separated public law court was the Royal Financial Court, established in 1883. Later, Act XXVI of 1896 set up a single-instance special court, the Royal Administrative Court, which incorporated the Royal Financial Court, too. It adjudged both general and financial cases in non-litigation process. Following the extension of the powers of public law courts, the Court of Competence was created in order to settle disputes of competence between ordinary, administrative courts or authorities of public administration.[1] After the Second World War, traditional formalised law was applied in usual cases of civil and administrative law, but in the field of administrative law there was no place for courts anymore. Hungary turned from a liberated country into a newly occupied one, where the Communist (later Socialist) Party controlled the administration.[2] The introduction of the reforms in the 70s and 80s set some irrevocable changes in motion. Ordinary courts got the competence to review more than twenty kinds of administrative cases (e.g.: taxes, land registry) in non-litigation process. Law and jurisdiction became more liberal. The change of regime in 1989–90 created rule of law in Hungary and gave rise to a gradually evolving reform in the judiciary.[3] As a first step, the Constitutional Court annulled the decree restricting the scope of disputable decisions. Act XXVI of 1991 opened the possibility of judicial revision in every case. In Hungary, jurisdiction takes place in a unified system, which has four levels: District Courts, Regional Courts, Courts of Appeal and the Curia. As of 1 January 2013, administrative cases are arranged by Administrative and Labour Courts (general first level). In important cases – 10% of all issues – Regional Courts proceed as second instance courts. The Curia of Hungary provides extraordinary remedy.

Judicial review is available both for natural and legal persons in respect of administrative acts that directly affect their rights or legal interests. According to a 'uniformity

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1 See Zinner Tibor, 'Thousand Years of Supreme Jurisdiction in Hungary' in Solt Pál-Zanathy János-Zinner Tibor (eds), The Supreme Court of the Republic of Hungary (Hungarian Supreme Court 2005) 5–22. See also Martonyi János, Államigazgatási határozatok bírósági felülvizsgálata [Legal supervision of administrative decisions] (KJK, 1960) and Trócsányi László Jr.: Milyen közigazgatási bíráskodást? [What administrative justice?] (KJK 1992).

2 Zinner (n 1) 23–33.

3 See Darák Péter, A közigazgatási bíráskodás európai integrációja [The European integration of administrative justice] (manuscript, 2007)

decision' issued by the Hungarian Supreme Court in 2004, associations formed by citizens for representing their environmental interests and other social organisations – which are active in the impact area – shall enjoy, in their area, the legal status of the party in environmental cases. In 1998 the Aarhus Convention ensured the participation of people without any subjective affected rights or interests. 'Good functioning' of the administration has great importance where the local government does not have outside control because of the lack of a higher level authority. Here the competent Governmental Office can ask for a review without having to be affected by the case.

The definition of 'Administrative Authority' includes all public legal entities and private legal entities exercising public power (e.g.: government departments, police, agencies, local self-governments, public corporations).

The concept of 'administrative act' is unfamiliar in Hungarian substantive law. The term is used in jurisprudence and in judicial practice. Actually, the theory distinguishes between normative and individual administrative acts.

Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter: GRAPS), which entered into force on 1st November 2005, regulates public contracts concluded by administrative authorities and parties.[4] In case of refusal to act, or an omission to do so, if the administrative authorities are under an obligation to implement a procedure following a request, the court is entitled to oblige the Authority to exercise its competence. Normative acts can be reviewed by the Constitutional Court, but also courts can initiate annulment of unconstitutional law, if it is applicable in the case. Review and annulment of local self-governments' decrees violating legal norms of higher rank (except for the Constitution – the Fundamental Law), as well as establishing the local self-governments' failure to legislate belong to the competence of the Curia.

1. Who reviews administrative acts?

1.1. Competent Bodies

As a main rule, there is a general right to appeal in the administrative procedure. Higher-level authorities are bound by GRAPS. In some special issues, there is direct access to courts (e.g. public procurement, competition cases). Judicial review is exercised exclusively by Administrative and Labour Courts.[5]

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[4] See Darák Péter, 'A közigazgatási eljárás új szabályairól' [On the new rules of administrative proceedings] (2006) 45 Ügyvédek Lapja 18–33. and Darák Péter 'A közigazgatási perek és nemperes eljárások új szabályozása' [On the new rules of litigious and non-litigious administrative procedures] (2005) 44 Ügyvédek Lapja 17–34.

[5] See Varga Zs. András-Fröhlich Johanna (eds), Közérdekvédelem – A közigazgatási bíráskodás múltja és jövője [Defence of Public Interest – Past and present of administrative justice] (PPKE JÁK-KIM 2011).

The Administrative and Labour Court of Budapest has a special exclusive competence in certain categories of matters, mainly in such cases where the first instance Authority has competence for the whole country (issues of ministries, media cases, and public procurement and competition cases). There are no regional courts in the review procedure. Higher courts have no first instance competence at all.

A Hungarian judge can deal with administrative issues when she/he is assigned to the list of 'administrative' judges. This means that she/he can handle administrative cases, but she/he isn't prohibited from working in civil law cases.

The Hungarian Constitutional Court is competent to examine normative acts of administration alleged to violate the Fundamental Law. If a normative act is found to be unconstitutional, it will be annulled.

1.2. Rules governing Competent Bodies

According to the Hungarian Fundamental Law/Constitution, ordinary courts supervise whether an administrative act is lawful or not. Case law extended the competence of courts step by step in the last decade. The uniformity decision of the Supreme Court (No. 1/1999) declared that a 'letter' of the police which was written in response to a complaint about a measure taken by an officer shall be considered as an administrative act. Another uniformity decision (No. 3/1998) pointed out that administrative decisions declaring a lack of competence are challengeable at court. The same regulation can be found in GRAPS and in chapter XX of the Civil Procedure Code (CPC) now – thus, there is no more legal barrier to judicial control over public administration.

1.3. Internal organization and composition of competent bodies

At first instance, Administrative and Labour Courts proceed. Administrative judges arrange their cases in one person. If the judge finds the case too difficult, or to be of significant importance, she/he can ask for a three-judge chamber, which has to accept the single judge's initiation. Chambers are composed automatically in accordance with the statute of the court.

The chambers of the Curia, consisting of three judges, deal with the case in such a way that one judge reports on the case. If they have an oral hearing, the head of the chamber leads it. There is a formal vote for the judgement, where the youngest judge votes first, and the head of the panel votes last. The minority opinion can be enclosed with the files for the higher-level court, which can take it into account in the second instance proceeding or in case of a revision.

1.4. Judges

Administrative judges belong to a specific category. They need a special assignment by the National Office for the Judiciary (NOJ). In practice, all administrative judges are assigned to this special position.

Administrative judges are recruited partly from the public administration, partly from among trainee-judges of the court. There are no special conditions for this position.

The NOJ has a department that organizes professional training sessions on current topics. The Association of Hungarian Administrative Judges organizes 3–6 conferences a year to make judges up-to-date.

Judge positions must be filled by application. The self-governing body of judges express an opinion about the candidates.

Level of payment depends on the length of service (increases automatically by some percentage every 3 years), as well as on the level of the court (the benefit is 15% at the Administrative and Labour Courts, 60% at the Curia).

Judges are not allowed to work outside the court except for the Ministry of Justice where they can take part in the work of the codification bureau as 'temporary codifiers'. Ordinary work as a judge is banned for this period of time. It is not possible to take up another position in public administration, either. Judges usually move from lower courts to higher courts, but not often between courts of the same level.

1.5. Role of Competent Bodies

The competence of courts is based on the supervision of lawfulness. This means that the court can annul an unlawful decision in any case, but in certain categories of matters (in my estimation more than 50% of all cases, e.g. tax cases, public procurement, land registry cases) a court can also alter the contested administrative decision. It is not clarified by law in each type of case whether alteration means a review of the matters of law or the court is free to review the matters of fact, as well. Theory and case law state that in family law cases the court decides on the merits of the case, so it can take a new fact or law into consideration. ('New' means here facts which happened after the contested administrative decision was issued, and laws which were not in force at that time.)

Administrative judges also review the lawfulness of administrative contracts in two ways. First, when the contractual partners cannot agree about the modification of the contract, they can ask the court for a judgement. Secondary, when the Authority finds that the partner has breached the contract, and therefore orders prosecution of same, the partner can request a review in the court. The reason of this provision is that nobody would come to the court directly after signing a contract, but later, when the parties have a debate about it.

In their judgement, Hungarian courts can order the Authority to act, when it is under obligation to implement a procedure upon request.

Claims for damages caused by unlawful administrative acts are exclusively heard by civil law judges.

The Constitutional Court has exclusive competence to examine the constitutionality of laws that may be applicable in an administrative review case. The administrative judge is entitled to suspend the hearing and ask the Constitutional Court for an examination of the applicable legal provisions. If a local government decree violates a legal norm of higher rank – with the exception of the Fundamental Law – the Curia of Hungary is entitled to

annul the decree in a non-litigation procedure. If the decree is annulled by the Curia, it cannot be applied in the ongoing case.[6]

Citizens may ask the Constitutional Court for examination only in the form of a constitutional complaint, namely, if the contested legal norm has been applied in a court proceeding and this has led to violation of a fundamental right. As of 1 January 2012, not only pieces of legislation can be subject to this kind of review, but court decisions themselves as well, that is, anyone can file a constitutional complaint against a court decision and the Constitutional Court may establish that the decision conflicts the Fundamental Law and annul same.

All Bills and Drafts of government decrees should be forwarded to the Curia, which renders an opinion regarding whether they concern the jurisdiction. The Curia gives expert opinion and judges of the Curia take part in the work of codification committees.

Giving such opinions pertains to the activity of the Curia, and is not a right of the individual judge.

1.6. Allocation of Duties and Relationship between Competent Bodies

The Curia has several means to ensure uniform application and interpretation of the law. If there is a divergence in the case law between lower courts, the president of the Curia, the leader of the administrative division of the Curia, or the head of a chamber in the Curia can initiate a special procedure to ensure the uniformity of the law. The uniformity decision, which is binding for all courts in Hungary, is passed by an extended chamber of five or seven judges. The Administrative Division of the Curia adopts non-binding opinions regularly. Judgements delivered in individual cases are published monthly, so the Curia's practice influences the judiciary.

2. How are administrative acts and actions reviewed by the Courts?

2.1. Access to Justice

It is essential that proper remedies in the proceedings before the administrative authorities have been exhausted.

Anybody (natural or legal person) whose rights or legal interests are directly affected by an administrative act can bring a case to the court.

The statement of claim must contain the factual and legal reasons, but the court examines ex officio whether the Plaintiff's rights or interests are affected by the administrative act. Article 98 of the Act on the protection of the environment gives access to courts on

[6] See Darák Péter – Patyi András, 'A normakontroll hatáskörök megosztása az Alkotmánybíróság és a közigazgatási bíróság között' [Sharing the power of constitutional control between the Constitutional Court and administrative jurisdiction] (2010) 1 Alkotmánybírósági Szemle 82–89.

environmental issues for environmental associations. The public prosecutor can file a suit if the client is not able to protect his/her rights.[7] In proceedings before the Curia, the General Prosecutor is entitled to act as 'amicus curiae', namely, to express his professional opinion in a question of law – either on his own initiative or upon request of the Curia, or any parties to the dispute – in order to contribute to the uniform application of law. The Curia is not bound by the General Prosecutor's opinion; however, it has to disclose the opinion with the parties.

A review must be requested within 30 days counted from the delivery of the decision. The time limit is the same in the case of claims submitted against inactivity and shall be counted from the date when the Authority should have fulfilled its duty.

Any final decision of the authorities can be contested at the court. Approximately 50% of acts of a preliminary nature can be appealed, and also challenged directly before the court. Other acts of preliminary nature are reviewed indirectly, in the review procedure concerning the final administrative decision.

There are no more screening procedures. The Constitutional Court annulled these rules several years ago, explaining that the Supreme Court cannot refuse a petition for review in an individual case reasoning with general aspects of fundamental importance.

The action must be filed in writing. The Plaintiff must enclose the copy of the challenged administrative decision or provide its most important dates. It must state the infringement of law. The Plaintiff must present the relevant facts and his/her reasoning as to why and to what extent the decision should be changed.

A court fee in form of duty stamps amounting to 70 000 HUF (230 €) is paid for an action against the administrative decision, and 70 000 HUF (230 €) for the review by the Curia. There is a higher fee for cases where the obligation of the Authority is a payment (taxes, customs, fines), 6% of the challenged sum, but it cannot be more than 900 000 HUF (3600 €) in first and second instance and 2 500 000 HUF (10 000 €) at the Curia. Fees are paid only after the procedure in administrative cases.[8]

A party (both Plaintiff and Authority) must be mandatorily represented by an advocate only before Appeal Courts and the Curia.

The Plaintiff can ask for legal aid and exemption from court fees and other procedural costs from the court hearing the administrative case, which may be granted depending on the Plaintiff's financial situation. A decision of the court refusing this allowance can be appealed.

2.2. Main Trial

The review procedures against preliminary decisions of authorities are non-litigious procedures. If a final administrative decision is reviewed, there is an oral hearing. Parties can ask for a closed hearing. European standards are guaranteed. As a general rule, evidence is given by the

[7] Varga Zs. András, 'Közigazgatási bíráskodás és egy lehetséges új bírósági szervezeti modell', [Administrative judiciary and a new possible organisational model of courts] in Varga Zs. András-Fröhlich Johanna (eds), Közérdekvédelem – A közigazgatási bíráskodás múltja és jövője [Defence of Public Interest – Past and present of administrative justice] (PPKE JÁK-KIM 2011) 121.

[8] See Act XCIII of 1990 on Court Fees.

parties, and the court takes evidence ex officio whenever the validity of administrative acts is under discussion.

Judges who are affected by the administrative proceeding cannot take part in the court procedure and must notify the president of the court of this fact. If the judge has a conflict of interest, another chamber delivers the judgement. Judges who worked earlier at the administrative Authority issuing the contested decision cannot deal with cases of this Authority for two years.

Claims can be modified until the end of the first hearing at first instance. Modification means giving another direction to the review. Deepening the argumentation or referring to a new paragraph won't be considered as modification of the action. After the application for review has been filed with the Curia, it cannot be changed.

All parties of the administrative procedure and anybody who is affected by the administrative decision can intervene until the end of the last hearing at first instance. The court decides whether it accepts the intervention or not. A representative of the State has no right to intervene in judicial review proceedings.

The public prosecutor supervises the lawful operation of the administration, and can submit a 'call' against administrative decisions. If this call remains without results, the prosecutor can file a suit against the decision.

If the Authority modifies its decision in such a way that it becomes satisfactory for the Plaintiff, the latter may withdraw his recourse. The parties can settle the dispute via an agreement. If the Plaintiff dies and the case was not bound to his/her person, the successor can continue the procedure.

The parties are responsible for providing evidences unless the validity of the acts is under discussion, or the protection of a minor requires it. The burden of proof falls upon the party whose interest is to prove the facts.

Generally, the oral hearing is open to the public. Taking into account the declaration of the parties, the judge decides whether it is possible or not to take photos, video or audio records in the courtroom. Information confidential for reasons of personal privacy or business can justify closed hearings. Oral hearings are conducted in the same way as in civil law cases. Parties can express their opinion and ask questions of the other party, witnesses and experts. At the end, they express their views and final proposals. Judgement is announced and the reasoning behind it is provided briefly.

Either the single judge alone or the chamber passes the judgement. The chamber deliberates in secret at the discretion of the judges.[9]

2.3. Judgement

Judgements contain factual and legal grounds as well as the evaluation of evidence and usually deal with the relevant objection raised. The explanation of the reasons must be sufficient to enable the parties to understand it.[10]

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[9] In details see Kozma György, Módszertani útmutató a közigazgatási ügyek bírósági gyakorlatáról [Methodological guide on the judicial practice of administrative cases] (OITH 1999).

[10] See Darák Péter: A közigazgatási eljárások szabályait értelmező felsőbírósági döntések 2005–2010. [Explanatory decisions of the rules of administrative proceedings of high level courts 2005–2010] (Complex 2010).

Legal norms referred to in the judgment are usually national provisions, but also the Constitution, Community law and jurisprudence are regularly invoked.

The parties must give the factual and legal grounds upon which a decision may be held unlawful. The court does not usually conduct any inquiry on its own initiative. The court changes discretionary administrative decisions when they can be declared unlawful. The higher court can change the lower instance judgement, or can modify the reasoning, as well.

The losing party bears the costs of the successful party, but if they both are partially successful and losing, the court may order that each party shall bear its own costs.

At first instance, the decision is almost always delivered by a single judge, at second instance and at the Curia by three judges. There is a provision having been in force since 1 November 2005 authorizing the single judge at first instance to order that a chamber of three judges should deal with the case if it seems to be complicated.

There is a vote where the opinion of the majority will be the judgement. The dissenting opinion can be attached to the files in a sealed envelope, which can be read only by the higher court chamber if there is an appeal or review procedure before the Curia.

Judgements are always announced in public and delivered in writing. The court puts down its ruling in writing within 15 days of its pronouncement and then delivers it.

2.4. Effects of decisions and execution of judgement

The judgement binds only the parties of the proceeding. The uniformity decision issued by the Curia has a binding effect for all courts. Courts cannot limit the effects of the judgement in time.

According to a new national legal provision, the Authority's decision made in a repeated administrative procedure may be called 'invalid' if it is controversial to the judgement. In this way it is guaranteed that the Administrative Authority duly implements the legal standpoint represented by the court. In case of inactivity, the Authority can be fined.

There are strict terms for the courts. The first trial must be held within 60 days. The court puts down the ruling in writing within 15 days of its pronouncement and then delivers it. If the case is not finished in reasonable time, the parties are enabled for compensation.

2.5. Remedies

Asylum cases are handled exclusively by certain Administrative and Labour Courts; neither an appeal nor petition for extraordinary remedy is admissible against the judgement. Roughly 80–90% of all cases are finished at the courts of first instance. There is a right to appeal only in cases where the administrative decision was made by a ministry or by an organ that has competence for the whole country (e.g. public procuration cases, competition law cases) – such cases constitute about 10% of all cases. These cases are handled at second instance by the Regional Court of Budapest. An extraordinary remedy before the Curia is possible in every case. In the course of an extraordinary remedy the lawfulness of the final judgement is examined. The Curia has exclusive competence to review decisions of the National Election Committee in election disputes.

2.6. Emergency Proceedings and summary jurisdiction/application for interim relief

Cases of exceptional urgency are listed by law (issues of Authority of guardians, disputes relating to elections, etc.).

Upon the request of the Plaintiff, the execution of the decision can be suspended if it would mean an irrecoverable harm for the Plaintiff and this is more significant than the interest of the public.[11]

In his/her request for suspension of the execution, the party must present the threat of serious harm.

Cases of exceptional urgency are listed by law (issues of Authority of guardians, disputes relating to elections, etc.). There is a strict time-limit for holding a hearing and passing the final decision.

3. Can administrative disputes be settled by non-judicial Bodies?

The Authority can revoke or modify its decision during the procedure before the Court within one year after the decision was delivered, but cannot violate rights acquired in good faith. If the Plaintiff is satisfied with the new decision, the procedure will be closed.

The Ombudsman has no competence in court cases. His/her recommendations can prevent an action. Mediation is not a must before an action in the administrative area. There is no arbitration in the administrative field.

4. Administration of Justice and Statistic Data

4.1. Financial resources made available for the review of administrative acts

The expenses of administrative justice are not monitored separately. Approximately 2600 judges and 7000 judicial officers work at Hungarian Courts. Fewer than one hundred judges work in administrative justice.

Every chamber of Curia has a trainee-judge assistant (they are graduated from the Law Schools) who works for 2–4 years on the same panel; some of them help in research and translate. For a shorter time all judges have such assistants.

[11] See: A közigazgatási bíráskodás gyakorlati kérdései [The practical issues of administrative jurisdiction] (OITH 2006).

All Courts have libraries where judges can find historical and up-to-date legal literature. Every month a bulletin is published with information on new monographs and papers.

There is an internal website where applicable law and a database of jurisdiction are available. All judges have access to the Internet, so European Union Law, other documents, and the e-mail addresses of all judges can be found.

Every court has a website. The website of the Curia, available at http://www.kuria-birosag.hu contains the most important judgements.

4.2. Other Facts and Figures

Every year there are 15000 new applications at the Administrative and Labour Courts. The Curia receives 2000 new administrative cases a year.

The Administrative and Labour Courts, the Regional Courts and the Curia finish approximately the same number of cases as they receive, on a yearly basis.

The length of the proceedings before lower courts is less than one year, while before the Curia it is 6–8 months. Regarding all applications, the Administrative and Labour Courts annul 10–20% of the contested administrative decisions.

The litigations concern the following fields: tax and custom cases (30%), social insurance (25%), land registration cases (15%), building and planning (5%). Media cases, bank control, public procurement, environment, forest administration, asylum, expropriation and police administration make up less than 5%.

Further reading

CSINK Lóránt – SCHANDA Balázs – VARGA Zs. András (eds), The Basic Law of Hungary. A First Commentary (Clarus Press-National Institute of Public Administration 2012)

Denis J. GALLIGAN and Daniel M. SMILOV (eds), Administrative Law in Central and Eastern Europe 1996–1998 (Central European University Press 1999)

Denis J. GALLIGAN – Richard H. LANGAN – Constance S. NICANDROU (eds), Administrative Justice in the New European Democracies (Open Society Institute 1998)

Public Administration and the Prosecution Service

Introduction

There are some professional beliefs which seem to remain unchanged even as their background changes. If there are legal beliefs of this nature, beliefs which remain unchanged even if the legal background (legislation) changes, common opinion about role of public prosecution services is one of them, beyond any doubt. European thinking about prosecution concerns mostly the question *How to prosecute?* Even the Council of Europe, in its basic Recommendation (*Rec(2000)19*) in 2000, considered prosecution services as bodies playing a crucial role in the administration of criminal justice, although its Explanatory Memorandum mentioned that

> 'public prosecutors may also in some countries be assigned other important tasks in fields of commercial or civil law, for example'.[1]

After a long chain a conferences, scientific and official documents that will be mentioned later, another Explanatory Memorandum drafted by the European Committee on Legal Co-operation (CDCJ) for better understanding of a new Recommendation (*CM/Rec(2012)11*) observed that

> '…whilst the principal action of the public prosecution service in member States of the Council of Europe lies within the criminal field and its criminal law competences, the public prosecution service does have a role outside the criminal justice system in many member States; a role that varies to a lesser or greater extent depending on the specific national legal order of each member state…'[2]

If we make a quick survey of the European States, we will find that the interest in the non-penal role of prosecutors has changed, not the legal background within the different States. Two steps of the way of legal thinking progresses should be mentioned to understand its changes.

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1 Recommendation Rec(2000)19 of the Committee of Ministers to the Member States on the role of public prosecution in the criminal justice system, (CoE 2000), Explanatory Memorandum, Commentaries on Individual Recommendations, Functions of Public Prosecutors, Preamble, para 1 and 5.d.

2 Recommendation CM/Rec(2012)11 of the Committee of Ministers to member States on the role of public prosecutors outside the criminal justice system, (CoE 2000) Explanatory Memorandum, Introduction, para 2.

Based on a questionnaire filled in by the majority of the member States of the Council of Europe at the 6th Session of the Conference of the Prosecutors General of Europe (hereinafter: CPGE) held in Budapest in 2005, a Reflexion Document was presented on the non-penal role of prosecutors (First Report).[3] The First Report made an overview on the non-criminal-law activities of the different Prosecution Services of Europe and drew the conclusion that member States of the Council of Europe can be divided into two groups.

a) The first group consists of member States in which prosecutors do not have any tasks outside the criminal field, or even if they do, their tasks are not considered important.[4]

b) In other member states prosecutors have tasks of high importance in the extra-penal area. in these member states the different tasks of Prosecution Services could be classified in two main groups.

ba) Civil law tasks: the most important tasks of prosecutors are in connection with the validation and nullification of marriages, and several other procedures on family status. Some other types of tasks are appeals and motions for a new trial, or nullification of court decisions, actions for protection of the rights of juveniles and persons incapable of managing their own rights, competencies linked with registration of business associations, declaration of bankruptcy and of termination of legal persons. Similar tasks can be seen in the field of registration and declaration of termination of associations and foundations. Some other tasks and measures of the prosecutor can be found in connection with labour law cases.

bb) Public (administrative and constitutional) law tasks as: measures (appeals, and other forms of legal remedy) taken by the prosecutor as special control on the legality of the operation of the administration, initiation of the constitutional court's procedures, disciplinary measures against the members of authorities and advisory/consultative role of the Prosecutor General.

In its Conclusions[5] the 6th Session of CPGE (Budapest) emphasized that the issue must be considered at a larger stage. This task was fulfilled at the Conference of European Prosecutors organised in Saint Petersburg in the Russian Federation in 2008, a conference observed now as the second step on the way of a change of legal thinking (Second Report).[6]

As a general overview of the non-criminal competencies of prosecutors in the Second Report, a list of non-penal tasks of prosecutors of the member States was obtained at first observation:

a) There are *no competencies outside the criminal field* in *Estonia, Finland, Georgia, Iceland, Malta, Norway, Sweden, or Switzerland, nor in the judicial systems of the United Kingdom.*

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[3] See: Varga Zs. András: Reflection Document on Prosecutors' Competencies Outside the Criminal Field in the Member States of the Council of Europe (CPGE (2005) 02) (CoE 2005) and Report on the Role of the public prosecution service outside the field of criminal justice (CCPE-Bu (2008)4rev), (CoE 2008).

[4] Austria, Denmark, Estonia, Finland, Georgia, Germany, Iceland, Italy, Moldova, Norway, Northern Ireland, Sweden, and Switzerland and in the judicial systems of the United Kingdom.

[5] http://www.coe.int/t/dg1/legalcooperation/ccpe/conferences/CPGE/2005/CPGE_2005_16Conclusions_en.pdf

[6] See: CCPE-Bu (2008)4rev: Report on the Role of Public Prosecutors outside the Criminal Field, (http://www.coe.int/t/dghl/cooperation/ccpe/conferences/2008/4rev_2008_CCPE-Bu_reportVargas_en.pdf)

b) Only few or very specialized competencies were communicated by *Albania, Austria, Azerbaijan, Denmark, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Moldova, San Marino, Slovenia and Turkey.*

c) The prosecutors of *Armenia, Belgium, Bulgaria, Croatia, Czech Republic, France, FYR Macedonia, Hungary, Latvia, Lithuania, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, the Russian Federation, the Slovak Republic, Spain, and Ukraine* have *extensive non-penal competencies.*

The grouping of States provides an opportunity for two different *prima facie* conclusions which do not exclude each other:

i. Based on groups a) and b) it can be concluded that Prosecution Services in almost half of the member States did not have non-penal competencies, or these competencies are declared to be not important or appear very rarely in practice.
ii. However on the basis of groups b) and c) it can be concluded that prosecutors in more than half of the member States have at least some non-penal competencies.

Although these two conclusions should be analyzed in detail, it is possible to state that the conclusions of the 6th CPGE seem to be pertinent:

'6.3 Some member States do not feel any need to provide extra-penal competencies to the public prosecutor and do not consider these tasks to be within the remit of the public prosecutor. This can be considered an acceptable approach to the role of the public prosecutor.

6.4 At the same time, other countries consider it as an integral part of their system to grant public prosecutors competencies outside the criminal sector, giving them a role in ensuring the operation of a democratic society under the rule of law and in protecting human rights. There is no reason not to consider this as an appropriate practice as well.'[7]

The important 'borderlines' are among:

- prosecution services *without* non-penal tasks;
- prosecution services with few, not important or special *civil law* tasks;
- prosecution services with both civil law and administrative law competencies to start *court-actions*;
- prosecution services having also extra-court (direct, own-power) administrative law competencies besides civil law and administrative law competencies to start *court-actions*.

Whereas this new specification shows not only the quantitative growth of the non-penal tasks of the different groups of the member States, it also expresses the intensity of the non-penal role of the different prosecution services; one of the most important questions could be whether there are other common features among prosecution services in the same groups characterized by the same intensity of non-penal role.

[7] http://www.coe.int/t/dg1/legalcooperation/ccpe/conferences/CPGE/2005/CPGE_2005_16Conclusions_en.pdf

1. Role of prosecutors concerning administrative law – history of regulation

It can be pointed out from our preliminary observations that even if the majority of European States empower their prosecution services with non-penal roles, these powers usually are of civil law nature, whilst administrative law tasks are really exceptional. The reasons for this situation can be understood if we take into consideration some elements of legal history.

It seems that four important roots of non-penal tasks of prosecutors and especially extended administrative powers can be identified:

a) the original – pre-modern – institutions of *procurators of the treasury* (or of the interests of the Crown); *San Marino* still holds this ancient denomination: *Procuratore del Fisco,* but the institution was known in the majority of the continental countries;
b) the institution of *procureur* in *France*, which can be considered as the mother-institution of the modern prosecution systems of the continental Europe;
c) the institution of *ombudsman* of *Sweden* as a specific model of non-decision-making institutions;
d) and finally the *tsarist procurator* of *Russia,* which combined the three main roots and had a decisive influence on Eastern and Central Europe.

One of the observations based on the two surveys presented above is that the sublimation of the boundaries between public and civil law, the strengthening the role of public services against the traditional proceedings of public administration bodies is sharpening the need for new forms of control (and of protection of rights) since the different instruments of legal remedy of administrative law do not suit civil law relations and civil law court actions are not quick enough to correct the different mistakes of the administration. The value of mechanisms of control without decision-making power is growing. This kind of control can be handled by an ombudsman focusing on human rights or by prosecutors protecting public order. In the end the outcome is analogous.

However, even if the role of direct (extra-court, own-powered) competencies of prosecutors fits the mentioned forms of control, these competencies must not be unlimited. The accurate limitations cannot be drawn up by replies to the Questionnaire, but some of the rough requirements are as follows:

Firstly, it is beyond any doubt that impartiality and fairness of prosecutors acting for public order or for other aim defined by law should be ensured, taking into account the criteria of Recommendation 19 (as the consequences of administrative law activity can be commensurable to those of criminal law activities).

Secondly, the definition of the parameters of administrative law competencies of prosecutors should be regulated by law as precisely as possible. The reasons for this requirement are similar to those presented above regarding court activities.

Thirdly, the obligation of prosecutors prescribed by law to reason their actions and to make these reasons open for the persons or institutions involved or interested in the case seems to be a must – as it was seen regarding court-actions.

Fourthly, measures prescribed by prosecutors can be compulsory only after a revision by court. Any kind of decision-making without the opportunity of being argued by the court

is hardly acceptable, even if the goal of warning, protest and similar actions of prosecutors could be the protection of rights or redress of injuries by a quick and simple procedure. In other words, measures of prosecutors can be enforced only by consent of courts. However, some very few and limited cases – like protection of state secrets or actions by other authorities bound by consent of prosecutors as a guarantee of rights – could be exempted.

Fifthly, opportunity for persons or institutions involved or interested in the case to claim against measures or default of prosecutors is necessary.

The member States of the Council of Europe contribute and maintain as a common root the democratic operation of society by respecting entirely the principle of rule of law and the protection of human rights and basic freedoms without any conditions. We can see that some of the member States do not feel it absolutely necessary to ensure competencies for the prosecutor in the extra-penal area and do not consider these tasks a basic requirement. In spite of these circumstances, we cannot say that those member States where prosecutors are not empowered to act in a non-criminal area have an inappropriate practice or should reconsider changing their system of prosecution.

At the same time we can also see that other countries consider it an integral part of their constitutional system to have prosecutors with the competencies outside the criminal area in order to ensure the operation of a democratic society and protect human rights. There is no reason to say that these member States have an inappropriate practice or should reconsider changing their system of prosecution. Comparing these two groups of member states and the requirements on the prosecutors' activities, it can be stated that prosecutors' non-criminal tasks are not inevitable, but when it exists it is useful and reasonable. In those cases where prosecutors are provided with such competencies outside the criminal area, member states have to ensure the rule of law, and within that framework, the respect of other basic principles and human rights governing all democratic societies.

2. European standards of non-penal role of prosecutors

The regular CPGE Conferences mentioned earlier and their transformation into the formal *Consultative Council of Prosecutors of Europe* (CCPE) maintained the interest concerning the topic. Yearly conclusions of the CPGE[8] and opinions of the CCPE (no. 1 on 'Ways of improving international co-operation in the criminal justice field', no. 2 on 'Alternatives to prosecution', no. 3. on 'The role of *Prosecution Services* outside the criminal law field', no. 4. on 'The relations between judges and prosecutors in a democratic society'[9], no. 5. on 'Public prosecution and juvenile justice'[10]) brought us step by step closer to a more harmo-

[8] See: http://www.coe.int/t/dg1/legalcooperation/ccpe/conferences/CPGE/

[9] Importance of Opinion no. 4 was underlined by the fact that it is in the same time Opinion no. 12 of the Consultative Council of European Judges (CCJE). The joint opinion was based on the 'Bordeaux declaration' (adopted on 19 November 2009) of the two judicial bodies (see https://wcd.coe.int/).

[10] See: https://wcd.coe.int/

nised or at least mutually understandable regulation and practise of European *Prosecution Services.* This aim was also facilitated by a comprehensive study.[11]

The *European Union* added its contribution to the work: the more or less formal forms of cooperation like the forum of general prosecutors of the member States, the Eurojustice[12] the Network of the *Prosecutors General* and equivalent institutions of the *Supreme Judicial Courts of the Member States of the European Union*.[13]

The *Venice Commission* gave its contribution to the changes of legal thinking within a short time after the 6th CPGE Conference accepted the list of principles of the First Report as important elements of standard.[14] The list of principles was the following:

1. In addition to the essential role played by prosecutors in the criminal justice system, some member states of the *Council of Europe* provide for the participation of the prosecutor in the civil and administrative sectors for historical, efficiency and economic reasons but their role should always be exceptional (*principle of exceptionality*).
2. The role of the prosecutor in civil and administrative procedures should not be predominant; the intervention of the prosecutor can only be accepted when the objective of this procedure cannot, or can hardly be ensured otherwise (*principle of subsidiarity*).
3. The participation of the prosecutor in the civil and administrative sectors should be limited and must always have a well-founded, recognisable aim (*principle of speciality*).
4. States can entitle prosecutors to defend the interest of the state (*principle of protection of state interest*).
5. Prosecutors can be entitled to initiate procedures or to intervene in on-going procedures or to use various legal remedies to ensure legality (*principle of legality*).
6. In case it is required for reasons of public interest and/or the legality of decisions (e.g. in cases of protection of the environment, insolvency etc.) the participation of the prosecutor can be justified (*principle of public interest*).
7. Protecting the rights and interests of disadvantaged groups of the society unable to exercise their rights can be an exceptional reason for the intervention of the prosecutor (*principle of protection of human rights*).
8. If co-operation between prosecution services and other subjects of public law – the executive, the legislative, local government entities – seems indispensable, member States can allow prosecutors general to consult with the representatives of the mentioned authorities (*principle of consultative co-operation*).
9. The principle of separation of powers should also be ensured in connection with the prosecutor's tasks outside the criminal sector (*principle of separation of state powers*).
10. Prosecutor's activities outside the criminal field should not affect the sovereignty of the legislative power (*principle of sovereignty of the legislative*).

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[11] European Judicial Systems, (CEPEJ CoE) 2008.

[12] See http://www.euro-justice.com

[13] See https://wcd.coe.int/wcd/ViewDoc.jsp?id=1799637

[14] Opinion on the federal law on the Prokuratura (prosecutor's office) of the Russian Federation, CDL-AD(2005)014, and Opinion on the draft law of Ukraine on the office of the public prosecutor, CDL-AD(2009)048

11. The participation of the prosecution service in the decision-making by the executive should not engage the responsibility of the prosecution service for the decisions of the executive (*principle of responsibility of the executive*).
12. The participation of the prosecution in court procedures should not affect the independence of the courts (*principle of independence of the courts*).
13. Prosecutors should have no decision-making powers outside the criminal field or be given more rights than other parties before courts (*principle of equality of arms*).
14. Prosecutors should not discriminate among persons when protecting their rights and should only intervene upon well-grounded reasons (*principle of non-discrimination*).
15. If the prosecutor is entitled to take measures in the civil and administrative law area, the rights and guarantees listed in Rec 19(2000) in connection with criminal jurisdiction also apply, such as the duty to carry out their functions fairly, impartially and objectively (*principle of impartiality of prosecutors*).

The next important international document was Part II of the Report of the Venice Commission on European standards as regards the independence of the Judicial System concerning the constitutional law requirements of Prosecution Services.[15]

Finally, the last important contribution to harmonisation was the new recommendation of the committee of ministers of the council of europe on non-penal tasks of prosecution.[16] The new recommendation recalls Recommendation Rec(2000)19 to member States on the role of public prosecution in the criminal justice system; consequently maintains as a general principle that the main task of public prosecutors concerns the field of penal law. However, being aware that in many member States, because of their legal traditions, public prosecutors also play a role outside the criminal justice system and that this role varies considerably between different national legal systems, the Committee of Ministers advises member States to take into consideration some common principles in connection with the mission of public prosecutors (representation of the general or public interest, protection of human rights and fundamental freedoms, and upholding the rule of law), their responsibilities in general when fulfilling non-penal roles (full accordance with the principles of legality, objectivity, fairness and impartiality), their national and international cooperation, and – what is of primary importance for the purposes of this essay – the role of public prosecutors as a supervisory organ. This part is so significant that we decided to quote it:

> ‘23. Where public prosecutors have a supervisory role in relation to national, regional and local authorities, and also in relation to other legal entities, for the purpose of ensuring their proper functioning in accordance with the law, they should exercise their powers independently, transparently and in full accordance with the rule of law.
> 24. In relation to private legal entities, the public prosecutor should only be able to exercise his or her supervisory role in cases where there are reasonable and objective grounds

[15] See http://www.venice.coe.int/docs/2010/CDL-AD(2010)040-e.pdf

[16] Terms of reference of the CJ-S-PR (Group of Specialists on the Role of Public Prosecutors Outside the Criminal Field) for 2011, see ww.coe.int/t/dghl/

to believe that the private entity in question is in violation of its legal obligations, including those derived from the application of international human rights treaties.
25. The authorities or other legal entities concerned by any action undertaken by the public prosecutor in accordance with paragraphs 23 and 24 should be entitled to make representations and challenge such action before a court.'

If we try to summarise the recommendation in a single sentence, we should say that the Committee of Ministers recommends restricting non-penal activity of public prosecutors to exceptional cases, and even in this cases their measures should be subject to judicial control.

3. Administrative law tasks of Hungarian Prosecution Service until the new *Fundamental Law*

3.1. Historical roots

The roots of the Hungarian prosecution services go back to the institutions protecting the royal assets of the feudal state (the Director of Legal Affairs, *fiscales Sacrae Coronae Regiae*) and advising the local authorities, the county assemblies (*fiscalis comitatis*).[17] During their activity, protection of public interest received more and more importance. It can be observed without any difficulty that the 'ancient' task of prosecutors concerned the public, not criminal, field of law.

Following the way of South-Western Europe of the 19th century and establishing the Napoleonic model of prosecutions, fulfilling mostly tasks within the criminal law field[18] (King Francis Joseph of Habsburg-Lotaring), Act XXXIII of 1871 on *Royal Prosecution Services* established a modern prosecution service organized in a centralized system after the conciliation of the nation with the Monarch. The dominant officers were the *Royal Prosecutors General* leading the county services subordinated directly to the Ministry of Justice. In the proceedings of the *Royal Curia* (the Supreme Court) the *Crown Prosecutor* and his Deputies represented the punitive interest of the State. The *Royal Prosecutors General* had no direct relations with the *Crown Prosecutor.* (The legal status, organization and functioning of this was similar to those observed in Austria nowadays).

3.2. The socialist prosecution service (*prokuratura*)

After the Second World War, the new concept facilitated by Soviet influence lead to the reorganization of the prosecution service. The new *prokuratura*-type organization was based

[17] Szendrey Géza, A magyar ügyészség évszázadai ['The Centuries of Hungarian Prosecution'] (Rejtjel 2005) 53.

[18] Directory of Prosecution Services (International Association of Prosecutors 1999) 110., 172., 219.

on the former amalgamation of institutions of the *Napoleonic prosecution* and of the Swedish ombudsman organized by *Tsar Peter I* in Russia.[19] The Soviet-type *prokuratura* was supposed to achieve general control over the state, economy and the whole 'civil' society. These goals required a hierarchical organization lead by a *Procurator General* responsible formally to the Parliament and subordinated informally to the Communist Party. Such an organization was extrapolated from the original text of Act XX of 1949 on *Constitution of the People's Republic of Hungary*. However, the new system was built up only in 1953 by statutory decree 53 of 1953 on *the Prosecution of the People's Republic of Hungary*.

The new regulation focused on control (supervision) divided into four sectors: supervision of criminal investigations, of courts (!), of public administration and of the 'rest': so-called 'general supervision', which included almost anything: labour relations, private law contracts, etc. The *Procurator General* leading and governing the Prosecution Service was effectively responsible to the Parliament: election and reporting (as public law institution) coupled with the opportunity of being removed due to political distrust made him an extremely powerful but at the same time politically subordinate office-bearer of the People's Republic.

The changes of goals were represented within the original text of the *Constitution* which had identified the *Procurator General* as guardian of legality. His functions were rather circumscribed than defined: his general task was to look after observance of law by ministries, other central or local public authorities, institutions and bodies, and last but not least the citizens, while he also had a special task, that of consequent persecution of misconducts breaching or endangering the order, security or independence of the People's Republic.

After the extensive redrafting of the text in 1972, regulation concerning the topic did not lose its abstract shape. The revised text empowered the *Procurator General* and to the *Prosecution Service* to ensure protection of rights of natural and legal persons and consequent persecution of misconducts breaching or endangering the constitutional order or security and independence of the Country. However, some new functions were specified within the text: The *Prosecution Service* was supposed to supervise the legality of criminal investigations, to represent criminal charges before the Courts, and to contribute in observance of law by the different official and private bodies and the citizens. The new text eased the consequent supervisor function of the *Prosecution Service* but did not break with it, and the public law position of the *Procurator General* remained the same.

3.3. Prosecution Service after transition of the 90's

The constitutional reform of the democratic transition made a single, but extremely important change in the text. Since the negotiations of the *National Round Table* (1989)[20] left the

[19] See: CCPE-Bu (2008)4rev: Report on the Role of Public Prosecutors outside the Criminal Field, (http://www.coe.int/t/dghl/cooperation/ccpe/conferences/2008/4rev_2008_CCPE-Bu_reportVargas_en.pdf)

[20] Grudzinska Gross (ed.): Constitualism in East Central Europe, (Czecho-Slovak Committee of the European Cultural Foundation 1994)

reorganization of the institution to the *new Constitution*[21] that was supposed to be drafted after the free elections (1990), the two main questions whether the *Hungarian Prosecution Service* should return to the Napoleonic model or headed henceforward by a *General Prosecutor* not subordinated to the *Executive*, and the necessity of a non-penal role of prosecutors was retained. Unfortunately Hungary has to wait more than two decades for the new *Fundamental Law.*

However, the *interim Constitution* abolished the right of the Parliament to recall the head of the *Prosecution Service* due to political considerations. This formally short change in the text was an important reform. Since then, the *Prosecution Service* headed and governed by the *Prosecutor General*[22] gained effective independence: it still was not subordinated to the Executive and from this moment it wasn't subordinated to the *Legislative Assembly either.*[23] The prescription of functions remained practically unchanged in the text (which mentioned of course the *Republic of Hungary* instead of the *People's Republic of Hungary*), but the detailed functions fulfilled by prosecutors – mostly those of non-penal character – were limited (in some cases essentially) or interpreted in conformity with the constitutional, international and European principles of law by several decisions of the *Constitutional Court*.[24]

Although the goal of this essay is to compare the novelties of the new *Fundamental Law* to the former *interim Constitution* in European perspective, and not a detailed examination of lower regulations, we have to make a short exception. The functions of prosecutors are regulated meticulously by the different codes of procedures. This is an important explication to the abstract (closed) formulation of functions in the *Constitution* (and the lack of detailed regulation concerning prosecutors in the Constitutions of certain states[25]). However, neither the *interim Constitution* nor the amended Act V of 1972 on *Prosecution Service* reckoned with changes of the procedural laws. Consequently regulations of Act XIX of 1998 on *Criminal Procedure Code*, judicial supervision of administrative acts becoming general and ordinary and establishment of ombudsman-institutions which restructured the effective role of prosecutors were not reflected in the *interim Constitution*. Abstraction of the constitutional text was advantageous on this point since the text of lower regulations did not cause direct collision, but the constitutional clauses 'floated' over the other Acts and over the everyday practice predominated by criminal law tasks.

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[21] See: Jakab András: 'The Republic of Hungary', in Rüdiger Wolfrum – Rainer Grote (eds): Constitutions of the Countries of the World (OUP 2008) 46.

[22] The change of denomination of the former Procurator General to Prosecutor General is not reflected in Hungarian since both denominations are the same: 'legfőbb ügyész'.

[23] This decisive consequence of the amendment on the constitutional position of the Prosecutor General was highlighted by the Constitutional Court, see Decision 4/2003 CC.

[24] See Decision 1/1994 CC on the private law tasks of prosecutors, Decision 2/2000 CC on intervention of prosecutors into administrative law procedures, Decision 14/2002 CC on the formal relations between judges and prosecutors, Decision 3/2004 CC on independence of prosecution, Decision 42/2005 CC on substitute civil action.

[25] E. g. the Basic Law for the Federal Republic of Germany; the Constitution of Austria; the Instrument of Government of Sweden.

4. Prosecution and administrative law in the framework of the new *Fundamental Law*

In virtue of the far and close history of the institution, the essential change of constitutional regulation is probably not surprising. It would appear the new *Fundamental Law* has been given a final answer to the almost quarter-century old questions concerning the *Hungarian Prosecution Service.*

4.1. Prosecution Service as part of the Judiciary

The rules establishing position of the *Supreme Prosecutor* and of *Prosecution Service* within the structure of public law organisations seem to put an end to the previous long debates. The new constitutional order keeps the *Prosecution Service* under the control of an independent Supreme Prosecutor without his/her subordination to the *Executive.* Consequently there is no reason to disregard the former opinion of the *Constitutional Court* considering the *Prosecution Service* as a judicial body (part of the judicial branch of power 'in a wider sense'). Within this model the *Supreme Prosecutor* – also independent – is responsible to the *Parliament* in a public law sense, but this responsibility does not mean any kind of subordination. His/her responsibility is limited to the duties strictly prescribed by law: his/her obligation to appear in the *Parliament* or its *Commissions* and to answer their questions. However, the content of the answers has to be considered by the *Supreme Prosecutor,* who also has the obligation to observe the law. Consequently by his/her answer the personal rights of persons affected may not be hurt, *Members of Parliament* may not obtain illegitimate criminal information, and the answer may not endanger the interests of ongoing criminal procedures.[26]

These changes are in concordance with suggestions of the *Venice Commission* mentioned above.[27] The *Commission* notes that '*there is a widespread tendency to allow for a more independent prosecutor's office'*, although usually *'subordination to the executive authority is more a question of principle than reality in the sense that the executive is in fact particularly careful not to intervene in individual cases'*. Nevertheless the *Commission* suggests that *'professional, non-political expertise should be involved in the selection process'* of the Head of Prosecution Service; *'use of a qualified majority for the election of a Prosecutor General could be seen as a mechanism to achieve consensus on such appointments';* he/she *'should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period',* moreover *'The period of office should not coincide with Parliament's term in office'; 'accountability to Parliament in individual cases of prosecution or non-prosecution should be ruled out'; 'specific instruments of account-*

[26] See Decision 4/2003 CC on independence of prosecution

[27] See Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service, Adopted by the Venice Commission at its 85th plenary session (Venice, 17–18 December 2010) (http://www.venice.coe.int/docs/2010/CDL-AD(2010)040-e.pdf)

ability seem necessary especially in cases where the prosecutor's office is independent', 'public reports (...) could be one such instrument'.[28]

4.2. Non-penal powers and competencies of prosecutors – rules of the *Fundamental Law*

What is more important than the constitutional position of prosecution, the *Fundamental Law* makes clear the rank of powers and competencies of prosecutors. While the enigmatic formulation of the *interim Constitution* made it rather difficult to set priority order among the different competencies of prosecutors, the *Fundamental Law* clarifies that the role concerning criminal procedures is of highest importance, when it stresses that prosecutors shall enforce the punitive authority of the *State* by prosecuting criminal offences, taking action against other illegal acts or omissions and facilitating the prevention of illegal acts.

The *Fundamental Law* does not have very much to say regarding the details of criminal law tasks. It marks out only the main directions of prosecutors' activity. They exercise powers in relation to criminal investigations; represent the public prosecution in court proceedings; supervise the lawfulness of penal enforcement and exercise other powers defined by law (para (2)). Thus the Fundamental Law once again gives mandate to the Parliament to create detailed rules ruling that prosecutors should exercise other powers and competencies defined by law.

Under the *interim Constitution* Hungarian prosecutors had certain tasks regarding administrative proceedings. If the legality of a decision of an administrative body *not supervised by administrative courts* was questioned, prosecutors might examine it and take certain measures. The most powerful action – but one without legally binding force – of the prosecutor was *objection,* since it might affect the administrative decision in case (if the public body agreed with the objection or a Court ruled to accept it). There was a less strong 'version' of objection called *observation* which could be formulated if the prosecutor found systematic illegal practice within the jurisdiction of a public body. Observation itself did not have any effect on the particular decisions. A twin of observation was *warning,* applicable when the prosecutor intended to avoid a presumably illegal future act. Finally prosecutors had the opportunity to submit a *notice* to public bodies if an act or nonfeasance was illegal but the 'level' of illegality was low. Beside the formal measures of control, prosecutors might initiate criminal, disciplinary or special administrative proceedings or civil lawsuits.

The new *Fundamental Law of Hungary* gave the opportunity to reconsider these competencies and to draft a new Act more concordant with other European practices.

4.3. The administrative role of prosecutors – rules of the *new cardinal act*

When the new statute, Act CLXIII of 2011 *on the prosecution service* was drafted, the initial versions of the text of the new recommendation (adopted later as CM/Rec(2012)11, mentioned above) were already known by experts, even if the text wasn't published. This

[28] See Report on European Standards… (n 27) paras 26, 34–36, 42, 44.

additional knowledge helped those who were working on the draft of the statute to harmonise the Hungarian rules with European Standards. As a result, the most important rules of the new act weren't criticised by the *Venice Commission*.[29] The most important changes compared with the previous regulation may be specified as follows.

The essential change of the new law was disavowal of the former supervision-orientation and of the investigative-type *ex officio* interventions of public prosecutors regarding administrative law cases. The new basic principle of such activities is intervention by concrete legislative license if there is officially knowledge of illegality affecting the public interest in a certain case. If these conditions are fulfilled, the prosecutor may conduct an inquiry (control of legality by formal procedure instead of supervision), and if any illegality is suspected, the prosecutor may ask for judicial redress by a competent court in administrative cases or – if there is legal ground – may ask for a formal supervision by a superior administrative body.

Before the petition by the prosecutor is submitted to the court or to the competent administrative body, the prosecutor should send his/her opinion to that administrative body which has 'committed' the misadministrative measure or decision. The opinion of the prosecutor is not binding to the involved administrative body, but if it agrees and is ready to redress the administrative fault, the judicial review or redress procedure of the superior body becomes unnecessary. Thus, communication of the prosecutor's opinion – even if it is not legally binding – is an efficient and quick way of redress, while there is no position of power as could be observed in the case of the former protest.

In some special cases (e.g. infringement procedures, administrative coercive measures, etc.) the prosecutor has special duties: he/she is obliged by law to intervene and to prohibit execution of such a measure if there is any doubt regarding legal grounds or preconditions.

Placing the newest Hungarian legislation into the process of crystallising European principles, the recognition that the *Fundamental Act* (and the cardinal act on *Prosecution Services* to be drafted and accepted) is trying to hit a moving target is hardly avoidable. Consequently it is no wonder that the *Venice Commission* was unusually cautious when formulating its opinion on the regulation of the Fundamental Act on *Prosecution Services*. The opinion of the *Venice Commission* states that the new *Fundamental Act 'focuses on the contribution of the Supreme Prosecutor and prosecution services to the administration of justice',* and the only (but very important) comment is that *'This approach is in line with the findings of the Venice Commission in its Report on European Standards as regards the Independence of the Judicial System'*.

[29] Opinion on Act CLXIII of 2011 on the prosecution service and Act CLXIV of 2011 on the status of the prosecutor general prosecutors and other prosecution employees and the prosecution career, CDL-AD(2012)008.

The Ombudsman

1. The position of the ombudsman in the separation of powers

It might be said that the role of the ombudsman cannot be accurately characterized by the distinctive features of any of the branches of powers. The Ombudsman does not create general rules of behaviour, like the legislative power, neither does he apply them in an authoritative way, like the executive, nor does he settle legal disputes, like the judiciary. As a result, several authors conclude that in a state modelled on Montesquieu's principles, the institution of ombudsman cannot be incorporated into any of the branches of power, and, due to the ombudsman's controlling function, he is 'not directly involved' in their work. The institution of the ombudsman does not constitute a branch of power in its own right, yet it is independent from all branches, as well as from all the other organs of the state.[1] This was also the approach taken by the Constitutional Court when it analysed the competences of the ombudsman. It pointed out the following: 'The organs controlling the work of the Parliament – including the Parliamentary Commissioner – are institutions of control in all Parliamentary states today, the tasks of which are to ensure the rule of law in the work of the executive power, as well as to grant legal security to the citizens. This is a general prerequisite of modern democracy, considering a public administration system which might easily become "overly powerful" due to its high number of employees, and its knowledge and experience in state affairs, and this excess of power might present as a danger' [Decision 17/1994. (III. 29.) CC]. According to the rule of law, the executive power is inseparable from the law; authorities can only have competence in the fields assigned to them by law. Therefore, the concept of the rule of law (Rechtsstaat) supposes the guarantee of *legal control* over the executive power. On the other hand, the concept of a Parliamentary state also necessitates the presence of *political control* over the executive power, since the government representing the executive power can only stay in office as long as it possesses a parliamentary majority.

Therefore, in parliamentary states the primary task of the legislator (the creation of norms) is accompanied by another: control. This control, furthermore, is exercised not only over the Cabinet (the Government) but – due to the responsibility of the government – encompasses a wide spectrum of the executive power. Legislation itself, however, can only exercise control over the executive power in a limited number of ways, such as through committees, interpellation and inquiries. Consequently it is a common practice that the Parliament establishes institutions independent from the executive power, in order

[1] Petrétei József, *Magyarország alkotmányjoga* [The Constitutional Law of Hungary] (Kodifikátor Alapítvány 2013) 215.

to oversee its work according to a number of set aspects. In the case of human rights, one such institution is the ombudsman.

The legal protection of the ombudsman is gaining more and more importance, and its focus is moving from the formal administrative decision-making to the less controlled activity of private companies working in the sphere of public services.[2]

Ombudsmen, by their *flexible proceedings* may concentrate on the relationship between an individual and a public or private body, being effectively in a powerful position, irrespective to the origin of this power. Ombudsmen are helped by the stabilization of the substantial content of rights by international documents. The indeterminate scope of courts, whether their duty is to protect individual rights against the power of state or 'only' to rectify particular encroachments of rights,[3] highlights the clear role of ombudsmen. In all those situations when an individual – standing in a public-law-relation directly with a body of the executive branch or indirectly with a private body ensuring public services and getting its power from the executive – has his/her rights violated, and legal redress could be excluded or accessible only with unreasonable costs or efforts, the individual has a sole support: the ombudsman. Although the institution of ombudsmen is not considered for a constitutional state[4]; it is necessary in the lacy public law relations of the 21st century.

2. The origin of the ombudsman

As is widely known, the ombudsman is originally a Swedish institution,[5] which can be dated back to the 18th century. In 1709, suffering defeat from the Russian army, Charles XII., King of Sweden, fled to Turkey. For the duration of his absence, he ordered the establishment of a new office – led by the ombudsman – which was responsible for the enforcement of acts and statutes, as well as for overseeing the work of state offices in order to make sure that they operate in a lawful manner.[6]

The function itself, however, is of much earlier origin – kings in Ancient Egypt ran 'complaint-handling offices', in the Roman Empire two censors were responsible for monitoring state administration, and to deal with the arising complaints. In China the *Jiānchá Yuàn in the Han dynasty fulfilled a similar role*.[7] This is to say that the importance of explor-

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2 Tadeusz Zielinski, *The Ombudsman – Possibilities and Delimitations for Action* (Biuro Rzecznika Praw Obywatelskich 1994)

3 Joana Miles, 'Standing in a Multi-Layered Constitution' in Nicholas Bamforth – Peter Leyland (ed), *Public Law in a Multi-Layered Constitution,* (Hart Publishing 2003) 407–412.

4 See: *Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons. A Handbook* (Council of Europe, Directorate of Legal Affairs 1996) 34.

5 Interestingly, the word 'bud' means 'message' in Scandinavian languages. Therefore it is entirely possible that the word ombudsman relates to the forwarding of messages.

6 See: Ibrahim Al-Wahab, *The Swedish Institution of Ombudsman* (Liber Förlag 1979) 20., and Bengt Wieslander, *The Parliamentary Ombudsman in Sweden* (The Bank of Sweden Tercentenary Foundation and Gidlunds Bokförlag 1994) 14–16.

7 Gerald E. Caiden, 'The Institution of Ombudsman' in Gerald A. Caiden (ed), *International Handbook of the Ombudsman* (Greenwood Press 1983) 9.

ing the shortcomings of state administration and approaching complaints from the perspective of subjective rights preceded the institution of handling the citizens' complaints.

The institution of the ombudsman in Europe did not appear until the 19th century; the detailed regulation concerning it appeared in the Swedish Constitution in 1809 (justitieombudsman). In its original form it was part of the executive power, and it gradually became an institution in the service of the rule of law and of human rights, independent of the executive power, throughout a period of historical development.[8]

The institution of the ombudsman did not become known worldwide until the second half of the 20th century. It is noteworthy that – as opposed to the work of the Constitutional Court – the institution of the ombudsman was not originally established in the post-authoritarian, but in stable democracies, such as Sweden, Finland, New-Zealand, as an additional control of the decisions made by state administration.[9] The ombudsman is a 'supporting guarantee' in the legal order, rather than the primary deliverer of basic rights, or of constitutionality in general. Originally it was not established as a forum in the defence of human rights, but in order to control state administration.[10]

3. Models

As a result of historical development, the institution of the ombudsman has a two-fold function: firstly, it oversees the work of state administration and the government; secondly, it investigates complaints concerning infringements of basic rights. Therefore, the ombudsman examines state administration and public proceedings in their entirety. On the other hand, it explores controversies from the perspective of the individual, and guarantees that basic rights are respected. Therefore, in order to fulfil the function of the ombudsman, both an inductive, and a deductive approach is necessary.

In parallel, the European legal literature defines ombudsman-like institutions by their basic peculiarities (irrespective of the special forms of their legal regulations in the different countries). The first group of peculiarities consists of *independence* and *mandate from the Parliament*. The second group regards the criteria of proceeding: *control* of public bodies and those providing public service, the aim of the institution in order *to protect* the personal right of individuals. Fulfilling its duties, the ombudsman cannot ignore considerations regarding formal principles of the controlled activity and they are empowered with a large scale of inquiry-instruments and rights. Finally the special measures provide the third group of characteristics. Ombudsmen cannot issue legally binding decisions, their 'voice' is heard through is criticism and recommendation (in special cases, ombudsmen

[8] See Gabrielle Kucsko-Stadlmayer, *Európai ombudsman intézmények* [Ombudsman Institutions in Europe] (ELTE 2010) 20.

[9] Szabó Máté, 'Alkotmánybíráskodás és ombudsmani tevékenység' [Constitutional Adjudication and the Ombudsmans' Activity] (2012) 2 Alkotmánybírósági Szemle 67.

[10] Varga Zs. András, *Alternative Control Instruments over Administrative Procedures: Ombudsmen, prosecutors, Civil Liability* (Schenk Verlag 2011)

also may initiate criminal, disciplinary, administrative and law-making proceedings to the competent authorities).

In 1985, the Committee of Ministers of the Council of Europe – welcoming the development of the institution of ombudsmen, taking into account that one of the main aims of the Council is the maintenance and further realization of human rights and fundamental freedoms and considering that – having regard to the complexities of modern administration – it is desirable to supplement the usual procedures of judicial control recommended the Governments of Member States:

'a. to consider the possibility of appointing an Ombudsman at national, regional or local level or for specific areas of public administration;

b. to consider empowering the Ombudsman, where this is not already the case, to give particular consideration, within his general competence, to the human rights matters under his scrutiny and, if not incompatible with national legislation, to initiate investigations and to give opinions when questions of human rights are involved;

c. to consider extending and strengthening the powers of the Ombudsman in other ways so as to encourage the effective observance of human rights and fundamental freedoms in the functioning of the administration."[11]

The consequences of Recommendation No. 13 are as follows:

- Ombudsmen should be appointed at national, regional or local level, or for specific areas of public administration;
- one of the basic functions of the Ombudsmen should be the protection of human rights and fundamental freedoms;
- the recommended instrument of the Ombudsmen should be the investigation;
- the Ombudsmen should investigate the functioning of public administration.

4. Efficiency

4.1. The correlation of the efficiency of ombudsmen-actions with the nature of the institution

If the addressee of the recommendation of the ombudsman does not agree and rejects the proposal, this specific proceeding is evidently non-efficient. On the other hand, it comes from the nature of recommendation (non-remedy) that it is the addressed body, and not the ombudsman who performs the certain act redressing the violation of the rights or interests of the claimant. Consequently, if the addressed body accepts the recommendation, the redress is facilitated by the ombudsman, but it is directly 'given' by the addressed body, which in many cases is exactly the same body which had previously committed the violation of right

[11] *Recommendation No. R (85) 13 of the institution of the Ombudsman* (Adopted by the Committee of Ministers on 23 September 1985 at the 388th meeting of the Ministers' Deputies)

or interest. If the contribution of the ombudsman to redress is only a kind of mediation, its role remains even more in the background.

Since the constitutional purpose of the institution of ombudsmen is to have the violation of rights redressed and the prevention of subsequent violations, the certain effect of their proceeding is of major relevance, and not the person or body to whom this effect is attributed. However, if the efficiency of ombudsmen is challenged, the last question of attribution is not without importance.

It also comes from the nature of ombudsmen's proceedings (non-remedy) that they are more efficient in situations or cases where all the instruments of legal remedy were inefficient or cannot be applied for.

4.2. Possible fields of activity, where growth of efficiency is expectable

One milestone of the new tendencies in administration known as New Public Management is that in more and more situations, tasks of public authorities are not managed directly by themselves only the methods of solution are regulated and the immediate performance is 'left' to private agencies, companies or other institutions.[12] As a consequence, in certain but very frequent situations (such as parking restrictions and fees in cities and other great localities) the different rules of (supremative) public law and those of (non-supremative) private law are to be used jointly.

The blending (amalgamation) of public and private law rules leads to an inconvenient outcome. Individuals concerned lose the (public law) protection they would have in administrative procedures (principle of confidence – the presumption of proceeding lawfully, burden of proof on authorities, obligation of the authorities to have clear statement of facts, minute rules of procedure, etc.). At the same time the relation between private persons concerned and the private agencies fulfilling the (formerly public) task is only apparently equal. The agency performing the task in question is usually not only in a monopolistic position, but all the features of the legal relation between the two parties are regulated by law. In such a situation, even the possible evidence is determined.

Private persons who have lost the protection of public law but who are not granted at the same time the freedom of a private-law-party are quite defenceless. This situation often occurs when public services and utilities are availed and it is decisive in the complexity of legal relations in connection with traffic administration, taxation or consumer protection.

These are fields of public activity where the efficiency of ombudsmen is expected to grow, since the classic (formal) instruments of legal remedy are not applicable in the cases concerned, while civil litigation, being too long and expensive, is also inappropriate to solve the violations which in fact are usually minor but very disappointing ones.

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[12] See: Christopher Pollitt, Sandra van Thiel, Vincent Homburg (eds), *New Public Management in Europe. Adaptation and Alternatives* (Palgrave Macmillan 2007), and Paul Craig, Adam Tomkins (eds), *The Executive and Public Law. Power and Accountability in Comparative Perspective* (Oxford University Press 2006), Martin Loughlin, 'Constitutional Law: the Third Order of the Political' in Bamforth – Leyland (n 3) 27–52.

5. Ombudsmen in Hungary

5.1. Ombudsmen before 2012

The history of ombudsman-like institutions in Hungary is rather short. The institution of the ombudsman in Hungary is based on the political consensus of the National Roundtable (1989).[13] The institution was incorporated in the former Constitution[14] in 1989 and an Act was adopted on the rules concerning the activities of the Parliamentary Commissioners in 1993. The first Commissioners were elected only in 1995.

Tracing the role of ombudsmen and the efficiency of their actions in the context of the provisions of the Constitution and that of the political reality should be based on the overview of legal rules, the decisions of the Constitutional Court, and the analysis of the abstract characteristics of the institution.

The basic legal background for the Hungarian Parliamentary Commissioners is Chapter 5 of the Constitution (Article 32/B), which mentions two Commissioners: the Parliamentary Commissioner for the Citizens' Rights and the Parliamentary Commissioner for the National and Ethnic Minorities' Rights. The two Commissioners should be elected by a two-thirds majority of the votes of the Members of the Parliament, and the Parliament may also elect special Ombudsmen for the protection of certain constitutional rights.

Two other ombudsmen were elected in 1995. Their position is legitimated not directly by the Constitution but by special acts: the Commissioner for Protection of Personal Data and Freedom of Information was elected as prescribed in Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest; the General Deputy Ombudsman was elected in conformity with Act LIX of 1993 on the Parliamentary Commissioner of Human Rights (hereinafter: Ombudsman-act). By an amendment of the Ombudsman-act the position of the General Deputy was abolished in 2007, and a new ombudsman with special competence – protection of rights of future generations – was elected.[15]

In the context of the Constitution, the role of the Parliamentary Commissioners is to investigate infringements of constitutional rights, or to have them investigated (in general or in conformity with their special competence) if they have knowledge about them, and to initiate special or general measures for their remedy. The role of the informal procedure of the Parliamentary Commissioners to protect human rights is different from the role of the Constitutional Court in controlling legal acts, thus the primary character of the procedure of the Parliamentary Commissioners is not the formal protection of the Constitution. Since the duty of protecting the fundamental rights prescribed in the Constitution is primary for every institution of the state, the role of the Parliamentary Commissioners is to complete and control the activity – including protection of rights – of other institutions.

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[13] Grudzinska Gross (ed), *Constitualism in East Central Europe* (Czecho-Slovak Committee of the European Cultural Foundation 1994)

[14] See: Jakab András, 'The Republic of Hungary' in Rüdiger Wolfrum, Rainer Grote (eds), *Constitutions of the Countries of the World* [issue 2-2008.] (OUP 2008) 46.

[15] Dezső Márta, Somody Bernadette, Vincze Attila, *Constitutional Law in Hungary* (Kluwer Law International 2010) 210–213.

5.2. The new approach of the Fundamental Law

At a first glance, the new Fundamental Law of Hungary (2011) did not affect the functions, powers, and rights of the Ombudsman while the organisation (number of ombudsmen), the level of legal regulation and guarantees of independence were reconsidered. The Commissioner henceforward has the duty to examine abuses of fundamental rights which he/she becomes aware of, or to have them examined, and to propose general or special measures for their remedy.

The most remarkable change is the reduction in the number of ombudsmen: the former position of the specialized autonomous commissioners is transformed, as deputies of the single Ombudsman, the Commissioner for Fundamental Rights with general competence; while the position of Ombudsman for Data Protection will be abolished and a new, independent administrative body will be entrusted with majority of its functions.

Neither the text of the Fundamental Law nor the ministerial explanatory memorandum of its former draft gives the reasons of changes. Remarkably, during the preparations the parliamentary committee suggested keep the multipolar ombudsman system unaltered. Still, within the new approach of the Fundamental Law, there are no specialized ombudsmen. Only one commissioner is elected, who fulfils his/her tasks in cooperation with his/her deputies also elected by the Parliament. Fewer arguments are given by the explanatory memorandum regarding data protection: control of the enforcement of the right to protection of personal date and of freedom of information is the duty of an independent authority instead of the former Data Commissioner.

The new Act CXI of 2011 on the Commissioner for Fundamental Rights defines the position of deputy commissioners. The Commissioner has to pay special attention to interests of future generations, rights of minorities living in Hungary, rights of vulnerable social groups and of children. The first two competencies are performed in cooperation with the two deputies, who can be entrusted with the right to sign the official documents and who have to inform the Commissioner of their findings or initiate ex officio proceedings or a motion to the Constitutional Court by the Commissioner. In the latter two situations, the Commissioner has to carry out the suggestions of the deputies or to explain to the Parliament in his/her yearly report the reasons for ignoring them. Efficiency of the deputies is guaranteed by their own staff granted within the new Act.

Although the deputies as civil servants will bear the rank of state secretary instead of the former rank of minister, their position is mostly unaltered. Election from specialist for a six-year term, rules of incompatibility with other official functions or labour relations (with the exception of teaching, performing arts, scientific or literary activity) gives them a certain degree of independence limited but not annulled even in their relations with the Commissioner. A transitional rule of the new Act assures the position of the special Commissioners in office: they kept their mandate as deputies.

The situation is less simple in the case of the former Data Commissioner. Although the institution of Data Commissioner was established as a special ombudsman in the Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest, more and more powers were given by several amendments over the years. The original powers to control the fulfilment of law regarding data protection and freedom of information; examination of complaints and keeping the registry of data protection, the Data Com-

missioner was empowered to block, erase or destroy any illegal management of data since 1st January 2004. From 1999 he or she had a similar right to initiate annulment of special data-qualifications as classified data or official secret. Disposition of the data Commissioner could be challenged in Court Proceeding (like any supervision of administrative acts). The last amendment of the Act came into effect on 1st January 2011, stating that the Data Commissioner has to apply prescriptions of the Administrative Procedure Act when deciding on illegal data management.

Amendments to the Act on Data Commissioner transformed step by step the initial ombudsman-like institution to a specialised administrative body ('state authority'). The new Fundamental Act has completed this process when it abolished the institution of data Commissioner and entrusted a new administrative body with the tasks of data protection.

Cardinal Act CXII of 2011 on the right to information-autonomy and freedom of information established the National Authority for Data Protection and Freedom of Information (hereinafter: NADI). NADI is independent, subject only to the law, may not be instructed by any other public body and may be given new tasks or functions only by an act of Parliament. The Chairman of NADI, who as a civil servant bears the rank of minister, should be appointed by the president of Hungary on the proposal of the Prime Minister for a term of nine years. Rules of appointment and those of incompatibility are not fixed similarly, but like those of the former Data Commissioner, and NADI practically inherits all his/her tasks and procedural guarantees.

On the other hand, NADI is a public body which is part of the Executive. Consequently its activity is not exempt from the jurisdiction of the Commissioner for Fundamental Rights. Thus the level of protection may be higher than in the previous years.

5.3. Novelties of regulation

The list of novelties of the Fundamental Law can be commenced with the first clause of the text regarding the Commissioner for Fundamental Rights, who *'shall protect fundamental rights and shall act at the request of any person'*. The translation – used by the Venice Commission and in this volume – does not reflect perfectly the official (Hungarian) rule. A more precise translation could be *'fulfils the activity of protection of rights'*.

One novelty of the Fundamental Law is the use of general introductory clauses in connection with several institutions (in the former Constitution such general clauses were applied more rarely). Certain ambiguities have risen due to this new 'style' of coding. There is no doubt that in the case of public law institutions, the rules of behaviour are those fixing the certain competences or jurisdiction, determining the organization and legal position of the head of office (election or appointment, etc.) and regulating the special relations to other public law bodies (supervision, cooperation, etc.). Based on these effective legal rules, theoretical conclusions may be drawn, some of which may lead to the scientific identification of an institution (e. g. the public law body which is independent and empowered to make final decisions in legal quarrels or regarding the responsibility of a person charged with committing a crime is identified in theoretical legal thinking as the judicial branch of state power). It is important to underscore that theoretical conclusions are based on legal rules, and not conclusion-type identity clauses are the sources of legal regulations. If the

genuine legal rules are mixed with theoretical dogma, difficulties may arise during the interpretation of the text.

This ambiguity can be recognized regarding the Commissioner for Fundamental Rights. The official wording of the Fundamental Law identifies him/her as *fulfilling 'activity of protection of rights'* followed by a genuine rule of competence (power): *'examine or cause to examine abuses of fundamental rights'* and a genuine rule of action *'propose general or special measures for their remedy'*. The emerging question is regarding the extra-regulation given by the introductory clause ('protection of rights') to the rule of competence ('examination of abuses of rights and proposals for remedy'). It would not be far from the truth to say that hardly any extra-regulation is given by the introductory clause. However, it is incorporated in the text, and consequently in the future situations may occur in which unexpected extra-regulations can be rendered from the general clause.

At the same time, an important element of denomination is abandoned in the text of the Fundamental Law. The former ombudsmen – with the exception of the Data Commissioner – were officially called Parliamentary Commissioners. The new Commissioner for Fundamental Rights is no longer entitled to the 'Parliamentary' epithet. Since the Commissioner and his/her deputies are henceforward elected with a qualified majority of the Parliament and have to submit an annual report, the change is rather formal than substantial.

5.4. The ombudsman's competence of turning to the Constitutional Court

Prior to 2012, anyone without any legal interest could turn to the Constitutional Court to challenge a piece of legislation. This possibility was terminated as the Fundamental Law entered into force. The typical competence of the Constitutional Court became the review of individual complaints instead of the abstract review of norms. As a result of this alteration, the Ombudsman's competence to turn to the Constitutional Court for posterior law review has gained significant role. The experience of the first two years shows that the Constitutional Court performs this competence upon the petition of the Commissioner for Fundamental Rights. Therefore, a large number of individuals, organs and social groups turn to the Commissioner to turn to the Constitutional Court and to challenge the law they find unconstitutional. In this competence, the Commissioner answers all submissions and either he launches a petition or states his reasons for not initiating the Court's procedure.

The legal base of the Ombudsman's competence to launch a petition is stipulated in the Fundamental Law itself. The detailed regulations can be found in the Ombudsman Act and the Act on the Constitutional Court. Besides, the Ombudsman stipulated the most basic aspects of such an enquiry and pointed out that the Commissioner paid close attention of the most vulnerable groups also in this competence.

The Commissioner's right to launch a petition has a subsidiary nature. If someone has already turned to the Constitutional Court with an individual complaint, then the Commissioner's petition for abstract review would have had no function. The Commissioner practices his right to turn to the Court mainly if the circumstances of the individual implementation of a right are missing.

The Commissioner is entitled to challenge all pieces of legislation, while the Constitutional Court's competence to review financial issues is restricted. The Commissioner can ask the Court to conduct a posterior law review or to review whether a law is contrary to international treaties. Yet it cannot request the abstract interpretation of the Court in a specific constitutional issue.

6. Conclusions regarding alternative forms of control

Having regard of the actuality of governments, one may see that democratic decision-making is less and less autonomous. Political decision making is non-transparently 'polygonal' in the local-regional-national-(federal-) European-international fields of force and its efficiency is influenced by a bureaucratic administration spreading out like a spider's web. As a consequence, liberty of action guaranteed by law, moreover even the fundamental rights of the individual (even if not considered to be a human being, but 'only' the subject of legal regulations) cannot be applied.

The complexity and meticulosity of regulations, the proliferation of administrative procedures make classical ways of remedy deficient. Law assures judicial control of administrative acts in vein if the harm to the individual party is not caused by a manifest substantive illegality or procedural fault, but the rigidity of administrative structures, non-perspicuity of legal regulations or their consequence, bypass of proper carrying out of governmental decisions. It cannot be left out of consideration that the formal judicial review is an exceptional remedy and the inevitable minuteness makes it efficient only if do is exceptional. If it is used as a daily, general and ordinary instrument of remedy, it will slow down the administrative decision-making; consequently it will slow down the effectiveness of the government.

The increasing number of mechanistic administrative procedures requires alternative forms of control. One of the alternative forms observed in this essay: the improper situation of public administration can be corrected by Parliamentary Commissioners who have the duty to give effective protection to the individual against depersonalized administrative structures. Parliamentary Commissioners could be effective if they abandon the often-found ambition to have more legal power, to become a super-authority, and they focus on the solution of problems not perceptible for formal legal remedies.

A legal system using some or many alternative forms of control will not make a government fail-safe, but it could be considered a great achievement if the administration's work is improved and therefore the number of formal judicial reviews and those of civil law trials against public bodies were sensibly decreased. Leastwise it would make the government and its control more equilibrated.

The relationship between civil organisations and public administration in Hungary, with special regard to their participation in legislation

1. Introduction

Social and economic (crisis) procedures occurring in certain countries, as well as negative effects[1] resulting from the structure of the EU, gradually directed attention to the importance of cooperation with civil[2] organisations and its growing significance, not only at the level of member states or the EU[3], but also globally.[4] It is important that the established and substantially independent civil/non-profit sector is not only affected by certain administrative rationalities from the direction of the market and state, even in post-Socialist countries, but it gains – through the independent norm type of philanthropy – 'administrative power' which is substantially able to intensively influence the behaviours of individuals and their organisations (even in a society organised by the state).[5] Civil society is the sector the establishment of which is inseparable from state and market, while it affects both.[6]

The popularity of the presently emerging ideas of 'good governance', as well as their increased legitimacy is 'not only due to governmental effectiveness, but also to the closely

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1 Several significant problems may be mentioned: democratic deficit; lack of legitimacy; management deficit, in so far as the human resources of EU institutions are limited; communication problem, as information is not transmitted to EU citizens properly; the growing problem of ensuring welfare services.

2 In this work – for better understanding and in lack of references for exceptions – civil organisation shall be interpreted as a type of organisations set forth in law [Article 6 paragraph (6) of Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Organisations], that is – except for parties – associations, foundations and civil societies registered in Hungary – therewith that the expressions non-profit (civil, non-profit organisation) and civil society refer to a broader organisational and personal scope.

3 Reisinger Adrienn, 'Civil/nonprofit szervezetek a kohéziós politikában – elméleti alapok' [Civil and non-profit organisations in cohesion policy – theoretical background] (2012) 8(1) Tér és Társadalom 40, 51.

4 In relation to the context of globalisation and civil society see Miszlivetz Ferenc, 'A demokrácia és a civil társadalom átalakulása a globális térben' [Transformation of democracy and civil society in global space] (2012) 9(1) Civil Szemle 62.

5 Billie Sandberg, 'Constructing Society's Aide' (2012) 44(8) Administration and Society 952, 955.

6 Helmut K. Anheier and Regina A. List, Dictionary of Civil Society, Philanthropy and the Non-profit Sector (Routledge 2005) 54.

related participatory governance'.[7] In this case constitutional and public law contribute to the legitimacy of the government, thus '[governing] upon indirect representation is supplemented with the participative democracy of multi-level governing, with the more direct involvement of citizens and their communities, local-governments in governing. Therefore, *neo-corporativism* and, moreover, *good governance* are "good" only if in parallel with the reduction of parliamentary control of everyday governing the substantial democratic effectiveness of the government increases, enforcing the criteria of legality, professionalism and the more fluid realisation of social needs'.[8]

Plural, participative democracy provides the participation of society and economic players, and thus civil/non-profit organisations, satisfying common social needs – beyond periodic elections and referenda – within the framework of the right to make recommendations, to be informed and to object, as well as in several ways within task provision possibilities.[9] In relation to civil/non-profit organisations, such fields and tools related to each other, or viewed independently, may be the following:

- the shaping of local and national public issues, debating actual issues;
- participation in the creation of laws;
- participation in local governmental work;
- the planning and realisation of settlement, territorial and national development programmes; cooperation in the management of investments and projects;
- the performance of public tasks and provision of (public) services;
- the building and shaping of communities;
- acting as a communication channel (the bridge-role), acting in an advocate role; presentation of interests, articulation of opinions, participation in consultative mechanisms and protection of rights.

It is possible to characterise these involvements from several aspects, based on e.g. the type of the organisation, features of the performed task, the degree of involvement (individual, partial, external support, etc.), and the existence of a degree of possible public power rights. At this point we wish to refer to an important approach, that of direct and indirect participation in public issues, related to which it is important that indirectness does/may not only mean that the civil organisation influences the given issue through other organisations or bodies, but also that its relationship to the issue does not create any substantial direct effect or legally interpretable, observable responsibility.

Therefore, the *primary direct institutions and tools of civil participation in broadly interpreted public matters (affairs), or in the performance of narrowly viewed public administrative tasks* are those through which civil society – in its relationship with certain institutions of the state or

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7 Frivaldszky János, 'A jó kormányzás és a helyes közpolitika formálásának aktuális összefüggéseiről' [On the present context of good governance and shaping proper public politics.] in Szigeti Szabolcs (ed), A jó kormányzásról: Elmélet és kihívások [On good governance. Theory and challenges.] (JTMR Faludi Ferenc Akadémia – Jezsuita Európa Iroda-OCIPE Magyarország – L'Harmattan Kiadó 2012) 61.

8 ibid

9 Reisinger (n 3) 48. See also Rixer Ádám, 'A kormányzat és a civil társadalom kapcsolatának jogi aspektusai Magyarországon' [Legal aspects of the relationship of government and civil society in Hungary] (Dphil thesis, KRE ÁJK DI Budapest 2006).

local government – appears directly as a substantial player [as client; representative; mediator; named member of a decision making forum (body) responsible for the final decision; service provider; possessor of authority powers, etc.]. In the case of *indirect institutions and tools* civil organisations merely participate in the flow of information, make recommendations, provide opinions (within the framework of *ad hoc* or institutionalised proposer, opinion maker or co-ordinative forums), without taking direct or indirect responsibility for the consequences of the decision made – at least formally – separately from its cooperation. The *differentia specifica*, therefore, *is the feature and degree of cooperation related to individual or normative decision making and the same of the responsibility for the cooperation*.

State regulation appears in the case of both systems of institutions and tools, but while in the case of indirect tools the obligations of state (administrative) bodies and the rights of civil organisations and their guarantees are dominant in the relationship, in the case of direct tools the numbers of rights and obligations are 'more balanced' on each side.

According to some approaches[10] legal regulation regarding the civil/non-profit sector (in the examined context) 'may be built in three main directions'; first of all, regarding the separate existence of the players of the non-profit sector, it may include norms 'enabling for cooperation' (possible organisational forms, operational, financial management rules, etc.); second of all, regarding the relationship of the civil non-profit sector and the state (*more precisely public administration*); finally, it may have a regulatory effect in relation to the civil non-profit sector and the private sector, thus the economic sphere and individuals. The division of the first two fields is (also) very much theoretical, because with the regulations carrying specific civil (non-profit) contents the state actor bearing legislative rights sets the boundaries of the two sectors and describes the features of their relationship: e.g. laws about public benefit organisations or voluntary services – despite the fact that their features facilitating the 'establishment and creation' of a separate sector – form a sophisticated and complex system while managing the realisation of public goals not by state actors, but supported and controlled (supervised) by the state.

As described in the previous parts, the relationship of the civil/non-profit sector and public administration may be examined from several specific aspects, but in our opinion these fields may be put into three – relatively – well distinguishable groups. Therefore, the relationship of administrative bodies with civil organisations may be identified in

a) *the creation of administrative programs and legislation*;
b) *the provision of public services*, and
c) *the (individual) protection of rights.*

From among these three aspects this chapter undertakes to describe in details the aspect of civil participation in program making and legislation, in a way that elaborates the issue from the perspective of state administration.

[10] Civil Jövőkép – Átfogó nonprofit jogi reform koncepció [Comprehensive legal reform non-profit concept] (Civil Társ Trust Programiroda 2004) 5.

2. Civil participation in program making and legislation

2.1. General questions of civil participation in program making and legislation

Among general pre-questions we shall refer to the fact that the narrowly viewed parliamentary section of legislation (which is not the subject of this work) and the section in which the contribution of state administration bodies is realised differ from each other, and the social organisations' participatory rights and competences are also different in the two phases.[11] Furthermore, there are significant differences between contribution to the decree making of state administrative bodies and of local governments.

We shall consider the opportunities available for narrowly interpreted civil organisations, and we will scarcely touch upon those tools available as opportunity only to certain citizens. It is important that among the forms of participation there are many which are available not only to those organisations which were established or registered in Hungary.[12]

The possible ways of participation may be categorised from several aspects:

Social participation in legislation has legally detailed (institutionalised) *forms appearing on the side of the legislator as obligation* (negotiations, forums, consultations and related basic feedback), as well as forms about which only general rules of the legal system may provide a starting point regarding their possible content or limits (organisation of demonstrations, requesting expert opinion, establishing an online debate forum, etc.), without having any legal minimum regulation about the 'observation' and utilisation of such information transmitted to the decision-maker this way, and therefore these have been primarily *regulated as possibilities of the potential users of these forms* (these forms are not in focus of this work).

Among institutions establishing some kind of obligation on the side of the legislator, there are extremely diverse tools considering their 'features and scope', which show great diversity also regarding the degree and directness of the role they play in establishing the content of the final (normative) decision, or regarding the targeted level of decision making/legislation (local, national or European). It is worth noting that this work concentrates primarily on the institutions of civil cooperation operating at the national level which can be properly understood through the state administration/local government division.

The literature offers another approach, as well, categorising tools and techniques of social participation into two big groups, distinguishing between traditional techniques and modern techniques. Among the latter ones, for example, the use of surveys may be mentioned.[13]

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[11] Vadál Ildikó, A kormányzati döntések konzultációs mechanizmusai [Consultation mechanisms of governmental decisions] (COMPLEX Kiadó 2011) 163.

[12] cf Article XXIII paragraph (7) and Article XXIII paragraphs (2) and (3) of Fundamental Law of Hungary.

[13] Reisinger (n 3) 113.

One of the most obvious groupings of available tools (institutional possibilities) is – as mentioned above – the traditional division of *direct* and *indirect* tools: in this regard the notion of directness means, one the one hand, the institutions (typically bodies) in which the representatives of civil society may express themselves directly and may be able to make some decisions, while, on the other hand, directness may be used also in the sense that the civil organisation directly approaches the legislative body (thus in our narrow interpretation, the competent central state administrative body or the body of representatives) with its suggestion or opinion. In the latter approach the indirect feature also means the influencing of the public administrative legislative body through another (legislative) body or person.

The titles of the chapter and the sub-chapter intentionally do not focus only on the main characteristics and rules of participation in the narrowly interpreted legislation, but also wish to mention at least those practices (institutions) through which civil/non-profit organisations may perform activities – which may not be transformed into legal instruments, but fit into the frameworks of law – influencing the life of the closer/broader community and participate in the creation of documents (strategies, concepts, declarations, calls, etc.). Therefore, when for the sake of understanding legislation is mentioned, it shall be interpreted – in a broader sense – by taking into account the abovementioned.

One of the most important pre-questions is how far civil society may go in participation in (political) decision making. According to the general (majority) opinion, its presence is reasonable and desired only in the preparation phase of decision making that manifests both informal and institutionalised forms.[14]

Within the analysis of regulations related to legislation, it may be observed that the regulation – especially with regard to the issue before us – is still very much diverse.[15] Before 1 January 2011, there was no comprehensive act which could have attempted to provide unified regulation for the possibilities and procedures of the enforcement of social interests in governmental decision-making mechanisms.[16] A unified set of regulations about social participation is still missing; even though Act CXXXI of 2010 on social participation in the preparation of laws 'implies in its title that we are facing a unified regulation, but this is not the case. In addition to this, sets of acts and government decrees contain relevant regulations regarding this issue.'[17] Judit Tóth noted earlier that 'The scope of tools related to the operation of the Government and the Office of the Prime Minister[18] is rather diverse. Their common characteristic is that they rarely form a unified system, and rather try to find supporters among civilians for the specific realisation of the goals of the given government.'[19] After reviewing the relevant valid regulations, we may arrive to a similar conclusion.

The significance of this scope of issues is magnified by the fact that in a plural social order more and more interests and values are formulated, the channelling of which into

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[14] Sebestyén István, 'Civil dilemmák, civil kételyek a civil szervezetek (köz)életében' [Civil dilemmas, civil doubts in the (public) life of civil organisations] (2004) 1(1) Civil Szemle 28, 36.

[15] Vadál (n 11) 170.

[16] ibid

[17] ibid

[18] Today Prime Minister's Office.

[19] Tóth Judit, 'Civilek részvétele a jogalkotásban' [Participation of civil society in legislation] in Tóth Judit (ed), Nonprofit jog [Non-profit law] (SZTE ÁJK 2003) 18.

governmental decisions is unavoidable in order to uphold social peace. However, social participation in governmental decision-making mechanisms shall be legally settled, just like the hierarchy of laws. In a rule of law state social participation in legislative procedures is not an optional process depending on the attitude and discretion of the power holder.[20] Moreover, in a democracy, especially in one of the participative type, the institutionalised system of proposing and opinion making shall not only go through quantity changes (*'more forums, better regulation'*), but also quality ones, which means that regarding these, normativity does not only mean the obligation to establish and create these institutions, but also 'making them unavoidable', thus ensuring their development through tools protected by law.

To summarize, it may be stated that one tool for alleviating possible political abuses typical in indirect democracy is the substantial participation of citizens and their organisations in public administrative *decision making* (legislation and the lawful influencing of individual cases), and the facilitation of this in a constantly 'broadening' scope. Several authors describe the benefits of social, especially civil participation. While the benefits listed below (studies prepared by Ádám Földes[21], Ildikó Vadál[22] and certain civil organisations[23] form the basis of the following list) may emerge to different degrees depending on the form of participation, it is definitely true that through them

- the quality of governmental/local governmental decisions may be improved ('more input, better output');
- the examination of the interest structure of the given subsystem (in simple form: field of authority) becomes easier.[24] Let's add: examining the *real* interest structure, if this is not necessarily identical with the structure observable in reflection of governmental intentions;
- needs, information and problems which are not observable by the decision-maker, or just barely, may be revealed;
- the threat of the emergence of social conflicts decreases;
- the quality of conflict prevention and conflict management increases (obedience to the law also increases, as well as the acknowledgement of the decision by the addressee of the decision);
- the legitimacy of decisions increases;
- more transparent and more controllable governmental decisions may be delivered;

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[20] Vadál (n 11) 170.

[21] Földes Ádám, 'A jogalkotásról szóló új törvény tervezet következményeiről, esélyekről' [About the consequences, of the new draft law on legislation. Chances.] in Márkus Eszter (ed), Ismerd, értsd, hogy cselekedhess: Tanulmányok a részvételi demokrácia gyakorlatáról [Know and understand in order to act. Essays on the practice of participatory democracy.] (EMLA Egyesület 2005) 65–68.

[22] Vadál (n 11) 171.

[23] A Társadalmi Egyeztetés Eljárási Normarendszere: NIOK Alapítvány, a Magyar Természetvédők Szövetsége és a Reflex Környezetvédő Egyesület ajánlása [The Norm System of Social Negotiation: Recommendation of the NIOK Foundation, the Hungarian Association for the Protection of Nature and the Reflex Association for the Protection of the Environment] (TEEN Program 2007) <http://www.mtvsz.hu/tarsadalmi_egyeztetes_eljarasi_normarendszere_8211_teen_program> accessed 22 September 2013.

[24] Ficzere Lajos, 'A minisztériumi feladat- és hatáskörök, valamint a háttérintézmények' [Tasks and competences of ministries and their background institutions] (2000) 50(8) Magyar Közigazgatás 476, 478.

- experiences and professional knowledge may be channelled and accumulated at certain actors.

In consideration of the before-mentioned, this chapter

A) distinguishes those special forms of participation which approach the legislator (a state administrative body participating in legislation) directly, and

B) distinguishes those institutionalised solutions through which the citizen or a particular (civil) organisation may influence the content of laws not by approaching the legislator (state administrative body participating in legislation), but through another state organisation.[25]

2.2. Civil tools in state administration directly influencing the legislator

2.2.1. Direct participation in program making and legislation without membership in bodies

I. Organisation of a national referendum proposal

Act CCXXXVIII of 2013 on Referendum Proposal, European Citizens' Initiative and Referendum Procedure states that the proposal of constituents on the settling of national referendum can be organised – among others – by associations as well, if the given question is connected with the scope of activities marked by the articles of association.[26]

II. Whistleblowing (public interest disclosure)

The whistleblowing directs attention to some circumstances the fixing or termination of which serves the interests of the community or the whole society. For our topic it is extremely important that the public interest disclosure may contain *recommendations for legislation*. [Article 141 paragraph (3) of Act XXIX of 2004 on the amendment and repeal of certain laws as well as the establishment of certain regulations relating to Hungary's accession to the European Union]. The notion of complaint and whistleblowing (public interest disclosure), as well as the related deadlines are regulated similarly by Act CLXV of 2013 on complaints and whistleblowing to the way they were regulated before. However, there is a novelty in the regulation, namely that whistleblowing may be made in the protected electronic system of public interest disclosure [Article 4 paragraph (1)]. There is another important fundamental improvement, namely that the operation of the system belongs to the competence of the Parliamentary commissioner of human rights, and the reporting party may request the restriction of access to its personal data to the Parliamentary commissioner

[25] For example, the initiation of the procedure of the parliamentary commissioner of fundamental right based on Article 24 paragraph (2) point e) and Article 30 paragraph (1) of the Fundamental Law of Hungary.

[26] Article 2 paragraph (1) point c).

of human rights and his office. Another important element of the new regulation is that the ombudsman shall publish a short excerpt of each disclosure on the Internet [Article 5 paragraph (2)], and the detailed rules of the protection of reporting parties were introduced too [Articles 11-–12]. The act also considers those disclosures which are not directed to classic state or self-governmental bodies or bodies performing public tasks. In order to handle these notices more efficiently and to prevent abuses or punishments, the legislator introduced the institution of *lawyer for the protection of the reporting person*. Legal persons not qualifying as state or self-governmental bodies may conclude service contracts with lawyers for the performance of a task related to the receipt and handling of disclosures related to their activities [Article 17 paragraph (1)].

III. Social negotiation and opinions

The two basic forms of social participation in the preparation of laws, *general negotiation* and *direct negotiation* appear in Article 7 of Act CXXXI of 2010 on social participation. The scope of the act covers opinion making by natural persons and non-state and non-local governmental bodies, organisations about draft laws and concepts of regulations grounding draft laws prepared by ministers. [Article 1 paragraph (1)] According to Article 5 paragraph (5) of the act – with the exception of some laws made in fields listed in an itemised way in paragraph (3) *(e.g. draft law on the establishment of organisations or institutions)* – social negotiation shall be initiated about the draft and reasoning of a) acts, b) decrees of government and c) decrees of ministers.

General negotiation provides for the possibility of giving opinion through the website of the body publishing the concepts or drafts, while the direct negotiation allows the relevant minister to request opinion directly from persons and organisations. The primary legal form of *direct negotiation* is the institution of *strategic partnership* – creating obligations also on the side of the minister – the framework of which is provided by an agreement determining several elements.[27] Through these agreements, the minister responsible for the preparation of laws may establish close cooperation with those organisations which are ready for mutual cooperation, and which represent wide-scope social interests in the preparation of the regulation of the given legal fields, or perform scientific activities in the given legal field (hereinafter referred to as strategic partners). A substantive weakness of the regulation is that Article 13 paragraph (2) of the act defines only in an *exemplificative* way – mentioning only some of the possible forms of organisations (e.g. registered church, trade union, civil organisation) – with whom such strategic partnership may be established. Another specific (and problematic) rule is the one according to which the obligation of the strategic partner is to represent the opinion of organisations which are not strategic partners but operate in

[27] A good example of strategic partnership is the strategic agreement established in November 2012 between Tibor Navracsics Deputy Prime Minister, Minister of Public Administration and Justice, as representative of the Ministry of Public Administration and Justice, and László Csizmadia, president and the representative of the Civil Cooperation Public Benefit Foundation, providing the organisational background of CÖF (Civil Cooperation Forum). Navracsics stated that 'social negotiation is a basic condition of the good state, because it facilitates the enactment of good quality laws complying with real life conditions, as well as the representation of social groups affected by the law'.

the given field of law [Article 14 paragraph (1)]. In some cases this could mean that the opinion of the 'rival' organisation operating in the given field should be represented fully and credibly.

Another important rule [Article 14 paragraph (2)] in this area is that in addition to the strategic partners the minister responsible for the preparation of the given law may integrate others into the direct negotiation of the relevant draft, and upon request it shall provide the possibility for participation in the review of the given law, as well.

However, it shall also be mentioned that the minister responsible for the preparation of laws may resort to other forms in addition to the abovementioned two for conducting negotiation (primarily for getting to know the opinion of non-strategic members).[28] It is also important that the abovementioned act allows the legislator to define other opinion-making and negotiation rights in other laws and legal instruments of state administration.[29]

For assessing the *real – practical – significance* of the given legal institution it shall be considered that Article 5 paragraph (5) of the act contains a special and often used rule, which states that 'The draft of the law shall not be put up for social negotiation if exceptional public interest requires its urgent approval'. Within the regulation and actual practice of national negotiation and review a significant aspect mentioned by literature is the *capacity of public administration* (in so far as with personal, technological and primarily temporal limits, the cautiousness of public administration may be easily explained). Therefore, the extension of the examined procedure with guarantee elements shall not result in disproportionate burden for state (administrative) organisations, *endangering applicability*.[30]

The *real legal nature* of broadly interpreted social review is shown by certain constitutional requirements related to the social players of the preparation of laws. According to the statement of the *Constitutional Court* made in its Decision 469/B/1990 CC, if the organisations drafting the laws do not comply with the obligations set forth in the *Act on Legislation*, this violation of obligations in itself shall not be sufficient reason for assess-

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[28] It usually depends on the ad hoc decision of the ministries' management which draft law will be negotiated at public debate, conference and informal discussion, in order to discuss the text of the regulatory concepts and drafts. These forms usually happen in parallel with public administrative negotiation.

[29] Beyond those set forth in the act on legislation – extending to strategic documents as well – there are rules among the provisions of Government Decree 38/2012 (III. 12.) on governmental strategic management about the social review of drafts. According to Article 15 paragraph (1) of the abovementioned decree, 'If in relation with the given strategic document this decree regulates so, during preparation it shall be ensured for non-state actors to access the draft and express their opinion regarding it'. According to Article 16 paragraph (1) of the mentioned decree within social review drafts shall be published also on the government website determined in Article 1 point b) of Government Decree 301/2010 (XII. 23.) on the publication and review of draft laws and regulatory concepts (which theoretically means unlimited and free access) and is shall be ensured for everyone to express an opinion about it in a digital form (as well as about any other draft, as well). According to Article 19 paragraph (1) of the mentioned government decree the person responsible for the preparation of the strategic plan documentation may initiate negotiations about the draft with selected non-state actors, in addition to social review.

[30] For example, Canada has traditionally used a two-level negotiation system: level 1: two public hearings are obligatory (one about the concept, one in case of the specific draft); level 2: ministry level; limiting the number of those invited/involved to 20–30 people or organisations (only the largest organisations and the most well-known experts are 'invited').

ing the unconstitutionality of the enacted laws. Such violation of legal regulations about the preparation of laws may only ground the state administrative or political responsibility of the legislator.[31] As the *Constitutional Court* expressed in its Decision 30/2000 (X. 11.) CC, only those organisations are unavoidable for the legislator which are *expressly and specifically* named in law(s) with the right to make statements – due to their role in the democratic decision-making process, with regard to the negotiation obligations – they possess public power.[32] If the act does not define expressly and specifically those organisations with concrete rights, but only regulates rights of the interested national advocacy organisations in general, the *Constitutional Court* did not consider the lack of involvement of those organisations a violation of the rule of law [as later Decision 20/2001 (IV. 12.) CC referred back to this decision].[33] This practice has not changed significantly after the approval of the *Fundamental Law* and the new *Act on Legislation*.

IV. Lobby activities

It is worth mentioning lobby activities in a separate subsection, with special regard to corruption, which is quite significant in Hungary.[34] The regulatory activities of ministries, or in a broader concept, governmental legislation, make the institutions of the government targets of lobbying. The creation of the topics and target persons of lobbying is determined by – in addition to the general structure of the governmental decision-making system – the level of development of the institutional system and decision-making processes of the government, achieved in relation to the extension of the role taking of the state.[35] During the performance of their tasks, civil servants represent a public administration which is more open than ever, which maintains wide-scale professional and social relationship networks, which detects and reacts on influences coming from society to an increasing degree. The appearance of 'public policy communities' show that players frequently get into contact with each other, realise their common interests and act together when formulating their professional needs. Players composing these communities are familiar with the elements of public policy institutions and procedures, and know the real significance of factors influencing the public policy decision-making mechanisms.[36] Moreover, in Hungary it may also be observed that in order to increase the efficiency of the enforcement of interests, any decision which forms the conditions and elements of public policy procedures may become the subject of lobbying. These may be budgetary, institutional, organisational or personal issues (e.g. in some sectoral fields, interest groups do not represent strictly professional issues but strive to influence the appointment of executive officers). This is an important issue*, even though in European countries the strictly centralised management of public administration usu-*

[31] Vadál (n 11) 184.

[32] ibid 185.

[33] ibid

[34] A Közigazgatás Korrupció-megelőzési Programja 2012–2014 [The corruption prevention program of public administration 2012–2014] (KIM 2012) 3–12.

[35] Lékó Zoltán (ed.), Lobbikézikönyv [Lobby Handbook] (Demokrácia Kutatások Magyar Központja Közhasznú Alapítvány 2002) 25.

[36] ibid

ally significantly keeps away external interest groups from decisions affecting the internal operation of public administration.[37]

The aim of the lobby act submitted and approved in 2006 (Act XLIX of 2006 on *lobby activities*) was to channel the influence of business interest on public power (decisions) into legally regulated areas and make them controllable. Therefore it did not target all forms of the enforcement of interests, but only those which were performed by 'professional' lobbyists or *lobby organisations* based on remuneration. The linking of strictly interpreted civil/non-profit organisations to lobby activities in Hungary is somewhat *difficult to understand*, because the scope of the previous act on lobbying covered only organisations performing lobby activities in a commercial manner (based on agreement, for remuneration) – thus did not concern the presentation of interests or arm twisting by organisations due to 'commitment to their members', 'belief', 'patronage', or 'altruism'. Nevertheless several organisations which represent interests have operated as associations in Hungary, and – within some limits – it has never been prohibited for them to perform some activities in a commercial manner.

The act was valid for an exceptionally short period of time (only for four years): among the reasons for its failure were *a)* the fact that the majority of those representing economic interests favoured the concept of self-regulation;[38] *b)* that the used *common law elements* were completely different from the Hungarian ones: several institutions appeared which were not interpretable for Hungarian political, administrative and legal culture, Hungarian public administration went into *passive resistance*;[39] furthermore, the act became a *quasi lex imperfecta* by insufficient control mechanisms. Still, the most determinative feature was the narrow substantial scope of the act, the fact that it wished to regulate one narrow aspect of the issue – easily eluded by covering material interests – at a high level of abstraction, without listing or at least slightly regulating the other types of influence – extending the scope of lobby activities to those, as well. The previous regulation practically did not consider the fact that today only those organisations may achieve real results which have serious professional background and resources, and are able to keep up with the latest novelties of technological development – in each case through professionally organised transmission of information.[40] The regulation considered lobbyists 'in reality', approaching the civil servant personally or by means of telecommunication, and neglected the more sophisticated, but very much influential, financed forms of pressuring [constant pressuring through 'position papers' summarising the official opinion, 'grassroots type lobbying' (when many write on the same topic under their 'own name'), or certain indirect tools of 'community relations' improving the consideration of the organisation by the decision-makers were fully excluded from the regulation.]

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37 ibid

38 See the presentations held at the 1st Hungarian Lobby Conference on 2 December 2004 in the Hungarian Parliament.

39 According to the report of the Justice Service of the Ministry of Public Administration and Justice, prepared in 2012, the 307 registered lobbyists tried to 'officially' influence only 316 (!) state or self-governmental measures within four years. Moreover, according to the report in relation with the approximately 3,200 local governments the lobbyists approached the competent persons only in 30 (!) cases within four years.

40 Lékó (n 35) 26–27.

It was the failure of the previous lobby act which showed that *in certain fields the state cannot intervene with its substitutive regulations even in the absence of self-regulation (which has been spreading significantly against central regulations)*: in some social fields permanent results may be achieved *only through the consistent stimulation of self-regulating mechanisms*, which is a slow and delicate solution, but lacks any alternative. This is the reason – partly – why the new lobby regulation creates *obligatory rules related to the enforcement of interests only on the side of the civil servant receiving the lobbyist (by this strengthening the integrity of public administration),*[41] and otherwise it trusts itself to the already established criminal law barriers (e.g. the crime of bribery).[42]

In Hungary this concept – realising social realities – conflicted with the opinion of organisations regarding the previous concept. Thus *Amnesty International, Greenpeace, the Társaság a Szabadságjogokért (Hungarian Civil Liberties Union, TASZ)* and others approached the minister of public administration and justice with an open letter in 2012, complaining that after 2010 it was not regulated substantively how business associations and business interest groups (advocacy groups) may influence the possessors of public power: 'Article 19 section b) of Act CXXXI of 2010 on *social participation in legislation* annulled act XLIX of 2006 on *lobby activities* without replacing it with proper regulations. The possibility of strategic partnership ensured in Article 13 of the act concerns only a narrow field of the enforcement of interests. Through strategic partnership, ministries may establish direct relationship with those organisations ready for mutual cooperation which represent a wide range of social interests in the preparation of the regulation of the given legal fields, or perform scientific activities in the given legal field. This act is far from regulating lobbying properly. It provides exclusively for cooperation with the ministries, even though lobbying is more than participation in ministerial level legislation: each activity aiming at influencing a public power decision or at the enforcement of interests belongs to the scope of lobbying.'[43]

In summary it may be stated (and it is confirmed by the letter of TASZ) that in Hungary the notion of lobbying may be apprehended in broader context than commercial activities, and may be interpreted and regulated likewise.

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[41] Hungary undertook the obligation to establish Codes of Professional Ethics for civil servants and the employee protection public order approved by professional public bodies independent from the government [See, for example, section 1 of Government Decision 1080/2013. (II. 25.) on the approval of the action plan about the obligations of Hungary within the international initiative of the Open Government Partnership].

[42] It has been a debated issue in Hungarian public administration at what level and at what depth the professional ethical norms enforceable within public service shall be regulated; within the framework of the Magyary Zoltán Public Administration Development Programme – theoretically – the old approach is getting stronger again, which – within legal frameworks – would allow for the wide-scope self-regulation of those concerned.

[43] http://tasz.hu/jogallamvedo?page=2> accessed 10 May 2013

2.2.2. Participation in program making and legislation through membership in bodies

I. Consultation

National definition of consultation

In Hungary the broadest concept of consultation has been used in a triple interpretation (or meaning):

a) one the one hand, the broader meaning includes the most comprehensive forms of social negotiation and review [System of National Cooperation (NER), National consultation];
b) on the other hand, it includes the legal forms of negotiation and review described earlier;
c) finally, it still includes the specific consultative forums, as well.

The present subchapter uses the third – narrower, more traditional – meaning as its starting point.

General issues of consultation

In relation to consultation, it may be generally stated that grounded decision making, quality governance and legislation require discussion with the interested parties, including consultation. Consultation is the involvement of those concerned in the procedure of decision making in order to create real social negotiation. In this sense, therefore, the definition relates not only to negotiation in the preparatory phase, but also to the unique realisation of the shaping of political will, which happens in order to establish the content of the law based on compromise.[44] 'In the long run, social peace may be maintained by compromises through the politics of agreements. Governance may be "successful and good" only if it takes into account the heterogeneity of those governed.'[45]

The significance of consultation is also stressed by the European Commission, which published an announcement about consultation, supporting the notion that during consultation each of those concerned should be allowed to properly express their opinion.[46]

In most member states of the European Union, separate, permanent forums have been established for macro-level consultation which facilitate the continuous relationship between the government and social partners and other representatives of interests – without the burden of immediate agreements – and within this they get the chance to familiarise themselves

[44] Drinóczi Tímea, Minőségi jogalkotás és adminisztratív terhek csökkentése Európában [Quality legislation and the reduction of administrative burdens in Europe] (HVG-ORAC 2010) 32–33.

[45] Vadál (n 11) 57.

[46] Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission. Communication for the Commission, COM(2002) 704 final.

with each other's opinion.[47] Beyond the narrow focus of issues related to the world of labour, this covers also specific policy issues. In member states, macro level consultations aiming at globally shaping the economy and social policy are usually hosted within the institutional frameworks of prestigious, dominant forums.[48] Naturally, governmental-civil discussion shall also be part of social discussion. In addition to social partners, the representatives of civil organisations 'shall also be present in the work of the consultative bodies of macro-level negotiation of interests'.[49]

Nevertheless 'it may be stated that the prestige of consultation is much lower in Hungary than in other member states'.[50] In Hungary the consultative role is often interpreted as of lower value, failure – also in the self-evaluation, self-assessment of the players; as a synonym of *slow marginalisation in substantial* – macro level – *policy-making.* This same fact lies in the background of the fact that in Hungary consultation, negotiation, cooperation is basically agreement-centred, bargain-oriented.[51] We shall also add that today in Hungary 'consultation is [often] not the indicator or instrument of values, but of relatively quickly changing interests'. A closely related phenomenon (fact) is that while in most of the old member states consultation is substantial (ensured by legal guarantees) and constant, in Hungary – traditionally – a lower level of regulation and 'ad hoc' character is dominant[52], *a situation intensified by the exceptionally infrequent convening of certain forums.*

The regulation regarding bodies operating alongside the Government (and ministries and other public administrative bodies) is individual: generally the operation of each body is settled by separate law or legal instrument of state administration, which contributes to the fact that there is often parallelism or overlap in their tasks and competences.[53] The functions of bodies operating beside the government are not always possible to separate; sometimes bodies with the same tasks operate under different names (e.g. inter-ministerial commissions or councils – see later).[54] The main reason for these difficulties is that 'in Hungary comprehensive, high-level framework regulations about the main types are still missing'.[55] This is true even if the provisions of Act LVII of 2006 on central public administrative bodies and the legal status of the members of Government and state secretaries and the valid Act XLIII of 2010 – with a similar name – on consultative bodies may be considered a few steps forward compared to the previous regulations.[56] This means that the relevant legal regulation may be

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47 Ladó Mária, Tóth Ferenc, A konzultáció és intézményei az Európai Unióban, tagállamaiban és Magyarországon [Consultation and its institutions in the European Union, in its member states and in Hungary] (OFA 2002) 192.

48 ibid

49 Bódi György, Jung Adrienn and Lakovits Elvira, Civil partnerség [Civil partnership] (KJK-KERSZÖV 2003) 190.

50 Ladó and Tóth (n 47) 193.

51 ibid

52 ibid. 194.

53 Vadál (n 11) 80.

54 ibid

55 ibid

56 According to Article 30 paragraph (1) of the valid act, the Government may establish other – thus in addition to government commissions and cabinets further – proposer, review and advisory bodies. According to paragraph (2) of the mentioned article, the members of bodies described in paragraph

further detailed without terminating or substantially limiting the freedom of the government in establishing organisations.[57] We do not necessarily agree that the issue should be regulated in more detailed constitutional rules,[58] but it seems obvious that a detailed regulation at the level of acts is necessary. *The more comprehensive regulation of consultative bodies is reasonable because the broadly interpreted governmental consultation goes beyond consultative bodies operating beside the government or ministries, and includes macro level forums independent from the governments, as well as territorial level mechanisms and specific bodies.*

It must also be added that 'By today a complex system of governmental consultative bodies has been established in all modern public administrative systems'.[59] However, despite their significance and quantity, the social sciences pay relatively little attention to these institutions, having a role in the shaping of governmental decisions, '[even though] a new sector has emerged, the operation of which is essential for the quality of governmental activities and is also important for their transparency.'[60]

It should be noted that there is no good name for this system of organisations in Hungarian law.[61] The expressions 'background institutions', 'auxiliary organisations', or 'consultative organisations', 'institutions of social dialogue', as well as 'proposer-review organisations' are (may be) imprecise and deceptive, especially because in some cases these – very diverse – organisations possess public power-like competences in addition to the narrowly interpreted consultative rights.

It is necessary to scientifically define the various types of these organisations and clarify – in a comparative manner – their role in decision making (in the preparation of laws). And due to the lack of consistent legal regulation it would be important to regulate their participation in the governmental decision-making system (in a more detailed form), with regard to their importance. (see later).

Grouping of consultative bodies

For the sake of transparency of governmental consultative bodies, they may be grouped according to the following aspects:[62]

a) the scope and legal form of participating organisations;
b) the features of civil cooperation;
c) their method of selecting members;
d) the legal regulation of the given body;
e) the features and content of the members' rights;
f) the frequency of application; and
g) the phase or level of governmental activities to which each (body) is related.

(1), as well as the scope of people permanently invited to the meetings of such bodies are appointed by the normative government decision establishing the body.

57 Vadál (n 11) 81.
58 ibid
59 ibid 17.
60 ibid
61 ibid
62 Vadál (n 11) 60.

Let's see them one by one:

Ad a) *Types of governmental (state administrative) consultative bodies based on their members*

Based on the scope of participating organisations Vadál distinguishes between *internal* consultative bodies of governmental activities and *external* consultative bodies of governmental activities. Among the internal ones, she lists those institutions (e.g. government committees, cabinets and inter-ministerial committees), in which only state bodies participate and the representatives of civil society (non-state bodies) are usually not present among the members. Among the external ones she lists those bodies within which, in addition to the representatives of governmental bodies, the institutions of the widest range of civil society are present: such as social organisations, representatives of interest (advocacy) groups, professional and expert organisations, representatives of science, professional chambers, etc.[63] Within this grouping it is important that 'through these bodies, the interconnection between governmental activities and the activities of organisations interested in and concerned about decisions may be established. Through these bodies, the presentation of interests, their collision, striving for consensus, and the professional and scientific grounding of decisions may be realised'.[64]

There is another grouping similar to Vadál's which, as one method of the presentation and enforcement of specific aspects of interests – significant in the preparation of governmental decisions – at each level and area of governmental activities [partly sectoral (strictly professional) and partly functional (beyond the aspects of certain sectors]

a) enforces the given (public policy) interests by establishing an independent coordinative mechanism or body (mainly relying on the staff of the state administration), or

b) introduces the institutional solutions – including external actors – of 'transmitting information' related to interests 'into governmental activities'.[65]

As has been mentioned before, both types of organisations may be put into the group of so-called governmental auxiliary bodies the 'common feature of which is that part or all of their activities is related to the governmental decision-making procedure with the aim that these decisions shall be well-grounded from all – professional, legal and political – aspects and the delivered decisions shall be used also in reality'.[66]

Based on the abovementioned facts, it is clear that the two types of organisations are not 'identical': while the second – theoretically – serves the observation, aggregation of interests and their transmission to the decision-makers, the first one performs the channelling of the revealed interests, and the professional preparation of their presentation in the drafts

63 ibid 61.

64 ibid

65 Balázs István, 'Magyarország közigazgatása' [Hungary's public administration] in Szamel Katalin, Balázs István, Gajduschek György, Koi Gyula (eds), Az Európai Unió tagállamainak közigazgatása [Public administration of the European Union's member states] (COMPLEX Kiadó 2011) 745.

66 ibid

of different programs and legal instruments, as well as their negotiation and concretisation within public administration.

However, the majority of practical difficulties results from the lack of consistent regulation and the conflict of existing regulations related to the tasks and composition of these two 'types of organisations' and their relationship. For example, two consultative bodies of an *internal* and an *external* type have been established to represent Roma issues, but the relationship between the Inter-Ministerial Committee for Social Development and Roma Issues[67] and the Roma Coordinative Council[68] has not been clarified; the relationship based on government decisions and practical experiences is hardly interpretable and less transparent. Moreover, they have been convened only once so far this year.

This situation is further complicated by the fact that within the *internal negotiation mechanisms of state administration* (at the meeting of the Government performing final coordination, or in different coordinative and consultative mechanisms, bodies) the representatives of civil organisations (may) appear directly in several ways. For example – to continue with the abovementioned example – according to the Government Decree establishing the Roma Coordinative Council '[The] Government calls upon the leaders of central state administrative bodies to ensure, in case of laws related to the social development of Roma people defined in the legislation program of the Government, the possibility to provide opinion for the [civilian and non-civilian] members of the Council within the public administrative negotiation'. Furthermore, section 49 of Government Decree 1144/2010. (VII. 7.) on the rules of procedures of the Government must be mentioned, according to which the administrative state secretary of the Ministry of Public Administration and Justice may invite external persons – for example representatives of civil organisations – to the meeting of the administrative state secretaries; and its section 59 states that persons – for example representatives of civil organisations – invited personally by the Prime Minister may participate at the meeting of the Government.

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[67] Within the scope of the examined field the Inter-Ministerial Committee for Social Development and Roma Issues supports those written in section a) herein. The Government established the Inter-Ministerial Committee for Social Development and Roma Issues for improving the standard of living and social status of Roma people and those living in poverty and for the harmonisation of governmental activities aiming at facilitating their social integration. The primary task of the Inter-Ministerial Committee for Social Development and Roma Issues – based on Government Decision 1199/2010. (IX. 29.) on the establishment of the Inter-Ministerial Committee for Social Development and Roma Issues – is to harmonise activities related to social development, to make recommendations for the Government for the harmonised planning of the resource needs of tasks related to the social development and for the supervision of finances, as well as to coordinate and evaluate the execution of governmental tasks aimed at improving the standard of living and social status of Roma people and those living in poverty and at facilitating their social integration.

[68] An institutional realisation of those written in section b) herein (in the examined field) is the Roma Coordinative Council established by Government Decision 1102/2011. (IV. 15.) on the establishment of the Roma Coordinative Council, which was established by the Government based on social partnership for the establishment and execution of measures facilitating the effective development of the Roma population, as well as for rendering an opinion about the results. The Roma Coordinative Council is an advisory, consultative body supporting social development, and in line with the aims of the Government it is a specific forum for transmitting information related to the interests of the concerned social groups into governmental work.

Ad b) *Basic types of governmental (central state administrative) consultative bodies – from the aspect of civil cooperation*:

1. bodies ensuring membership-like civil participation[69] (mixed system);
2. bodies composed of the delegates of only (central) state administrative bodies (e.g. Sulinet Expressz Program [Internet at Schools Express Programme] Project Council[70]) – without civil organisational rights;
3. bodies composed of the delegates of only (central) state administrative bodies – with the possibility of direct channelling of civil interests;[71]
4. bodies composed exclusively of experts – without direct and expressed civil participation;[72]
5. bodies without civil member that may make suggestions for the appointment of members (their opinion is requested in a formal procedure, e.g. Hungarian Design Council[73]).

Ad c) *Main forms of establishing membership*:

1. ministerial request and appointment – without civil cooperation (e.g. recommendation) before the appointment;
2. ministerial request and appointment – with the possibility (right) for civilian recommendation;
3. submission of a declaration of unilateral accession,[74] or declaration of will[75];

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69 The expression 'civil participation' primarily means those cases when the natural person participating in a consultative body is representative of a civil organisation, not in his own name, directly due to his professional expertise gained at the given field.

70 Government Decree 283/2003. (XII. 29.) on the tasks and operational rules of the Sulinet Expressz Program Project Council.

71 The president of the Inter-Ministerial Committee for Social Development and Roma Issues may invite other people – typically representatives of Roma civil organisations – based on its founding document.

72 See for example the composition of the Scientific Committee set forth in Article 6 paragraph (1) of Government Decree 112/2011 (VII. 4.) on the (…) scientific committee supporting the work of the National Atomic Energy Office.

73 For the appointment of the members of the National Design Council (MFT) the president of the National Office of Intellectual Property makes a recommendation, for the creation of which he requests the opinion of related professional and interest representation organisations [Article 2 paragraph (2) of Government Decree 266/2001 (XII. 21.) on the Hungarian Design Council].

74 According to Article 1 of Ministry of Human Resources Decree 50/2012. (XII. 19.) on the National Patient Forum any civil organisation may join the section of the National Patient Forum (herein after referred to as: NBF) in line with its activities with a declaration of accession sent to the Board of the NBF if the civil organisation operates in compliance with act on civil organisations and performs its activities in the field of health care.

75 According to Article 2 paragraphs (1) and (2) of Government Decree 65/2000. (V. 9.) on the establishment and detailed rules of the operation of the Charitable Council, those public benefit organisations which want to become members of the Council may submit a related declaration of intent to the minister – and the minister shall automatically provide credentials for the representatives of those organisations which comply with conditions set forth in Article 1 paragraph (2) and have submitted their declaration of intent.

4. naming a specific civil organisation in a normative source of law (e.g. HUNGARNET Association[76], or earlier the National Association of Hungarian Artists);
5. by election based on the candidacy (application) system.

It is important that the abovementioned types do not cover all types operating in practice, with special regard to the fact that the mechanisms of selecting (civil) members and of the establishment of membership are not fixed in each case. *A practical difficulty which has been mentioned in the literature for a long time* is that in case of bodies where there are provisions about the selection of civil members, in many cases it is still not clear what the exact mechanism is for their selection and what methods may be used to ensure the democracy of the procedure.[77] This deficient legal regulation allows the government (any government, not just the current one) to arbitrarily select from among organisations formally complying with all conditions, not necessarily paying attention to their real social significance and professional preparedness.

Ad d) *Legal regulation of consultative bodies – from the civil point of view*:

Open legislation may become *counterproductive* if 'the processing of opinions and the feedback procedure are not regulated and managed properly' – says Vadál.[78] Mentioning these elements is especially important regarding the domestic – external – consultative bodies, because *these communication aspects provide the basis of many practical difficulties*.

Ad e) *Rights and tools available for the civil members or for the body with civil members*:

1. review;
2. recommendations;
3. negotiation of interests;
4. preparation of decisions;
5. decision making;
6. coordination;
7. analysis and evaluation of execution;
8. lawsuit.[79]

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[76] Section 1 of Government Decision 1129/2013. (III. 14.) on the establishment of the National Information Infrastructure Development Program Council and the definition of its rules of procedure the Government established, as proposer, review and advisory body the National Information Infrastructure Development Program Council, and its section 6 requests – among others – the president of the HUNGARNET Association to participate in the work of the Program council as a permanent member.

[77] Héthy Lajos, Civil beszéd vagy 'párt-beszéd'? [Civil speech or 'party-speech'?] (Napvilág Kiadó 2010) 96.

[78] Vadál (n 11) 162.

[79] The rule defined in Article 25 paragraph (7) of Act XXVI of 1998 on the rights and equal opportunities of disabled persons, according to which against those violating the rights of disabled persons defined in law the National Council for Disabled and the national interest representative organisations of disabled persons may initiate a lawsuit.

Among – public power-like – rights which go beyond traditional consultative rights (the right to information, the right to negotiate, the right to make recommendations, the right to give an opinion) those shall be mentioned through which decision making power is divided between the public administrative body (typically the Government) and the consultative body.[80] In such cases the original possessor of the decision making right, who is responsible for decision making, cannot deliver the decision on its own, because the converting right (co-decision making right) of the mentioned body limits this. Naturally, in such cases the original possessor of the decision-making right cannot fully delegate the right to decision making or its responsibility for the decision (and the liability for its possible consequences), but with the self-regulating 'delegation' of certain elements of decision making it may ensure substantial participation and unavoidable control-possibility for the representatives of the targeted groups. A good – though as yet theoretical – example is the Framework Agreement established between the Government of Hungary and the *National Roma Self-Government* [ORÖ], based on which 'Within their cooperation the Government and the ORÖ establish a draft government decree, in which they define the certain fields of intervention and the participants of the co-decision agreement and together with the bodies appointed for co-decision-making define the co-decision-making mechanism relevant for the given field, by taking into consideration, and keeping in line with, the valid EU and national procedural regulations'. In an exemplificative manner, the Framework Agreement defines those fields in which it wants to give to the ORÖ effective and substantial rights for the enforcement of interests: 'The Government establishes the co-decision system primarily in the fields of programs aiming at the expansion of employment, increasing standards of education and improving standards of living, as well as of scholarship programs, investment and employment supports.' It is clear, therefore, that the decision-making and co-decision-making rights may primarily contain partial rights related to tenders, funds, or personal issues, sometimes not in a substantial manner, but 'only' in form of veto[81] or 'quasi veto', these latter ones covering the elements which, for example, allow for the postponement of decision-making or the suspension of the execution of the delivered decisions.[82]

Ad g) *Types of consultative bodies related to certain governmental levels*:

We may distinguish between bodies based on whether they were created by the Government or independently from it. The best example for the latter is the National Economic and Social Committee established by Act CXIII of 2011 on the *National Economic and Social Committee*, which was created with the aim of discussing comprehensive ideas related to economic and societal development and national strategies existing through governmental cycles, and facilitating the elaboration and realisation of harmonised and balanced economic growth and the related social models. The Committee was established as a *consultative, proposer and advisory body independent from the Parliament and the Government*, and as

[80] Vadál (n 11) 61. and 86.

[81] The exclusive right to recommendation and the right to initiative, as well as the right to consent and the decision bound to a certain voting rate may be considered as such.

[82] For details see: Rixer Ádám, A roma érdekek megjelenítése a jogalkotásban [Incorporation of Roma interests into legislation] (Patrocinium 2013) 158–160.

the complex and most diverse consultative forum of social dialogue between organisations representing employers' and employees' interests, economic chambers, civil organisations operating in the field of national policy, national and foreign representatives of science, and churches defined in a separate act.[83] It is worth noting that the solution is not unique in Hungarian legal development.[84] It is important that independence from the Government does not mean that during the activities of the forums, opinions of the Government and civil organisations cannot be directly in conflict or that the government cannot be substantially 'influenced' in some ways.[85]

In addition to the most comprehensive consultative mechanism(s), consultative bodies operating beside the Government and certain central state administrative bodies form a separate category; these partly appear in classic, sectoral fields (health care, education, social issues, economic issues[86], etc.), and partly may be identified as intersectoral fields (e.g. see the before mentioned Roma issue).

In addition to consultative bodies operating beside or 'between' central state administrative bodies the territorial consultative bodies, or *bodies with a consultative type of tasks* shall be mentioned, the majority of which may be characterised as so-called quasi state administrative bodies. These may also be called atypical mixed bodies, in so far as they appear neither as fully state administrative, nor fully local-governmental, syndicate types of bodies.[87] It is true in general that the main reason for their existence is that the presentation of general and local interests, abilities and expectations could not be possible or reasonable at the same time at other forums or scenes. These creatures may be described as territorial cooperative mechanisms – typically aiming at program-making – in so far as they primarily try to act as forums for the exchange of opinions and for dialogue between civil and local-governmental and state administrative (types of) bodies (organisations). They are usually without organisational independence, but they are usually independent in exercising their

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[83] Article 2 paragraph (1) of Act XCIII of 2011 on the National Economic and Social Council.

[84] The Economic and Social Council – which has always operated in an unstructured way and without substantial rights – was established in the building of the Parliament on 24 August 2004, and wished to remain a professional forum independent from the government and party politics 'by discussing long-term national, strategic issues'. In the Council, national trade unions and employers' interest representatives, and representatives of chambers, investors, civil organisations and science were present as members. The GSZT expressly aimed at being the forum of national consensus seeking to rise above everyday political fights. In this institution the different sectors were allowed to present their opinions about issues the nation was facing that would determine long-term development.

[85] For example, based on Article 153 paragraph (1) of Act I of 2012 on the Labour Code, the Government shall receive authorisation to define in decree – after consultation in the National Economic and Social Council – about a) the lowest obligatory wage and b) the amount and validity of the guaranteed wage minimum.

[86] See for example Government Decision 1166/2012. (V. 22.) on the reorganisation of the budget estimate from reserves available for extraordinary governmental measures in order to ensure the resources necessary for the performance of the tasks of the Corporate sector and the Government's Permanent Consultative Forum.

[87] Patyi András and Varga Zs. András, Általános közigazgatási jog (az Alaptörvény rendszerében) [General administrative law (Within the system of the Fundamental Law)] (Dialóg Campus 2012) 329.

tasks and competences.[88] Examples of such are the *Regional Social Policy Committees* or the *Regional Tourism Boards.*

Summary statements and general conclusions in relation to consultation

It is an assumption in legal literature – which goes beyond our specific subject – that the relationship of the established forums for the preparation of decisions and for negotiation, their specific role and significance should be clarified in law.[89] For a long time the main question has been whether in the case of decision-making mechanisms supplemented with mainly informal, 'customised' elements, the strictness of the legal regulations (deeper and more accountable than today) – and of the transparency and higher level of legal security theoretically achievable by this – would impose great difficulties in reaching substantial compromises and using practical 'quickly reacting' methods. It may be stated that the difference mechanisms aiming at the preparation of decisions should be formalised through more detailed legal provisions than today.[90]

Among further difficulties, on the one hand, the low level of professional preparedness and material resources of social players (the latter may appear, for example, in relation to the costs of preparing an expert opinion), and, on the other hand, as the capacity deficiency of the governmental side, the lack of such civil servant staff – specialised in negotiating activities – in central public administration may be mentioned.[91]

2.3. Civil tools in local governmental administration which directly influence the legislator

2.3.1. Legal bases of civil participation

According to the Fundamental Law, the source of public power is the population which exercises its power through its elected representatives, or especially directly. According to Article 31 paragraph (1) of the Fundamental Law local governments operate in Hungary to manage local public issues and exercising public power. As Article 6 of Act CLXXXIX of 2011 on *the local governments of Hungary* (hereinafter referred as LGH) puts it: 'During the performance of its tasks the local government:

a) supports the self-organising communities of society, cooperates with these societies, ensures wide-scale cooperation of citizens in local public issues;

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88 ibid

89 See for example: Trócsányi László, 'Közjogi változások és a rendszerváltás' [Public law changes and the transition] (1993) 43(7) Magyar Közigazgatás 5.

90 Kéri László, 'A kormányzati döntéshozatal szervezetszociológiai nézőpontból' [Governmental decision-making from organisational point of view] in Pesti Sándor (ed), Közpolitika: Szöveggyűjtemény [Public Policy Reader] (Rejtjel Kiadó 2001) 218.

91 Vadál (n 11) 171–172.

b) strengthens the self-funding ability of the settlement, reveals its opportunities and uses its own resources;
(…)'.

The mentioned provisions of the LGH facilitate the realisation of goals set forth in Act XXVI of 2010 on the promulgation of the additional protocol on participation in local public life attached to the *European Charter of Local Self-Government* made in Strasbourg on 15 October 1985. According to the Charter, the right to participation in local public life means the right to define and influence the performance of the local governments' tasks and competences, for the enforcement of which right the law should provide tools (Article 1 section 2).

2.3.2. General questions of the participation of local societies

Obviously, it is useful if we are able to generally define the main features of Hungarian local governmental societies, either by putting them into a basic category established in international literature; for example, Almond and Verba distinguish between church community (convergent, but externally closed), servile culture, participative political cultures, and the political culture of citizens – which is an ideal mixture of the previously mentioned ones.[92] However, instead of putting Hungarian civil society – in a very simplified way – into one of these categories, it shall be noted that among the specific characteristics of the Hungarian civil/non-profit sector, the practice of the individual enforcement of interests, instead of wide-scale cooperation and the presentation of interests in public spheres, is still observable; furthermore, compared to Western-European standards, the pace of the flow of information to this sphere and within the sphere, as well as in relation to this the level of information supply may be considered rather low. National analyses repeatedly confirm that in 'civil public knowledge' the existence of local civil concepts is often barely known, just like – in the relationship with local governments – the existence, tasks and competences of the so-called civil advisors.[93]

It is a basic statement that the way to the integration of local communities leads through participation and cooperation.[94] This is why it is especially important from the aspect of the sustainability of local communities to analyse the set of tools providing possibilities of participation, the actual applicability and condition of such tools, as well as the relationship

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92 Gabriel Almond and Sidney Verba, The civic culture: Political attitudes and democracy in five nations (SAGE 1989) 16. – cited by Brachinger Tamás, Helyi közösségek és helyi hatalom egy hazai középvárosban [Local communities and local power in a domestic medium-sized town] (Eötvös József Főiskolai Kiadó 2010) 175.

93 Brachinger (n 92) 177.

94 Csörgits Lajos, A magyar helyi önkormányzati rendszer átalakítása: A demokrácia, a helyi közügyek és a helyi önkormányzás egyes kérdései [Transformation of the Hungarian local governmental system: Certain questions of democracy, local public issues and local governing] (Dphil. thesis, Széchenyi István Egyetem ÁJK DI 2013).

of local government (as local public power and the main forum of the presentation of local interests) and the organisations providing for the possibility of participation.[95]

The basic, main feature of forums for shaping local public will is that they provide institutionalised frameworks for citizens' participation in local public affairs.[96] Depending on which form of participation is favoured by the settlement's representative body, the regulatory level of the different legal institutions may vary:[97] the existence, elaboration and frequency of application of different forms of participation depend also what types of problems (typical problems) the given society shall face.

Based on the local governmental organisational and operational rules it may be observed that by the regulation of wide-scale and various types of participatory rights, the representative bodies – based on the previous Act LXV of 1990 on *Local self-governments* (hereinafter: LSG), in line with European norms – have properly established the alternative forms of participation in local public life.[98] Due to the provisions of the LGH, these forms of participation 'exist' also after 1 January 2013. Undoubtedly, it may be stated that the new legal regulation did not introduce any novelties: the unchanged regulation of these legal institutions show that the legislator does not consider this field especially important, or the earlier regulated forms of local participation are sufficient, and no need for change has emerged in this regard.[99]

The grouping of the forms of participation guaranteed by law is possible through the parallel examination of several significant aspects: these are, for example:

- whether the local application of these is obligatory or depends on local needs and requirements [thus the forum a) is regulated in law and is operated obligatorily, b) is regulated in law but its operation is not obligatory, or c) is not regulated in law, but is used (accepted) in practice];
- at what point the civil/non-profit organisation joins in and cooperates in the process of decision-making; thus whether the preparation of the decision, the delivery of the substantial decision, of the monitoring activities of the application of the decision is the connection point, and the specific subject of the cooperation;
- whether the given right is individual or collective;
- for which types of settlements (types of local governments) these are possible; and
- at which level of the hierarchy of laws the legal instrument providing for the enforcement of the right is present (e.g. fundamental law, cardinal act, act, decree, legal instrument of state administration).[100]

According to the LGH, in local public issues (matters) the local government expresses and realises local public will in a democratic form, by achieving wide-scale publicity [Article 2 paragraph (2) of the LGH]. There are several ways for creating local public will: forms re-

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95 Brachinger (n 92) 175.

96 Kiss Mónika Dorota, A helyi közakarat formálásának fórumai a Mötv. tükrében [The forums of shaping local public will in the reflection of the LGH] (2013) 6(1) Új Magyar Közigazgatás 11. and 16.

97 ibid

98 ibid

99 ibid

100 ibid

sulting in local governmental decisions[101] are well distinguishable from those forms (forums) which cannot be reached by exercising competence (e.g. local popular initiative targets the discussion of the relevant topic at the body of representatives, for which the public hearing may also be a useful method…). The latter ones are primarily available for arm-twisting, review, declaration of statement, presentation of interests, support of decisions, grounding of decisions and preparation of decisions.[102]

2.3.3. Civil participation in program making and legislation through membership in bodies

I. The presence of those supported by the civil sector in local governmental and minority self-governmental bodies

At the election of local governmental representatives and mayors, certain civil organisations may act as so-called nominating organisations. This allows certain local organisations, their representatives (members, volunteers, sympathizers, supporters, etc.) to become elected members of representative bodies (general meetings). According to Article 3 section 3 of Act XXXVI of 2013 on election procedure, the nominating organisation is: '(…) at the election of local governmental representatives and mayors at the time of setting the date of the elections any party, association, except for trade unions registered in the register of the court, if registered by the election committee as nominating organisation.' Further details are set forth in Act L of 2010 on the election of local governmental representatives and mayors [e.g. Article 8 paragraph (7), Article 9 paragraph (2), Article 11 paragraphs (1)-(3), and Article 11/A].

From the aspect of (nominating) minority civil organisations, it is also important that, according to Article 21/A paragraph (1) of Act L of 2010, at the local governmental elections and at the interim elections held for the election of the representative body of, the minority candidate may receive a mandate in a preferential way on the list of independent candidates. According to Article 2 section 14 of Act CLXXIX of 2011 on the rights of minorities, a minority organisation is any association registered in the court register of civil organisations, except for parties and trade unions, the goal of which – defined in its statutes – is the representation of the minority specified by the act.

Regarding the person elected after the civil nomination, it shall be stated that after the elections he is liable to all citizens with the right to vote; and the contents of this responsibility, which go well beyond the relationship with certain organisations, are defined in law. [e.g. according to Article 32 paragraph (2) section k) of the LGH 'The local governmental representative (…) shall keep contact with citizens with right to vote, to whom he shall provide information about his activities as representative at least once a year.']

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[101] The LGH regulates which body may delivery local governmental decision: the body of representatives, the local popular initiative, upon authorization from the body of representatives the committee of the body of representatives, body or partnership of the part local government, the mayor and the notary. [LGH Article 41 paragraph (3)].

[102] Kiss (n 96) 16–17.

II. The presence of those supported by the civil sector in committees

According to Article 41 of the LGH, committees are organs of the representative bodies which support the latter in performing local governmental tasks. Just as in cases of committees operating in other fields of public administration, their main function is to cooperate in the preparation of decisions by their recommendations, opinions and proposals and to supervise the execution of the decisions. However, the role of the committees of the representative bodies goes beyond the functions of proposing, opinion making and supervising. Committees operating in the local governmental organisation are syndicate bodies elected by the body of representatives; their legitimacy is indirectly derived from the community of citizens with the right to vote, indicated by the LGH as holders of the right to self-government. This is the basis upon which – as mentioned before – based on Article 41 paragraph (3) of the LGH, they are authorised to deliver local governmental decisions.[103] In summary, it may be stated that basically three large groups of tasks belong to the competences of committees:[104]

a) preparation of decisions,
b) supervision of the execution of local governmental decisions, and
c) exercising decision-making rights.

According to Article 57 paragraph (1) of the LGH, those persons may also be elected as members of the committee – by the decision of the representative body – who are not representatives of the local government. It is important that at the meeting of the committee the rights and obligations of those members who are not local governmental representatives are identical with the rights and obligations of the local governmental representatives.[105] The direct barrier before transforming external – sometimes 'civil' – interests into decisions is the rule that 'the chairman and at least half of the members shall be appointed from among local governmental representatives' [Article 58 paragraph (1)].

It is an important question whether it is possible to substitute (replace) a committee member at the meeting of the committee with (by) another member (maybe someone belonging to the same civil organisation) or with an external person (also maybe belonging to the same civil organisation). The LGH – like its predecessor the LSG – does not allow for substitution [about this see Decision 43/2009. (IV. 3.) CC of the *Constitutional Court*].

The committee system facilitates the establishment of a differentiated work division in the local governmental organisation for more effective performance of local governmental tasks. *The fact that not only local governmental representatives may hold membership in committees allows for the integration of experts – sometimes delegated by civil organisations – into the work of the committee, whose contribution increases the grounding and professionalism of decisions.* The committee system allows for the widening of the democratic bases of local governmental decisions, partly through non-representative members bearing the same rights and obligations as other committee members, and partly because

[103] Nagy Marianna and Hoffman István (eds), A Magyarország helyi önkormányzatairól szóló törvény magyarázata [Explanation of the Act on Hungary's local governments] (HVG ORAC 2012) 220.

[104] ibid 224.

[105] It is important that LGH also touches upon other issues of the legal status; it contains provisions – among others – on the oath, conflict of interests, unworthiness or resorting to cost refund (Article 40).

based on the legal regulation, the representative body is able to create operational rules which facilitate the integration of representatives of self-organising local communities, civil organisations, the local economy and service providers into the work of the committee with consultative rights (see later).[106]

2.3.4. Civil cooperation in program making and legislation without membership in bodies

I. Whistleblowing (public interest disclosure)
See those written in section I of subchapter 2.2.1

II. Recommendation at public hearing
According to Article 54 of the LGH the representative body shall – obligatorily – hold a previously announced public hearing at least once in every year, at which the local population and representatives of locally interested organisations (thus not only civil organisations) may raise questions and make recommendations related to local public affairs. The significance and importance of recommendations formulated at the public hearing (not including the public hearing regulated in Act CLXXIX of 2011) is strengthened by the fact that the imposed recommendation or question shall be answered at the public hearing or within 15 days. The latter rule is the only really problematic point, because regarding the procedure related to public interest petitions, complaints and reports – as has been referred to – there are provisions set forth in Articles 141–143 of Act XXIX of 2004 on the *amendment and repeal of certain laws* as well as the establishment of certain regulations relating to Hungary's accession to the European Union.[107]

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[106] With those obligations set forth in the LGH – e.g. the obligation to establish certain commissions – the body of representatives has received great freedom in determining its commission structure, the number of members of certain commissions, the tasks and competences of commissions and the rules of their operation in its organisational and operational rules. The Act provides not only for the establishment of permanent commissions, but temporary, so-called ad hoc commissions may also be established for certain local governmental tasks, for the period of performance of the task. For the composition, election and operation of these – in the absence of any specific legal regulations – the rules on commissions shall be applicable [this is supported by Constitutional Court Decision 68/1992. (XII. 21.) CC].

[107] Article 141 paragraph (1) State and local governmental bodies shall manage complaints and public interest reports in compliance with this act.
(2) Complaint is a petition which aims at terminating the violation of individual rights or interests, and its management does not belong to the scope of any other procedures – especially court or state administrative procedure.
(3) Notice of public concern draws attention to circumstances the correction or abolition of which serves the interest of the community or of society as a whole. A notice of public concern may contain recommendation, as well.
Article 142 paragraph (1) Complaint and notice of public concern shall be examined within thirty days following its receipt.
(2) If it is assessed in advance that the analysis grounding the decision requires more than thirty days, the complainant (reporter) shall be informed about this within fifteen days following the receipt of the complaint (notice), by stating the expected completion date of the procedure.

The mentioned provisions were not annulled after the approval of the LGH, therefore those and the rules of the LGH about public hearing 'concur' with each other. The legislator may interpret this seemingly double regulation in different ways: it may start from the assumption that the legislator consciously used different deadlines and thus invalidated the 'main rule' with regard to questions and recommendations – which may be managed as complaints and reports – raised at public hearings. It may also consider – and through this it may arrive to a different conclusion – that the obligation to answer set forth in the LGH is not identical with the provision of the accession act regulating management [Article 141[108] paragraph (1)], and judgement [Article 142 paragraph (1)], in so far as the former criteria may be fulfilled if the obligor announces to whom it wishes to transfer the issue; while in the latter case(s) substantial steps shall be made, thus – remaining with the previous example – the actual forwarding of the issue shall take place.

Based on the LGH, the public hearing shall be regulated in the organisational and operational rules. With regard to this, attention shall be drawn to the previous practice – which is definitely unlawful from this time forth – which regulated public hearings in the annex of the organisational and operational rules, and in its exhibit: the annex is an integral part of the decree, but it is not available for formulating rules of behaviour.[109]

We shall also draw attention to the fact that in Hungary the local population often considers the facultative village meeting, rather than the obligatory public hearing, as the basic forum of the local government, as the primary form of participation in local public life. In the opinion of Kiss, due to the interdependency established between the two institutions, the rules of the public hearing – in a normative way and also in practice – strongly determine the village meeting.[110]

The reason for the – upheld – separation of the two institutions is that the typical subject of village meetings is notification about important events affecting different local sectors and the expression of related opinions. Among others, the issues which belong here are the local governmental budget decree draft; time proportionate realisation of the annual budget, next year's plans and directions of development, financial concepts, the activities of the local governments in the business year, improvement of public services for the population, major settlement development goals, and the most important events of the preceding period.[111] In the regulation of this forum, local features may be enforced well, as well as the ideas of the representative body, as there are no obligatory rules.[112]

III. Participation at other forums

According to Article 53 paragraph (3) of the LGH, the representative body in its organisational and operational rules regulates the order of those forums (settlement, town policy forum, town-part meeting, village meeting, etc.) which facilitate the direct provision of information for the population and for associations, as well as their involvement in the preparation of the most important decisions. The act regulates that the representative body shall

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[108] Kiss (n 96) 19.

[109] ibid

[110] ibid 20.

[111] ibid 21.

[112] ibid

be informed about statements and minority opinions emerging at these forums. In Hungary these forms, defined with a variety of expressions – regulated typically in organisational and operational rules or earlier in the so-called forum regulation – are the following: settlement policy forum, town district meeting, group meeting, social discussion, complaint box, opinion box, forum for the exchange of opinions, public forum for the negotiation of interests, settlement-part meeting, holiday area discussion, open hours, round table discussion, public opinion survey, brainstorming, open day, civil forum, settlement visit, area visit, telephone client service, and community work(!). The definition and regulation of this last as a form of democratic participation is rare.[113]

Based on surveys, the literature shows that these legal institutions are not only regulated in local instruments, but most of them have actually been used in the process of establishing public will.[114] The significance of this is not reduced by the fact that these forums have usually had a low rate of participation.[115]

Some authors consider the introduction and increasing application of further techniques and methods necessary, such as:

a) the institution referred to as participatory budgeting, which is 'the definition of the composition and ratios of the settlement's budget and the supervision of its application through a transparent and annually held dispute and planning process open for all residents'.[116]
b) a 'Citizens' Jury': the essence of this is the facilitation of the management of local issues (public affairs) by establishing a lay 'mini-society' of 15–25 people in a way that the body creates public policy recommendations to the decision makers of the settlement;
c) holding a consensus-conference (as public meeting of experts and citizens – for elaborating mutual development recommendations);
d) holding a deliberative poll, in so far as it measures the opinions of those concerned (provides an answer) before and after getting to know an issue in details, focusing on substantial flow of information and on providing possibility for debate;
e) organizing a so-called future search, in so far as they try to make the subjects of decisions participate in the preparation of and debate about the decisions influencing their environment with active organisational work.[117]

We only wish to refer to the fact that the effectiveness of civil participation may be significantly increased by those indirect forums, at which civil participants do not (necessarily) get into direct connection with the representatives of public administration organisations, but negotiate among themselves, either locally or at county level, in order to prepare a

[113] ibid 17.

[114] Bencsik András, Burai Petra, Csefkó Ferenc, Fábián Adrián, 'Az önkormányzatok átlátható, korrupciómentes működése' [Transparent and corruption-free operation of local self-governments] (2012) 5(7–8) Új Magyar Közigazgatás 67.

[115] ibid 59.

[116] Pataki György, 'Bölcs laikusok: Társadalmi részvételi technikák a demokrácia szolgálatában' [Wise laics: Techniques of social participation in favour of democracy] (2007) 4(3–4) Civil Szemle 145.

[117] Reisinger (n 3) 60.

stronger joint action. In the years following 2000, several Civil Negotiation Councils were formed (e.g. in Nyíregyháza on 24 February 2004). However, such initiatives may operate firmly if – formally or informally – they are completed with the representatives of public administrative bodies. This is a less well-researched area, about which there is not much information available.

It is also a long-mentioned fact that – among others – the effectiveness of cohesion policy in the EU could be significantly increased if local, territorial, and if possible, regional levels and the certain states prepared their own participation plans regarding which players they would include in what kind of local, regional decision-making procedure, for what period of time and what techniques they would use.

IV. Advisory rights

This is a right which does not originate from membership in bodies, but is closely related to it. The possibility of exercising advisory rights goes beyond participation in the basic institutions, ensuring the publicity of exercising public power and democratic operation, such as the meeting of the representative body, as well as the possibility of getting to know the data recorded there[118]. According to Article 53 paragraph (3) of the LGH, the representative body shall regulate in its organisational and operational rules the representatives of which self-organised communities shall have advisory rights in their scope of activities at the meetings of the representative body and its committees. Naturally, those speaking with advisory rights shall also comply with the debate order set forth in the decree of the local government, thus also the 'time limit set forth for the contribution'.[119]

V. Initiating local referendum

In line with legal regulations, a local referendum may be held about issues belonging to the tasks and competences of the local government. [Article 31 paragraph (2) of the *Fundamental Law*] The significance of this institution is increased by the fact that according to article 3 paragraph (4) of the LGH 'Citizens with the right to vote exercise their right to self-government through their elected representatives and by participating at local referendum'. From the standpoint of our topic it is very important that according to the provisions of the LSG, *valid till 2014*, local referendums could have been initiated at the mayor by – among others – the managing body of the local association [former Article 47 paragraph (1) section c)]. The real significance of the initiation of a local referendum is supplied by the fact that the result of the referendum is obligatory for the body of representatives (provided that the referendum was valid and successful), and it shall be considered a local governmental decision also based on the new regulation. *The newly created law*, Act CCXXXVIII of 2013 on Referendum Proposal, European Citizens' Initiative and Referendum Procedure, states that the proposal of constituents on the settling of local referendum can be organised – among others – by associations as well, if the given question is connected with the scope of activities marked by the articles of association.[120]

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[118] For details about these institutions see Decision Köf. 5036/2012/6 of the Local Governmental Council of the Curia.

[119] Decision Köf. 5030/2012/9 of the Local Governmental Council of the Curia.

[120] Article 35 paragraph (1).

Another similar institution – lacking the obligatory force – was the *popular initiative* (also valid till 2014), through which any issue could be brought to the body of representatives, decision-making about which belonged to the competence of the body of representatives. In case of the relevant initiative of sufficient number of citizens with the right to vote, the body of representatives was obliged to discuss the issue raised [former Article 49 paragraph (2) of the LSG]. Popular initiative was repealed by the abovementioned Act, as well.

3. Tools influencing the legislator indirectly, through other bodies

Here those possibilities will be presented through which the citizen or the civil organisation influences the contents of laws enacted by competent public administrative bodies by approaching not the legislator, but another state organisation. In some cases, these mechanisms may make the chances of influencing the legislator rather indirect, and sometimes – as will be shown – quite distant *(through the initiation of the review of the content of the given law, which may lead to the annulment of the law or legal regulation by the Constitutional Court)*. Such tools may be, among others,

1. Constitutional complaint. According to Article 24 paragraph (2) section c) of the *Fundamental Law,* based on the constitutional complaint the *Constitutional Court* – which may be approached also by the civil organisation concerned about the given issue – reviews the harmony of the law used in the individual case with the *Fundamental Law.*

2. Initiating the procedure of the parliamentary commissioner for fundamental rights. According to Article 24 paragraph (2) section e) of the *Fundamental Law,* upon the initiative of the Government, one-fourth of the members of Parliament, the president of the *Curia*, the *Chief Prosecutor* or the *parliamentary commissioner for fundamental rights,* the *Constitutional Court* reviews the harmony of laws with the *Fundamental Law* within the frameworks of subsequent norm control. The related procedure of the parliamentary commissioner of fundamental rights may be initiated by anyone, in line with Article 30 paragraph (1) of the *Fundamental Law.*

4. Summary

In summary we can draw the conclusion that both the individual segments of civil society, the political culture and also the administrative bodies participating in legislation must improve to comply with the already existing legal framework of statutory instruments.

It can be stated that the Hungarian legal system makes it possible to channel the direct and institutionalised participation of civil entities within program- and law-making activities of organs belonging to public administration, but real deficiencies can be detected concerning the material and legal consequencies of different initiatives, the frequency of

convening various corporate bodies, and the *mere formal* mode of operating the particular mechanisms.

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Part IV.

INSTITUTIONAL SYSTEM OF HUNGARIAN PUBLIC ADMINISTRATION

Central administration

1. Introduction

Before the transition (1989–1990)[1] Hungarian public administration was a unified state administration system under very strong political guidance exercised by the Hungarian Socialist Workers' Party (MSZMP) which was the only political party during the communist era. Local governments were not separated from the state and political administration. The head of the state administrative system was the Government[2] which was subordinate to the MSZMP.

After the transition the democratization process of the Hungarian public administration began. The local governments became independent from the Government. On the other hand, the transition had very serious affects on the central government itself. These affects are as follows:

a) The Government became the leader of the state administrative system in both political and administrative sense. The Government is the principal body of state administration, having organizational power over it and adopting decrees. On the other hand, the Government's democratic legitimation comes from the Parliament, because the Parliament delegates power to the Government which shall be responsible to the Parliament. Therefore the Parliament has its general impact on the functioning of the Governments (e.g. acts, the state budget).

b) The governmental system faced some new tasks which could not be observed in the communist era, e.g. the Hungarian Competition Authority was established in 1990:[3] this kind of body would have been certainly unthinkable before the transition because of the lack of a market economy.

c) The other important new phenomenon is the rise of autonomous and quasi-autonomous agencies in central administration, e.g. the aforementioned Hungarian Competition Authority or the National Radio and Television Board in 1996. These organs need some degree of independence from the Government and the other levels of central administrations (e.g. ministers) because of the political sensibility of their work or to guarantee the functioning of some constitutional rights.

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1 On the transition see from a historical point of view: Romsics Ignác, From Dictatorship to Democrarcy. The Birth of the Third Hungarian Republic 1988-2001 (Boulder 2007).

2 The Government is the principal body of the central administration, its members are the Prime Minister and the Ministers.

3 Act LXXXVI of 1990 on on the Prohibition of Unfair Trading Practices

d) The impacts of EU-accession in 2004 and later the EU-membership were not so well-marked since EU law, according to the Treaties, provides no direction on what kind of organizational structure Member States operate. However, this statement proves to be less and less true. The convergence between Member States brought organizational solutions closer together, even in the sense of organizational specifications. E.g. some EU regulations oblige Member States to establish and operate independent regulatory authorities in certain sectors.[4]

The ministerial structure has been affected by changing economic regulation, especially with regards to the organisational models evolved to solve and handle tasks that arise from the fact of being a member of the EU (e.g. harmonisation of legal framework, the transposition of the services directive, development policies, planning, and use of EU subsidies).

Agency-type organizations gain more significance within Member States. As mentioned above, there are fields in which the EU obliges Member States to operate independent regulatory bodies (e.g. media). These agencies also operate trans-national networks for e.g. information-gathering purposes.

2. The legal framework of central government in Hungary

The fundamentals of the regulation of Hungarian central government are the Fundamental Law of Hungary[5] and Act XLIII of 2010 on central state administration bodies and the status of Government Members and Ministers of State (hereinafter GMMS). Some organs are established by the Fundamental Law (e.g. the Government and the Ministries). The Act on the enumeration of Ministries enumerates the Ministries, but the responsibilities and main tasks are distributed in the Government Decree on the tasks of the Members of the Government.[6] The internal organization and functioning of the Government (e.g. the decision-making process) is regulated in the Government Resolution on the standing orders of the Government (hereinafter Standing Orders).[7]

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4 E.g. in the field of independence of media authorities, see Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

5 On the Fundamental Law see Csink Lóránt-Schanda Balázs-Varga Zs. András (eds), The Basic Law of Hungary. A First Commentary (Clarus Press 2012), Tóth Gábor Attila (ed), Constitution for a Disunited Nation. On Hungary's 2011 Fundamental Law (CEU Press 2012).

6 The Act XLII of 2010 enumerates the Ministries, eg. fixes that there is Ministry of Interior. The Decree 212/2010. (VII. 1.) of the Government lays down that the Minister of Interior is responsible for local government, buildin affairs etc.

7 Government Resolution 1144/2010. (VII. 7.) on the standing orders of the Government.

3. The Government

3.1. The definition and tasks of the Government

The Government 'is the general means of executive power; its tasks and competencies shall encompass all that is not expressly conferred by the Fundamental Law or any other legislation under the competence of another body'.[8] That means that the Government is ultimately responsible for all governmental affairs, so it can intervene when it is necessary. If a new task or problem occurs, the Government has to take care of the solution, e.g. by establishing a new state administration body or ordering a body to exercise its competence.

The Government is 'the principal organ of public administration' according to the Fundamental Law, which means in a broad sense that the Government has an essential influence on public administration, including local governments. But in a narrow sense the Government directs only state administrative bodies e.g. Ministries. The Government exercises only legal supervision on local governments, which grants him a much lesser toolkit than direction.

The Government is responsible to the Parliament. It is a very important element of the definition of the Government because the powers of the Government are mainly delegated by the Parliament. The Government is authorized to implement its program and policies by the Parliament. The Parliament plays a key role in the creation of the Government (e.g. electing the Prime Minister – hereinafter PM) and the acts of the Parliament regulate the basis of the Government's and the state administration's functioning. Furthermore, the Parliament exercises supervision over the activity of the Government e.g. the Members of the Parliament ask questions the ministers or the PM. The committees of the Parliament hold hearings on various matters.[9]

The tasks of the Government cannot be totally enumerated while governance is a very complex activity. Nevertheless, Act No. XX of 1949 (Constitution of the Republic of Hungary) used to list the tasks and competences of the Government, although it is a very rare solution amongst modern constitutions. According to the Fundamental Law and other regulations the main tasks of the Governments are as follows:

a) Organizing of the governmental decision-making process. Due to the parliamentary form of government, bills and other decisions of the Parliament and the President of the Republic have usually been prepared by the Government since the transition. While formulating these proposals, the Government obviously pursues to implement its own program.

b) Making governmental decisions. The Government evidentially makes its own decisions like decrees and resolutions,[10] e.g. establishing state administrative organs.

c) Implementation of governmental decisions. On the one hand, the Government implements its own decisions. Subordinate bodies, like Ministries and Central Offices, also

[8] Art. 15 of the Fundamental Law.

[9] Szabó Zsolt, 'A parlamenti ellenőrzés fogalma és eszközei' (2010) 3 Közjogi Szemle 54.

[10] Art. 15 of Fundamental Law and Art. 23 of the Act CXXX of 2010 on Legislation.

play their parts in this process under the direction of the Government. On the other hand, the Government implements the decisions of the President of the Republic and the Parliament, e.g. the Governments adopts decrees under authorization given by an act of the Parliament. In sum, the Government is the most important policy-making body in the governmental system.

3.2. The competences of the Government

The elements of the legal toolkit of the Government are as follows:

3.2.1. Law-making

The Government can adopt *decrees* which are generally binding rules of conduct (legal acts). The Government can adopt a decree under authorization given by an act of Parliament or without explicit authorization (the latter is called original law-making authority of the Government). The former is more common: these decrees implement acts which contain the authorization. E.g. decrees adopted by original lawmaking authority usually create a body subordinate to the Government e.g. an agency. Most of the decree implements acts of the Parliament, e.g. the Government adopted Decree 17/1999. (II. 5.) on distance contracts under the authorization of Act CLV of 1997 on Consumer Protection.

The Government can also adopt *resolutions* which are not generally binding rules of conduct: they apply only to the Government itself and the subordinate bodies like Ministries. These resolutions often lay down policy programmes, schedules, plans and other regulations with a scope within state administration, e.g. Government Resolution 1144/2010. (VII. 7.) on the standing orders of the Government (Standing Orders).

3.2.2. Organizational power[11]

According to the Fundamental Law, the Government *may establish government agencies* pursuant to provisions laid down by law (Art. 15). This power covers not only the right to create a body but to build up, direct and coordinate the whole state administrative system. The origin of the organizational power is the authorization of the Parliament to the Government to implement its program. For this purpose the Government must have an appropriate and well-constructed state administration system.

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[11] On Organisationsgewalt in German literature see: Ernst-Wolfgang Böckenförde, Die Organisationsgewalt im Bereich der Regierung. Eine Untersuchung um Staatsrecht der Bundesrepublik Deutschland (Duncker & Humblot 1964); In Hungarian literature, see: Fazekas János, A Kormány szervezetalakítási szabadsága. Keretek és korlátok [The freedom of organizational development of the Government. Frames and limits] /PhD thesis/ (ELTE 2012); in Anglo-saxon countries: A.W. Bradley and K.D Ewing, Constitutional and Administrative Law (Longman 2003); Steven J Cann, Administrative Law (Sage 2002).

The *organizational powers* are the following:

a) Establishing the types of state administrative organs.
b) Creation, termination and reorganization of state administrative organs.
c) Regulating the tasks and competences of state administrative organs.
d) Ensuring budget, assets and personnel of state administrative organs.
e) Defining the internal organizational structure of state administrative organs.

The Government can exercise these organizational powers *within some limits* fixed by the Fundamental Law and the acts of the Parliament. Thus some organizational powers can be performed only by the Parliament: e.g. the election of the PM or enumeration of the Ministries.[12] Some powers can be exercised by the President of Hungary e.g. appointing the Ministers and Ministers of State.

However, the Government has a large scope of organizational powers, as has been underlined by the decisions of the Constitutional Court.[13] Most of the administrative bodies are created by the Government, so creation by the Parliament is exceptional, e.g. the Government itself or autonomous agencies which need some independence from the Government. Besides, according to the Fundamental Law, 'the provisions of an implementing act regarding the designation of ministries, ministers or administrative bodies may be amended by an act of Parliament' (Art. 17). The background of this provision is that some bodies (e.g. the Police) are created by an implementing act which can be a serious restraint of the Government's organizational power because an implementing act is 'an act of Parliament which may be passed or amended subject to two-thirds majority of the Members of Parliament present' (Art. T of the Fundamental Law). Governments usually do not have such majority in the Parliament, so when the Government wants to reorganize or rename these bodies, it is not necessary to have such a majority to pass or amend the particular act.

The organizational power of the Government prevails in the way of the regulation of the administrative bodies' tasks and competences. The acts of the Parliament usually do not designate state administrative organs with their proper nouns but only with their common nouns designating the main task of the organ. The acts authorize the Government to designate the concrete organs in decrees with proper name. E.g. Act CXLI of 1997 on Real Estate Registration authorizes the Government to designate the real estate supervisory authority or authorities (Art. 90), so that the Government adopted the No. 338/2006. (XII. 23.) Government Decree in which it designates the Department of Land Administration as real estate supervisory authority.

[12] The enumeration of Ministries is a traditional instrument of Hungarian public law since the Act III of 1848 on the Creation of the Independent Hungarian Government.

[13] Eg. Resolution No. 90/2007. (XI. 14.) of the Constitutional Court.

3.2.3. Competences related to local governments

According to the Fundamental Law, *'the Government exercises supervision of the legality of municipal governments* through the Budapest and county government offices' (Art. 34).[14] On the one hand it means legal control: the government offices obtain information on the functioning of the local government and if necessary, take the appropriate measure, e.g. turn to court. On the other hand, the borrowings or other commitments may be restricted to Government approval by an act of Parliament (Art. 34). Furthermore, the Government proposes to the Parliament to dissolve the council of representatives of a local government functioning contrary to the Fundamental Law (Art. 35).

Besides, local governments exercise not only local, but state administrative tasks and competences. These activities are under the direction of the Government (e.g. the regulation lies in Government decrees).

3.2.4. Other competences

There are some competences which are hard to typify. The Government (or the PM) *gives instructions to Ministers* e.g. to prepare a draft paper in various matters. The Government also *controls the functioning of the state administrative bodies* through certain bodies e.g. Government Control Office.[15]

3.3. The structure of the Government[16]

The structure of the Government is regulated by the Fundamental Law and the GMMS.

3.3.1. The Government as a body

The Government consists of the Prime Minister and the Ministers. The PM appoints one or more deputy prime ministers from among the Ministers by means of a decree.[17] The PM is elected by the Parliament and the Ministers are appointed by the President of the Republic on the proposal of the PM (so the composition is determined practically by the PM). The

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[14] See Hoffman István, 'Az önkormányzati döntések kontrolljának főbb modelljei a nyugati demokráciákban' [The main models of the control of the decisions of Local Self-Governments in Western Democracies] (2013) 6 Közjogi Szemle 34.

[15] See Act CXCV of 2011 on Public Finance and Government Decree No. 355/2011 (XII. 31.) on the Government Control Office.

[16] See Müller György, Kormányról kormányra a rendszerváltás utáni Magyarországon. Antalltól Gyurcsányig [From Government to Government after the transition in Hungary, from Antall Cabinet to Gyurcsány Cabinet] (Magyar Hivatalos Közlönykiadó 2008).

[17] Art. 16 of the Fundamental Law.

ministers take an oath before the Parliament. Collectively, the composition of the Government is dominated by the principle of separation of powers.

3.3.2. The Prime Minister

The conditions of appointment for PM are *right to vote and a clean criminal record*.[18] There are no other conditions e.g. university degree, so this is obviously a political position.

The PM defines the general policy of the Government.[19] So the PM is the leader of the Government. His most important powers are as follows:

a) gives instructions to the Ministers and other subordinate bodies in order to define tasks for them;
b) chairs the meetings of the Government;
c) exercises powers in connection with civil service e.g. proposals to the President of the Republic for appointing Ministers, Ministers of State;
d) appoints one or more Deputy Prime Ministers from among the Ministers by means of a decree;
e) adopts Regulation of Organizational and Operational Procedures of the Prime Minister's Office;
f) makes decisions on behalf of the Government in exceptional cases between two sessions.

The Prime Minister's Office (hereinafter PMO)[20] helps the work of the Prime Minister. It has several departments like Secretariat of the PM, the Department of Communications, political advisers etc. The PMO organizes the programs of the PM and contributes to the shaping of government policy. The PM makes contact to the Ministers and the central administration primarily through the PMO which is led by a Minister of State.

The Prime Minister's Commissioner[21] is a senior official who is appointed by the PM for a specific task e.g. the spokesperson of the PM. The appointment is for fixed term but no longer than the term of the PM.

3.3.3. Government Committees and other consultative bodies[22]

These bodies are established to handle issues which are more complicated than others and may affect more Ministers' fields (e.g. development policy). Before the Government makes such a decision like that, one of these bodies may examine the particular issue and take a

[18] Art. 20 of GMMS.
[19] Art. 18 of the Fundamental Law.
[20] Art. 36 of GMMS.
[21] Art. 32–33 of GMMS.
[22] Art. 28–32 of the GMMS.

proposal to the Government. These commissions and cabinets are created by a Government resolution and are made up of the members of the Government and sometimes experts who are familiar with the matter concerned.

The Government's Commissioner is similar to Prime Minister's Commissioner, who is appointed by the Government for a fixed term (maximum 2 years) to perform a specific and very important task (e.g. managing priority government investments).

3.4. The functioning of the Government

The Government's decision-making process is regulated in the Standing Orders and the Semi-annual Schedule which specifies the proposals and decisions the Government wants to take.

3.4.1. The decision-making process of the Government[23]

The Government's decisions are usually prepared by a Minister who is responsible for the certain matter. The proposals are written and discussed by the civil servants working in the ministries and PMO. The initiative may come from the upper regions of state administration (e.g. the PM), a non-governmental organization or from the EU-institutions.

The *proposal* is a written document which contains all necessary information to make a well-grounded decision e.g. the substance and reasons of the planned decision; if it fits to the program of the Government, the Fundamental Law and EU law; expected social and economic impacts etc.

After composing the proposal, the proposing minister has to initiate the *consultation process*. The initiative is authorized by the Minister of State for administration of the Ministry of Public Administration and Justice. The authorization is denied if the proposal is not suitable to be discussed e.g. is contrary to the aims of the Government. If the authorization is done, the proposing Minister sends the proposal to other ministers and the NGO's concerned, etc. in order to discuss it. If the discussions are successful, the proposing Minister submits the proposal to the Council of the Ministers of State for administration of the ministries. The Council discusses the agenda of the next session of the Government and decides if the proposals are suitable for the Government to decide on. If not, the Council instructs the proposing Minister to revise the draft to arrange further consultations.

If the Council finds the proposal suitable, *the Government discusses the proposal at its session.* The session is presided over by the PM, and Ministers can participate on it. The PM can invite other persons; e.g. the spokesperson of the Government is a regularly invited person. The Government makes its decisions by vote. The session is not public, but summary and audio recording are made.

[23] Vadál Ildikó, A kormányzati döntések konzultációs mechanizmusai (Complex 2011).

4. The Minister and the Ministry[24]

4.1. The Minister as a Member of the Government

The Minister is a political senior official like the PM since the conditions for appointment are the same. Accordingly, the Minister is appointed by the President of the Republic on the proposal of the PM so the composition is determined practically by the PM.

'The Minister – within the framework of the general policy of the Government – autonomously runs the sectors assigned under his or her competence, including the subordinate bodies, and performs the tasks assigned by the Government or the Prime Minister'.[25] *The minister is responsible for certain areas of the governmental policies* which are defined in a Government decree. The main task of the Minister is to implement the Government's program in these certain fields and to channel the feedbacks to the Government and the PM.

The two types of Ministers are as follows:

a) *A Minister with portfolio* who leads a Ministry, e.g. the Minister of Rural Development leads the Ministry of Rural Development. The competences are addressed to the Minister; the Ministry 'only' helps the work of the Minister. The numbers and the name of the Ministries is a subject of an act of the Parliament e.g. Ministry of Interior, Ministry of Foreign Affairs, Ministry of Human Resources, etc.
b) *A Minister without portfolio* 'may be appointed to perform specific tasks determined by the Government'[26] e.g. coordinating work related to nationality policy and church affairs.

4.2. The tasks and competences of the Minister

As mentioned earlier, the main task of the Minister is *to implement the Government's program in these certain fields and to channel feedback to the Government and the PM.* Furthermore, the typical tasks and competences are the following:

4.2.1. Governmental decision-making

The Minister prepares governmental decisions (including the decisions of the President of the Republic and the Parliament) in the fields of his portfolio e.g. drafts of Government decrees, resolutions and bills. The Minister elaborates sectoral programmes and plans and makes comments on other Ministers' proposals. In addition, the Minister takes parts in the decision-making processes of the European Union.

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[24] Verebélyi Imre, 'Milyen és mennyi minisztérium legyen az új kormányban?' [What and how much ministry should be in the new government?] (2006) 56 Magyar Közigazgatás 754.

[25] Art. 18 of the Fundamental Law.

[26] Art. 17 of the Fundamental Law.

4.2.2. Law-making

The Minister adopts decrees and normative resolutions. *Decrees* are generally binding rules of conduct (legal acts). The Minister can adopt a decree under authorization given by an act of Parliament or a Government decree. These decrees implement acts and Government decrees which contain the authorization. The Minister can also adopt *normative resolutions* which apply to subordinate bodies and persons e.g. the Regulation of Organizational and Operational Procedures if the Ministry.

4.2.3. Budget and resource management

The Minister governs the budgetary matters of the subordinate bodies whose budgets are situated in the Ministry's chapter in the act on the central budget. So the Minister performs the rights of the founder over these bodies and exercises financial control over their performance. In addition, the Minister *manages state-owned property* which is necessary to perform his tasks. The Minister also can exercise certain rights of ownership of state-owned companies assigned.

4.2.4. Direction of subordinate bodies

These bodies are *central and exceptionally territorial bodies*, e.g. central offices or the County Government Offices. Therefore the Minister performs various directional competences like instructions, appointment of the head of the subordinate organ, etc.

4.2.5. Legal supervision

The Minister performs legal supervision *over non-subordinate (autonomous) bodies like public corporations.* E.g. the Minister of Public Administration and Justice performs legal supervision over the Hungarian Bar Association. As a result, the Minister checks whether the supervised body works legally and if not, takes the appropriate measures, e.g. initiating a board meeting or going to court.

4.2.6. Managing sectoral information systems

The Minister needs credible information about the sector for which he is responsible to perform his duties and competences. He gains information from the subordinate bodies. The Government also obtains information through the ministers in the several sectors.

4.2.7. Administrative proceedings

The Minister *rarely performs procedures of first instance*; his main tasks are law-making, policy planning, etc. In the area of administrative proceedings, the Minister performs primarily procedures of second instance or oversight procedures.

4.2.8. Public relations

The Minister holds contact with NGO's and citizens in order to obtain feedback on the government policies of the conducted sectors. Initiatives may come from them e.g. proposals to draft a regulation (bill or decree or other governmental decision). On the other hand, the Minister has to facilitate the acceptance of government decisions and foster the civil participation in the governmental decision-making process.

4.3. The structure of Ministries[27]

Governmental activity has political and professional aspects at the same time. Since the governmental decisions are prepared by Ministers, the structure of a Ministry also has political and professional elements. The political elements are variable due to political changes (e.g. dismissal of a Minister or change of Government), but professional elements are more or less permanent. The general rules are fixed by the GMMS, the structure of a certain Ministry is regulated by the regulation of organizational and operational procedures which is a normative resolution adopted by the Minister with the approval of the Minister responsible for the coordination of government activities (the Minister of Public Administration and Justice).

4.3.1. The political elements of the structure

The political leadership of a Ministry consists of the Minister and the Ministers of State, who are political officials. They are often Members of the Parliament and appointed by the President of the Republic on the proposal of the PM. Their mandate is terminated when the mandate of the Government ends. They need no degree or professional experience to be appointed. The Minister and the Ministers of State are responsible for the implementation of the Government's policy in the work of the Ministry.

a) *The Minister is the political leader of the Ministry.* The Minister has a Cabinet which contains the Secretariat, the advisors and other departments which help the work of the Minister (e.g. department of communications, human relations, etc.). The Cabinet is led by the Head of the Cabinet, who is the closest colleague of the Minister (except for

[27] Müller György, 'Állami vezetői modellek a rendszerváltás utáni Magyarországon, a státustörvény' [State leader modells in Hungary after the transition, the Status Act] (2007) 3 Közigazgatási Szemle 14.

the personal assistant of the Minister if this position exists). The Head of the Cabinet organizes the work of the sessions of the senior officials of the Ministry. The Minister can also appoint a Ministerial Commissioner or a Working Group for a special task.

b) *The Ministers of State substitutes the Minister* e.g. the Parliamental Minister of State deputize the Minister at the Parliament. Other Ministers of State are responsible for certain fields, e.g. the Minister of State for Health Care works at the Ministry of Human Resources. The Minister of State has also a Cabinet and a Secretariat.

4.3.2. The professional elements of the structure

This is the part of the Ministry which is more or less independent from political changes and permanently performs the Ministry's professional tasks: preparing and drafting decisions, holding connection with clients etc.[28]

a) *The administrative leader of the Ministry is the Minister of State for administration* who is appointed by the President of the Republic on the proposal of the PM for a non-fixed term. The conditions of appointment are the right to vote, a clean criminal record and a university degree in the field of law, economics, public administration or other relevant field. The Minister of State for administration cannot be a Member of Parliament: he is civil servant. As the administrative leader, the Minister of State for administration coordinates the work of the Ministry and performs an intermediate activity between the senior political officials and the civil servants of the Ministry.

b) *The Deputy Ministers of State* are subordinate to a Minister of State or the Minister of State for administration (in some cases directly to the Minister). They are responsible for certain fields e.g. the Deputy Minister of State for Public Law under the direction of the Minister of State for Justice at the Ministry of Public Administration and Justice. They are appointed by the PM on the proposal of the Minister. The conditions are the same as those of the Minister of State for administration.

c) *Civil servants work in Departments* led by a Head and subordinate to a Deputy Minister of State or a Minister of State for administration or a Minister of State or even the Minister (e.g. the departments for communication or internal control).

5. The non-ministerial central bodies

There are several tasks in the central government which should not be performed by Ministers or Ministries e.g. administrative proceedings in concrete cases. The types of these organs are established by the Fundamental Law (autonomous regulatory body) and the GMMS (central office, governmental agency and autonomous body). These organs are usu-

[28] The legal status of the professional element is regulated by Act CXCIX of 2011 on Civil Service.

ally under the direction of a Minister, the PM or the Government itself (except autonomous regulatory bodies and autonomous bodies).[29]

5.1. Central offices[30]

a) *This is the main type of the non-Ministerial central bodies founded by a Government decree*. Central offices are under the direction of a Minister or the PM, who appoints the Head of the central office, gives instructions, adopts a normative resolution on the organizational and operational procedures etc. E.g. the Hungarian State Treasury works under the direction of the Minister of National Economy.
b) *Tasks and competences*. Central offices usually carry out duties like administrative proceedings e.g. issuing licences, imposing fines, etc. They often make decisions of second instance in cases managed by territorial bodies. Regulatory inspection and supervision are also major parts of their powers: they check if clients comply with the provisions of legal regulations and decision. Their specific task is to maintain official recordings, e.g. the Central Office for Administrative and Electronic Public Service maintains Personal Data and Address Register. Central offices also organize and finance public services, e.g. Klebelsberg Institution Maintenance Centre maintains secondary schools.
c) *The structure of a central office* is regulated by the Government decree which establishes the body and the regulation of organizational and operational procedures. The structure is similar to a Ministry's structure without political elements. The central office is led by the Head (President, General Manager, Director etc.) who is appointed and dismissed by the Minister or the PM.

Central offices may have regional or territorial bodies usually in counties and sometimes in districts.

5.2. Government offices[31]

a) *Government office is an exceptional type of central government in Hungary which has some kind of independence from the Government*. The guarantees of the independence are as follows:

[29] On non-ministerial bodies see: Radoslaw Zubek, Core Executive and Europeanization in Central Europe (Palgrave Macmillan 2008), Christoph Knill, The Europeanisation of National Administrations (Cambridge University Press 2001), Per Laegreid and Koen Verhoest (eds), Governance of public sector organizations. Autonomy, control and performance (Palgrave Macmillan 2010), Hajnal György, 'Agencies and the politics of agentification in Hungary' (2011) 13 Transylvanian Review of Administrative Sciences (Special Issue) 74.

[30] Art. 72–73/A of the GMMS.

[31] Art. 71–72 of the GMMS.

aa) Government offices are listed in the GMMS[32] which certainly cannot be modified by the Government only by the Parliament. Government offices are e.g. National Tax and Customs Administration or the Hungarian Central Statistical Office.
ab) Government offices are created by an act of the Parliament.
ac) Government offices are directed by the Government and supervised by a Minister designated in the decree of the PM. That means that governance powers are shared between the Government (the PM) and the Minister. E.g. the Head is appointed by the PM but the resolution on the regulation of organizational and operational procedures is adopted by the Minister. However, nobody can give instructions to the Head and the regulatory decisions cannot be supervised neither by the PM nor by the Minister.
ad) Government offices report to the Government on their activities but inform the concerned committee of the Parliament at once.

b) Tasks and competences. Government offices perform administrative proceedings which should be more or less independently exercised from the Government or concerns more sectors or Ministries.

c) The structure of government offices is similar to that of central offices.

5.3. Autonomous bodies and autonomous regulatory bodies

The autonomous and regulatory bodies form a special area within the state administrative system. Their tasks were original governmental tasks, but for some reasons these tasks had to be decoupled from the Government, e.g. defense of some constitutional rights. Autonomous bodies emerged firstly in the USA and the United Kingdom and later in Europe (after the Second World War). In Hungary autonomous organs were established after the Transition. Their main characteristics are the following:[33]

a) Safeguarding constitutional rights and values, e.g. freedom of speech, competition, anti-discrimination policy, etc.

b) Quasi jurisdictional and other regulatory competences which need to be performed autonomously from the Government, e.g. administration of elections.

c) They work in politically sensitive sectors like public procurement or media. In these sectors governments usually intends to have impact on the activity of the public bodies because of political causes.

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[32] Art 1 of the GMMS.

[33] On autonomous bodies see: Balázs István, 'A közvetett közigazgatás és az autonóm struktúrák a polgári államok közigazgatásában' [The indirect administration and the autonomous structures int he public administrations of Burgeois States] /PhD thesis/ (ELTE 1989); Fazekas János, 'Az autonóm jogállású államigazgatási szervek' [The autonomous administrative organs] <http://www.mjvsz.hu/resourcea/5/SwEfS09hKIXRAF3lEKn8mlkvo.pdf> accessed 10 December 2013; A.W. Bradley-Ewing (n 11) 306.

5.3.1. Guarantees of autonomy

a) The autonomous regulatory bodies and the autonomous bodies are listed in the GMMS Autonomous bodies include e.g. the National Competition Authority and the National Election Office. Autonomous regulatory bodies are the National Media and Infocommunications Authority and the Hungarian Energy and Public Utility Regulatory Authority.

b) These bodies are created in an act of the Parliament which cannot be modified by the Government. Autonomous regulatory bodies are created in a cardinal act.

c) They cannot be instructed, neither by the Government nor by the Minister or other state organ.

d) They submit a – usually annual – report to the Parliament and may inform the Government of their activities.

e) The main governance powers on their staff are usually performed by the President of the Republic or the Parliament or the Head of the body. The Head is often appointed by the President of the Republic or elected by the Parliament. Besides, the PM sometimes has some powers in this field, e.g. proposal on the appointment of the Head of the National Competition Authority. On the other hand, the senior officials and civil servants must comply with severe rules on conflict of interests. The salary of the senior officials and civil servants are higher than those of the employees of other central bodies.

f) Autonomy in budgetary matters should also be mentioned. Autonomous bodies usually elaborate their own budget and therefore it is adopted as a part of the Central Budget Act of the Parliament. The budget is sometimes a separate act of the Parliament (e.g. the budget of the media authority).

g) While autonomous organs have no supervisory bodies amongst state administrative bodies, their decision cannot be supervised (repealed or modified) by administrative organs but only by courts. The supervision exercised by the court covers only legal aspects.

5.3.2. The specialities of autonomous regulatory bodies

This type of administrative bodies is established by the Fundamental Law[34] *and the bodies are listed in the GMMS*[35] Their main characteristics are as follows:

a) They are *created in a cardinal act* of the Parliament.

b) The *Head* of an autonomous regulatory body is appointed by the President of the Republic on the proposal of the PM or appointed by the PM. The Deputy Head is appointed by the head.

c) They submit their annual *report* to the Parliament on their activity.

d) The Head of an autonomous regulatory body adopts decrees under authorization of a cardinal act.

[34] Art. 23

[35] Art. 1

e) *The main tasks and competences of these bodies are specific regulatory competences*. They usually exercise supervision over the fields of telecommunication, gas, electricity, banks sector, public health, consumer protection, etc. Their main speciality is that they make and enforce regulation at once: they can adopt decrees, regulations, policies, recommendations and other norms, and on the other hand, they can impose fines, give licenses to companies, market actors and make other certain measures. Under the regulation of the European Union, the Member States must establish independent regulatory authorities e.g. in the field of media.[36]

The main reason of the regulatory authorities' emergence is the complexity of the economic and technical background of the concerned sectors. These sectors develop very rapidly, so regulatory and supervisory tasks need special knowledge and expertise, and therefore traditional sources of law (e.g. acts) are not appropriate legal instruments in these areas.

Although regulatory authorities are parts of the executive branch, direct political impact from the Government and other state bodies must be driven back as well as other external interferences, mainly from the side of the supervised sectors.

The statutory and other decisions of regulatory bodies are special among other state decisions, because they are based on not purely legal, but often abstract concepts from the field of economics and other social sciences like political sciences and sociology, e.g. 'unfair trading practices', 'dominant position' or 'unfair manipulation of business decisions'. The use of abstract concepts allows wide freedom and margin for authorities to make the best decision in the particular case. It is very important in these fields because of their complexity. However, it is a great challenge for lawyers, legal counsels, civil servants and judges (at the authorities and the courts) who have to apply these regulations, even if they have no higher degree e.g. in economics. What's more: clients, companies and other concerned market actors cannot foresee the substance of the authority's decision, because the regulation (acts, decrees etc.) frequently does not detail the standpoints of the process and the decision, only the principles, which is a problem of constitutionality. So e.g. if the media authority imposes a fine on a broadcasting company because of an unlawful commercial, other broadcasting companies also take the prescriptions of the decision into consideration in order to avoid a future fine.[37]

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[36] See footnote 4.

[37] On regulatory authorities see Xénophon A. Yataganas, 'Delegation of Regulatory Authority in the European Union. The Relevance of the American Model of Independent Agencies' Jean Monnet Working Paper 3/2001; Damien Geradin and Nicolas Petit, 'The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform' Jean Monnet Working Paper 01/2004; Kovács András György, 'Mitől szabályozó egy hatóság?' [What makes regulatory an authority?] in Valentiny Pál-Kiss Ferenc László (eds), Verseny és szabályozás 2008. [Competition and regulation 2008] (MTA Közgazdaságtudományi Intézet 2009) 13; Fazekas János, 'A szabályozó hatóságok jogállásának alapkérdései' [The basic questions of legal status of regulatory authorities] in Marianna Nagy (ed), Jogi tanulmányok (ELTE ÁJK 2005) 123.; Horváth M. Tamás, 'A szabályozó hatóság típusú közigazgatási szervek szabályozási koncepciója' [The regulative conception of reulatory authority-type administrative organs] (2004) 54 Magyar Közigazgatás 403.

5.3.3. Problems with autonomy in central government

Autonomy in central government is a worldwide phenomenon, and in some sectors it is an expectation or duty to establish autonomous or quasi-autonomous bodies, e.g. telecommunication authorities in EU member states. However, autonomy breaks the hierarchical structure of central government. It may leads to some controversial consequences as follows:

a) In certain sectors *autonomous bodies have no professional and political responsibility for their decisions*, because they have no supervisory body within state administration. The Government usually has no direct influence over these organs. As mentioned earlier, only courts can supervise the decisions of independent bodies, but this review covers only legal matters.

b) As a matter of fact, *independent legal status can become empty as a result of political aims*. Governments often try to extend their influence over autonomous bodies and the supervised sectors e.g. in the field of media. The toolkit of legal regulation is very wide: e.g. appointment of the Head of the authority by the PM, or only the proposal by the PM may provide influence over the body.[38] Independency is an outstanding problem of regulatory authorities, because they operate in sectors where market liberalization is in progress or completed, e.g. the energy (electricity or gas) sector. In these fields the regulatory and owner function of state must be separated.

c) Autonomous regulatory authorities have some other problems of constitutionality. These bodies often adopt normative rules without constitutional basis when their concrete decisions have normative effect on the market actors who are not concerned by the concrete decision e.g. license or other measure. These proceedings lack the constitutional guarantees of legislation process e.g. transparency. This problem no longer exists when a regulatory body adopts decrees, but the normative legal instruments are not so flexible tools as concrete measures.

[38] Eg. the Head of the National Media and Infocommunications Authority was appointed by the PM due to Act CLXXXV of 2010 Art 110 Pharagraph (3). This provision was in force until 3 April 2013, then the competence was transferred to the President of the Republic.

Territorial Public Administration

1. Territorial Public Administration after 1990

1.1 Re-establishment of the dual system of local administration

In Hungary the dual system of public administration of local level was re-established in 1990, when decentralized organs, namely the local self-governments and the territorial organs of the Central Government, also called deconcentrated organs took the place of the councils of the soviet type, integrating their functions at that time. In this dual system, general administration is performed by local self-governments while local or territorial organs of the central Government fulfil special tasks.

In 1990, after the lapse of the councils, more than 10 new territorial services of central administration were established at county level with the same scope of authority that the soviet-type county council had fulfilled in one integrated unit earlier. One of the main problems of the establishment of this new system of deconcentrated bodies was the eventuality of creation without following a unified central concept. Some of the new deconcentrated bodies were set up by ministers and the creation of these new organisations was not directed by a single government policy. It was driven by ministers following the interest of one given administrative branch directed by the minister. Territorial state administrative organs became the representatives of ministers or ministries in the county instead of being deconcentrated organs of the Central Government. As a result, a new nonintegrated system of territorial state administration was set up determining the next two decades of territorial public administration.

Only one initiative tried to assure the representation of Central Government at the territorial level. That was the institution of the Commissioners of the Republic founded in 1990 in 7 regions containing 2 or 3 counties and finishing its activity in 1994. This was a weak attempt of the Central Government in order to have representation at the territorial level and to assure a kind of cooperation over the nonintegrated system.

As the Central Government already noticed the problems deriving from the de-integration of the territorial level of its administration in the early ’90s, it tried to turn it to a more integrated and simple, transparent system strengthening the coordination and its own presence at the same time. These initiatives could not arrive to full realisation within the decade. However a considerable result of the reform was the reduction of the number of organs of state administration from 30 to 21 by 1998.

1.2 Issue of regionalisation

In 1990, when the system of local and territorial public administration was reformed, professional debate arose concerning the role of counties. Counties in Hungary have got traditions going back a thousand years. The claim to change the system of counties for a different system of territorial or regional division of public administration adequate to circumstances has been made several times in Hungarian history. Plans have been elaborated in theory as well as in practice. The most realistic solutions were always born in crisis situations, when significant political or social changes took place or were expected.[1] That was the moment when the regionalisation issue came to agenda parallel to the subsidiary and slight role of county self-government and Hungary's intention to integrate to the European Union.

The program for modernization of Hungarian public administration issued in the form of a Government Resolution in 1992[2] did not mention regions or the renewal of the county system. Four years later, in 1996, the Government issued the detailed program for the reform of Hungarian public administration in the form of a resolution once more.[3] This program dealt with the question of regionalisation but only in connection with county self-government. The program made it clear that the establishment of a new level of public administration between county and the central level, namely the region, functioning as an administrative authority of general scope of powers, was not necessary. But the process of European integration claimed the necessity of a certain regionalisation because of the NUTS system[4] implemented throughout European Union. As the units of this system are mainly statistical ones, there was no legal need to make administrative divisions of them in the same time, even if in many members of the European Union, their boundaries follow the administrative division.[5]

In 1996 Act XXI of 1996 on Regional Development established two different regional institutions in public administration: the planning-statistical region and the development region, the latter as a deconcentrated organ. The development region was a possible solution to the initiation of regionalisation. County self-governments were authorised to form a development region on the basis of voluntary association and to constitute a common organ called the regional development council. The Act did not imposed planning-statistical regions and development regions to operate in the same territorial framework meaning that the two kinds of regions were not compatible. Finally this relation between statistical (NUTS) regions and administrative (development) regions was changed by the Parliament in March 1998.[6] The Parliament issued the resolution on the National Concept of Regional

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1 The first chance for reforming counties was in 1990, but they remained unchanged although county self-governments lost a large part of their functions and powers and received a very restricted role in comparison with their earlier status and the settlement functions. In 1994, when the Act on Local government was modified, the legal and political status of counties was strengthened.

2 Resolution of the Government 1026/1992 (V. 12.)

3 Resolution of the Government 1100/1996 (X. 2.)

4 NUTS : Nomenclature of Statistical Territorial Units.

5 See Map 1 on Regions and Counties.

6 See Map 2 on Regions.

Development[7] establishing 7 planning-statistical regions and confirmed a division of 150 small regions. Small regions had earlier been created by the Central Office of Statistics compatible to the NUTS system. Hungarian integration to the NUTS system was made possible but the regions did not become the general framework of territorial division.

1.3 The concept to regionalise territorial administration

Concerning territorial state administration, the Central Government published the framework of its projects declaring its intention to change the system of counties in the way of regionalisation in 1998. One of the measures taken in order to implement the policy was a resolution of the Government, which entitled the Minister leading the Prime Minister Office to exercise some functions and powers related to public administration and regional development. The Minister exercised his functions and powers through a minister of state in charge with this task. From there, the procedure of regionalisation was at a standstill, despite the 1999 and 2001 governmental resolutions on regionalisation of state administration.

A working group was set up in order to elaborate a detailed plan for the reorganisation of public administration into a regional framework on the basis of the new government program relating to the renewal of regionalisation in 2002. In 2004 the working group suggested a two-step regional reform. By 2004 at the latest the revision of the Constitution and of the Act on Local Self-Government was planned in changing counties into regional units. By 2006 as a next step, it planned to organize elections of self-governments by region. In the summer of 2006 the Government presented the proposal to the Parliament in a form of a bill that aimed to establish regional self-governments instead of counties, but it was rejected due to lack of preliminary political agreement[8]. Regionalisation in the system of local self-governments seemed politically stuck. That is why regionalisation was only possible in the administration of State under subordination of the Central Government.

Although regionalisation in State administration had already begun in the late 1990's, it was neither consequent nor fully complemented. It really strengthened in 2006 when the Government declared the reorganization of territorial administration of the State. As we saw earlier, the regionalisation of state administration was considered the doorstep of the establishment of regional self-government. By 2008, the Government realised its plan and as a result of territorial reorganisation, most of the organs of state administration became regional based mainly on the 7 NUTS regions. 16 organs operated in the regions of NUTS II level, 8 regional organs functioned in special regional units different than county and only 7 organs of state administration remained in county units.

As we could see, the idea was that regional self-governments would follow the territorial reorganisation of state administration, but finally difficulties appeared in

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[7] Resolution of the Parliament 35/1998 (III. 20.)

[8] Revision of the Constitution as well as the Act on Local Self-Government required a majority of two-tiers in the Parliament.

the process related to the County Offices of Public Administration. Offices of Public Administration in counties were created in 1995 shifting the institution of the Commissioner of the Republic. County Offices of Public Administration were created as organs of state administration of primary importance. They were the deconcentrated bodies of the Central Government in the counties. They were subordinated not only to one of the ministers but represented the Central Government in the county as well as in the Capital City. County Offices of Public Administration had a key function in public administration at the territorial level because they coordinated all the other deconcentrated organs of state administration. Another main function of them was to exercise control of legality over local self-governments in the county. This function was fixed by the Act on Local Government.

In the framework of the regionalisation of State administration, the Central Government decided to reorganise the territorial division of the County Offices of Public Administration into regional units in 2007. For this reason the Government issued decree 297/2006. (XII. 23.), but the Constitutional Court declared this decree unconstitutional.[9] The Constitutional Court did not delete the decree of the Government immediately, which might have caused serious problems in territorial administration, but it fixed a deadline 'pro futuro' as the final date of application.[10] At the same time the Constitutional Court obliged the Government to re-regulate the subject in accordance with the Constitution. The Government issued a new Decree identical in content to the previous one. It was simply issued under a different number.[11] The consequence was no different; the Constitutional Court declared it unconstitutional again[12]. The reasons were the same, as well as the result, the obligation of issuing another decree on Offices of Public Administration before 31 December 2008.

Right before the deadline the Government issued another decree under a different title: 'Offices of State Administration'.[13] But not only the term 'Office of Public Administration' was avoided but the Government created new territorial organs in seven regions which were entitled to exercise all the authority of the previous County Offices of Public Administration except for the most important one, namely the control of legality over local self-governments. Consequently the control of legality over local self-governments was suspended, because the Government was not authorised to establish organs exercising control of legality over local governments. It was possible only in a way of the legislature.

As a consequence of these events, it may be said that the regionalisation of public administration initiated by the Central Government with the final aim of substituting regional self-government for county self-governments failed. The original idea of this regional reform was that organs of State Administration under central subordination were to be reorganised into regional units, and then, the following step was planned as the reorganisation of Offices of Public Administration. By the end of 2007, the first step was mainly done because the majority of the county units of State Administration (decon-

9 See the Resolution 90/2007 (XI. 14.) of the Constitutional Court.

10 30 of June 2008

11 See Government Decree 177/2008 (VII. 1.)

12 See Resolution 131/2008 (XI. 3.) of the Constitutional Court.

13 See Government Decree 318/2008 (XII.23.)

centrated organs) were reorganised into regional units. The following step, namely the regionalisation of the Offices of Public Administration, was stuck and adopted differently than planned. The last step would have been that the self-governments of the counties followed the regional division of the State Administration and county self-governments transformed into regional self-governments. This point of the plan failed as well.

1.4. Reform of State Administration in territorial level in 2011

At the end of 2010 the Hungarian Public Administration returned to the county based system.

Before the reform of 1st January 2011 of the central Government's territorial administration, 31 different deconcentrated organs operated in Hungary. 15 of them fulfilled their tasks in 7 regions as units of NUTS II. Only 7 of them were organised in the 19 counties and others operated in special territorial units, called regions also.

Most of these deconcentrated organs were directed or supervised by one of the ministers, meaning that they all served as local or territorial units of a ministry except for the offices of public administration in counties – or in regions between 2008–2010 – and in Budapest, which were declared to be territorial organs of the Government for the purpose of general administration; however they were directed by the Minister of Interior, later called Minister for Justice and Police.

In contradistinction of local self-governments or central administration, the legal basis of this sector of public administration is not unified. The system of local self-government has a constitutional basis regarding Articles 31–35 of the Fundamental Law and the Act on Hungarian Local Self-Governments,[14] providing a single and unified legal background for the structure. Structure and legal status of organs of the central administration are regulated by a single Act also.[15] Deconcentrated units of state administration lack this kind of single and unified legal regulation deriving from Parliamentary legislation, because it covers the structure only in a part. Before 2011 the status of these organizations was regulated by different legal rules, mainly by the Government in the form of decrees, but some of them were established by acts of the Parliament. Hierarchical relations between superiors and their local units, as well as the details were also regulated in the same manner, mainly in a Government decree or in Parliamentary act establishing the organ and defining its scope of authority. Denomination of these organs differed from each other also and one could not usually draw a conclusion from the denomination about the activity, or about the tasks of a certain deconcentrated organ.

As a general rule, territorial organs of state administration operated in middle tier. They had units in regions or in counties, although some of them had organizations in smaller units of public administration in different areas. For example the police still have offices or stations even in small settlements, or territorial structure of offices of land registry following

[14] Act CLXXXIX of 2011 on Local Self-Governments of Hungary.

[15] Act XLIII of 2010 on Organs of Central Administration of the State and on the Status of Members of the Government and Secretaries of State.

the system of local courts. These organs showed a truly colourful mosaic before 2011, but finally became the subject of reform intended to integrate and unify the system.

2. The current system of territorial administration of the State – an integrated system

In 2010 a new integrated system was established in the way of legislation. The aim of the reform was the concentration of services in a centralised system, the integration and simplification of a system of more than 30 different deconcentrated entities as well as strengthening coordination and efficiency. Today as a result, three sub-systems of the deconcentrated organs can be distinguished in Hungarian territorial administration. Two of these sub-systems derive of the integration of former deconcentrated organs while the third one is still a set of separate organisations. The main sub-system of the territorial administration of the State is represented by the Capital and County Government's Offices. Also an integrated organisation is the territorial unites of the National Tax and Customs Administration, and the third sub-system is constituted by several organisations under central direction.

2.1 Capital and County Government's Offices

In 2010 the Parliament passed Act CXXVI of 2010, establishing the Capital and County Government's Offices that have integrated most of the deconcentrated territorial organs directed by different ministers earlier. The Capital and County Government's Offices are the territorial units of the central Government having a general scope of authority. The heads of the Capital and County Government's Offices are the Government Representatives appointed by the Prime Minister.

The Capital and County Government's Office is directed by the Government by way of the Minister of Public Administration and Justice. Consequently it is directly subordinated to the Minister of Public Administration and Justice, but some of its professional activities are directed by the respected Minister. This system of direction is called double direction.

The system of double direction is based on separating two different kind of elements of the operation or activity of a given organisation. Certain tasks of an organisation vary and depend on the administrative branch to which the organisation belongs. These tasks are called professional tasks, and they feature only a given branch of public administration. Another type of task is called functional tasks. Functional tasks can be found in each administrative branch. They do not depend on the professional area of an organisation, and these tasks are all the same in the all the branches of administration.

The system of direction as well as internal structure of the Capital and County Government's Office reflects the distinction between professional tasks and functional tasks. Internal structure of the office is divided into the core office, the set of specialized authorities and the district offices. The specialized authorities are internal organizational units of the

Capital and County Government's Office but they are not subordinated to the head of the Office regarding their professional activity. They are subordinated to the respective Minister regarding their professional activity. That is why the heads of specialized authorities are appointed by the Government Representative with the agreement of the respective professional superior exercising professional direction or supervision, meaning in certain cases one of the ministers. Consequently the specialized authorities of the Capital and County Government's Office – former entities as deconcentrated bodies – operate under double direction: professional direction is exercised by the Minister directing the administrative branch while functional direction is exercised by the Government by way of the Minister of Public Administration and Justice, finally by the head of the office, the Government Representative. As Act CXXVI of 2010 states, the functional direction is exercised and some of the functional tasks are fulfilled by an agency designated by the Government.[16]

The head of the Capital and County Government's Office is called the Government Representative. The Government Representative is appointed by the Prime Minister upon the proposal of the Minister of Public Administration and Justice. Employers' rights are exercised by the latter over the Commissioner except for appointment and revocation, which belong to the Prime Minister. The mandate of the Government Representative is attached in time to the mandate of the Prime Minister. Consequently its charge ends if the Prime Minister's mandate terminates. No educational or professional background is required by the act for the fulfilment of this position. Only the eligibility in general elections is needed, which qualifies this position as a political one. Professionalism is assured by the general director of the Office and his or her deputy, the director. They are required to have a university degree and professional experience. The general director is the head of the administration, appointed by the Minister of Public Administration and Justice for an undetermined period, as he works under the act on civil service. The director is appointed by the head of the office upon the proposal of the general director.

The functions of the Capital and County Government's Office are exercised by the Government Representative, although these functions are determined as those of the Office by Act CXXVI of 2010 and by the Decree of the Government 288/2010 (XII.21). The main elements of the scope of authority of the Capital and County Government's Office are as follows:

- Coordination and support of the execution of the Government's tasks following legal regulation and instructions of the Central Government – for this reason a board is operated in the county by the head of the office[17]
- Coordination over the organs of public administration in the county
- Coordination of the execution of the instructions of the Government in the county/ in the Capital
- Decision making as an authority of 1st instance[18] in the administrative procedure
- Revision of decisions of authority as a level of 2nd instance in the administrative procedure

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[16] The Government Decree 177/2012 (VII.26.) designates the Office of Public Administration and Justice as the authority exercising functional direction over the Capital and County Government's Offices. As the highest level of direction is the Prime Minister and the Minister of Public Administration and Justice, the Office of Public Administration and Justice is called the authority of medium-level direction.

[17] County Board of Public Administration.

[18] For example authority of 1st instance in the procedure of expropriation as the Act CXXIII of 2007 states it.

- Control over the activity of all organs subordinated to the Government in the county with some exceptions (police, tax administration)
- Training and further training of civil servants in the county
- Consulting in the decision-making process of the Central Government
- Operation of front office for parties in administrative procedures in a form of integrated service for citizens
- Control of legality over local self-governments

The internal structure of the capital and county government's office is regulated by Act CXXVI of 2010. The capital and county government's office is divided into three main units: the core office, the set of specialized authorities and the district offices. The three units make one unified budgetary and legal entity.

The core office integrates the departments headed directly by Government Representative. The set of specialized authorities integrates former deconcentrated bodies of territorial administration. The departments of the set of specialized authorities can have their own authorization to act by law and can be entitled to make decisions without the influence of the Government Representative.

The act does not specify the specialized authorities but entitles the Government to designate them. 17 special authorities integrated into the Capital and County Government's Office are enumerated by the Government in a form of a decree.[19] The services provided by them are as follows:

1) Trusteeship and social welfare
2) Building and National heritage
3) Administration of justice
4) Protection of soil and plants
5) Forestry
6) Agriculture
7) Food safety
8) Land registry
9) Health insurance
10) Pensions
11) Labour (unemployment)
12) Labour safety
13) Consumer protection
14) Public health
15) Measure and Technical Security
16) Traffic
17) Rehabilitation of handicapped persons

The district offices were set up in January 2013, and since then they have been made part of the Capital and County Government's Office. The district offices can be found in the re-established districts. The district offices in a county constitute part of the County Gov-

[19] 288/2010 (XII.21) Government Decree on the Capital and County Government's Offices.

ernment's Office, just as it is in the Capital City. Considering that the re-establishment of districts was the next and a separate phase of the reform following the establishment of the integrated Capital and County Government's Office, a detailed introduction is necessary just after the presentation of the other sectors of state administration in territorial level.

2.2 Territorial units of tax administration – the National Tax and Customs Administration

As we saw above, most of the organisations of the administration of the State at the territorial level were integrated into one unified office in the county and they are currently operating under its direction in a hierarchical system. One of the exceptions is the tax administration that was not concerned by this integration. As a part of the reform at the territorial level, a separate act was passed by the Parliament on the services of tax and customs administrations.[20] The National Tax and Customs Administration has its own territorial and local units in a hierarchy not belonging to the Capital and County Government's Office.

The National Tax and Customs Administration has its own territorial and local units operating under the subordination of the central organ of national level. Territorial and local units of the National Tax and Customs Administration are divided into three main departments: the tax department, the customs department and the criminal department of finances. All three of the departments have their head offices in National level. Detailed rules of the organisation and the rules of operation in the hierarchical structure are given by the Government Decree 273/2010 (XII. 9.) on Structure of the National Tax and Customs Administration and on the designation of certain organisations.

The central organ of the tax department, the Central Office, has its middle tier and lower tier units in territorial and local level. In the tax department, 7 regional general directorates can be found in the middle tier and 20 county (capital) directorates operate at the lower level. In addition, one special directorate operates in lower level, the Directorate of Significant Parties. Lower directorates are directed by regional units except for the Directorate of Significant Parties, which has a common superior regional organ with the customs administration.

The central office of the customs department has 7 regional general directorates as well as the General Directorates of the Airport, the Directorate of Field Operations and the Expert Institute in the middle tier. At the lower level of the customs department 20 county (capital) customs directorates operate under the direction of the regional general directorates. Also at the lower level, the Airport Directorate No. 1 and No. 2 operate subordinated to the General Directorates of the Airport. The Customs Directorate of Significant Cases and Parties operates at the lower level also. The tax department and the customs department have a common territorial unit at the regional level: the Tax and Customs General Directorate of Significant Cases that directs the operation of lower units of the tax and the customs administration related significant cases.

[20] Act No CXXII of 2010 on the National Tax and Customs Administration.

Finally, the criminal department of finances is headed by the Financial Intelligence Unit. It has 7 regional general directorates as deconcentrated bodies and one unit in lower level, the Office of Goods and Clues.

The territorial organs of tax administration are directed by the National Tax and Customs Administration, consequently they are not subordinated to the Capital and County Government's Office, in contrast to the integrated services of the state administration in the county. Act No CXXII of 2010 entitles the Prime Minister to designate one of the ministers to exercise supervision over the National Tax and Customs Administration. The Prime Minister designated the Minister for National Economy as the hierarchical superior of the organisation.[21]

The territorial and local organs of tax and customs administration are not subordinated to the Capital and County Government's Office in the county, but they are obliged to cooperate with the Capital and County Government's Office and the Government Representative is entitled to demand information and data from the territorial tax administration, as Act CXXVI of 2010 states. In addition, territorial tax and customs administration do not belong to the authority of coordination of the Capital and County Government's Office, either. Even control cannot be exercised over tax and customs administration by the head of the Capital and County Government's Office.

2.3. Nonintegrated Organs of State Administration in Territorial Level

As we saw above, a third sector of deconcentrated organs of public administration can be discerned on the basis that they were not integrated either into the Capital and County Government's Office or into the tax and customs administration. Actually 14 deconcentrated bodies operate at the territorial level of public administration. These organs can be classified on the basis of the territorial framework of their operation and three main classes result. Some of these organisations operate in the counties and in the Capital City, totalling 20 in number. The territorial framework of the deconcentrated bodies of the second type is the 7 NUTS regions of the country. And finally we can find territorial organisations in special territorial units not following either the county division or the general regional division as the third type.

2.3.1. In the group of county – and capital – based territorial organisations of the State administration we can find 6 services. All of them have 19 or 20 units in the counties as a general rule. They are as follows:

1. The National Police guard its former structure and organisation. 20 Main Police Offices operate in 19 counties and in the Capital City. Under the county level, 175

[21] See Article 1, point e) of the Decree of the Prime Minister No. 5/2010 (XII. 23.) on Designation of Ministers Exercising Supervision over Government Offices.

local police offices[22] can be found in cities and in major villages subordinated to the head of the county main office. Local police offices have police stations in smaller units. The Police are directed by the head of the National Police Office that is under the direction of the Minister for Interiors.

2. Directorates of Hungarian State Treasury operate in the 19 counties and in Budapest.[23] Their superior is the Hungarian State Treasury that operates under the direction of the Minister for National Economy.
3. The National Land Fund Managing Organization has 19 territorial offices in 19 counties and a central office in Budapest.[24] The National Land Fund Managing Organization is directed by the Minister of Rural Development.
4. The Agricultural and Rural Development Agency has a central office and a central directorate in Budapest. At the territorial level, it has 18 territorial offices in the counties.[25] The number of territorial offices is only 18 because the office of Pest County operates in the territory of the Capital City as well. The central office is directed by the Minister of Rural Development.
5. The Klebelsberg Institution Maintenance Centre[26] is directed by the Minister of Human Resources. It was established in 2012 after the integrating most of territorial services of the State Administration. The reason of for creating the Maintenance Centre was the takeover of the direction of educational institutions by the State from county self-governments first and most of local self-governments' schools then in 2013. The Klebelsberg Institution Maintenance Centre has 19 educational circles in counties in the middle tier containing further educational circles in at the local level namely in the 175 districts of the 19 counties and 23 districts of Budapest. The total number of educational circles is 198.[27]
6. General Directorate of Social Affairs and Child Protection is directed by the Minister of Human Resources. It was established by the Government in 2012. Consequently its territorial units were established after the reform of 2011 aiming at integration.[28] The General Directorate has 20 offices: 19 of them operate in the counties and one in the Capital City.

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22 See the Decree 67/2007 (XII. 8.) of the Minister for the Justice and the Police.

23 See the Decree 311/2006 (XII. 23.) of the Government on the Structure of the Hungarian State Treasury.

24 The National Land Fund Managing Organization was established by Act LXXXVII of 2010. Article 4, paragraph (8) of the Act states that The National Land Fund Managing Organization fulfils its tasks by means of its Central Office and territorial (county) units.

25 See the Decree 256/2007 (X. 4.) of the Government on the Agricultural and Rural Development Agency.

26 The name of the Centre was named given after count Kuno Klebelsberg, reformer of the system of education as minister for education and for religion, (1922–31). Also he was minister of interior between 1921 and 1922.

27 See Decree 202/2012 (VII. 27.) of the Government on the Klebelsberg Institution Maintenance Centre.

28 See the Decree 316/2012 (XI. 13.) of the Government on General Directorate of Social Affairs and Child Protection.

2.3.2. Some of the territorial organs of State Administration follow the regional division based on NUTS. As a principle these territorial – regional – units can be found in 7 NUTS regions of the level II of the system. Regarding that earlier the NUTS II was the basis of the territorial division of State Administration only three services remained by 2014.

1. The Office of Immigration and Nationality is directed by the Minister of Interior and it has 7 Regional Directorates.[29] The Office runs 3 asylum reception facilities and 3 closed asylum reception centres. It has one community shelter as well.
2. The Regional Directorates of the Hungarian Central Statistical Office have particular status. Although the Central Office is established by an Act of Parliament,[30] the 6 regional directorates are settled by the regulation of organizational and operational procedures of the Central Office. The form of the regulation of organizational and operational procedures is not a legal rule but an internal regulation, namely the regulatory instruction 11/2011 (II. 25.) of the Minister of Public Administration and Justice. In addition, the number of regional directorates is 6 however their offices can be found in 7 NUTS II regions, but no office can be found in the Central Region (Budapest and County Pest). Another speciality is that the territorial framework of the regional directorates is nationwide.
3. The Hungarian Investment and Trade Agency was established in 2010 and is directed by the Prime Minister. The Hungarian Investment and Trade Agency has a central office and 6 regional offices. It has also 9 Regional Information Points situated in county seats. Although the Agency itself was founded by the Government in a Decree,[31] the regional offices and information points are designated by the regulation of organizational and operational procedures having the form of regulatory instruction.[32]

2.3.3 The third possible territorial framework of operation of the administration of the State is the particular units of a deconcentrated organ, meaning that either the county system or the NUTS II regional system does not serve as territorial framework of the operation. The services of this particular kind are as follows.

1. The National Inspectorate for Environment, Nature and Water was reorganised in 2013.[33] The National Inspectorate has 10 regional inspectorates and 2 of these regional inspectorates have local stations. The National Inspectorate is directed by the Minister of Rural Development. The reason for the 10 territorial units in this administrative

[29] See the Decree 162/1999 (XI. 19.) of the Government on the Office of Immigration and Nationality.
[30] Act XLVI of 1993 on the Statistics.
[31] See the Decree 265/2010 (XI. 19.) of the Government on the Hungarian Investment and Trade Agency.
[32] See the Regulatory Instruction 3/2013 (V. 31.) of the Prime Minister.
[33] See Article 4 of the Decree 481/2013 (XII. 17.) of the Government on the Designation of the Organisations of Authority and Management of Environment, Nature and Water.

branch can be found in the 19th century, when the administrative structure of water management was set up following the basins of the natural Hungarian water system, and not the county system. Although the structure and the direction of the central level of water management was reorganised, the territorial framework of the service has not been changed as a possible consequence of administrative reforms since 1990.

2. The system of National Preserves contains 10 directorates operating in the territory of National Preserves. The system of National Preserves as a central office is directed by the Minister of Rural Development.[34]
3. The National Institute for Environment has 12 stations as territorial organs in 12 particular territorial units.[35] The National Institute for Environment is directed by the Minister of Rural Development.[36]
4. The Hungarian Meteorological Service has observatory and radar stations but 4 regional centres as well. Although the Service was reorganized in 2010 by a Government Decree[37], the 4 regional Centres are designated by the regulation of organizational and operational procedures of the Service in the form of the regulatory instruction 12/2011 (VII. 8.) of the Minister for Rural Development who exercises direction over the Service.
5. The Hungarian Office for Mining and Geology has 5 departments in particular regions. The Office operates subordinated to the Minister of National Development. The Office and its 5 departments were established by the Government in 2006.[38] The territorial structure of mining in public administrations is based on facts, as well. This is the reason for the difference from the general county system. Deep mining is organised in 5 districts based on industrial facts that determined the territorial structure of this service.

2.4. Administration of State in Local Level, the Districts

A general feature of territorial administration under central subordination was its operation in the middle tier, meaning counties or even larger territorial units. Since 1990, most of the services were established and operated in counties and in regions. Consequently, the administration of the State was not represented in smaller local units of lower level except for certain local units directed by their middle tier organisations such as in the field of land registration, unemployment or public health. Most of the tasks of the State in administration

[34] See Article 6 of the Decree 481/2013 (XII. 17.) of the Government on the Designation of the Organisations of Authority and Management of Environment, Nature and Water.

[35] Originally the territorial structure of environment management followed the organisation of water management.

[36] See Article 5 of the Decree 481/2013 (XII. 17.) of the Government on the Designation of the Organisations of Authority and Management of Environment, Nature and Water and the Decree 300/2011 (XII. 22.) of the Government on the Modification of Certain Government Decrees Related to Water Management.

[37] See the Decree 277/2005 (XII. 20.) of the Government on the Hungarian Meteorological Service.

[38] See the Decree 267/2006 (XII. 20.) of the Government on the Hungarian Office for Mining and Geology.

were fulfilled by local governments in a form of delegated tasks mainly by the chief executive, also called clerk. An attempt to create general territorial units of local administration of the State directed by middle tiers authorities in the hierarchy was the establishment of small regions equivalent to the units of NUTS level IV. In 1998, small regions became firstly statistical units, then authority of territorial development, and finally the territorial framework of several local authorities of the State administration as well as basis for the cooperation of local self-governments. But they never became a general unit of public administration just as the county. Only a couple of services operated or were represented by own offices in small regions.[39]

The arrangement of the local administration was realised as the next phase of the reform that had started in 2010. After integrating most of the deconcentrated bodies into a single and unified office at the county level, the Parliament re-established the system of districts at the local level in 2012.[40] The Parliament modified Act CXXVI of 2010 that had established the Capital and County Government's Offices and set up district offices belonging to the county government's offices as their departments.[41] At the same time the Act entitled the Government to determine the districts being general territorial units of the State Administration in local level. Consequently the division of the districts was fixed by the Government in the form of the Government Decree 218/2012 (VIII. 13.) on the District Government's Offices. The decree created 175 districts in the countryside and made the 23 former capital-districts of Budapest equivalent to them. The total number of District Government's Offices then is 198 in Hungary.[42]

As the Act CXXVI of 2010 states the district office is the sub-office of the county government's office. The structure is the same in Budapest: district offices in Budapest are sub-offices of the Capital Government's Office. Internal structure of the district office is partly similar to those of the county office. The district office is composed of two main units: it has a core office headed directly by the head of the district office and the set of specialized authorities. The set of specialized authorities of the district office are under double direction just as in county level. General direction is exercised by the Government Representative while professional direction over the departments of the set of specialised authorities is exercised by the specialised authority of county level as a general rule. Consequently the management of administrative tasks related to a given branch of public administration is influenced by the professional superior of middle level and finally by the respective minister.

The head of the district office is appointed by the Minister of Public Administration and Justice on the proposal of the Government Representative of the county (or Capital). The latter exercises the rest of employer's rights over the head of the district office. The head of the district office is a civil servant; a tertiary degree graduation at higher education and practice in public administration are required. The heads of the specialised authorities

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[39] See Map 3 of Small Regions.

[40] Councils of Soviet type operated in districts until 1971 and the district itself was abolished in 1984.

[41] See the Act of Parliament CCX of 2012 on the Modification of Parliamentary Acts Related to the Operation of Capital and County Government's Offices and of the Act on Administrative Procedure. This Act entered into force on 1st January 2013.

[42] See Map 4 of Districts.

belonging to the district office are appointed by the head of the district office on the proposal of the head of the specialised authority of county level that exercises professional direction. The head of the district office has a deputy appointed by the Government Representative upon proposal of the head of the district office.

The composition of the set of specialised authorities in district offices is determined by the Government in its decree.[43] The services provided by the specialised authorities in local level are as follows:

1.) Trusteeship and child protection
2.) Building
3.) National heritage
4.) Animal health and food safety
5.) Land registry
6.) Labour and unemployment
7.) Public health.

It is important to mention that the creation of districts has a consequence in the repartition of administrative tasks. Many of administrative tasks of the State fulfilled by clerks of local self-governments were passed into the scope of authority of the district. The general rule of the rearrangement of authority is that only local public affairs should be managed by local self-government while administrative tasks of National interest performed at the local level should belong to the lowest level of the State Administration, namely to the district.

The main functions of the district office are

- execution of tasks determined by legal regulation either for the core office or the specialized authorities
- participation in the execution of Capital and County Government's Offices' tasks aiming to achieve the objectives of the Central Government
- Operation of front office for parties in administrative procedures in a form of integrated service for citizens

The integrated service for citizens is the final step of the reform of territorial administration. The establishment of integrated services for citizens also called one stop shops is on the way in the districts. The original idea was first realised at the county level when one shop stops were opened and run by the Capital and County Government's Offices in 2011. This integrated service of new kind serves as an information centre and opening proceedings of different type is possible also in one point instead of the visit of several authorities. After opening up 29 one shop stops in January 2011, the network of one stop shops was developed in the way that the Government issued its decree 515/2013 (XII. 30.) on one stop shops aiming to establish these services on the basis of districts. In the near future, as the objective of the reform 198 integrated offices will operate, each in a district.

[43] See Article 2 of the Government Decree 218/2012 (VIII. 13.).

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Local Self-Governments

1. Introduction and the concept of self-governance and local self-governments. European standards for local self-governments and Hungarian regulations

Establishing local self-governments in 1990 had significant importance in the history of Hungary: the name of the state administrative system which had been used for half a century was changed (from state administration to public administration). The new structure was extended with a new sub-system (the sub-system of local self-government administration), new organisational principles were introduced (e.g. real decentralisation and autonomy) and while the importance of certain principles of operation declined (e.g. state guidance), at the same time others increased (e.g. the principle of legality).

'One of the most important legislative tasks of these months and even of this year is to adopt the act on local governments and to hold local elections', said Prime Minister József Antall, in the Hungarian Parliament on 22nd May, and the last twenty-plus years have verified his statement.[1]

After the full review of Act XX of 1949 on the Constitution of the Republic of Hungary, local communities gained independence and were granted the right to independently regulate and manage local public affairs in a legal framework.[2] Autonomy made the interests and peculiarities of individual settlements become known as the result of a legally managed correct procedure and made it possible for local governments to perform their tasks and exercise their authority independently.[3]

All of these were accompanied by economic independence guaranteed by the Constitution. In the period of transition, a liberal and – relatively – modern system of local government institutions developed on the basis of the provisions of the Constitution:

- the principles of the European Charter of Local Self-Government prevailed;
- democratic power could be exercised locally;
- the system offered scope for self-regulatory processes and local legislation.[4]

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1 Government programme of Antall József; delivered in the fifth session of the 1990–1994 Parliament on 22nd May, 1990. Kiss Péter (ed), Magyar Kormányprogramok. 1867–2002. II. [Hungarian Government Programmes 1867–2002 II.] (MHK 2004) 1598.

2 Art. 44/A (1) a) of Act XX of 1949 on the Constitution of the Republic of Hungary. In effect until 01 01 2012.

3 Laurence J. O'Toole, 'Local public administrative challenges in post-socialist Hungary' (1994) 2 International Review of Administrative Sciences 293.

4 Csefkó Ferenc, Pálné Kovács Ilona (ed), Tények és vélemények a helyi önkormányzatokról [Facts and opinions on local governments] (MTA RKK 1993) 175

'Convention no. 122 of the Council of Europe, the European Charter of Local Self-Government was a milestone in the development and legal regulation of local governments. This Charter laid down the principles and legal precepts of local self-governance which are generally applied and applicable in the member States of the Council of Europe. The contents of the Charter comply with the generally accepted legal principles of the concept of local government.'[5]

The convention, adopted in Strasbourg on 15th October 1985, was announced in Act XV of 1997 on the European Charter of Local Self-Government. The Charter was created under the auspices of the Council of Europe (this international organisation is not to be confused with the Council of the EU, which is an organisation of the EU) and its purpose was to specify standards, deriving from the rule of law and democracy, which are generally applied in the nearly fifty Member States of the Council of Europe in the course of establishing their respective systems of local self-governments.

A certain democratic mechanism was developed, in which 'centralisation, which may be regarded as having a general effect, can prevail in the interest of achieving social aims, while in the interest of achieving all other aims of public interest, partial self-governance (autonomy) can prevail'.[6] The peculiarities of the Hungarian local government system, developed in this way, stem from several sources: Hungarian traditions of self-government, the institutions of the former soviet-type council system which were 'presentable' and proper within the framework of a constitutional state of the rule of law and solutions originating from Western-European (mainly South-German) self-governmental systems. The modern structure of Hungarian self-governments is based on these factors.

The structure of Hungarian local self-governments still rests on two other pillars: settlement-level and county (regional level) self-governments. Task performance (and financing) is focused on settlement-level self-governments. Since 1990, county self-governments have been seeking their place in the Hungarian self-government administration.[7]

Although the task of self-government has a double character, with service and (public) authority, it is indisputable that local self-governments provide certain local public services, while self-government organs rarely participate in exercising local public authority.

On the one hand the past two decades have proved that local objectives and intentions, collaboration, common will, parochial spirit and a sense of local identity can yield significant results, bring about revival and preserve values. On the other hand, by the end of the first decade of the new millennium, it became obvious that the self-government system suffered from internal conflicts, and due to the steadily decreasing state subsidies and the impact of the economic downturn, anyone could see that the established system was not sustainable and was grievously unfair – from several points of view.[8]

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5 Berényi Sándor, Az európai közigazgatási rendszerek intézményei (Autonómiák és önkormányzatok) [The institutions of European administrative systems. (Autonomies and local governments)] (Rejtjel 2003) 311

6 Tamás András, A közigazgatási jog elmélete [The theory of administrative law] (Szent István Társulat 1997) 157

7 Szabó Lajos, 'A középszint az önkormányzati törvény módosításának tükrében' [The meso level in the light of amendment of Local Government Act] (1994) 12 Magyar Közigazgatás 721.

8 Kákai László (ed), 20 évesek az önkormányzatok. Születésnap, vagy halotti tor? [Local Governments at Twenty. Birthday or funeral?] (PTE BTK 2010) 149

2. The constitutional legal status of self-governments in Hungary

The Constitution of Hungary (abrogated on 1st January 2012), when compared internationally, dealt with local self-governments in a quite detailed way, as does the Fundamental Law of Hungary (which came into force on 1st January 2012). Only five articles and twenty-three paragraphs of the Fundamental Law deal with local self-governments. The territorial division of Hungary is specified in Article F) of the part titled Foundation of the Fundamental Law:

(1) 'The capital of Hungary is Budapest.

(2) The territory of Hungary consists of the capital, counties, cities and towns, as well as villages. The capital, as well as the cities and towns may be divided into districts.'
A more important change is that – unlike the Constitution – the Fundamental Law does not speak about the districts of the capital as a special type of settlement (vested with the right to local self-governance). Thus the Fundamental Law repealed the constitutional guarantee of the functioning of the self-governments of districts in the capital.

Provisions pertaining to public authority at a local level can be found in the part titled Local governments. The fact that 'constitutional statutes', called cardinal Acts, detailing special rules pertaining to local self-governments – to be adopted later – are referred to four times in this part indicates that essential content elements of legal regulation appear in the detailed rules. ['Cardinal Acts shall be Acts, the adoption and amendment of which require the votes of two-thirds of the Members of Parliament present.' Article T (4) of the Fundamental Law.]

The provisions pertaining to the territorial division of the country and to local self-governments got 'torn apart' (structurally) in the Fundamental Law. 'In Hungary local governments shall be established to administer public affairs and exercise public power at a local level' and the basic rules are to be defined by a cardinal Act [Article 31 (1) of the Fundamental Law].

The Fundamental Law – unlike the provisions of the Constitution – makes no reference to the content of local self-governance, local independence (autonomy) or the fundamental constitutional right to local self-governance which enfranchised local citizens are entitled to. Obviously, enfranchised local citizens can still participate both directly and indirectly in the exercise of local power. A provision in the chapter titled Freedom and responsibility lays down, 'Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of Parliament, local government representatives and mayors, and Members of the European Parliament.' [Article XXIII (1) of the Fundamental Law]

Article 32 of the Fundamental Law sets forth that 'In administering local public affairs local governments shall, to the extent permitted by law:

a) adopt decrees;

b) adopt decisions;

c) perform autonomous administration;

d) determine their regime of organisation and operation;

e) exercise their rights as owners of local government properties;
f) determine their budgets and perform independent financial management accordingly;
g) engage in entrepreneurial activities with their assets and revenue available for the purpose, without jeopardising the performance of their compulsory tasks;
h) decide on the types and rates of local taxes;
i) create local government symbols and establish local decorations and honorary titles;
j) ask for information, propose decisions and express their views to competent bodies;
k) be free to associate with other local governments, establish alliances for the representation of interests, cooperate with the local governments of other countries within their competences, and be free to affiliate with organisations of international local governments, and
l) exercise further statutory responsibilities and competences.

Acting within their competences, local governments shall adopt local government decrees to regulate local social relations not regulated by an Act or by authority of an Act. Local government decrees may not conflict with any other legislation.

Local governments shall send their local government decrees to the metropolitan or county government office immediately after their publication. If the metropolitan or county government office finds the local government decree or any provision of it unlawful, it may apply to any court for a review of the local government decree.

The metropolitan or county government office may apply to a court to establish a local government's neglect of its statutory obligation to pass decrees or take decisions. If such local government continues to neglect its statutory obligation to pass decrees or take decisions by the date determined by the court's decision on the establishment of such neglect, the court shall, at the initiative of the metropolitan or county government office, order the head of the metropolitan or county government office to adopt the local government decree or local government decision required for the remedy of the neglect in the name of the local government. The properties of local governments shall be public properties which shall serve for the performance of their duties.'

There are minimal, hardly noticeable changes in the text compared to previous regulation. The most important change was the title of the article: instead of the term fundamental rights of self-governments used formerly, the above mentioned rights are named as the responsibilities and competencies of local self-governments in the Fundamental Law. This term – compared to fundamental rights – better matches the nature of local self-governments as administrative organs.[9]

The possibility of intervention granted to county (metropolitan) government offices is relatively far from the modern supervisory methods (e.g. consultation, notice) applied to prevent violations that local self-governments might commit. The primary goal of state supervision is to ensure the lawful operation of self-governments. State organs must facilitate

[9] Fábián Adrián (ed), 20 éves a magyar önkormányzati rendszer [Hungarian Local Government System at Twenty] (Jövő K A 2011) 47.

the performance of the tasks of self-governments while striving to assert the constitutional principle of the legality of public administration. A further goal of state supervision is to help local governments perform their tasks by providing advice, support and protect local communities and enhance the sense of responsibility of local government organs.

Establishing the statutory obligation of local governments to legislate and ordering on this ground, the county (metropolitan) government offices adopt the required local government decrees in the name of the local self-governments thereafter the omission of the adoption of the local decree was stated by the (supreme) court (Kúria). [Article 32 (5) of the Fundamental Law] This new right of government offices to adopt 'substitute decrees' should be regarded a strong supervisory authority.

The responsibilities and competences of local governments shall be exercised by local representative bodies. Local representative bodies are headed by mayors. County representative bodies elect one member to serve as president for the term of their mandate. Local representative bodies may elect committees and establish offices as defined by a cardinal Act. [Article 33 of the Fundamental Law]

It can be claimed that no essential changes have been made to the organisational units and organs of local self-governments except that in the text of the Fundamental Law – unlike in the Constitution – there is no reference to town clerks. Thus this institution has lost its constitutional status.

The internal construction of Hungarian self-governments is remarkably structured and proportioned; it almost maps the system of 'checks and balances'. This means that there are three organs (the representative body, the mayor and the town clerk) at the imaginary centre of the organisation and operation of self-governments, none of these can be replaced or evaded – due to the legal regulation – and are all stable for the most part.

'Local governments and state organs shall cooperate to achieve community goals. An Act may define compulsory responsibilities and competencies for local governments. Local governments shall be entitled to proportionate budgetary and other financial support for the performance of their compulsory responsibilities and competences. An Act may authorise local governments to perform their compulsory duties through associations.

An Act or a government decree authorised by Act may exceptionally specify duties and powers relating to public administration for mayors and presidents of county representative bodies.

The Government shall perform the legal supervision of local governments through the metropolitan and county government offices. An Act may define conditions for, or the Government's consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance.' [Article 34 of the Fundamental Law]

The traditional 'natural law' approach should undoubtedly be abandoned when defining the notion of local self-government. It should be started from the idea that modern (local) self-governments form part of the state organisation, although the notion of self-governance may be traceable to several theoretical starting points.

Modern local self-governments have their autonomy, yet they are still clearly state self-governments, not independent from state organisations, and genuine collaboration and cooperation with central (state administration) is indispensable, the importance of which is constitutionally recognised under the provisions of the Fundamental Law.

The economic situation of Hungarian local self-governments before 2012 is best characterised by the fact that the number and volume of their compulsory tasks dramatically outweigh their revenues, especially the amount of state subsidies. This process has led to that situation in which self-governments are indebted to such an extent that nobody can precisely assess and measure it, as not only self-government budgets are weighed down by debts (which is visible) but self-government undertakings as well (which is mostly invisible). This actually means that the central (state) budget attempts to keep its own deficit in check by 'shifting' it upon the local government system to an ever growing extent.

Establishing the institution of mandatory local government associations, making it possible to provide for it by law, may serve further modernisation. In the interest of effective task performance, former government practice tried to make settlement-level municipalities fulfil their tasks jointly by budgetary-financial means, while in the future, by virtue of the Fundamental Law, this will also be possible under a statutory provision.

State control (supervision) of local self-governments has been a cardinal issue of the Hungarian self-governmental system since before 2012. The multitude of remedial and control mechanisms is a peculiar feature of the Hungarian self-government system, but at the same time it can make the system weak and contingent. It is true that there are enough – internal and external – organs (county government offices, prosecution services, State Audit Office, self-government committees, clerks, auditors etc.) to supervise the legality of the operation of self-governments, but these organs have insufficient corrective powers.

The reinforcement of legal control and its converting into legal supervision from time to time have been urged in special literature for theoretical reasons and also on the basis of accumulated practical experience. A minimal widening of the sphere of authority was regarded as achievable by temporarily implementing decisions deemed unlawful and by authorising supervisory organs to adopt a decision in the case of a failure to adopt a decision. (Some authors argued in favour of more substantial widening of supervisory authority.)

The other supervisory power according to the Fundamental Law is disputable: 'An Act may define conditions for, or the Government's consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance.' [Article 34 (5) of the Fundamental Law]

The abovementioned provision is another novelty in Hungarian constitutional law; its aim is easy to specify: to prevent the further indebtedness of local governments, which has grown to an extent by now jeopardising state budget balance. (Legal regulation restricted local government borrowing before 1st January 2012 as well, but these restrictions were easy to avoid, so expectations were not met.)

The borrowing of local governments tends to serve the purpose of operation and the performance of compulsory tasks instead of financing investments and developments. Obviously, the deficit in the budget of local governments is caused typically by the insufficiency of state subsidies and own revenues to cover the expenses of performing compulsory tasks and providing local public services.

The Fundamental Law cannot solve the issue of financing, only tool for 'a debt break' has been institutionalized. Its effectiveness is heavily disputed, and it severely restricts local economic autonomy. It should also be added that the effectiveness of this provision is further endangered by its being belated: credit institutions – noticing the enormous problems of managing property of and financing local governments – tend to be less willing to finance

the operation of local governments regardless of whether the Government will consent to borrowing or not.

Voters exercise universal and equal suffrage to elect local government representatives and mayors by direct and secret ballot, during the elections allowing the free will of voters in the manner defined by a cardinal act.

Local government representatives and mayors are elected for a term of five years according to a cardinal act.

The mandate of local representative bodies shall end on the day of the national elections of local government representatives and mayors. In the case of elections cancelled due to a lack of candidates, the mandate of local representative bodies shall be extended until the day of the interim elections. The mandate of mayors shall end on the day of the election of the new mayor.

Local representative bodies may declare their own dissolution, as provided by a cardinal act. At the motion of the Government – submitted after obtaining the opinion of the Constitutional Court – Parliament shall dissolve any representative body which operates in a way contrary to the Fundamental Law. [Article 35 of the Fundamental Law]

Until now the abovementioned provisions have been contained in separate statutes, but by lifting them to constitutional level, their core contents have not changed except for lengthening the term of the representative bodies and mayors from four to five years and terminating the mandate of the mayor in the case of the dissolution of the representative body.

The former wording of the Constitution evoked the atmosphere of the transition of 1989–90; also defined as fundamental rights of self-government were local governance replacing the central direction of local councils, independence, the freedom of wide local self-determination, which was especially manifest in considering the concept of self-governance as a collective right enjoyed by the community of the local electorate, and the functions of local representative bodies.[10]

The Fundamental Law departs from this approach and clearly shares the standpoint claiming local self-governments are institutions within the organisation of the state; these are local organs of public administration which are not opposed to the state but are an integral part of it, strengthening democratic legitimacy. Local self-governments are not institutions organised on a social basis, but they are a form of administration, legitimised by the principles of democracy and vertical separation of powers and functions, decentralised and thus easing the burden on the state for managing public affairs at their own responsibility.[11]

The Fundamental Law no longer defines the essence of local self-governance as the subject of special fundamental rights which realises local people's sovereignty but (following Western-European models) as a constitutional (institutional) guarantee, a basis on which local self-governments must exist and operate in Hungary. The Hungarian state/government must ensure the regulatory and financial conditions for the realisation of this guarantee. This constitutional basis is much closer to Western-European standards and

[10] Herbert Küpper, Die ungarische Verfassung nach zwei Jahrzehnten des Übergangs (Peter Lang 2007) 86

[11] Klaus Stern, Das Staatsrecht der Bundesrepublik Deutschland II., vol 2 (CH Beck 1984) 405

constitutional solutions than the former was, but it departs from a century of Hungarian public-law tradition.

The fundamental purpose of the Hungarian Act on Local Self-Governments adopted on the basis of the provisions of the Fundamental Law is to establish a modern, cost-effective and task-oriented self-government system which allows for democratic and effective operation and at the same time – in a manner asserting and protecting the collective rights of the electorate to self-governance – imposes stricter limits on self-government autonomy than before. The provisions of the new Act on Local Self-Governments allow for the inclusion and operation of renewed structures (e.g. differentiated transfer of powers).

3. Tasks of the Hungarian local governments

The task system of Act CLXXXIX of 2011 on the Local Self-Governments of Hungary (hereinafter: Hungarian Municipal Code) is based on the system of the former Hungarian municipal law. Thus the *municipal* and the *delegated administrative tasks* are distinguished by the new Municipal Code, as well. *Mandatory tasks, voluntarily assumed tasks* and *facultative tasks of the local government* could be classified among the municipal tasks.

The possible municipal tasks of local governments are listed in section 13(1) of the Hungarian Municipal Code. It is controversial in the Hungarian legal literature: are these tasks installed by this section directly, or it is only a non-exhaustive list? The grammatical interpretation of the Code shows that this list determines mandatory tasks: the text of this section stipulates that municipalities 'should perform' *('ellátja')* these tasks. However, the ministerial reasoning of the Bill of the Municipal Code highlights that the new Code only contains direct power installation rules as an exception, because these tasks and services are determined by sector acts, when the powers of the central and local government are defined. The Municipal Code defines the principles of the installation of the powers (for example the differentiated installation of tasks). The approach of the ministerial reasoning can be justified by the regulation of section 13(1), which contains such services as well, which are defined as facultative tasks by the sector acts. Point 7 of this paragraph, for example, contains aid to theatres as a municipal task, which task is defined as facultative municipal service by Act XCIX of 2008. Similarly, local public safety-related tasks are defined as voluntary nature services by the section 17 of the Municipal Code.[12]

One of the main amendments of the new Municipal Code *does not contain the principle according to which local public affairs shall be performed by the local governments*. Thus central legislation power (the Parliament) was given a free hand to define and re-define the share of the powers between the central and the local government. After the new regulation, important public services, which were organized formerly by the local governments, became the responsibilities of the central government and their territorial agencies. For

[12] Hoffman István 'Az önkormányzati feladat- és hatáskörök átalakított rendszere az új önkormányzati törvényben' [The modified system of functions and scope in the new Local Government Act] ([2013)] 67–8 Új Magyar Közigazgatás 10

example, primary and secondary schools, inpatient health care and residential social care are mainly organized by the agencies of the central government (by the Klebelsberg School Maintenance Centre and the Social and Child Protection General Directorate).[13]

3.1. Municipal tasks

3.1.1. Obligatory tasks

Obligatory municipal tasks are defined by act having regard to the Municipal Code. According to a significant modification of the regulation, *new instruments of legal supervision* could guarantee the fulfillment of these tasks. Beyond the new instruments of legal supervision the *differentiated installation of tasks* is required. Although this differentiation was allowed by the Act LXV of 1990 on Local Self-Governments, it is required by the New Municipal Code. Thus the tasks of the diverse municipalities should be defined differently by the sector/special regulations. The main criteria of this installation of tasks are determined by Act CLXXXIX on the Local Self-Governments of Hungary. Thus 1. the nature of the duty, 2. the different capability of the local governments, especially the different economic performance, population and the size of the area of the municipality shall be taken into account (section 11(2) of the New Municipal Code). The personnel, the material and the financial conditions of the performance of the obligatory tasks (public services) can be regulated not only by acts, but also by the decrees of the Hungarian Government and by the decrees of the ministers after these general rules of the municipal law. This right of the central government to regulate the conditions of (local) public services is not unconditional: Resolution 47/1991. (24th Sept.) of the Hungarian Constitutional Court declared that the decree which entirely excludes the free decision of the local government breaches the constitution. The performance of the obligatory municipal tasks has *priority* because the performance of these duties must not be jeopardized by the performance of the facultative tasks of local governments.

3.1.2. Facultative tasks

Thanks to the continental (general clause) approach of the Hungarian local government system, these tasks may be performed which are not required by acts: namely the *facultative tasks of the local governments.* It was indicated in point 2.1.1 that the main aim of the municipalities is the fulfillment of the obligatory tasks, thus local governments can provide these tasks if *strict legal conditions* are met. Firstly, local governments can perform as a facultative task only a *local public affair.* Local governments could perform such a task which is not among the responsibilities of the central government. Therefore the Constitutional Court declared that such a local government decree which establishes a city policy with the powers and duties of the (state) police is a breach of the constitution [Res. No. 8/1996. (23rd February) of the

[13] Hoffman István, 'Some Thoughts on the System of Tasks of the Local Autonomies Related to the Organisation of Personal Social Care' ([2012)] Lex Localis 323

Constitutional Court]. Secondly, the performance of facultative tasks cannot be contrary to the law. As was mentioned above, obligatory tasks have priority. The performance of facultative tasks can be funded only by *own revenues of the local governments* and by *special central subsidies* for these tasks determined by the Act of the Budget of Hungary. Thus Hungary has a unified state police system, where the police are maintained and directed by the central government. However, special regulations regarding the tasks of local public safety are determined by the Act on the Local Self-Governments of Hungary. Municipalities are allowed by the new Municipal Code to establish an organization responsible for local public safety and for the preservation of local government assets. This organization can use force determined by acts. This task is obviously facultative. Because the use of force, the central government has stronger supervision: the (state) police have not only legal but technical supervision powers, as well. Therefore the municipality should establish agreements with the police.

3.1.3. Alternative tasks

The third element of the municipal tasks is alternative (voluntarily assumed) tasks. This type of municipal task has evolved in the 'border area' of the obligatory and facultative tasks in the European municipal systems. These tasks could be defined as a 'correction tool' of the differentiated installation of tasks. The possibility of the voluntary assumption of the tasks of the county level local government or those settlement level municipalities which have a larger population or greater economic power could solve the inelasticity of the differentiated tasks system determined by central regulation (by acts). In the European municipal systems this opportunity was regulated by sector/special acts.[14] Although the European acts on local self-governments have not contained this type of the tasks, the Hungarian municipal law allows and it is regulated by the Hungarian municipal codes.[15] This specialty particularity of the regulation remained, although major changes have taken place in the field. The settlement- level local governments and their inter-municipal associations can voluntarily assume the obligatory tasks of those settlement -level municipalities which have wilder economic performance or larger population, if 1. it is justified by the needs of the population of the (smaller) municipalities, and 2. after the assumption the public services is are provided more efficiently and at least on the same professional standard, and 3. supplementary state subvention is not needed for the performance. A new element of the regulation, is that the tasks of the county local governments cannot be assumed. If these conditions are met, tasks are assumed by the decree of the municipality (or by the resolution of the inter-municipal cooperation). The procedure and the conditions are supervised legally by the County Government Office. The funding of the alternative tasks is similar to the obligatory tasks: the assuming municipalities get the same amount from the central budget as those municipalities

[14] For example the French Social Code (Code de l'action sociale et des familles) allows the settlement-level local government to provide the basic social basic services (which services are provided by the counties) if they meet the statutory conditions. See: Hoffman (n 13) [2012] Lex Localis 323.

[15] See Hoffman István, 'Az önként vállalt (alternatív) önkormányzati feladatok szerepe a magyar önkormányzati rendszerben' [The Role of the Voluntarily Assumed Tasks in the Hungarian Local Government System] ([2011) 4] Közjogi Szemle no. 2. 37.

which should compulsorily perform these services. A special type of the alternative tasks is if *the tasks of the central government* are assumed by a local government.

3.1.4. The limit of the municipal task performance: the right of the Government to the completion of a project

A strong limit of the municipal task performance is that a local government project funded by the European Union could be completed by the Government for the fulfillment of the national obligation to the European Union – despite against the will of the given local government. This right is the final guarantee of the compliance with the national obligations because Member States are responsible for these obligations and are represented by their Governments. Thus, primarily the central governments are responsible for the offences of the local governments. Therefore the Government of Hungary has this right. Obviously local governments have the right to appeal. The resolution of the Government of Hungary can be revised by the Budapest Court of Public Administration and Labour.

3.2. Delegated administrative tasks of the officers of the local governments

It has been widely allowed by the Hungarian municipal law for the officers of the local governments to perform central government tasks by the officers of the local governments. If the officers make a decision in their delegated power, this decision cannot be considered as a municipal decision. Therefore, the municipal bodies and organs cannot direct this officer. The reason of for the transfer of power is the efficient and grassroots public administration. There are powers and duties which have to be performed at the settlement level but it is not efficient if the central government had has agencies in every settlements.

Because the delegated nature of these powers, the territorial central government agencies have not only legal but technical supervision rights. These agencies are the supervising organs of local government officers, which supervision is regulated by the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter: Ket.).

Although the number of the cases, in which the officers of the local government have had duties in delegated power, was reduced by the establishment of the District Government Offices in 2013, these officers play an important role in the Hungarian regulatory activities.

The officers who can posses delegated powers and duties was changed last year. There were certain plans of the central government which tried to eliminate the delegated duties, or at least to convert an extraordinary procedure. Thus only the mayor and the president of the county council could perform delegated duties by according to the original text of the article 34(3) of the Fundamental Law. The Government Resolution No. 1299/2011. (published on 1st September) on the Establishment of the Districts was in line with this approach. The separation of the municipal and central government tasks was planned by the sub point 2. *j)* of that Resolution. The rigid separation of these tasks was not fulfilled: the delegated powers of the settlement clerk were allowed by effective article 28(2) of the Transitional

Provisions of the Fundamental Law (published on 31st December 2011). This was a limitation, because formerly the mayor, the clerks and the officers of the Mayor's Office could perform these powers. The original state has been restored by the Fourth Amendment of the Fundamental Law (published on 25th March 2013) which affected the article 34(3) of the Fundamental Law. Thus the mayor, the president of the county council, the clerk and the officer (civil servant) of the Mayor's Office could can perform delegated powers and duties. A significant change is that the right of the central government has been limited by the Fundamental Law.

The differences between the municipal and delegated administrative tasks are shown by the following table.

	Municipal regulatory cases	***Delegated regulatory cases***
Related to…	*Local public affair*	*National public affair*
Which type of legal norms can define it?	*Act, Decree of the Local Self-Government*	*Act, Governmental decree issued under the authority of an act*
Acting authority	*Representative Body;* under the authorization of the representative body the mayor, the clerk, the committee of the representative body and the inter-municipal association	*Mayor, clerk, officer (civil servant) of the Mayor's Office;* by the agreement of the local governments, the inter-municipal association
Remedies	If 1st instance is the representative body, thean remedy to the court (Court of Public administration and Labour) If 1st instance is the mayor, committee, clerk or inter-municipal association, thean appeal to the representative body (after the 2nd instance decision of the representative body: remedy to the court).	*Appeal* – generally – to the County Government Office.
Role of the County Government Office	It is not covered by the legal supervision, either.	Supervising authority under the Ket. and coordination powers under the Government Decree No. 288/2010. (published on 21st December).

3.3. The provision of municipal public services

Municipalities have great freedom to choose the form of the provision of the local public services. It is stated by the section 41(6) of the Act on the Local Self-Governments of Hungary that local governments can establish an institution governed by the public law or a non-profit organization or for-profit organization for the provision. This paragraph allows the municipalities to contract with a natural or legal person, or with a legal subject without personality for these this provisions. A third way of for the provision of these services is the inter-municipal cooperation. Thus the public services can be organized and managed

differently. The obligation of the local governments is to ensure the accessibility to these services.

A significant limitation of this freedom is the section 41(8) of the New Municipal Code, which allows the Parliament to define in acts several services which can be provided only by a municipal organization governed by the public law or inter-municipal associations or by companies with a majority municipal influence. Such an act is the Act CLXXXV of 2012, which allows getting waste management permission for the organizations governed by public law, or for inter-municipal associations or companies with majority central or local government influence. This regulation follows the German public service provision model, which has been largely based on the local government companies.[16]

4. Types of Hungarian local self-governments

The Hungarian municipal system is a *two-tier system.* The first tier is the level of the settlement municipalities and the second areis the counties. Settlement municipalities are villages and towns. Budapest as the capital of Hungary has a special status: it is both settlement and county level municipality, and it has a two tier system, as well.

4.1. Settlement- level local self-governments

According to the sections 20 and 21 of the Act on Hungarian Local Self-Governments, settlement- level local governments are villages and towns. *Villages* provide *basic public services* exclusively for *their own population.* Section 20(2) of the new Municipal Code regulates the *title of large village* (nagyközség). Formerly this title had one privilege: only that this larger class of village could apply for the title of town, an advantage which was abolished by the new regulation. Now the title of larger village can hold include those villages having a population of more than 3 000 inhabitants or which have owned this title since 1st January 2012.

The Towns' local governments of towns provide several types of *public services* for their own population and *for the population of their hinterlands.* Thus a significant correction tool of the spatial fragmentation of the Hungarian municipal system is the *urban neighborhoodneighbourhood system*.[17] Among the towns' local governments of towns: *towns, disrictsdistrict' headquarters towns* and *county towns* are distinguished. The hHinterland of the disrictsdistrict' headquarters town is the district which are appointed by a Government decree of the Government. County towns provides public services for the population of a whole county or for the population of a large part of the county, thus the hinterland of these towns is the county. Public services provided by the county towns are county mu-

[16] Horváth M. Tamás, 'Közmenedzsment' [Public Management] (Dialóg Campus 2005) 61.

[17] Hoffman István, 'Differenciált hatáskör-telepítés és városkörnyékiség a helyi-területi igazgatás rendszerében' [Differenciated scope installation and urban neighborhood system in local-territorial administrative system]([2012)] Jogtudományi Közlöny no. 4. 157 and 164.

seums and libraries.[18] County towns are settlements which hold have held this title from since 1st January 2012. County towns are not part of the County Local Government; they are independent from the counties.

Budapest as the Capital of Hungary has a two-tiered system, which has both settlement- and county- level municipality. The lower tier of the metropolitan local government is the district of the capital, which has the right to local governance and which is classified as a settlement- level municipality. The second tier of the system is Metropolitan Local Government, which has responsibilities for county local governments. It provides those settlement- level municipal tasks which cover the whole capital and which are related to the special status of the capital. The capital is practically in practice a settlement (the largest settlement of Hungary), which that is why the Lord Mayor and Metropolitan Clerk can hold those delegated duties and powers, which the County Presidents and the County Clerks cannot.

4.2. County local governments

The second tier of the Hungarian municipal system is the county local government. The Fundamental Law's general provision on public affairs barely prevails among the counties. The new Municipal Code states that the counties provide the task of regional and rural development, territorial planning and coordination defined by acts. Therefore, county local governments can barely be classified as authorities with general powers.

5. The administrative organization of Hungarian local governments

The administrative system of Act CLXXXIX of 2011 on the Local Self-Governments of Hungary follows the tradition of the former Hungarian municipal laws and the European samples. At the same time there have been several changes and amendments. Although the system could be classified as a balanced system where the role of the representative body (council) and the operational leadership of the municipalities are quite equalized, the changes of the powers of the politician leader, the mayor have been strengthened by the new Municipal Code. In the following (point) main elements of the administrative system of the local governments will be reviewed.

[18] Although the county towns provide these services generally, in two Hungarian counties these tasks belong tofall among the responsibilities of two districts' headquarters towns. In County Pest, the District Headquarter's Town of Szentendre and in County Komárom-Esztergom the District Headquarter's Town of Tata are responsible for these tasks. See paragraph 2 article 45 of the Act CXL of 1997 on the Museums, Public Libraries and Community Education.

5.1. The representative body (assembly) of Hungarian local governments as strategic decision making body

The central bodies of the local governments are the representative bodies (in the counties, the county towns and the capital the assemblies). The Act on Hungarian Local self-Governments strengthened the strategic decision making position of these organs when it stated that municipal decisions can be made in their own right only by the representative bodies or by local referendum. The mayor, the inter-municipal association, the representative body of the part of the settlement, the committee of the representative body and the town clerk can make decisions by the authorization of the representative body. The priority of the representative body is demonstrated by the right of this body to instruct other bodies, and by the right to withdraw the delegation of powers. Delegated powers of the representative body cannot be further delegated: the ban on sub-delegation prevails.

5.1.1. Decisions of the representative bodies

The decision of the representative body can be of two types, namely a *decree* or a *resolution.*

A *decree* is a legal act (law) which cannot be contrary to other legal regulations; thus it is at the lowest level among the legal hierarchy. Local governments can adopt a decree *in their own right* in accordance with article 32(2) of the Fundamental Law, which *allows local governments to publish legal regulations in their duties*. *Local governments can be authorized to adopt a decree by an Act* (of the Parliament), as well. *Ultra vires* principle prevails: the local government cannot go beyond the limits of the authorization. Thus the Decree of the Municipality of Érpatak Village on social benefits was repealed because those rules were regulated in the decree which were beyond the authorization. These rules belonged to the field of the administration of constructions (i.e. minimum rules on flats and houses) [Decision Köf.5051/2012/6. of the Local Government Council of the Curia]. The limits of the local government legislation in their own right are the abovementioned *local public affairs* which are not ruled by other legal norms and the regulations of other legal acts. Although local governments have broad freedom to regulate their own local public affairs, the Hungarian municipal law contains several legislative delegation rules. The reason for these delegation rules is that in Hungarian public law the delegation of legislative powers is not a possibility, but an obligation. The delegated legislator shall adopt the legal norm. Thus in these cases local governments shall publish a decree, though these tasks are purely local public affairs. If the local legislation is rejected by the local government, it can be replaced by the County (Metropolitan) Government Offices (see point 8).

The decrees of local governments are adopted by the representative body and are signed by the mayor and the clerk. The publication of the local government decree is different from the publication of the central legislation. It shall be published in the official gazette of the local government, or if the local government does not have an official gazette, it shall be published in the manner customary for the locality. If local governments have their own homepage, the decree shall be published on the Internet. Since 2013/2014 the decrees of local governments shall be available on the National Law Library, which can be accessed

on the Internet (www.njt.hu). The decree is published by the clerk and is sent forthwith to the supervising authority, the County (Metropolitan) Government Offices, which forwards it to the Minister of Public Administration and Justice.

The *resolution* can be normative or individual. The representative body adopts its individual decisions in the form of a resolution, which can even be decisions governed by public or private law. The normative local government resolution is a *public organization's governing instrument* according to the Act CXXX of 2010 on Legislation which can regulate the organization and the programs of the representative body and those bodies which are directed by the representative body. The resolutions are signed by the mayor and the clerk and they must be sent to the county (metropolitan) government office, as well.

5.1.2. Duties and powers of the representative body

The representative body has only municipal tasks and duties; it cannot have delegated administrative tasks. Although in municipal tasks the representative body has a great regulatory freedom, it has been partly limited by the new Municipal Code. For example the freedom of local governments to determine their own manner of organisation has been limited by the new rules of the Act on Local Self-Governments of Hungary, thus the obligatory elements of the organization and operational regulations are defined by section 53 of the new Municipal Code. The autonomy of the municipalities has been weakened in the field of the mandatory municipal tasks, because central legislation has wider regulatory powers.

Duties of the representative body can be classified as *non-transferable duties*, in which only the representative body can make decisions; and *transferable duties*, which can be delegated to the mayor, the committee, the representative body of the part of the settlement, the inter-municipal associations and to the clerk. The adoption of a local government decree, the main organizational duties and powers and main personnel decisions, the major economic and business decisions, access to the inter-municipal associations and international cooperation belong to the non-transferable duties. Non-transferable duties can be defined in an act. This definition does not need a qualified majority in the Parliament. Although only the representative body can make decisions in these cases, the mayor has the right to make decisions between two sessions of the representative body in urgent cases or can replace the failed resolution of the representative body. This leader has very strong economic powers and duties. As will be mentioned later, the mayor has *suspensive veto*, which can be unblocked by the qualified majority decision of the representative body. These changes signify that the balanced system has been partly modified: the mayor has been strengthened by the new Municipal Code.

The representative body can delegate other powers and duties to the *mayor*, to the *committee*, to the *representative body of the part of the settlement*, to the *inter-municipal associations* and to the *clerk*. The municipal law has no direct rules on the form of the delegation, but Ket. states that regulatory duties can be delegated only by a local government decree. This rule is in harmony with the with the decision of the Hungarian Supreme Court. A legal act for the delegation of powers and duties in regulatory cases is required by the No. 1/2003 Administrative and Civil Uniformity Resolution of the Supreme Court. The decision on the delegation of powers and duties can be withdrawn by the representative body and the

representative body can instruct the delegated organs, thus the strategic direction of the body (council) prevails. In municipal regulatory cases, the directive rights of the representative body are limited by the prohibition of the withdrawal and transfer of the jurisdiction of the authority which excludes the specific instructions of the representative bodies.

5.1.3. General rules on the operation of the representative body

The chairman or chairwoman of the representative body is the mayor, who convenes and chairs the sessions of the body. If the mayor is unable to attend to his or her responsibilities, he or she is substituted by the appointed deputy mayor. The mayor can be substituted by other persons if the mayor fails to convene the session and the Act defines another chair of the session.

The representative body shall convene as needed, as often as is called for in the organizational and operational regulations but *at least six times per year.* The meeting must be set up when requested by a quarter of the councilors, by a committee of the representative body (council) or by the leader of the county (metropolitan) government office (the government representative). The representative body shall hold an announced advanced *public hearing at least one time per year*, which local voters and the representatives of the non-governmental organizations with an interest in the local public affairs may pose questions and make proposals in matters of public interest. Questions shall be answered within 15 days.

The session of the representative body (council) is *in principle public.* The Local Government Council of the Curia states in the decision No. Köf.5.036/2012/6. that 'the public of the exercise of power is the basis for the democratic operation and it is the cornerstone of the operation governed by the rule of law'.

There are *three options* in which the council has to or shall or may convene *in camera.* Firstly, the council *have to convene in camera* to discuss a municipal regulatoryregulation, conflicts of interest, indignity, awards, disciplineary – excludinged the starting of the disciplinary process – or a case related to a declaration of assets. Secondly *if the affected person does not agree, the council shall convene in camera* to discuss an election, appointment, release, and the starting of a disciplinary process and other personal personnel matters if it they needs arequire resolution. Thirdly, the *representative body (council) may order an in-camera session* to discuss the disposition of its property and tenders announced by it if a public discussion would infringe any business interests. The members of the council, the deputy mayors elected not from among the council members, and the clerk or the officer of the mayor's office or the common office as well as the party concerned (if invited) and the expert shall participate in the in-camera meeting. The president of the minority self- government can participate in those in- camera sessions which affect the duties of the minority self-government (especially in appointment cases, when the minority self-government has the right to consent). An act (of the Parliament) or the a local government decree can prescribe those cases where the party concerned must be invited. The decision which the in camera session made is public, but the protocol of this session is not. The in camera session could not exclude prevent the accessibility to the information of public interest or public information.

The representative body has a *quorum* if more than half of the councilors are present at the session. The Local Government Council of the Curia stated in the decision No.

Köf.5.003/2012/9. that the participation shall be personalin person, which does not allow a session to bhold e held a session by video conference or to a vote to be sent by letter or by other mode. The quorum shall be observed maintained continuously during the session.

The representative body makes a decision by *simple* or by *qualified majority.* The majority is *simple* if the proposal is supported by the majority of the present councilors. The majority is *qualified* if the proposal is supported by the majority of the elected councilors. A qualified majority is needed for example for the adoption of a local government decree, for the establishment of an inter-municipal cooperation or institution, the exclusion of a councilor or to establish the a conflict of interest or the indignity (see section 50 of the Act on Local Self-Governments of Hungary).

The representative body (council) makes its decision by an open ballot. The new Municipal Code regulates cases when vote by name can be ordered. Secret ballot can be heold if an in- camera session is needed or it may be heold.

Protocol shall be prepared on the sessions of the representative body which is signed by the mayor and by the clerk, and it will be sent to the supervising authority, to the county (metropolitan) government office within 15 days after the session.

5.1.3. The beginning and the end of the mandate of the representative body and the councilors

The mandate of the councilors begins by a *vote.* Since 2014 the term of the mayors and the councilors will behas been five years (until 2014 it was four years). *The representative body starts its current operation by its opening session.* The end of the mandate is in principle the opening session of the representative body elected by the next general local elections. The mandate of the representative body can be ended before the end of general term, if the representative body is dissolved by the qualified majority decision of this body. There are time limitations for the dissolution decision: it cannot be within six month of the local general elections and after the 30th November of the year before the next general local election. As it waspreviously mentioned, the representative body can be dissolved by the Parliament if the representative body breach the constitution by through its operation or by through the lack of the (municipal) operation

The clerk directs the mayor's office or the common local government office. The town clerk is substituted by the deputy town clerk who fulfils the tasks defined by the town clerk. The town clerk

a) decides in state administrative matters delegated to his competence by a legal regulation;
b) exercises the employer's rights in respect of the non-cabinet civil servants and employees of the mayor's office and the common local government office and exercises other employer's rights in respect of the deputy town clerk;
c) provides for carrying out the responsibilities connected with the functioning of the local government;
d) attends the meetings of the representative body and of its committees in an advisory capacity;

e) notifies the representative body, an organ of the representative body or the mayor if he finds any infringement of statutory provision in their decisions or their operation;
f) submits an annual report to the representative body on the activities of the office;
g) prepares the state administrative matters falling within the competence of the mayor for decision;
h) decides in official matters delegated to him by the mayor;
i) decides in matters concerning local administration and local administration authority conferred under his competence;
j) regulates the order of the issuance of official copies of decisions in matters under his competence;
k) records the data specified by the act on the apprehension and record system concerning property found and the search and identification of persons and property and deletes such data after the property found is handed over to the owner.

The mayor's consent is required – within the scope defined by him – for appointments, remuneration, executive appointments, dismissals and issuing rewards in respect of non-cabinet civil servants and employees of the mayor's office and common local government offices.

The mayor – by way of tender – appoints the town clerk for an indefinite period of time. In the local governments of settlements with less than ten thousand residents and in the common local government offices of settlements with a joint number of residents of less than ten thousand – in accordance with rules pertaining to the town clerk and on the recommendation of the town clerk – the mayor may appoint and in other local governments and common local government offices shall appoint the deputy town clerk.

The representative body of the local self-government sets up a mayor's office or a common local government office to carry out the tasks connected with the preparation of matters for decision and the implementation of such decisions in matters falling within the competence of the mayor or the town clerk. The office participates in coordinating the cooperation of the local government with other local governments and with state organs.

Local governments of villages with less than two thousand residents, located in the same district, and separated by the administrative area of only one settlement shall establish a common local government office. A settlement with more than two thousand residents may also belong to the common local government office. The joint number of the residents of settlements belonging to a common local government office may not be less than two thousand, or the number of settlements belonging to the common office shall be at least seven.

The representative bodies of the concerned local governments shall agree on the formation or termination of a common local government office within sixty days, reckoned from the day of the municipal elections. If the common local government office is not established within this period of time, or any of the settlements cannot join, the head of the government office shall designate the settlements belonging to the common local government office as of/if? the first day of the month following the lapse of the deadline. The representative body of the local government concerned may turn – on the grounds of violation of law – to an administrative court against the decision concerning the designation.

The town clerk, deputy clerk or his representative must attend the meetings of the common local government office and provide them with the required information. On the

basis of an agreement of the representative bodies concerned, the town clerk, the deputy clerk or his representative shall ensure office hours at each settlement.

5.4. Inter-municipal associations as organs of the local governments

The general rules on the inter-municipal associations are regulated by the Chapter IV of the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary, but there are other legal institutions which have the nature of an inter-municipal cooperation. These legal institutions are regulated by other public law instruments.

As it was mentioned above, the article 34(2) of the Fundamental Law of Hungary allows the Parliament to require the performance of an obligatory municipal task by inter-municipal cooperation. The Parliament can establish by an act a mandatory inter-municipal association. The Chapter IV of the Municipal Code does not contain rules on these mandatory established associations, but other articles of this Act have such rules.

The amendments of the Act on the Local Self-Governments of Hungary have dual nature. Firstly, the formerly differentiated system in which there were institutionalized several types of the inter-municipal associations has been simplified. Only one type of the inter-municipal associations is regulated by the new Municipal Code: the *association with legal personality*. Secondly, the formerly separated – regulated[19] in the Act CXXXV of 1997 on the Inter-municipal Cooperation and Associations and in the Act CVII of 2004 on the Associations in the Small Regions – legal norms were incorporated in the Municipal Code. The section 87 of the Municipal Code states that the representative bodies (councils) of the municipalities may form inter-municipal associations with legal personality in order to more efficiently and appropriately perform one or more municipal tasks or the delegated tasks of the mayor and the clerk. Although only the association with legal personality is declared by the Act on the Local Self-Governments of Hungary the new rules allows to establish different service delivery districts within the associations. Thus the new associations are mainly umbrella associations which unify more inter-municipal cooperation with different participatingnt local governments.

The association shall be established by a *written agreement* of the participant local governments. It is based on the decisions of the representative body. These decisions have been made by qualified majorities of the bodies. A decision with qualified majority is required for the access to the association, as well. Access can take place on the first day of the year (1st January) having regard to the legal personality of the association. The secession can take place – for similar reasons – on the last day of the year (31st December). The representative body shall decide on the access or the separation at least six month earlier and the body shall inform the council of the association shall be notified of the intention of separation or access.

The association can establish organizations governed by public law, companies, non-profit organizations and other form of organizations for the performance of the public task.

[19] Józsa Zoltán, 'Önkormányzati szervezet, funkció, modernizáció' [Municipal Organization, Function and Modernization] (Dialóg Campus 2006) 126–127

Because of the legal personality of the association, it has an asset which is separated from the local governments which established this cooperation, but this asset is a part of the national asset. In the legal disputes related to the associations, the *courts of public administration and labour* have jurisdictions. Formerly the ordinary, civil courts have had jurisdictions in these cases, because these disputes were considered by the legislation – which was in force until 31st December 2012 – as disputes governed by private law (see the decisions No. 5.Pf.20.332/2008/4. of and No. Pfv.X.20.104/2009/4. of the Hungarian Supreme Court).

If there is no other rule in the agreement on the association, the participant local government shall financially support the association proportionally in proportion to the number of their population. The cessation cases of the association and the mandatory elements of the agreement on the inter-municipal association are defined by the Act on the Local Self-Governments of Hungary.

The central organ of the inter-municipal association is the *council of the association,* whose members are delegated by the representative bodies of the participant local governments. The members of the council have a vote which is defined by the agreement. The decisions of the councils are made by in the form of a *resolution* because the associations do not have legislative powers. If other regulations are not defined by the agreement on the association, the *simple majority* is the majority of the participant local governments. If the number of the members is more than 10, the simple majority is the numerical majority which majority covers at least the 30 percent of the population of the associated local governments. For the *qualified majority*, the majority of the population of the associated local governments is required.

The chairman or chairwoman of the council of the association is elected from the members of the council and a deputy chairman (or chairwoman) can be elected. The council may establish committees for the decision-making and for the executive tasks. The association may have separated office. If such a separated office is not established, these tasks are performed by the mayor's office or common office of the headquarter settlement. The professional operation has been strengthened by the rule that the clerks of the municipalities are involved to the session of the councils in an advisory capacity.

The legal supervision tasks are performed by the county (metropolitan government) offices. Thus the government office can convene the council, and it can initiate a lawsuit at the court of public administration and labour on the grounds of violation of law and the government office may impose a fine of legal supervision.

6. Land management in the Act on Local Self-Governments of Hungary

The Act on the Local Self-Governments of Hungary states that the community of the local voters of the settlements (settlement local governments) and the counties (county local governments) has the right to self-governance. Thus a local community can have in that case autonomy in that case, if it is classified as a settlement or as a county. These questions are regulated by the law of the *land management.*

6.1. Declaration of a village

The smallest unit which has the right to self-governance is the *village.* The Act on the Local Self-Governments of Hungary does not contain any definition of the village – the last act which contained this definition was the Act XLII of 1870 on the communities.[20] Only the *conditions* of the declaration of village are determined by the municipal law. Thus the declaration shall be initiated by local voters of a geographically and architecturally separated, populated area, which unit is able to the exercise the right to self-governance and is able to perform and organize the municipal tasks without the decline of the service standards. The village can be established if these conditions are met by the remained and the newly established settlement, as well. Before the declaration of a village a local referendum shall be held: the whole population of the 'old' settlement (and not only the population of the populated area which wants to be a new village) shall be involved. Other conditions of the declaration are that the population of the separated populated area has increased in the last ten years, the infrastructure is more developed than the national average and and the municipal tasks are provided performed at lower costs by the local government than the national average.

The aim of these very strict conditions is to slow down the increasing number of local governments, because it is difficult to meet these conditions.[21]

The conditions and requirements are examined by the minister responsible for the legal supervision of the local governments (which minister in the current Government system is the Minister of Public Administration and Justice). The decision of the minister can be judicially reviewed by the Budapest Court of Public Administration and Justice on the grounds of violation of law. If the minister supports the lawful initiative, the village is declared by the President of the Republic, who can review the legality of the proposal.

6.2. Merge of the settlements

Villages and towns which are/were built together can initiate the merge merging of the settlements. This results practically the termination of the former municipalities and the establishment of a new local self-government which is the (legal) successor of the former settlements. The merging merge of the settlements are is declared by the President of the Republic on a proposal of the minister responsible for the legal supervision of the local self-governments.

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[20] Beluszky Pál, 'Magyarország településföldrajza. Általános rész.' [The Settlement Geography of Hungary. General Part] (Dialóg Campus 2004) 149–151

[21] Rozsnyai Krisztina 'A területszervezésre vonatkozó szabályok az Mötv.-ben' [Regulations of the Hungarian Municipal Code on Land Management] (2013) 6 Új Magyar Közigazgatás [2013] vol. 6 no. 7–8. 39–40.

6.3. Replacement of the parts of the local governments

The subject of right to local self-governance can be partially changed if the populated area of the local government changes. Thus the decisions on the replacement of *uninhabited* parts of settlements are made by the representative bodies of the given municipalities. If the part of the settlement is *inhabited*, the population is affected. Therefore a *local referendum* shall be heold as a general rule, with narrow exceptions.

6.4. Towns

The Act on the Local Self-Governments of Hungary states that the representative body of a village which have has a spatial role and reaches the average urban development can initiate the *declaration of a town*. The town is declared by the President of the Republic on a proposal of the minister responsible for the legal supervision of the local self-governments.

County towns are those towns which were county towns on 31st December 2012 (these were the county seats and Dunaújváros, Érd, Hódmezővásárhely, Nagykanizsa and Sopron). The *district headquarters' towns* are assigned by the Government decree No. 218/2012. (published on 13th August) on the District Offices.

6.5. Counties and the Capital of Hungary

The territory of the counties and the Capital and the system of the metropolitan districts are determined by the *Parliament.* Because of the change of the subject of the local government in several cases, a local referendum is needed before the decision of the legislator.

7. The asset and finance of the Hungarian local governments

7.1. The asset of the local governments

The regulation on the assets of the local government has been transformed during the last few years. The last amendment of the Constitution of the Republic of Hungary changed the article 12(2) of the Constitution, which was in force until 31st December 2011. The amendment allowed the Parliament to nationalize without any compensation the local government assets by an act, if the powers and duties of the local governments change, and the asset is related to such a task which does not belong to the new responsibilities of the municipality.

This amendment was in harmony with the new regulation of the Fundamental Law of Hungary. The article 32(6) states that 'assets controlled by municipal governments shall be public property, serving the performance of municipal government tasks.' According to this regulation, local government assets is are not separated from the assets of the central government, but rather these are together the *national assets.* Because of the local

government asset is an integrated part of the national asset, it serves as the performance of the municipal tasks. Therefore if the responsible authority of former municipal tasks has been changed, the asset may be free expropriated. Thus the local government asset can be classified as a kind of constitution of trust, which are is related to the tasks of the municipalities and it is not defended against the interventions of the central (parliamentary) legislation.[22]

Since 1st of January 2012 the main rules on local government assets is have been regulated by the Act CXCVI of 2011 on the National Assets (National Asset Code). The *dual system* of the municipal asset has been remained, because the local government asset can be either a *core asset* or a *business asset.*

The *core asset* directly serves as the performance of the obligatory municipal tasks. The core asset has two components. The first component is the *unfit core* asset which is an asset owned exclusively by local governments and which is determined by the National Asset Code and by another Act or the decree of the local government. The second component is the *limited marketable municipal asset* which is defined by an Act (of the Parliament) or by a local government decree.

The free exercise of the right of the municipal ownership is limited by the regulations of the National Asset Code. Thus the business activity of the local government may not risk the performance of municipal tasks. Therefore the local government may take part in those companies which have the limited liability of for the members. The local government may not take part in companies which have no transparent ownership structure.

The local governments shall adopt a medium-and long-term asset management plan.

The *exclusive economic activities* of local governments are determined by the Act on the National Assets.

Trust law can be established on the local government asset, which is regulated by the Municipal and the National Assets Codes.

7.2. Finance of local governments

Although it is a *separated subsystem,* the budget of the municipalities is *part of the national budget*. The separation does not exclude the subsidy of local governments by the state (by the central government).

The local government finance is based on the *annual budget* of the municipality. The funding of the mandatory and voluntary municipal tasks and the delegated administrative powers is based on this legal norm. A significant change in the new Municipal Code is that the *operational deficit* cannot be planned, thus the expenditures of the performance of the municipal tasks shall not exceed the revenues. Therefore the *deficit* can be planned only for the financing of the *investments and developments.*

[22] Hoffman István, 'Átalakuló önkormányzati vagyon – az alkotmányos szabályok és a sarkalatos törvények tükrében' [Changing Municipal Asset – in the Light of the Regualtions of the Fundamental Law and the Cardinal Acts] (2013) 14 Jegyző és Közigazgatás [2013] vol. 14. no. 3 20.

The municipal tasks can be funded by *own revenues*, *received funds* and *state subsidies.* The Act on the Local Self-Governments of Hungary states *that the local government is burdened by the consequences of loss management*, and the central government is not responsible for the obligations of the municipalities.[23]

7.2.1. Municipal revenues

Own revenues • The following *public revenues* are considered municipal own revenues: *incomes*, *fees* and *charges* of municipal services and of municipal asset management, *dividend, profit* of the municipal business activity, *rent, received funds* as *private incomes* of the local government and *local taxes, fees* and *fines* . *Local taxes* are the *local business tax,* the *tourism tax,* the *communal tax of the individuals and the businesses,* the *land tax* and *building tax*.

The main changes of the regulation on own revenues are the new limitations of *local credits.* As mentioned above, a permission of the Government of Hungary for local government borrowing was introduced by the article 34(5) of the Fundamental Law. We have indicated that the aim of this regulation is to prevent local government debt. This type of limitation is based on the regulations of several German provinces *(Länder).* Thus the Government has a prior consent to the local government borrowing. Detailed rules are regulated/established by the Act CXCIV of 2011 on the economic stability of Hungary. Shortly, in principle all loans and other transactions with a nature of loan (for example municipal bonds) shall be permitted by the Government. There are broad exceptions of this principle. For example there is a *de minimis* rule and illiquid loans do not need permission. Similarly, loans which are required for the financing of projects with the co-payment of the European Union do not need the consent of the Government. Although there are a huge number of the exceptional cases, the financial freedom of local governments is significantly limited by this legal institution.

Assigned central taxes • The assigned central taxes have remained as the revenues of the local governments, but their significance was weakened. Such an assigned central tax is 40 percent of the vehicle tax (which tax is levied by local tax authorities) and 100 percent of the income tax of the land rent.

State subsidies • The rules on state subsidies were significantly changed by the new Municipal Code. In 2013 a *task-based financing* system was introduced. Thus state subsidies are based on the mandatory (obligatory) tasks of the municipalities. Firstly they depend on the standards of the services defined by legal norms. The efficient management, the expected own revenue of the municipality and the actual revenues of the local self-governments have to be taken into account by the determination of the subsidies.

The main principle of the task-based financing system is the *additional nature:* the own revenues of local governments are complemented by the state subsidies, thus local

[23] Kecső Gábor 'A helyi önkormányzatok gazdálkodásának reformja és az adósságrendezési eljárás módosításai' [Reform of the Finance of the Local Governments and Amendments of the Municipal Debt Settlement] (2013) 6 Új Magyar Közigazgatás [2013] vol. 6 no. 7–8. 26 .

communities are interested in collecting their own revenues.[24] The task-based subsidies are earmarked, thus the expenditure shall be spent on the financing of the obligatory and several – by the act on the annual central budget defined – voluntary tasks several – defined by the act on the annual central budget – by of the municipalities.

The complementary state subsidies remained: in exceptional cases, local self-governments that are disadvantaged through no fault of their own may receive this state subsidy in order to protect their independence and viability.

Local governments are responsible for their economic management, thus local government can also go bankrupt. The procedure of liberating the bankrupt municipalities from debts is regulated by the Act XXV of 1996.

7.2.2. The control of the local government economic management

First of all, the legality of economic decisions is supervised by the county (metropolitan) government office. The economic activities of local governments are controlled by the State Audit Office of Hungary, which controls and monitors the legality, expediency and effectiveness of these decisions. The subsidies co-paid by the European Union are controlled by an independent regime.

The economic control and monitoring within the local government organization system were amended partially. The monitoring powers of the economic committee of the representative body have been extended. Similarly to the former regulation, the internal control is conducted by the clerk. The internal audit has been simplified by the new Municipal Code because the audit by independent auditor companies is no longer required by the municipal law.

Summarizing the financial freedom of local governments and the defence of assets: they were weakened by the new regulations of the municipal law. These changes have been justified by the prevention of the local government debt and by more efficient national asset management.

8. Relationship between local governments and state organs, legal supervision over local governments

Parliament shall regulate by law the legal status, powers and responsibilities, mandatory tasks, types of organs, guarantees of operation, and financial resources of local self-governments and the basic rules of their financial management. Parliament shall decide on the dissolution of a representative body that breaches the Fundamental Law on its first session following the receipt of the submission of the initiative of the Government to this effect.

[24] Kecső Gábor 'A helyi önkormányzatok gazdálkodásának reformja és az adósságrendezési eljárás módosításai' Új Magyar Közigazgatás [2013] vol. 6 no. 7–8. 28

Parliament shall decide thedecide the territorial division of the state and – after having consulted with the concerned local governments – the merger and separation of counties, changes in their boundaries, their names and capitals, and the formation of new districts of Budapest or the changing the boundaries of the districts of the capital. .

The President of the Republic:

a) upon the initiative of the concerned local self-governments, shall decide the declaration of the title of town, as well as the formation and merger of villages, the dissolution of their union, and the naming of towns and villages;
b) shall assign the head of the concerned government office – if Parliament dissolves the local representative body – with the task of exercising the statutory powers and responsibilities of the mayor and in cases of pressing necessity, decide matters falling under the assignable competence of the representative body.

The Government shall, with the participation of the minister in charge of the legal supervision of local self-governments, provide the legal supervision of local self-governments through the government office. The minister in charge of the legal supervision of local self-governments shall:

a) govern the legal supervision of local self-governments;
b) initiate the submission of a proposal by the Government to Parliament for the dissolution of any local self-government operating in violation of the Fundamental Law;
c) prepare the decisions on territorial issues that fall within the scope of the jurisdiction of the Parliament's and the President of the Republic's jurisdiction;
d) after examininged the proposal of the government office – provided all conditions are met – initiate the submission of a Government proposal requesting the Constitutional Court to review the constitutionality of a local government's decree.

The minister in charge of local self-governments shall:

a) take part in the preparation of the drafts of statutes, legal acts for the governance of public organisations and the drafts of specific state decisions, concerning powers and responsibilities of local self-governments, and activities of mayors, the Lord Mayor, and the government office;
b) take part in granting government consent to specific borrowings and commitments of local self-governments;
c) coordinate the Government's responsibilities concerning issues of settlement development and financial management connected to the operation of local self-governments and issue the issuing of certain databases;
d) coordinate the tenders for the utilisation of development funds made available to local self-governments and the establishment of the legal conditions concerning the financial management of local self-governments;
e) take part in collecting and systemising local government data, necessary for the system of task financing of local governments;
f) be entitled to institute, through the minister in charge of the national budget, an on-the-spot audit of the financial management of local governments performed by the Hungarian State Treasury;
g) be entitled to have access to and systematise all the data of the information system of public finances concerning the local government subsystem of public finances.

National municipal alliances may put forward proposals concerning legislative tasks and measures to take and may consult the Government about strategic issues concerning public services provided by local self-governments and issues of the national budget concerning local governments.

Beyond the competences defined in the Fundamental Law, in the sphere of legal supervision over local self-governments, the government office may:

a) issue a legal notice;
b) initiate the convocation of the representative body or the association council and convene the representative body or the association council in cases defined by law;
c) propose that the minister in charge of local self-governments to initiate the submission of a Government proposal requesting the Constitutional Court to review the constitutionality of a local government decree;
d) initiate the review of a local government decision at an administrative court;
e) initiate the commencement of a court proceeding against a representative body for a failure in decision- making or task performance obligation and for ordering substitute decision- making;
f) propose to the minister in charge of the legal supervision of local self-governments to initiate the submission of a proposal by the Government for the dissolution of any local self-government breaching the Fundamental Law;
g) initiate at the Hungarian State Treasury the withholding or withdrawal of a specific part of a subsidy, defined in law, due from the national budget;
h) start proceedings to terminate the mandate of a mayor having committed repeated infringements;
i) initiate a disciplinary procedure against the mayor of a local self-government or against a municipal clerk;
j) initiate the audit of the financial management of a local self-government by the State Audit Office;
k) provide professional help for local self-governments in matters falling within the scope of their powers and responsibilities;
l) impose a legal supervision fine on local self-governments or associations in cases defined by the Act.

In a legal supervision procedure, the government office shall examine:

a) the legality of the organisation, operation and decision-making procedure of the local self-government;
b) the legality of the decisions (decrees and decisions) of the local self-government;
c) the fulfilment of the local self-government's duty of their statutory legislative obligation and the fulfilment of their decision-making or task performance (public service provision) obligation.

The legal supervision procedure of the government office shall not cover – as a general rule – the decisions adopted by the local self-government or its organs which:

a) may give rise to a labour dispute or to a dispute deriving from civil service relations, or
b) may give rise to court or administrative proceedings defined in law,

c) were adopted by the representative body within the scope of its discretionary power;, in the case of decisions adopted within the scope of discretionary powers, the government office may only examine the legality of the decision-making procedure.

The government office, in respect of matters falling within the competence of the local self-government, may request information or initiate consultation, which must be performed by those concerned within the deadline set.

The local government may put forward a proposal concerning the operation, organisation or decision- making procedure of the local self-government. The proposal shall be debated and decided by the representative body of the local self-government. The government office shall be informed by the local government about the reason for rejecting the proposal.

In that case when the government office notices a violation of law, within the scope of legal supervision, it shall service a legal notice on those concerned to eliminate the violation within a specified deadline, not shorter than thirty days. The concerned parties shall examine the contents of the legal notice and notify the government office about the measures taken accordingly or about their disagreement within the deadline set. If the deadline is not met, the government office decides the application of other means of the legal supervision procedure within the scope of its discretionary power.

If the government office finds that a local government decree breaches the Fundamental Law, it may propose that the minister in charge of the legal supervision of local self-governments to request the Constitutional Court to review the constitutionality of the local government's decree. The minister in charge during the legal supervision of local self-governments, after having examined the proposal of the government office – provided all conditions are met – shall initiate the submission of a Government proposal requesting a review of: whether the local government decree complies with the Fundamental Law.

The government office may request the Curia to review whether the local government decree complies with statutory provisions within fifteen days reckoned from the receipt of notification from the local government or the lapse of the deadline. Upon the commencement of the court proceedings, the government office shall deliver the motion to the concerned local self-government.

The government office shall request the Curia to establish the failure of the local self-government to perform its legislative obligation if the local self-government has failed to perform its statutory obligation to legislate and shall simultaneously inform the local self-government of it. If the local self-government fails to fulfil its legislative obligation within the deadline set by the Curia, the government office, within thirty days reckoned from the lapse of the deadline, shall request the Curia to order the government office to remedy the omission.

The decree adopted by the head of the government office in the name of a local self-government shall qualify as a local government decree with the exception that the local self-government is entitled to amend or repeal it only after the next municipal elections. During this period any amendments may be made by the head of the government office.

Within fifteen days reckoned from receipt of notification from the local government or the lapse of the deadline for notification, the government office may request the administrative court to review the local government decision. If the implementation of the local government decision found to be in violation of law would cause serious injury to the public

interest or would cause unavoidable damage, the court shall suspend the implementation of the decision.

Within fifteen days from the receipt of notification from the local government or the lapse of the deadline for notification, the government office may request the administrative court:

a) to establish the failure to meet the statutory decision-making obligation of the local self-government and order the adoption of the decision, or
b) to establish the failure to meet the statutory task performance (public service provision) obligation of the local self-government and order the performance of the task.

Upon the initiative from the government office, the court establishes the failure to meet the decision-making obligation and orders the local government to take the decision or ensure the performance of the task (public service provision) within a specified deadline.

The government office may impose a legal supervision fine on the local self-government. The legal supervision fine may be imposed repeatedly/frequently if the same obligation is breached repeatedly or in the case of the breach of any other obligation(s). When imposing the legal supervision fine, the government office shall take into consideration:

a) the seriousness of the breach of obligation;
b) the budgetary situation of the local self-government, and
c) the number and amount of fines imposed previously.

The judicial review of the decision of the government office imposing a legal supervision fine may be requested from the competent administrative court by the local self-government or association within fifteen days from the receipt of the decision.

Minority Self-Governments in Hungary[1]

Introduction

The Hungarian State has had long history in regulating minority issues. The Minority Act of 1868 made by Ferenc Deák and József Eötvös[2] was a unique set of regulations in this field, one of the first in Europe. However, this modern Act, which was ahead of its time in terms of the concepts of democracy and law, was only partly respected by the authorities, therefore it did not fully manage to meet the needs of minorities.

In the first seventy years after the 1920 Treaty of Trianon, no minority act was made in Hungary. Still, during the period between the two world wars, this was somewhat made up for by the minority protection system of the League of Nations, incorporated into the Hungarian peace treaty closing the First World War. After the Second World War, the newly established state socialist regime – in line with the practice of other socialist states – did not consider legal regulation necessary in this field. However, the changes during the second half of the 1980s raised the issue to create a minority act again. Preparations for making a new act started in 1989 and lasted for four years.

At the time of formulating the Act on National and Ethnic Minorities in 1993, the legislator was guided by two objectives: to preserve a diverse, multicultural world for the next generations and – by considering the interests of Hungarians living in neighbouring countries – to provide an example for the legislators of neighbouring countries.

The Act CLXXIX of 2011 on the Rights of Minorities (herein after referred to as: AMR) replaces the Act on Minorities of 1993, which was already at the time of its adoption regarded as an ambitious law making it possible for the thirteen recognized national and ethnic minorities to participate in decision-making processes, and was guaranteeing both individual and collective minority rights to these minorities.[3]

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1 The Government's translation of the Fundamental Law uses 'nationalities', while the relevant new act contains 'minorities' for the translation of the same term. We believe that 'minorities' is a more precise term, but in citations from and explanations in relation to the Fundamental Law we use 'nationalities' in this work.

2 Ferenc Deák (1803 – 1876) was a Hungarian statesman and Minister of Justice in Batthyány's Cabinet. He was known as 'the Wise Man of the Nation'. József Eötvös (1813 – 1871) was a Hungarian writer and statesman. He was Minister of Religion and Education in Batthyány's and later in Andrássy's Cabinet. He was also elected president of the Hungarian Academy of Sciences.

3 Advisory Committee on the Framework Convention for the protection of National Minorities, Third Opinion on Hungary adopted on 18 March 2010, ACFC/OP/III(2010)001

The constitutional right of minorities, as 'constituent parts of the State'[4] to establish local and national minority self-governments. The present study seeks to present the changes in and the state of legislation regarding minority self-governments (herein after referred to as: MSGs) as well as to evaluate some of its significant aspects.

1. Constitutional bases, legal regulations, international undertakings

The rights of minorities are stipulated in the Fundamental Law of Hungary, while the details are regulated in the Act on Minorities. The Fundamental Law overtook most part of the regulations of the Constitution ensuring rights of minorities. The old-new regulation recognises minorities as 'constituent parts of the State', ensures the right to use their native languages and to the individual and collective use of names in their own languages, to promote their own cultures, and to be educated in their native languages. The constitution-maker defines one of the main tools of the realisation of these basic provisions when it states that '[n]ationalities living in Hungary shall have the right to establish local and national self-governments.'[5]

The Fundamental Law does not necessarily ensure representation for minorities in the Parliament, as it only regulates participation in the work of the Parliament: '[n]ationalities living in Hungary shall contribute to the Parliament's work as defined by a cardinal act'.[6] The new Hungarian Electoral Act established the possibility of preferential representation of national minorities in the Parliament. Those minorities who cannot elect their own representative can take part in parliamentary work by sending their minority advocate to the Parliament. Members of Parliament forming part of a minority and minority advocates may also use their mother tongues in the Parliament.

According to the Article XXIX (3) of the Fundamental Law, '[t]he detailed rules about the rights of nationalities living in Hungary, nationalities and the conditions of recognizing nationalities, as well as the rules for the elections of their local and national self-governments, shall be defined by a cardinal act.' The significance of this regulation is indicated by the fact that it was approved and may be modified with votes of two-thirds of the Members of Parliament present at the voting (absolute qualified majority).

The Preamble of this cardinal act (AMR) states that 'Hungary protects minorities, enables them to foster their culture and use their mother tongues, provides education in their mother tongues, enables them to use names in their own languages and to collectively take part in public affairs, promotes the attainment of their cultural autonomy and guarantees the right of their actual communities to self-administration and self-government'. An important aim of the AMR is to establish the cultural autonomy of nationalities based on the

[4] The National Avowal of the Fundamental Law (Preamble) clearly states that '[t]he nationalities living with us form part of the Hungarian political community and are constituent parts of the State'.

[5] Art. XXIX (2) of the Fundamental Law.

[6] Art. 2 (2) of the Fundamental Law.

principle of personality, the institutional framework and guarantee of which is provided by the system of MSG with public law status.

There is no unified international/European model of the representation of minority rights; states enjoy broad-scale autonomy regarding legal and institutional solutions.[7] However, regarding principles, some important documents have been approved within the framework of the Council of Europe about the protection of minority rights, which have been signed by member states and by those willing to join.

The related Hungarian legal regulation fits in to these internationally undertaken obligations. The establishment of the system of MSG suits the progressive European trend of the representation of minority interests and the protection of minority rights. Hungary has ratified the European Convention on Human Rights and its Additional Protocols (with the exception of Protocol No. 12), approved Recommendation 1201 of the Parliamentary Assembly of the Council of Europe on the recognition of collective rights of minorities, and joined the European Charter for Regional or Minority Languages.

2. Definition of minority and minority self-government

By giving a definition of minority in the AMR, the legislator has set up a system of criteria in order to define the objective criteria of the given community. These requirements may be formulated not only at the level of the community, but also regarding the individual who wants to have himself recognised as member of the minority. Article 1 (1) of the AMR defines minorities: '[p]ursuant to this Act, all ethnic groups resident in Hungary for at least one century are minorities which are in a numerical minority amongst the population of the state, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of collective affiliation that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities.'[8]

Contrary to the definition of 'national and ethnic minority' defined in the previous Act LXXVII of 1993 the minority definition of the AMR does not contain the 'Hungarian citizen' criterion. Certain communities objected to this before, because in their opinion the legal regulation had diverse affect on those members who – despite in certain cases having lived in Hungary for decades – were not Hungarian citizens.

Although the above-quoted definition does not contain a reference to the 'citizenship' criterion, it clearly follows from the Article XXIX (2) of the Fundamental Law[9] as

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[7] There is no unified definition of minority in the Council of Europe which could be used as an obligatory notion in present and future member states.

[8] This definition is similar most of all to the one formulated by the UN minorities jurist Francesco Capotorti. See Kovács Péter, Nemzetközi jog és kisebbségvédelem [International law and the protection of minorities] (Osiris 1996) 36–59.

[9] '[…] Every Hungarian citizen belonging to any nationality shall have the right to […]'.

well as from the Article 170 (1) of the AMR[10], that minority rights are restricted only to citizens.[11]

Regarding minority rights and obligations in line with the definition, those persons belong to a minority who are residents in Hungary, consider themselves part of the given minority and state that they belong to this minority in cases and ways defined in the AMR.

Article 2 (2) of the AMR defines MSG by stating that '[m]inority government: an organisation established on the basis of this Act by way of democratic elections that operates as a legal entity, in the form of a body, fulfils minority public service duties as defined by law, and is established for the enforcement of the rights of minority communities, the protection and representation of the interests of minorities and the independent administration of the minority public affairs falling into its scope of responsibilities and competence at a local, regional or national level.'

Appendix No. 1 of the AMR lists those minorities which are entitled to establish local and national MSG: Armenian, Bulgarian, Greek, Croatian, Polish, German, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian. This means that in Hungary there are thirteen legally recognised minorities; from these, before 1 January 2012 there were twelve national minorities and one ethnic minority (the Roma people)[12], but due to the regulations of the AMR the notion of national and ethnic minorities was abolished and it has been replaced with the unified expression of nationalities.[13]

The list is relative; nevertheless it is quite reasonable that in line with the protection of the vested rights, the thirteen minorities have kept their rights deriving from the previous act. The need to give preference to other groups may be raised. For example, due to our shared historical traditions and common features, it may be asked why Italians are different from the thirteen minorities in the list. Within some communities the need for inclusion of the Turks has been raised.[14] In line with its own request the Jewish community is a religious category, not a minority.[15]

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[10] 'The effect of this Act shall extend to Hungarian citizens residing in Hungary and forming part of a minority as well as to the communities of these individuals.'

[11] Opinion No. 671/2012, CDL-AD(2012)011. 8.

[12] In legal literature and among experts, an interpretation has spread according to which a national minority is a group which has a mother country, while ethnic minorities do not have any, therefore in our case the Roma people may be considered as such.

[13] The modification of the previously used notion is necessary because the word nationality suits Hungarian legal historical and social historical traditions better. These traditions usually mentioned minority communities as nationalities; nevertheless the expression 'minority' is a broader notion which includes 'everyone' from members of religious minorities to sexual minorities. The word 'nationality', therefore, is able to express the 'scope' for which it is used better. The Ministry for Administration and Justice (the proposer) reasoned this modification, on the one hand, by stating that during its application the act on minorities will be in harmony with the Fundamental Law, and, on the other hand, they do not wish to consider the 'majority-minority' relation any more, but wish to focus on those values with which minorities with their cultural peculiarities contribute to the culture of Hungary, to Hungarian culture as a whole. [T/4997. sz. törvényjavaslat a nemzetiségek jogairól (Rights of Minorities Bill No. T/4997.)]

[14] Cservák Csaba, Népek, nemzetiségek, kisebbségek Magyarországon [Nations, nationalities and minorities in Hungary] (manuscript 2013).

[15] See Decision of the Constitutional Court 2/2006 (I. 30.) ABH.

If a minority other than those listed in Appendix No. 1 wishes to verify that they meet the relevant conditions, at least one thousand electors forming part of that minority may start an initiative that the minority be declared an ethnic group native to Hungary. The relevant signature collection forms shall be submitted to the Chair of the National Election Committee. The procedure shall be governed by the provisions of the Act relating to the initiation of national referenda.[16] The above initiative may be organised by electors who may be elected at the minority government elections. In the course of its procedure, the National Election Committee shall seek the position of the President of the Hungarian Academy of Sciences with respect to the existence of the statutory conditions. A repeated application may not be submitted within one year of the refusal of Parliament.

In past years several initiatives have aimed at the recognition of certain communities as minorities. However, these were not successful, because in the opinion of the Parliament they did not comply with the minority definition of the Act.

MSG established in Hungary between 1994 and 2010[17]

	1994/1995	1998	2002	2006	2010
Armenians	16	25	30	31	39
Bulgarians	4	14	30	38	41
Croats	57	73	107	115	127
Germans	162	268	335	378	424
Greek	6	18	30	34	37
Polish	7	32	50	47	49
Roma	477	771	1004	1113	1245
Romanians	11	32	44	46	71
Rusyns	1	9	31	52	75
Serbians	19	34	43	40	48
Slovakians	51	73	112	116	122
Slovenians	6	10	13	11	11
Ukrainians		4	12	19	23
Total	817	1363	1841	2040	2312
Settlements	No data	1046	1308	1435	1591

Nationwide data show significant growth in each election cycle regarding the number of established local MSGs and the number of settlements initiating minority elections. This growth in the MSG system has taken place despite critiques of the system by many Romani activists: some candidates may be motivated to create an MSG to gain influence within the

[16] See Chapter II of the Act CCXXXVIII of 2013.

[17] Bindorffer Györgyi, Kisebbség, politika, kisebbségpolitika. Nemzeti és etnikai közösségek kisebbségi önkormányzati autonómiája Magyarországon [Minority, politics, minority policy. Minority self-governmental autonomy of national and ethnic minorities in Hungary] (Gondolat Kiadó – MTA 2011) 126.

community and benefit from the privileges that it could provide.[18] The number of national MSG has stayed constant with one MSG per recognized minority group.

3. Types and establishment of minority self-governments

According to the Fundamental Law: '[n]ationalities living in Hungary shall have the right to establish local and national self-governments.' In addition to the Fundamental Law, Article 50 of the AMR determines what levels of self-governments may be established by minorities. In terms of levels, local and regional (hereinafter collectively referred to as 'local') and national MSGs may be formed. A local MSG may be set up in localities, towns and metropolitan districts, while regional ones in the capital and it counties.

In order to repress the phenomena known earlier as 'ethno business'[19], AMR ensures the right to participate in minority local governmental elections for those who are registered in the minority registry, while only those may be included on the list of votes who belong to certain minority. The AMR refers the procedural rules to the competence of the Act on elections, even though this latter Act does not contain rules for checking the veracity of claim that someone belongs to a minority.[20]

The AMR changed from the system of electors to direct elections. According to the new regulation, an MSG may be established through direct elections. As result of this change, participation at regional minority self-governmental elections shall be ensured for all citizens with the right to vote living in the county who belong to a certain minority, regardless of whether regional minority self-governmental elections are held in his settlement. It is a constitutional requirement that each minority voter shall have the right to exercise its active right to vote at the national minority self-governmental elections.

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[18] See National Democratic Institute, The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation (OSCE/ODIHR 2006) 10.

[19] The so-called 'ethno business' phenomena has been incorporated into public knowledge as a notion describing Roma politicians who abuse the political sphere in order to make a living. The mere existence of this phenomenon – which does have factual background – should not be obstacle to development directions; it might be useful to consider it as lesson forcing the incorporation of guarantees into different processes. See Rixer Ádám, A roma érdekek megjelenítése a jogalkotásban [Roma interests in legislation] (KRE ÁJK 2013) 165.

[20] Similarly to the previous regulation the legislator defined the acknowledgment, expression of identity as an exclusive and unalienable right of the individual, and stresses that no one shall be forced to make a declaration about belonging to a minority. In addition to this, the AMR introduces a new provision, according to which act or its executing law may define the declaration of the individual as a precondition of the enforcement of certain minority rights. This means, therefore, that the enforcement of certain minority rights is subject to the declaration of the individual, not to recognition by the community. See Kállai Ernő, 'Vélemény a készülő nemzetiségi törvény tervezetéről' [Opinion about the draft of the Act on minorities] (2011) NEKJOB <http://www.kisebbsegiombudsman.hu/hir-706-velemeny-keszulo-nemzetisegi-torveny.html> accessed 21 November 2012.

3.1. The role of the census data in the establishment of minority self-governments

Elections shall be called to select the members of a local MSG if the number of individuals forming part of the given minority in the locality reaches thirty according to the data provided in response to the questions of the latest census regarding minority affiliation and aggregated by minorities.[21] Elections shall be called for the election of members of a regional MSG if the number of local elections called in the capital or in the county is at least ten. In the new regulation the call for the election of a national MSG is obligatory, regardless of the number of local and regional bodies.

The new act set up the date of census as a reference point for the call for minority governmental elections. By using the data of the census, the legislator wishes to prevent the call for elections in settlements where the community to be represented is not present, and the register of voters is 'expanded' only for purposes of abuse. However, it is problematic that there is significant difference between the data of minorities regarding their own communities and the data of the National Statistical Office. As has been pointed out by the parliamentary commissioner of national and ethnic minority rights in past years, the data of the 2001 census should not be considered reliable, especially in the case of Roma groups 'hiding' due to some serious preconceptions. In several settlements, very few people indicated voluntarily their nationality and cultural bonds, even though the presence of minorities is obvious. In contrast to this, in certain towns and metropolitan districts – probably due to the higher population – the census data show that there are more minority members, even though this fact is often disputed by the national governmental of the concerned minorities.[22]

Regarding the provisions of the AMR about the use of census data for election purposes the Constitutional Court stated that '[i]t is not about the unnecessary or disproportionate violation of the right of minority members of to self-determination'. However, the decision of the Constitutional Court warned the legislator that based on the expected experiences of 2014 it would modify the act if at halftime between the two censuses there would be significant need for minority elections not in keeping with the data of the 2011 census.[23]

3.2. Transformed minority self-government

An MSG may also be set up indirectly. According to the new regulation, a local government may declare itself a transformed MSG: '[a] local government may declare itself a transformed minority government at its founding meeting held after the general or by-elections if, on the day of the elections, (a) more than one half of the citizens recorded in the register of franchised citizens in the locality are recorded in the given minority's electoral register, and (b) more than one half of the elected members ran as the given minority's candidates

[21] The 'thirty persons' rule based on census data must be applied in the 2024 municipal elections for the first time. Until that election, the 'twenty five persons' rule is going to be applied.

[22] See Fórika László, A nemzetiségi jogok védelme [Protection of minority rights] (Alapvető Jogok Biztosának Hivatala 2013) 148.

[23] See Decision of the Constitutional Court 41/2012 (XII. 6.) ABH.

at the local municipality elections.'[24] Even though it is not stressed enough, in broad view this institution is the domestic example of the principle of regional autonomy. Some experts believe that the traditional geographic location of Hungarian minorities and the migration processes of previous years make it impossible to realise the model of the representation of minority rights upon territorial autonomy.[25]

4. Rights and obligations of minority self-governments

The rights of an MSG shall be due to the community of electors forming part of the minority, who shall exercise these rights in the manner determined by law, by way of their elected representatives. Unless the AMR provides otherwise, the rights of the MSG shall be equal in respect of all MSGs.

The board of an MSG may delegate its responsibilities and competence to its bodies (chair, committee and in the case of the national level, office) as well as to its association as determined by law. The bodies of an MSG may, in respect to such delegated competence, give instructions for the exercise of powers and may withdraw such powers. Delegated competence may not be further delegated.

The AMR may establish mandatory responsibilities and competence for an MSG, and the Parliament shall simultaneously allocate proportionate resources and means for the fulfilment of mandatory responsibilities and competence. The MSG may proceed independently or in cooperation with other agencies in minority public affairs falling within their scope of responsibilities and competence, within the boundaries of the rules of law. In the course of the administration of minority public affairs, the MSG shall, within its scope of responsibilities and competence, adopt decisions, administrate affairs freely, proceed in the capacity of owner in respect of its property, independently determine its budget and manage it on the basis thereof.

5. Tasks and competences of minority self-governments

According to the AMR the fundamental role of an MSG is to protect and represent the interests of minorities.

For the clarification of tasks it is important to define 'minority public affair', in which we may find feedback to the enforcement of individual and community rights, and the cultural interests of minorities are also formulated in it. According to the definition, in addition to the enforcement of rights and the representation of interests, minority public

[24] Art. 71 (2) of the AMR

[25] See M. Váradi Mónika, 'A kisebbségi önkormányzatok működésének jellemzői, tapasztalatai' [Features and experiences of local minority governments] in Szigeti Ernő (ed), Az önkormányzati közigazgatás az EU-csatlakozás tükrében [Local governmental public administration in reflection to joining the EU] (Magyar Közigazgatási Intézet 2004) 347.

affairs consist of the fostering, preservation and enrichment of the minority language, the realisation and preservation of cultural autonomy by MSG, as well as public services for the benefit of the former activities, and therefore these belong to the tasks of an MSG.

5.1. Tasks and competences of the local minority self-governments

Within the relevant legal frameworks, the local MSG shall determine the conditions of their lawful operation with a qualified majority[26] within non-transferable competence and within the statutory boundaries, including the detailed rules of their organisation and operation, within three months of the founding meeting, and shall further amend them within thirty days as and when necessary; the name and symbols of the MSG and the holidays of the minority represented by them; asset inventory, range of core assets and rules of the use of the assets constituting their property; establishment of local government associations or joining other local government associations.[27]

A local MSG shall decide with simple majority[28] on the following within its non-transferable competence: the election of its chair and vice-chair; the establishment of committees; the election of lay judges; the budget and its final accounts; appointments and senior engagements falling within its competence; submission of tenders, applications and requests for state aid and waiver of aid.[29]

The AMR clearly distinguishes between obligatory and voluntary (facultative) tasks of local governments identified as minority public affairs. Hungarian law provides the possibility that the act may make the performance of certain public tasks obligatory for local governments.

Mandatory public duties of local MSG are the following: (a) duties related to the maintenance of institutions fulfilling minority duties, (b) at their own initiative, fulfilment of other responsibilities and competence delegated by other local governments or municipalities, including duties related to the maintenance of transferred institutions, (c) duties related to the maintenance of institutions taken over from other organisations, (d) duties related to representing the interest of the community represented and creating equal opportunities, with special regard to the duties of local municipalities related to the enforcement of minority rights, (e) exercise of decision-making and cooperation rights serving to reinforce the cultural autonomy of minority communities in connection with the operation and responsibilities of institutions operated by state, local government or other agencies in the minority government's jurisdiction, (f) in the interest of the reinforcement of the cultural autonomy of the community represented, supporting community initiatives with organisational and

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[26] In the case of decisions requiring a qualified majority, the 'yes' vote of more than half of the elected representatives is necessary.

[27] See Art. 113 of the AMR.

[28] In the case of decisions requiring simple majority, the 'yes' vote of more than half of the representatives present is necessary. The board of the local MSG has the quorum if at the meeting and at the time of delivering the given decision more than half of the minority self-governmental representatives are present.

[29] See Art. 114 (1) of the AMR.

operational services, liaison with the local minority civil organisations and initiatives of the community represented and local church organisations, (g) initiation of the measures necessary for the preservation of cultural assets associated with the minority community in the jurisdiction of the MSG, (h) participation in the preparation of development plans, (i) assessment of demand for education and training in minority languages.

The voluntary public duties of the local MSG are, in particular, within the boundaries of the available resources: (a) establishment of minority institutions, (b) establishment of decorations, establishment of the conditions and rules of endowments, (c) calls for minority tenders, establishment of scholarships.

In addition to these voluntary duties, a local MSG may, with the exception of the duties of the authorities, fulfil voluntary responsibilities, in particular in the fields of issues related to minority education and cultural self-administration, the local written and electronic press, the fostering of traditions and cultural heritage, social inclusion, social, youth and cultural administration, public employment, locality operation and locality regulation. Neither individuals nor supervisory authorities have legal recourse to enforce the performance of these voluntarily undertaken tasks.

Similarly to the previous regulation, the AMR provides for the takeover of tasks and competences in order to foster cultural autonomy. For example, the MSG – in the order set forth by the AMR – may take over the maintenance rights of institutions of public education established by another body, and the takeover of the maintenance rights of cultural institutions or cultural tasks may be possible as well. The Roma minority wanted to take part in managing social issues, but this was not possible, because these are authority tasks and the AMR does not allow an MSG to exercise authority powers.[30]

For the implementation of their mandatory and voluntary duties, an MSG may establish institutions, business associations and other organisations, including the takeover of institutions, within the statutory boundaries, shall appoint their heads and managers and shall exercise the founder's rights as set forth in a separate legal rule. An MSG may only establish or take part in the operation of business organisations in which their liability does not exceed the extent of their pecuniary contributions, and where the venture undertaken may not jeopardise the fulfilment of their mandatory duties.[31]

5.2. Tasks and competences of national minority self-governments

In accordance with the relevant legal frameworks, national MSGs shall determine the conditions of their lawful operation and shall decide on the following with qualified majority, as non-transferable competence: place of head office, national holidays of the minority represented, principles and method of utilisation of available radio stations and television channels, principles of utilisation of available public service radio and television programme time, establishment and operation of legal aid service for the minority community and operation of information services for the local MSG, compilation of minority first name

[30] Bindorffer (n 17) 257.

[31] Art. 116 (3)-(4) of the AMR

register and enquiries regarding minority first names, subsidisation of minority media from the national MSG state aid provided under the act, other issues determined by law falling within their responsibilities and competence.[32]

Regarding mandatory tasks, it has to be noted that the assignment of tasks in the legal regulations concerning Hungarian MSGs is not homogeneous: the mandatory tasks of different self-governmental levels (local and national), and in some cases the same level, but different size MSGs may differ from each other.

The national MSG shall: (a) fulfil the duties of interest representation and protection of interests emerging in the locality in connection with the given minority community if there is no MSG in the locality, (b) engage in the representation and of protection interests as defined in a separate rule of law in connection with the municipality responsibilities performed by the county municipality, (c) represent and protect the interests of the minority it represents on a national level, (d) maintain a national network of minority institutions in the interest of the development of minority cultural autonomy.

Within its opinion making, initiating and consenting competence, the national MSG: (a) shall state its opinion on the drafts of legal rules concerning the minorities represented by it in that capacity, (b) shall state its opinion on the implementation in Hungary of bilateral and multilateral international agreements related to the protection of minorities, and shall initiate the implementation of measures necessary for the enforcement of the provisions thereof, (c) may request information from public administration agencies on issues concerning the groups of minorities represented, make proposals to them and initiate the implementation of measures in matters falling within their competence, (d) shall exercise the right of agreement on issues directly concerning the given minority in connection with development plans, (e) shall participate in the compilation of information related to the election of the members of minority governments in cooperation with the election committee and the state agency responsible for minority policy.

The national MSG may set up minority lists and voters may vote on these instead of traditional party lists.[33] The Act CCIII of 2011 on the elections of Members of Parliament of Hungary established the possibility of preferential representation of minorities in the Parliament. In a simplified way it may be stated that in order to get a preferential mandate the list shall receive one-fourth of the otherwise proportionate quote (calculated from the number of votes per mandates).

The responsibilities and competence of the national MSG shall be due to the general meeting of the national MSG. The general meeting may delegate its responsibilities and competence, not including any non-transferable competence, to its chair, committee, office or an association as set forth in the act. Officials and bodies of the general meeting: chair, one or several vice-chairs, committee and office.

Among the tasks performed by national MSG it shall be emphasized that if there is no local MSG in the locality, the national MSG shall perform the interest representation and interest protection tasks of the given minority community emerging in the locality.

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[32] Art. 117 (1) of the AMR

[33] For setting up minority lists, the recommendation of at least 1% of voters registered in the list of voters as minority voters, but maximum one thousand and five hundred recommendations shall be necessary.

Similarly, it performs interest representation and an interest protection task defined by law in relation with governmental tasks performed by the county self-government, and performs, at a national level, interest representation and interest protection tasks of the minority represented by it.

6. Financing system of minority self-governments

According to the Article 126 (2) of the AMR, '[t]he State shall provide aid at the rate determined in the Act on the central budget: (a) for minority governments for the fulfilment of minority public duties, as part of the duty funding system, (b) for activities and projects pursued and implemented as part of the educational and cultural self-administration of minorities and minority cultural autonomy, (c) for minority organisations within and outside the sphere of state finances for the development of the cultural autonomy of minorities.'

The financing system of governmental subsidies was criticized repeatedly because it did not take into account the proportions of minorities: MSGs representing a less numerous minority community receive the same amount as those composed of larger groups.

Opinions differ within the particular minority groups as to how this problem should be addressed.[34] According to the new regulation, the amount of state subvention is tied to the minority data of the census. This means that in those settlements in which the data of the census do not show the presence of the given minority, the state support for the operation of a local MSG is symbolic.[35]

We do agree with the differentiated support of MSG, because – if proper legal background exists – this may be the guarantee for not establishing non-operational bodies merely for the hope of financial support. However, it is a basic question whether the data of the census may be used for determining the level of state support. During the census, answering the questions about minority data is voluntary, and as has been mentioned before, many do not reveal their real identity.

[34] See Eiler Ferenc, Kovács Nóra, 'Minority Governments in Hungary' in Gál Kinga (ed), Minority Governance in Europe (ECMI 2002) 190.

[35] In case of local MSGs the rate of general operational support is determined based on the data aggregated by minorities of the data disclosure provided in response to the questions of the latest census regarding minority affiliation. In accordance with this, the general operational support that may be provided for a certain local MSG shall be determined upon the average support of local MSGs: (a) 30% if the number of those belonging to the minority is less than 4 in the town/village, (b) 50% if the number of those belonging to the minority is not less than 4 but not more than 30 in the town/village, (c) 100% if the number of those belonging to the minority is not less than 30 but not more than 50 in the town/village, and (d) 200% if the number of those belonging to the minority is more than 50 in the town/village.

7. Relationship with the local government

The AMR clearly defines the guarantee of the operating conditions of an MSG and the performance of execution tasks related to the operation as tasks of the local government. In the interest of the fulfilment of its obligation, the local municipality shall, within thirty days, make premises available for use according to their designated purpose and shall enter into an agreement with the local minority government with respect to the use of the premises, the availability of further conditions and the performance of tasks.[36]

The provision of support, its rate, its formal or informal conditions, and its withdrawal upon different – sometimes personal – reasons may make the local MSG inferior, even though it shall enjoy equal public law status. While the AMR clearly states that MSGs are not subordinate to municipal governments, in many settlements the MSG is dependent on the local government. This is due to the fact that MSGs do not have an independent administrative infrastructure and rely on the local government to provide for their operational needs.[37]

Within its obligation to provide support, the local government shall ensure for the MSG: the use of an office at the seat of the head office of the MSG suitable for the performance of its tasks monthly as necessary but at least for sixteen hours, as well as the occasional use of other premises for the purpose of minority events. However, the request for a permanent office may be primarily justified if the MSG exercises its rights to maintain minority educational, public cultural and interest protection institutions requiring continuous maintenance, or provides other minority public services which require the everyday use of an office.[38] The right of the MSG to use the office therefore may vary from occasional to permanent use, but the law does not oblige the local government to ensure exclusive use of such premises.

The AMR unnecessarily limits the rights of MSG because – in contrast to the previous regulation – they are not allowed to exercise consenting rights in the decision making of the local government with regard to fostering tradition and culture, equal opportunity, social inclusion and welfare services, concerning minority population as such.

8. Conclusion

The AMR confirms Hungary's internationally recognised commitment to minority protection, based on the applicable international standards and the particular circumstances prevailing in the country.

By establishing MSG a very important institution has been created for each national minority living in Hungary, which may serve as an example for other countries (not including here the federal states).

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[36] See Art. 80 of the AMR.

[37] National Democratic Institute, The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation (OSCE/ODIHR 2006) 16.

[38] Fórika (n 22) 150.

The AMR made the MSG a more efficient and transparent system. The new legal regulation will probably reduce to a minimum the so-called 'ethno business' phenomena. In this regard a genuine and detailed assessment can be made only after the 2014 elections, based on the practical experience of the early years.

Despite the fact that the provisions of the AMR provide a wider scope of competences to the MSG than what they have ever had, in the case of the specific competences of both the local and the national MSGs there are too many permissive and conditional rules, while too few ensure specific rights. The loose formulation of regulations – originating from soft law – related to the ways of living of minorities (e.g. the right to participate in local politics) does not provide for the enforcement of specific interests, and the available financial resources are still quite narrow.

The autonomy of the MSGs seems to be framed by a particularly detailed regulation of the cooperation agreement that these bodies must conclude with the local municipality.

Further reading

Eiler Ferenc – Nóra Kovács Nóra, 'Minority Governments In Hungary' in Gál Kinga (ed), *Minority Governance in Europe* (ECMI 2002)

Kállai Ernő, *'Some Experience about the Operation of Local Roma Self-governments in Hungary'* in Kállai Ernő-Törzsök Erika (eds), *Stagnation. A Roma's life in Hungary* (EOKIK 2005)

National Democratic Institute, *The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation* (OSCE/ODIHR 2006)

Venice Commission, *Opinion No. 671/2012 on the Act on the Rights of Nationalities of Hungary*, (CDL-AD(2012)011)

Part V.

FINANCIAL AND ORGANISATIONAL ASPECTS

Public finances in Hungary

1. Introduction

Hungarian Public finance is highly influenced by external circumstances and internal processes.[1] Due to the very open economy and high state debt inherited, Hungary and those countries to which the Hungarian economy is strongly connected are highly exposed to global financial tendencies. Global economic tendencies of recent years have a significant impact on the European economy. Maintenance of the GDP growth and the difficulties arising from the high public debts require stronger efforts from governments. As a consequence of the 2008 global crisis, some of the EU members found themselves in a debt crisis. The countries most influenced are Greece, Spain, Portugal, Italy and Ireland, but the entire eurozone and even member states using their own currencies are affected.

The Hungarian economy faces three major challenges: maintaining the fiscal stability and controlling the state budget deficit; eliminating the factors that decrease competitiveness; and ensuring the conditions of growth.[2] Based on international studies and analysis, one of the weakest points of the Hungarian economy is the quality of the business environment, which is negatively influenced by overly complex and ever-changing legislation, high administrative burdens and problems with the enforcement of agreements, in addition to the symptoms of corruption in certain areas that is disadvantageous for fair companies in the competition.

However, in order to comply with 'the Europe 2020 Strategy' aiming a smart, sustainable and inclusive growth, Hungary carries out legislative and structural reform. This is inevitable, since government debt reached 80% of the GDP in 2010 as a result of the budget deficit having continuously exceeded 3%. Short-term measurements (sector taxes) to consolidate the deficit were successful. However, in the long-term, the structural reform of the government expenditures would be needed. Reduction of the current deficit, supporting of the GDP growth and blocking of the re-building of the deficit is required at the same time. The reform contains back-to-back plans to improve the current economic situation.

A fundamental element of the new economic policy is to put emphasis on growth rather than on redistribution. To achieve this, sustainable economic growth is needed which is based on the opportunities offered by the Hungarian economy. In this regard, two major measures are the New Széchenyi Plan and the Széll Kálmán Plan.

The New Széchenyi Plan – supported by 2,000 billion HUF between 2011 and 2013 – based on domestic and EU sources. Focused on dynamic increase of employment, fiscal

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1 Maiyalehné Gregóczki Etelka, Összehasonlító államháztartástan [Comparative study of Public Finance] (BCE Közigazgatás-tudományi Kar 2010)

2 Maiyalehné Gregóczki Etelka, Államháztartási ismeretek [Public Finance doctrines] (BCE Közigazgatás-tudományi Kar, 2010)

stability, and supported economic growth and enhancement of Hungary's competitiveness.[3] The ten-year plan determines focus points and related programmes that will ensure the long-term development of the country. All focus points integrate several industries; thanks to this, programs resulted in the appearance of globally competitive Hungarian products, services or enterprises already in mid-term.

The Széll Kálmán Plan is a collection of measurements in the area of the labour market, the pension system, public transport, higher education, the medicine subsidising system, public administration, local governments and state revenues.

2. Public financial institutions

2.1. Provisions of the Fundamental Law

Paragraph (1), Article N) of the Fundamental Law makes it compulsory to apply the *'principle of balanced, transparent and sustainable budget management'*.[4]

It is a thorough invention of the Fundamental Law to discuss public finances in a consolidated structure and an independent chapter, though with the exception of some rules in connection with it. This separated chapter of the Fundamental Law can also act as a financial constitution, because basically this regulates financial policy including basic elements of fiscal and monetary policy. Thus, it gives a modern and detailed regulation on budget content issues and regulates government debt issues in detail.

2.1.1. The regulation of the central budget in the Fundamental Law

The Fundamental Law declares that the legislative proposal on the central budget is submitted to Parliament by the Government in a transparent manner and in reasonable detail. It is a novelty in this respect that it also determines the basic criteria of submission and includes the content and acceptable procedural rules and institutional guarantees of the budget.[5] Budget discipline is also enhanced by paragraphs (4) and (5) of Article 36: as long as state debt exceeds half of the GDP, only an Act on the central budget can be adopted. This provides for state debt reduction in proportion to the GDP and when this proportion is reached – according to paragraph (4) – this rule of thumb must not be violated.

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[3] Six programmes of the New Széchenyi Plan are the following: Healer Hungary- Health Industry Program, Green Economy Program, Enterprises Development Program, Traffic Development Program, Science and Innovation Program, Employment Program.

[4] This is a well known approach in European constitutions. For example Chapter X, Article 216, paragraph (5) of the constitution of Poland states the following: 'No loan, guarantee or financial assurance is allowed that results in national debt surpassing the three-fifth of the annual GDP. The calculation of the annual national GDP and national debt are regulated by a special Act.'

[5] Articles 36–44 of the Fundamental Law.

The Fundamental Law also determines new regulation on government debt in detail. It resolves that as long as the state debt exceeds half of the GDP, no such borrowing may be contracted and no such financial commitment may be undertaken in the course of the implementation of the central budget which would result in an increase of the ratio of state debt in relation to the GDP as compared to the previous year.[6] This is a new approach, and considering the approval and execution of the central budget, it is the limitation of the fiscal policy of the legislator, as well as the parliamentary majority of any future parliament. More responsible and more efficient public finance management is necessary in Hungary. This is an ever-demanding necessity of the current crisis and also a basic demand of society. Another new element in Article 44 is the Budget Council, which similarly to the loan limitation, can be regarded as a step towards more transparent and reliable tax payment through public finance management. As long as the abovementioned proportion of state debt and full Hungarian GDP are reached, the scope of authority of the Constitutional Court is narrowed,[7] the Constitutional Court may only review or annul financial Acts in connection with well-defined basic rights and legislature procedures.

The budget limit of the Fundamental Law may only be derogated in times of special legal order and to the extent necessary to mitigate the consequences of the circumstances, triggering the special legal order, or in case of an enduring and significant national economic recession, to the extent necessity to restore the balance of the national economy.[8]

2.1.2. State duties and recompenses

The regulation of the Fundamental Law will directly affect redistribution and eventually state recompenses too, with special regard to the limited taxpaying ability of taxpayers. In the current environment of the global economy this is an urgent problem which must include the reduction of the state organs supported efficiently by public finances, the rationalisation of government expenses and the cut of superfluous bureaucracy, thus creating budget discipline. It is already discussed in the constitutions of several European countries (e.g. France, Poland, and Germany).

The legislator makes an attempt to define the concept of state duties and public interest. At the same time it is always apparent in the Fundamental Law how important the relation between individual activities and state recompenses is.[9] It is evident that state and public administration

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6 Article 37 paragraph (3) of the Fundamental Law.

7 Article 37 paragraph (4) of the Fundamental Law: 'The Constitutional Court may review the Acts on the central budget, the implementation of the central budget, central taxes, duties and contributions, customs duties and the central conditions for local taxes for conformity with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of human data, to freedom of thought, conscience and religion, or the rights related to Hungarian citizenship and it may annul these Act only for the violation of these rights.'

8 Article 36 paragraph (6) of the Fundamental Law.

9 See Ádám Antal, 'A posztdemokráciáról, mint a posztmodernitás különös változatáról' [On postdemocracy, as a special variant of Postmodernity] (2012) 1 Jura 7–11.

are to serve their citizens and not the other way round[10] and it is imperative to provide services for the citizens in proportion with the tax burden and in exchange for tax payment. It is beyond doubt that the circle of state duties is continuously re-evaluated, and there are more and more of them in order to meet the demands of global competition in the 21st century.[11] In view of this the demand for sustainable development[12] is also more emphasised. Article N), paragraph (1) of the Fundamental Law is also in harmony with this,[13] when it makes sustainable budget management compulsory. The 'National Avowal' of the Fundamental Law states that it is a common goal of citizens and the state to reach a good life, security, order, justice and freedom, thus it is not the state's one-sided and often meaningless responsibility to serve public good and public interests and to make social justice continue to prevail in the future.

Magyary's abovementioned idea (public administration being for the citizens and not vice versa) is also quoted in the National Avowal: 'Democracy is only possible where the state serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse.'[14] Moreover Article O) of the Fundamental Law specifies this, when it declares that everyone shall be responsible for him- or herself, and shall be obliged to contribute to the performance of the state and community tasks according to his or her abilities and possibilities. It is obvious that personal freedom and civil autonomy must be respected by all states.[15]

This quote partly highlights personal responsibility and at the same time declares the common performance of duties in accordance with the wording of the National Avowal quoted above.

Paragraph (1) of Article XXX on public burden sharing in section 'Freedom and Responsibility' is in connection with Article O), because it partly takes over the content stated earlier in paragraph 70/I of the Constitution and says that 'everyone shall contribute to covering common needs according to his or her capabilities and to his or her participation in the economy'. This regulation of the Fundamental Law on public burden sharing shall respect the situation of the taxpayer in the economy and the state may regulate to what extent taxpayers have to participate in sharing these burdens based on their economic situation. In this way, this regulation creates the constitutional basis of levying sector taxes, and significant players of the economy (with a large total assets figure on their balance sheet) may share a larger portion of public burdens, even if it violates the principle of payment ability.

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[10] Kiss István, Magyary Zoltán, A közigazgatás és az emberek [The administration and the people] (Dunántúl Pécsi Egyetemi Könyvkiadó és Nyomda Rt., 1939) 373.

[11] Drinóczi Tímea, Gazdasági alkotmány az Alaptörvényben [Economical Constitution in the Fundamental Law] (2012) 2 Pázmány Law Working Papers 33. <http://plwp.jak.ppke.hu/images/files/2012/2012-33-Drinoczi.pdf> accessed 11 October 2012

[12] Állami Számvevőszék Kutató Intézete [Research Centre of the Hungarian State Audit Office], Az állam célszerű gazdasági szerepvállalása a XXI. század elejének globális gazdaságában [The expedient economic engagement of the State], quoted by Drinóczi (n 11) 3.

[13] This is in full harmony with Paragraph (3) of Article (3) of the EU Treaty: 'The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.'

[14] Fundamental Law of Hungary (April 25, 2011), National Avowal.

[15] Sárközy Tamás, 'Az újraértékelendő államszervezetünkről' [On the reappraising State organ] (2010) 2 Mozgó Világ Online 2, <http://mozgovilag.com/?p=3415> accessed 27 October 2013

One of the elements of full state taxation rights is also included in paragraph (1) of Article XIII., which says that property shall entail social responsibility. This opens the opportunity for taxation based on property and the taxation of property items themselves.

According to paragraph (2) of Article XXX for persons raising children, the extent of contribution to covering common needs shall be determined by taking into consideration the cost of raising children.[16] This potentially reduces the financial responsibilities of the state, but enhances the justification of the tax system.[17]

2.1.3. National asset

A new solution is that the Fundamental Law determines state and local self-government property as part of the national assets.[18] Moreover, the Fundamental Law guarantees that the management and protection of national assets shall aim at serving the public interest and meeting common needs.[19] According to this modern concept, the requirement of responsible management, as well as the limitation of national asset transfer and the demand of transparency, is presented in this context.

2.1.4. Budget support

According to paragraphs (1) and (2) of Article XXXIX supports from the central budget may only be granted to transparent and public organisations. It is especially positive, and regarding Hungarian affairs highly reasonable, to elevate these requirements on the level of constitutional values and highlight them several times in connection with public finances.[20]

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16 This is in harmony with Article L) paragraph (2) of the Fundamental Law, which states that 'Hungary shall encourage the commitment to have children.'.

17 Cf. Ercsey Zsombor, Az Szja- és az Áfa-szabályozás igazságossága a magyar adórendszerben [The justiceship of PIT and VAT systems in Hungarian Tax System] /PhD Thesis/ (Faculty of Law, University of Pécs 2013) 68–69.
<http://doktori-iskola.ajk.pte.hu/files/tiny_mce/File/Vedes/Ercsey/ercsey_nyilv_ertekezes.pdf> accessed 14 October 2013

18 Patyi András, Patyi, András 'The Autonomy of Local Governments and the New Constitution' in Hulkó Gábor-Patyi András (eds), Public Finances – Administrative Autonomies (Universitas-Győr Nonprofit Kft. 2012) See also Boris Bakota,-Fábián Adrián Fábián-Ljubanović Boris, 'Local self-governments in Hungary and in Croatia' in Drinóczi Tímea – Mirela Župan – Ercsey Zsombor-Mario Vinković (eds), Contemporary legal challenges: EU – Hungary – Croatia (Faculty of Law, University of Pécs – Faculty of Law, J. J. Strossmayer University of Osijek 2012) 298.

19 Article (38) paragraph (1) of Fundamental Law.

20 The importance of transparency is also emphasised by László Kiss in several of his works, when he defines it as an indispensable element to operate in a fully democratic way. Kiss László, 'Jogállam és/vagy élhető állam' [State of law and/or livable State] in Csefkó Ferenc and Horváth Csaba (eds), A demokrácia deficitje avagy a deficites hatalomgyakorlás [The deficit of Democracy or the exercise of power with deficit] (PTE-ÁJK, Baranyai Értelmiség Egyesület 2008) 145.

2.1.5. Detailed regulation of public burden sharing

The public finance chapter of the section titled 'The State' in the Fundamental Law states[21] that in the interest of predictable contributions to common needs and of a secure livelihood for the elderly, basic rules for the sharing of public burdens and for the pension system shall be laid down in a cardinal Act. In connection with this authorisation, Chapter V of Act CXCIC of 2011 on Hungary's economic stability (hereafter the stability law) contains the basic regulation of public burden sharing. Chapter V of the stability law defines the basic rules of public burden sharing and gives a modern and straightforward regulation in this field.[22]

2.2. System of public finance. General remarks

Serious change in the legal regulation of Hungarian public finance took place by way of Act CXCV of 2011. The new and effective regulation broke the tradition of the regulation based on a single legal norm, and it focuses on efficiency, the control and balance of public finance and responsibility in financial matters instead. The reason of this is that the Fundamental Law already has a budget and public finance chapter that defines the expectations towards the budget in detail.

Another important change is that the Act transformed the structure of public finance. The previously fragmented regulation (broken into four sub-units) that concentrated on budget processes was replaced by a new regulation that focused rather on the operation of budget organs and divided the structure of public finance into a central and a local sub-unit. These two sub-units, the central and local level of the budget sector, shall provide the proper maintenance of public finance in Hungary.[23] Another novelty is that the new regulation is deeper rooted in Hungarian tradition and for example, in remitting and in countersignature the rules of Act XX of 1897 were better considered. This system doesn't list public finance principles in a separate chapter, but the majority of those appear in certain law sections. The law's wording emphasises the regulation of the operation of the treasury and local self-government system.

The current public finance system is made of two sub-systems, which are separated only in their structure, but they cooperate in financing and carrying out state duties, as they are two logically connected levels of the same state and the same public finance.

A typical feature of the two sub-systems is that the basic principles of public finance must apply for all budget organs in both systems.[24] This current two-role model respects the conditions of the European Statistics Finance System that was established by IMF and EU and the requirements of SA. It is a wise idea to create a unified public finance system, as the

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21 Article 40 of the Fundamental Law.

22 See Ercsey (n 17) 71–80.

23 Vígvári András, 'Megtelt-e a konfliktuskonténer? Néhány pénzügyi szempont a helyzetértékeléshez és a rendszer átalakításához' [Is full the 'conflict container'? Some financial aspect to the assessment of the situation and the reform of the system] (2010) 3 Pénzügyi Szemle 465–477.

24 Paragraph 1 of the Act does not set an impossible criterion, when it regulates the full execution of public duties and the transparent operational conditions.

financing of the operation of local self-governments, health insurance or other state duties needs to be laid on the same principles, interconnected financing and normative systems.

2.3. The State Budget

The government shall define the major directions of economic and financial policy on the proposal of the minister in charge of public finance by 31st March. This especially affects the goals of tax and budget policy and states the budget balance goal serving the reduction of state debt.

The organ in charge of the chapter shall plan the revenues and expenses of budget organs, centrally managed targets and separated state financial funds and social security financial funds respecting the planned expenses sum as detailed and determined by the minister in charge of public finances by 31st May.

Then the organ in charge of the chapter shall have the planned revenues and expenses approved by the minister in charge of public finances by 31st July. At the same time it shall inform the minister of the modification methods or possibilities of regulations, public law organ regulation methods, agreements or other liabilities that may influence budget revenues and expenses.

The government shall submit its central budget bill to the Parliament by 30th September, and according to Act CXCIV of 2011 on economic stability (hereinafter: stability act), also inform the Budget Council[25] of the central budget bill. Then Parliament, with the consideration of the State Audit of Hungary and the Budget Council's opinion (general and detailed debates), shall debate the central budget bill and determine the chief sums of chapters' revenues and expenses in a special resolution as well as the (budget) balance of the central budget until 30th November. After passing the resolution, no amendment is possible in chief sums of chapters' revenues and expenses and in the budget balance of the central budget. The Parliament shall pass an Act on the government budget and its execution.

2.3.1. Final accounts, control

The government shall submit the bill on final accounts to Parliament by the last day of the eight months following the budget year. Two months prior to submitting the final accounts bill to Parliament, the government shall submit the proposal to the State Audit of Hungary. The opinion of the State Audit of Hungary about the final accounts is not binding.

[25] The Budget Council shall act as a body and participate in the preparation of the central budget bill and in the control of the regulations on state debt level. The Council's work shall only be subordinated to the Fundamental Law and other laws of Hungary. The members of the Council shall make an opinion individually and they are independent from each other in their opinions. The chairman of the Council shall be entitled to participate in Parliament's plenary session or in committee sessions, when the central budget bill or the amendment of the budget act are debated. The chairman has a right to speak and share the council's opinion at the mentioned sessions.

The content of the final accounts is the investigation of the execution of the central budget by items. The budget cycle is finished when Parliament approves the final accounts of the budget year.

2.4. Local self-governments

2.4.1. The property of self-governments

The property of local government was established after the change of regime, and based on transfer of state property. This process passed in a legal framework, and the local government reform steps of 2012 were able to organically fit into this process.

If the property of local government is deemed as the condition of the authority of local self-government, it can be declared that there are significant differences within the subsystem of local self-governments. The reconsideration of the management of local governments and budget financing are also part of self-government reform.

Generally, the property of the local government consists of real estate (urban properties, rural lands, and buildings), movable properties (machines, vehicles, hardware) and valuable rights and interests (tenancy, security, ownerships). Theoretically, the property of local government can be divided into two parts. The first one is called capital property, which serves management, and carries out the basic tasks of the local government, thus these assets are not alienable, chargeable, or deliverable for utilization (e.g. public roads, public lands, etc.). The other part of the property of local government can be managed or realized independently, so it is qualified as business or venture property. The local governments can use, charge, alienate the business property with their own decision,[26] in a controlled way,[27] therefore some barriers were established. For instance, the activity undertaken cannot endanger the compliance of the basic tasks of the local government,[28] and the risk taken by the local government shall only be limited, so no unlimited liability may be undertaken.

2.4.2. The budget of the local governments

Many similarities can be noticed between the process of preparation, adoption, and implementation of the local government's budget and the same procedure of the state budget.

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[26] For example they established and operated industrial parks, airports and harbours, founded public service companies for the local population, or did property leasing. It can be concluded that the range of activities undertaken is wide, but their efficiency and market productivity differ by place and local government.

[27] See Varga Zs. András, 'Public Financing: Local Autonomy and Need for Alternative Control' in Gábor Hulkó Gábor, Patyi András (eds) Public Finances – Administrative Autonomies (Universitas-Győr Nonprofit Kft. 2012).

[28] Patyi András, 'Local Government' in Csink Lóránt, Schanda Balázs, Varga Zs. András (eds), The Basic Law of Hungary: A First Commentary (Clarus Press 2012) 228.

The annual budget of the local government is the central element of the local government's operation and autonomy,[29] and also the framework of local governments' funding, which is accepted by the representative body in the form of municipal regulation. The budget regulation chronologically follows the acceptance of the state budget, because the state budget determines the elements of local government's operation.

The obligation to establish the budget of the local government is one of the most important obligations thereof, since it cannot obtain get state aid otherwise. The local regulation may be adopted in February and March based on the new appropriations of the effective state budget entered into force on the first day of the fiscal year. The local government has to set aside a reserve until the establishment of the local budget, and similar legal instruments like cancellation are applicable for the implementation of the budget of the local self-governments as well.

The local budget contains income and expenditure appropriations, and the balance has to be defined the way that operation deficit cannot be planned in the regulation. The operator of budget preparation and adoption is the municipality clerk. In relation with this task, the clerk's most important obligation is to prepare the conception of the budget by 30th November of the fiscal year, and to show the draft to the committee of the local government and the local minority government, furthermore to get the opinions of these bodies. The mayor shall submit the draft regulation to the representative body, which shall be adopted after their discussion. The representative body is liable for the operation of the local government, the mayor is accountable for the regularity of management, and the municipality clerk is responsible for the legality.

The local self-government also drafts annual accounts on the execution of the local budget, which may be submitted to the representative body by the major until the last day of April following the budget year.[30]

2.4.3. The financial resources of local self-governments

The units of the Hungarian local government system basically have three major revenue categories, irrespective of the economic strength, population number and location. The first and most important category is own revenue, the second is state subsidies,[31] and the third is the shared or assigned revenues. This is set forth by the new act on local governments the way that the local government provides the funds for fulfilling the obligations thereof from its own revenues, the revenue received from other economic organizations, furthermore from central state subsidies. The proportion of the three sources of revenue differs significantly by each local government.

[29] ibid 228.

[30] Articles 23–29 of Act CXCV of (new act on) the State Budget.

[31] As it is pointed out by András Patyi, the local self-government shall be entitled to financial support from the budget to the scope of the tasks thereof. See Patyi, 'Local Government' (n 28) 223.

2.4.3.1. Own revenues

The own revenues derive on the jurisdiction of the local self-government based on its own decision and related to the local economic events, therefore this type of revenue is levied and collected by the local self-government. The most important elements of the self-own revenue are the *local taxes*, regulated by the Act C of 1999 uniformly in the last twenty-three years with minor amendments.[32] The major characteristic of the local tax is that the local government (the representative body thereof) may decide upon it within the framework of the referred act.[33]

The other big group of own income consists of *fines* (e.g. environmental fines, on-the-spot fines of administrative offences) coming from the local governments territories. The types of these penalties and the local government's interest quota are determined by Article 33 of Act CCIV of 2012 on the 2013 Central Budget of Hungary.

The whole of income from the sale of *hunting rights* concern the local self-government, and together with the financing framework can appear at the budget of the local self-government units. Among the self-government's own revenues, borrowing[34] and other incomes from *bond issues* should be mentioned. The *benefaction, heritage and gift* offered by individuals, firms, and enterprises could mean significant income for the self-government units.

2.4.3.2. State subsidies

State subsidies are those sources of revenue which determine the function of the local government system the most. The subsidies are provided on the ground that local governments, as the local level of the state and national budget, fulfil and perform state functions and tasks in the way specified by the central budget in specified cases. Therefore they are entitled to government subsidies in proportion to the tasks. The title, the proportion and the method of financing are determined and defined by the budget act, the public finance act, and new local government act together.

In 2013, the tasks and functions of the local governments were modified, and financing of the local governments was totally transformed.[35] The state introduced the task-based

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[32] Unfortunately many local self-government units in Hungary cannot realize high proportion of local taxes, many underprivileged self-governments work in Hungary, to which have no or negligible income from the local taxation. The proportion of the own revenues is different by each municipality. It is obvious that those local self-government units are in advantages situation in this regard as well, the territory of which has high level of economic activity.

[33] See Patyi, 'Local Government' (n 28) 228.

[34] Regarding the regulation thereof, see Gál Erzsébet, 'Kell-e szabályozni az önkormányzati hitelfelvételt? A magyar eset tanulságai' [Should regulate the credit record of Local Self-Governments? Lessons from the Hungarian Case] (2011) 1 Pénzügyi szemle 124.

[35] The State Audit of Hungary launched a complex audit on the system of local self-governments in 2011. The risks of management, borrowing and debt were analyzed in detail and the experiences were published. See Domokos László, 'Kockázatok a működésben és növekvő eladósodás a magyarországi önkormányzatoknál. Az Állami Számvevőszék ellenőrzéseinek tapasztalatai' [Risks in functioning and growing indebtedness in Hungarian municipalities] (2012) 2 Pénzügyi szemle 165.

support, thus tasks to be performed by the local government associations and the nationality municipalities were provided by funds bound for the task itself. The amount is paid for the local governments by the Hungarian State Treasury in each month with net financing. A very important element of the new provision is that the mayor is liable for the management of the local self-governments, and the subsidies which are obtained without proper authorization (illegitimate) are penalized and the related procedure has been put in place as well.

2.4.3.3. Shared taxes

The smallest source of funding for the management of local government management was transferred or shared revenue. Those items are assigned for the local governments by the budget, but the Parliament laid down the rate of financial elements, the way of transference connected with the budget act every year (e.g. personal income tax, inheritance, gift and real estate transfer tax). The self-government obtained these incomes from the central budget and had not direct influence at the extent thereof.

The vehicle tax, which was initially known as the weight tax, was formerly collected and used by the local governments, and this revenue still belongs partly (40% thereof) to the local governments.

2.5. The Hungarian Tax System

Hungary has a modern tax system similar to other EU member states. Some elements of the tax legislation were already introduced in the late 1980s with the tax reform of 1988. Significant changes were made to the tax laws as a consequence of Hungary's accession to the EU in 2004. However, the most common opinion is that the current system is over-complicated, bureaucratic, and unfair.

The National Tax and Customs Authority was established in 2011, as a consequence of the merger between the Hungarian Customs and Finance Authority and the Tax and Financial Control Administration.

2.5.1. Corporate Tax

Hungarian companies are subject to a relatively low corporate income tax. Up to a tax base of 500 million HUF (approximately 1.7 million EUR) the tax rate is 10%. Above this threshold, the tax rate is 19%.[36]

There are several tax incentives available in connection with, for example e.g. job creation, R&D, investments, holding activity, etc.

[36] See Article 19 of the Act LXXI of 1996 on Corporate Tax and Dividend Tax.

Although the corporate tax is one of the lowest within the EU, there are a number of sectoral taxes which were introduced in recent years. Additional taxes are levied on the financial sector, telecom companies and energy suppliers.

2.5.2. Value added tax

Hungary's VAT system is harmonized with the EU rules, although Hungary applies the highest general VAT rate in Europe (27%). In addition, there are two reduced rates:

a) 18% reduced VAT rate applicable to milk and bakery products, as well as hotel and other accommodation services;
b) 5% as the super-reduced VAT rate applicable to books, daily and other newspapers, some pharmaceuticals, certain medical aids/equipment with 98 and 90% social security subsidy, and central heating services.

VAT is charged on transactions of goods and services sold in Hungary, on intra-Community acquisitions and on the import of goods. Certain kinds of goods and services are exempt from VAT.[37] All natural persons, legal entities and partnerships supplying goods or services on a regular basis for profit are liable to VAT. Foreign entities performing business activities should generally also be subject to VAT in Hungary.

VAT returns should be filed on quarterly basis or monthly (annually). A cash refund will be transferred in 45 (75) days to the taxpayers.

2.5.3. Customs duties

As a Member State of the European Union, Hungary is part of the Customs Union of the EU.

Customs duties are payable on non-community goods imported from countries or territories that are not part of the EU's customs territory.

2.5.4. Personal income tax

Hungary recently introduced a flat personal tax system with the single rate of 16%.[38] Although deductions are very limited, a child allowance is available.[39]

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[37] For a detailed study, see Ercsey Zsombor, 'Some Major Issues of Value Added Tax' in Ádám Antal (ed), PhD tanulmányok IX. (PTE ÁJK Doktori Iskolája 2010) 217–218.

[38] For a more detailed study, see Ercsey Zsombor, 'The Current Personal Income Tax Regime in Hungary', in Studia Iuridica Auctoritate Universitatis Pécs Publicata (University of Pécs, Faculty of Law 2012) 57.

[39] Zsombor Ercsey and Emina Jerković, 'Personal income tax: provisions regarding fairness' in Drinóczi Tímea- Mirela Župan-Ercsey Zsombor -Mario Vinković (eds), Contemporary legal challenges: EU – Hungary – Croatia (Faculty of Law, University of Pécs-Faculty of Law, J. J. Strossmayer University of Osijek 2012) 335–336.

Hungarian citizens and other individuals are considered to have their habitual abode in Hungary if they stay in the country for more than 183 days. In these cases they are subject to personal income tax on their full income. Hungary has double taxation treaties with a large number of other countries.

The personal income tax base contains all dependent, non-dependent and other sources of income.

2.5.4.1. Cafeteria benefit system

The so called 'cafeteria' benefit system (fringe benefits) is a common form of compensation in Hungary. Usually it does incur lower tax and social security rates.

The most common fringe benefits are meal vouchers, catering service provided at the employer's canteen (if available), the so-called 'Széchenyi Recreation Card' that can be used for different services such as accommodation, recreation determined by separate legislation, school-start support, travel passes or contribution to the employee's pension fund.

2.5.5. Social security contribution

The employee contribution rates are the followings:

Pension contribution	10%
Health contribution for pecuniary	3%
Health contribution in kind	4%
Contribution to Unemployment Fund	1.5%
Total	**18.5%**

From 1st January, 2012 the employer's part of the social security obligation is replaced by a new tax on the social security charge. The total employer obligation is 27%.

2.5.6. Rehabilitation Fund Contribution

As a general rule, disabled people should comprise at least 5% of an employer's headcount. Any employer not meeting this criterion is obliged to pay a contribution of HUF 964,500/ disabled person not employed per annum (for 2013).[40] The contribution is not levied if the total number of employees does not exceed 25.

[40] See http://www.kpmg.com/HU/en/IssuesAndInsights/ArticlesPublications/Documents/investment-in-hungary-2013.pdf

2.5.7. Training Fund Contribution

Employers are required to contribute to this fund, which supports various vocational schools in Hungary. The contribution is set at 1.5% of the total annual base for the social security charge.

2.5.8. Gift tax, inheritance tax, and other 'duties'

2.5.8.1. Inheritance tax

Inheritance tax (called inheritance duty in Hungary) is payable on inherited assets in Hungary. Lineal heirs and spouses are exempt from inheritance duty. For other relationships the general rate is 18%, while the 9% preferential rate is applicable in case of residential property and rights relating to residential property.

There are exemptions from inheritance and gift duties; for example foundations, churches, public organizations and non-profit corporations are not liable for duties.

2.5.8.2. Gift tax

The applicable rates for gift duty are the same as those for inheritance duty. The general rate is 18%, while the 9% preferential rate is applicable in the case of residential property and rights relating to residential property.

Few transactions are exempt from gift duty (i.e. gifts provided to a public organization or lineal heirs are exempt from gift duty).

2.5.8.3. Registration fees and stamp duties

A number of fee and duty types may also apply to business associations. The registration fee at the Court of Registration amounts to 600,000 HUF for public limited liability companies and 100,000 HUF or 50,000 HUF for other entities. For the registration of a branch, the fee is reduced to 50,000 HUF.

2.5.8.4. Property transfer tax

Individuals and legal entities are subject to property transfer tax levied on the transfer of Hungarian real estate, motor vehicles or any rights related to such property and also on the acquisition of shares in companies owning domestic real estate. The tax is payable by the transferee and is levied on the market value of the property transferred. The general rate is 4% with certain exemptions and preferential rates.

2.5.9. Local Business Tax

Local business tax (hereinafter referred to as the LBT) is collected by the local governments and the rate is 2% calculated on adjusted net sales. As a consequence, LBT is payable even in a loss-making situation. There are a few municipalities where the LBT is 0%. Local governments have the right to collect property, communal and tourist tax as well.

2.5.10. Other taxes

In addition to the abovementioned, there are many other taxes in Hungary. They include, among others, innovation contribution, excise tax on alcohol, tobacco and fuel, 'green taxes', cultural levy, taxes in connection with cars and traffic (e.g. company car tax or registration tax) etc. Small enterprises can opt for simplified taxation methods such as the 'EVA' (simplified entrepreneur tax).

2.6. Public Procurement

2.6.1. The prosperous economic and financial effects of the legal environment of the new public procurement.

Renewing the rules of the public procurement market was an important step in achieving positive economic changes in Hungary. The state and the public sector are the biggest consumers in the European public procurement market. The total annual value of the public sector procurement in the EU will sum up to 1 billion Euros, which is about 16–18% of the EU GDP. These facts speak for themselves: state behaviours in procurement and public procurement will seriously affect the market.

The public procurement's legal environment has recently changed in Hungary;[41] the new act on public procurement is Act CVIII of 2011 on public procurement, which came into effect on 12th January 2012. The primary legal policy goals during legislation were the follows:

a) more flexible and easier public procurement procedures, more obvious rules for certain procedures;
b) promoting participation of micro, small and medium-sized enterprises in public procurement, reducing the possibility of fraud and corruption, the introduction of regulations to reduce and surmount chain debts, guaranteeing the payment of subcontractors which are mostly micro and small businesses;
c) reducing the administrative costs;
d) the more emphatic appearance of environmental aspects, green procurement;
e) creating a favourable regulatory environment to protect employers' interests.

[41] Regarding the earlier set of rules, see Maiyalehné Gregóczki Etelka- Barna Orsolya-Hubai Ágnes-Tátrai Tünde, Általános közbeszerzési ismeretek [General doctrines on public procurement] (KSZK-MKI 2008). See also Maiyalehné Gregóczki Etelka – Fibiczer Gabriella, A közbeszerzés általános ismeretei [General doctrines on public procurement] (Magyar Közigazgatási Intézet 2005).

According to Section 1 of the new Act on Public Procurement, public procurement procedures and the related review procedures are governed in order to ensure the transparency of public spending and to improve control of the appropriation of public funds, and to ensure fair competition in the course of public purchases. The objective of the aforementioned Act and the legislation adopted for the implementation of this Act is to facilitate the participation of micro, small and medium-sized enterprises in public procurement procedures, to promote sustainable development and help to achieve the State's social objectives, and to promote legitimate ways of employment.[42]

Compared to the previous legal regulation, the new legal environment will broaden the line of objectives.

The rules of procedure in the system of the Hungarian Act on Public Procurement henceforward vary depending on whether the procurement's value equals to or exceeds the EU threshold limits. In the latter case, the contracting authority has to announce the procurement procedure by the so-called community regime. If the procurement does not reach the value of community threshold limits, though it is higher than the national limits, the contracting authority shall act in accordance with the rules of the national regime.

The acquisition subjects covered by the Act are purchasing goods, service orders, construction investments, construction concessions, and service concessions as a particular national specialty. The abovementioned acquisition subjects have not changed compared to the former regulations. Just like the former act, the new Act on Public Procurement is based on the provisions of the public procurement directives; however, in contrast with the former regulation, the current version puts the emphasis more on the requirement of sparing public spending, to promote participation of the micro, small and medium-sized enterprises in public procurement, and to enforce sustainability criteria.

In the new system of public procurement, Act CVIII of 2011 on public procurement is a framework legal regulation which has numerous execution decrees that regulate the specific detailed rules. The act contains power for the government in several subjects, in order for the detailed rules to be defined in decrees. The Government plays the main role, or the Ministry of National Development in particular, since controlling the procurement systems is the scope of authority of the Ministry. Developing simple, logical, and anti-corrupt conditions for procurement, executing the necessary related legislature work, controlling and coordinating the procurement of Public Administration bodies, and other legal entities are all the objectives of the Public Procurement Secretary Office. Based on the authorization in section 182 of the Act, the Government is authorized to decree, among others, the means of proof required in public procurement procedures, the provisions relating to approved tenderers and the detailed regulations concerning the sanctions to be imposed by the Public Procurement Arbitration Board. Also mentioned, among other things, are the detailed rules of centralized procurements financed by the Health Insurance Fund[43] as well as the detailed rules for procedural actions that may be performed through electronic

[42] Cf. Maiyalehné Gregóczki Etelka, Barna Orsolya, Hubai Ágnes, Tátrai Tünde, Közbeszerzési eljárás és technikák [Public Procurement procedure and techniques] (KSZK-MKI 2008).

[43] Relating to health-care services, and the amount of charges payable to central purchasing entities authorized to conduct centralized procurement procedures intended to cover the costs of implementation only.

means (e.g. electronic auctions)[44]. The government is also empowered to create the special regulations for the procurement of pharmaceuticals and medical devices, reflecting the necessary derogations.[45]

As stated above, the Hungarian Act on Public Procurement contains a number of forward- looking provisions for interests of micro-enterprises and SMEs, which requirement is drafted among the goals of the law. The law contains the following major provisions to help the participation of micro, small and medium-sized enterprises in public procurement:

a) in certain types of procedures in the national regime, only SMEs can submit bids;
b) if the subcontractor's participation is more than 25% in the performance, the
c) subcontractor is entitled to joint contractor status;
d) in order to prevent the round of debts, the contracting above a specified contract value
e) may directly contract the sub-contractors;
f) a number of detailed rules for reducing the administrative costs of bidders.

In Hungary, two thirds of businesses are sole proprietorships and one-third is companies. Recently a moderate decrease in sole proprietorships was observed in the sector, but the rate of companies increased. In this latter category the rate of unincorporated business decreased in comparison to legal entities. The limited partnerships among the unincorporated business and the limited liability companies among the legal entities dominate. General partnerships, joint-stock limited liability companies and cooperatives share a fraction of the foregoing.

As for the size of the companies concerned, the micro, small and medium-sized enterprises operating represent 99.9% of all enterprises in Hungary. Within this, without employee/self-employed businesses or 1–9 people enterprises together present a high proportion of micro businesses – namely, 95.1% of all operating business – whereas the medium-sized enterprises, internationally speaking, is low. The average size of Hungarian SMEs compared to the old countries of EU is typically small, under 5 people.

The Hungarian SMEs typically have activities with high manpower and low capital investment and a greater share of employment than of sales or income. In recent years, the position of SMEs has also shown improvements in some areas – such as finance, management, info-communication – but the output of them is less than small businesses in developed countries. Having all of this in mind for the future, SME's competitiveness, their performance, efficiency, human capital stock, etc. noticeably need to improve. Among others, the regulations of the new Act on Public Procurement will surely be a help. Next to the expansion of SMEs, a large company and a foreign-owned firm stopped and turned back

[44] In that regard for a detailed study, see Maiyalehné Gregóczki Etelka (ed), Elektronikus közbeszerzés Magyarországon [e-Public Procurement in Hungary] (E-government Alapítvány 2006).

[45] From Act CVIII of 2011 on Public Procurement, due to the unique nature of these procedures; special regulations governing public contracts affecting classified information, or which are related to fundamental national security or defence concerns and requiring special security measures; special regulations governing public contracts in the field of national defence, to purchases of goods and services, and public works contracts made expressly for military and law enforcement purposes serving fundamental defence interests.

in some areas such as capital, revenues, exports or the share of added value. The SMEs' participation in the Hungarian public procurement market is more and more significant.

According to the latest data, public procurements make up 6.9% of the total GDP in Hungary. The new regulation is expected to significantly facilitate the increased enforcement of the sustainability criteria, and SME involvement in the public procurement market since the new legislation gives highlighted attention to these two requirements, both at the drafting of law aims and at the level of principles and detailed rules. Yet before the introduction of the new regulations there were a number of efforts observed in the legislation to ensure that a larger proportion of SMEs could participate in public procurement, and as a result the performance of SMEs has improved significantly in the procurement of the central government institutions. Their share was more than 40%, which means that 74% of the public procurement tender was won by SME-classified economic operators in the recent past. This is primarily the result of an approach of a new, SME-friendly procurement that has evolved since the end of 2009.

As for the structure of Hungarian public procurement, service subject processes are dominant, followed by the ordering of construction investments at about the same volume, and the supplies, while the number of contracting in the subject of the concession is very low. It must be noted here: under Hungarian legislation beyond the building concession, some types of service concession also fall within the scope of public procurement. In terms of the distribution of the value of acquisitions, construction investment procurement procedures are of utmost importance.

As regards the distribution of contracting authorities, local governments appear to the public procurement market in the largest number, followed by central government agencies. For the future – the legislation's changes in view – public procurement launched by the local government is expected to decrease, while the significance () of the central budget will increase, within which the increase of the role of government agencies, including a number of specialized, recently established administrative bodies, can be observed.

The new legislative framework is expected to leave further room for the market development of public procurement in Hungary with key roles in the sustainability criteria, and a wide range of involvement of SMEs, which is also economically advantageous.

Further reading

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Tasks and powers of the Hungarian public administration resulting from EU membership

1. Introduction – the phenomenon of a 'European Public Administration'

The institutional system and operation of the European Union is a very complex and unique phenomenon in itself. The fact, however, that many EU-policies are implemented not only by EU institutions, but also by national authorities, makes the picture even more complex. The system of relations between the EU institutions and the member states is multifaceted: national public administrations not only implement EU policies, they are also in charge of approving and complementing them. A principal phenomenon in this aspect is the division of administrative functions in the EU. This means that the EU institutions envisage the objectives of the EU, collect information, plan, decide, coordinate and control. The implementation of the decisions of the EU – at least in areas of shared competences – is primarily the responsibility of member states, mainly of their public administrations, but also of other state bodies.

In this organizational and operational model, EU institutions and the member states form a pan-European 'public body', which is part of a pan-European form of legislation, administration and judiciary. All of these can be taken into account in the definition of European public administration, as follows. In an organic sense, EU administration is the sum of the 'core' union and national (regional and local) institutions, which prepares EU decisions (legislation) and ensures their implementation and effectiveness.

Apart from minor exceptions, in the absence of legal regulations that are directly binding on the administrations of the member states, there are 'only' expectations from the EU: the consistent and full enforcement of EU law, which is reliable, transparent and operates democratically. The TFEU has made significant progress in achieving this. In our opinion, in the case of the secondary sources of EU law, the EU can influence the structural and functional system of the member states.

On the other hand, the connection between the institutions of the EU and the Member States is also a partnership, and not a hierarchical relationship. One common phenomenon inherent in this partnership is that the EU formulates recommendations and other 'soft-law' instruments in fields where it cannot prescribe obligations through lack of jurisdiction and makes the member states interested in following them. We will see an example of this in the EU funding system where several forms of data disclosure are not obligatory but the effective use of the resources is only guaranteed for a member state if it also complies with the recommended forms and procedures, not just the obligatory ones. This is fairly con-

spicuous in the course of the execution of funded projects on the developer's side, as well. The project management tools used in the EU permeate the funding system and become the norm without their legal translation. This need not be criticised in itself as it improves the culture and quality of project planning and execution; however, the phenomenon that we might as well call the appearance of 'undercover codes of practice' certainly deserves attention from a judicial point of view.

There are several examples of how EU membership influences the public administration of the member states on all levels. Regulation No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS-regulation) prescribed for member states to establish the classified territorial units. Although the organisation of public administration is still the competence of the member states, the regulation binds them to set up territorial units for statistics. Although the delegation of powers to these territorial units was not prescribed, the easiest way is to have coinciding administrative units of statistics and competences. The prescription of territorial units for statistics raised the issue of setting up administrative units – this reform has not been introduced in Hungary; the county level has continued to be the main unit of public administration.

As examples of another relation, we can mention the cooperation between the EU and national authorities, the cooperation between the Commission and the Hungarian competition offices, or the cooperation between the EU Court of Auditors and the national offices responsible for financial control. The EU Court of Auditors carries out its checks based on the accounting voucher from the EU institutions or from the member states on the spot. Checks in the member states are carried out by the National Court of Auditors while being in constant contact with its organs. The EU Court of Auditors and the national institutions cooperate in a loyal way while respecting each other's independence. The national institutions let the EU Court of Auditors know whether they intend to take part in the check. If they take part in this procedure, they will be almost like EU institutions: a 'de-concentrated' organ of the EU Court of Auditors. Thus, the institutions build an institutional network in order to implement EU law.

As we can see, the representatives of the institutions of the EU and the member states are partners. They make up an institutional network together in order to ensure the effective enforcement of EU law. The model of European administration can be characterized as '… transition of separation of power between cooperation, subordination and superiority' according to the literature. This transition is called the 'model of interpenetration'. In this sense '…interpenetration means a principle which aims at the achievement of unified administrative actions due to two principles – the cooperative and the hierarchical model.'[1]

A uniform administrative system governed by a model created in Brussels does not exist in the member states. This circumstance can lead to crucial problems in view of the unified implementation and enforcement of EU law. The implementation is carried out in 28 ways, since the place of the execution is too far from the Brussels-based European

[1] Eberhard Schmidt-Assmann, 'The operating and hierarchical model of the European Public Administration' (2003) 10 European Law 200–210.

Commission. Consequently the situation leads to a partnership between the Commission and EU institutions.

As a result of the abovementioned factors, the European Union and its institutional system do not exert direct power (irrespective of some exceptions) on the public administration of the member states. It is without doubt, however, that it influences it continuously, widely and more and more powerfully: as the acquis communautaire has an implicit binding effect through Article 6 of TEU and through certain secondary sources expressis verbis, it obliges them to what is called a 'result-obligation'.[2] This obligation means the implementation of EU law and the accomplishment of the three requirements by the public administration of the member states: that they should be reliable, transparent and democratic. What do these terms mean?

1. **Reliability.** Member states organize their public administration independently, without any external influence; therefore, we cannot speak about administrative acquis. It is neutral for the EU what kind of organizational solutions and functional methods are applied by the member states and how their civil service is built up. There is only one essential thing: the public administration should function so as to fulfil the tasks of the EU completely in order to achieve the goals determined by the EU. The emphasis is on achieving the EU goals; in other words, on the effective application and implementation of the acquis communautaire. To achieve this, the EU expects the following from the member states: they should have a reliable public administrative institutional system; the EU regulations should be incorporated in the legal system; they should be enforced effectively by the different organs; furthermore, the continuous control of enforcement and the settlement of legal disputes should be facilitated. Reliability includes the different elements of efficiency: accuracy, quickness, dynamic adaptability, as well as the promotion of economic and political integration.
2. **Transparency.** The EU expects the member states to have transparent public administration, which means that the scope of authority of the state organs in contact with EU institutions is to be well-defined. The powers and levels of decisions should be separated precisely and the powers of the institutions should be in compliance with each other so that there should neither be gaps, nor overlapping powers.
3. **Democracy.** Another requirement of the EU is the democratic operation of the administrative institutions of the member states. The requirement of democracy includes law and order, respect for human rights and fundamental liberties, a multiparty political system, political impartiality of those working for the executive power, the stability of legislation and the reliability of public administration.

If we examine how the integration has affected the central, regional and local administrative organs of Hungary, we can state that each member state has a different administration, although the obligation of preparation and implementation of EU law is the same. Moreover,

[2] Jacques Fournier, 'A megbízható közigazgatás' [The reliable public administration] (1997) 47 Magyar Közigazgatás 631–640.

a new process, the Europeanization of the administrative law of the member states is taking place due to the EU 'result-obligation'.

The definition of the 'Europeanization of the administrative law' means that the national administrative law develops under a European influence. Contrary to this, 'European administrative law' means that a part of EU law became independent. This definition is narrower than the law which regulates the matters of administration and implementation in the EU, since it does not cover the implementation by the jurisdiction. On the other hand, this definition is wider than the law which involves the harmonization procedure of the administrative law of the legal systems of the EU and the member states, since it includes the loyal cooperation of EU institutions and the organs of the member states.

After outlining the context, in the remainder of the paper, we will discuss the most important elements of the framework of relations within the European Union. We will present the coordination of EU affairs in the central public administration, the main field of which is participation in the decision- and lawmaking of the EU, i.e. ex-ante policy making. Then we will touch upon the effects of EU membership on territorial public administration. We will follow this by describing the most important rules and institutional frameworks of the use of resources and the coordination of the funding coming from the two largest subsystems of the EU budget, the Cohesion Policy and the Common Agricultural Policy. The chapter will show that the EU membership has fundamentally changed the structure and functioning of Hungarian public administration as it has provided the institutions with new tasks and forced them to employ a new way of functioning.

2. The coordination of EU affairs in Hungary

Each and every member state has established its own structure for handling European affairs, coordinating the contribution of the member state to EU legislation and implementing EU decisions. These structures of the administration can be divided into four, or rather five groups. In case of the British and French solutions, EU affairs are coordinated by a central organ (the European Secretariat), established ex-novo, beside the government, but subordinated to the prime minister. The ministry of foreign affairs has this task in Belgium and Spain, whereas in Germany it is the ministry of economy. The other solution is the decentralized model. Its main feature is that each central authority (ministry) has a department dealing exclusively with EU matters. For example in Luxembourg, through lack of central coordination, each ministry is in contact with its Brussels counterpart.[3] As mentioned above, there is another solution which can be considered a transition between the centralized and decentralized models. In this case, organs dealing with EU affairs are not only in the ministries but in the government as well (for instance in Hungary).

[3] Török Éva, 'A közigazgatás fejlesztése és az Európai Közösségekkel történő jogi harmonizáció összefüggései' [The modernisation of public administration and the connection with legal harmonisation with the European Communities] (1994) 44 Magyar Közigazgatás 35–43.

Before Hungary joined the EU, existing units dealing with the EU were based at the Ministry of Foreign Affairs, which was a logical consequence of the fact that relations with the EU were clearly in the domain of diplomacy and foreign affairs. As the process of enlargement started, placing ever larger demands on the administration, it became clear that the issues that were coming on the pre-accession agenda were not foreign policy issues but were spread widely across the numerous policy sectors covered by the acquis.

Since the accession process has gradually transformed from a foreign policy process to a process dominated by and focused on a wide array of internal political and economic reforms, the system of its management has changed accordingly.[4]

On the executive level, the management of the process was transferred from foreign affairs departments and ministries for foreign affairs to the line ministries, while the role of the main coordinator was granted to the MFA. Unlike most new member states which have joined the EU since 2004, the central coordination role for EU affairs in Hungary still belongs to the Ministry of Foreign Affairs, and not to some coordinating body within the a government office. A move towards the primacy of MFA systems in the new member states can be regarded as a kind of 'normalisation' of domestic EU policy-making after the period of intense preparation for membership and its special demands.

As it is well-known, the member states expound on their points of view and lobby within the Council of the EU in the course of decision-making. This complicated organisation is the primary forum for lobbying as opposed to the European Commission, in whose work the member states only participate to a lesser extent and with a reduced scope of authority. The public administration of each member state is responsible for their coordinated participation in the work of the Council.

The coordination of EU affairs in Hungarian public administration is carried out by the State Secretariat for EU Affairs (EU Secretariat) under the auspices of the Ministry of Foreign Affairs (MFA). Before this setup was introduced, EU-coordination was responsibility of the Prime Ministers' Office, and this field was lead by a minister without portfolio. The EU Secretariat prepares and coordinates the EU policy of the Government, and also monitors its implementation. In the framework of this it also assists the Minister for Foreign Affairs in the implementation of tasks related to the European Union under his purview. The State Secretariat is responsible for managing the activities of the Inter-ministerial Committee for European Coordination (ICEC), which meets weekly, and also for maintaining active contacts with European Union institutions. The State Secretariat is also tasked with the preparations in Hungary for the meetings of the European Council, summit of the Heads of State and Government, as well as the sessions of the General Affairs Council, that meets at the level of foreign ministers.

The general task of the ICEC is to coordinate and control the professional preparation and implementation of the EU policy of the Hungarian government and the tasks related to EU membership, as well as to prepare and harmonise the views to be adopted at negotiations, with special regard to making suggestions concerning the view to be adopted at the debates

[4] Antoaneta Dimitrova-Klaudijus Maniokas, 'Linking Co-ordination of European Affairs and European Policy: New Member States in the Decision-Making Process of the EU' (First rough draft) http://www.researchgate.net/publication/228953717_Linking_Coordination_of_European_Affairs_and_European_Policy_New_Member_States_in_the_Decision-Making_Process_of_the_EU

discussing EU legislative proposals on the agenda of the EU institutions, and harmonising and preparing the position of the government concerning the proposals of EU institutions open for public consultation and debate.[5] One condition for effective lobbying on the side of Hungary in the process of the decision-making of the Council is the timely adoption of a coordinated, unified Hungarian view in all fields of public administration. The ICEC, headed by the Minister of State responsible for EU Affairs within the Ministry of Foreign Affairs, is composed of a Deputy State Secretariat from every ministry, and the work of the Committee is assisted by 52 expert groups, each of them consisting of 30–60 ministry experts. These thematic expert groups play an important role in developing positions. They conduct their work under the leadership of the responsible ministry and actively cooperate with other expert groups. They ensure that the government positions should be formulated in a comprehensive and uniform way along the lines of inter-portfolio coordination.

Expert groups are obliged to monitor the EU and home legislative agenda concerning the scope of their duties, with special regard to the work plan and legislative programme of the Government, as well as the work programme of the European Commission and the Presidency of the Council of the European Union, to turn to the ministry or the central administrative organ and take or initiate the necessary measures in order to coordinate them. Expert groups hold meetings or consult in writing to discuss the issues on the agenda of EU decision-making procedures.

In order to fulfil the above-mentioned tasks, expert groups prepare a view to be adopted by Hungarian MEPs at the negotiations of the Council forums concerning every issue on the agenda of EU decision-making procedures belonging to their scope of duties. If necessary, they consult the social and economical lobby groups and representative bodies beforehand.

This bottom-up coordination system, involving every relevant portfolio, makes it possible to have decisions made at the level that is the most appropriate for their significance. The ICEC provides a suitable framework to ensure that for all strategic issues, it is the most appropriate, political level decision-making body – if need be, the Government – that decides.[6]

The agenda of the ICEC is determined by the agenda of the Council bodies. Beside discussing and adopting the mandates for the weekly COREPER I and COREPER II meetings, it prepares the Council meetings of Ministers; it hears reports of Council meetings, reviews the most important Council working group developments; adopts positions on new EU plans, as well as measures related to the infringement of European Court of Justice procedures; reviews the current issues related to the European Parliament and to the European Commission, prepares drafts related to EU membership.

The competent ministries are responsible for the preparation of the debates of the different configurations of the Council according to the following:

[5] The competences and functions of the ICEC are described by Government decree 1169/2010. (VIII. 18.).

[6] http://eu.kormany.hu/inter-ministerial-committee-for-european-coordination-icec

Council configuration	Main responsible ministry in Hungary
General Affairs (GAC)	Ministry of Foreign Affairs
Foreign Affairs (FAC)	Ministry of Foreign Affairs
Economic and Financial Affairs (ECOFIN)	Ministry for National Economy
Justice and Home Affairs (JHA)	Ministry of Interior, Ministry of Public Administration and Justice
Employment, Social Policy, Health and Consumer Affairs (EPSCO)	Ministry of Human Resources, Ministry for National Economy
Competitiveness	Ministry for National Economy, Ministry of Foreign Affairs*
Transport, Telecommunications and Energy (TTE)	Ministry of National Development
Agriculture and Fisheries	Ministry of Rural Development
Environment (ENVI)	Ministry of Rural Development
Education, Youth, Culture and Sport (EYC)	Ministry of Human Resources

The role of the ICEC Secretariat is performed by the EU Coordination Department of the Ministry of Foreign Affairs. It is responsible for the uniformity and coherence of ICEC meetings, the coordinated positions and their representation; it reviews the implementation of tasks resulting from EU membership. Beside this, it also manages the electronic distribution of Council documents arriving from the European Union within Hungarian public administration. The memorandum, written in the form of a report according to the agenda of the Government is submitted to the Government by the Minister of Foreign Affairs following the meeting of the ICEC. The detailed regulations of the operation of the ICEC are set by the Minister of Foreign Affairs in an agenda approved by an instruction.

3. Changes in the territorial level state administration due to EU membership

The determining feature of an EU 'territorial policy' is regionalization and a strong level of municipality on one hand, and closely related to this, a significant decrease in the number of medium-level units and a significant increase in the population of this level on the other. The number of the middle-level (regional) units decreased from 531 to 320 in the European Union in the period between 1956 and 1995, while the population increased on average from 468,000 to 1,159,000.[7] The reasons behind the strengthening of regionalization as an economic, social and political process are as follows: the extension of ethnic movements, the effects of the latest functions of state administration (e.g. the effect of decentralisation), the representation of regional interests, and the regional policy of the European Community. Regionalization can also be considered as the weakening of national states since it enforces

[7] Horváth Gyula, Európai regionális politika [European Regional Policy] (Dialóg Campus 2003) 305.

the central state power to delegate competences to the regions below the national level. In Hungary, where the NUTS 2 level does not have its traditions, 7 NUTS 2 level regions were created, out of the 19 existing NUTS 3 level counties ('megye'), which is the main administrative unit of territorial administration in Hungary.

On the level of local administrative organs (NUTS 4 and 5), the local council is determining. With regard to the local self-government organs of administration, certain common features occur.

4. The implementation of the EU Cohesion Policy in Hungary

The framework of regulation

The Cohesion Policy falls under the authority of both the member states and the EU; in accordance with this, its regulation consists of both EU and member state laws. The EU regulations pertaining to the Cohesion Policy define the frameworks for the deployment of resources, i.e., among other things, the amount and basic principles of the resources to be deployed, the deadline and manner of the deployment of resources, as well as the fundamental rules of deployment (the scope of activities to be funded, the tasks of the authorities, the duties of the applicants, the procedures of decision-making, financial processes).

For the sake of the unified implementation of the Cohesion Policy all over the EU, it establishes the rules pertaining to it in the form of EU regulations (and not directives), which can be applied directly and are not required to be adapted by the member states. How long these regulations are in effect depends on the multiannual financial frameworks of the EU. There are separate regulations in effect concerning the areas in which the diverse funds (European Regional Development Fund, European Social Fund, and Cohesion Fund) can be used, and there is a 'general' regulation governing the framework of the deployment of resources in the case of each fund. The general regulation in the period between 2007 and 2013 was Council Regulation No. 1083/2006; the relevant regulation in the period between 2014 and 2020 is Regulation No. 1303/2013 of the European Parliament and of the Council, which contains common provisions regarding five funds, including the Structural Funds and the Agricultural Fund for Rural Development, in addition to the common provisions on the three structural funds mentioned above.

The implementation of the EU Cohesion Policy in Hungary has been an ongoing process since the accession of country to the EU in 2004. Within the framework of the EU provisions, Hungarian regulation, planning and implementation establishes, among others:

- the focal points of national development, topical priorities;
- the project selection system (including who receives support, when and what for);
- tasks of the relevant institutions responsible for program and project level tasks;
- processes (from the preparation of calls for proposals to the end of the project maintenance period);
- public procurement procedures;

- standards of project assessment, contracting, monitoring of project implementation, financial management, checks and audits,;
- provisions for collaterals, legal complaints and the repayment of funds in case of irregularities.

As we can see, national legislation serves as a subsidiary to EU legislation and it also ensures the detailed fulfilment of the principles derived from the common regulations[8]. In certain areas, however, national legislation is stricter and more detailed than EU regulations, over-emphasising administrative requirements and placing a heavy administrative burden on beneficiaries instead of focusing on results and effectiveness.

In Hungary, the statutory level of legislation is necessary for the implementation of programmes co-financed by the EU, since the authorities responsible for the management of operational programmes are placed in the different ministries, and coordination among them is performed by the Prime Minister's Office. The source of legislation is Government Decree 4/2011 (28th January) on the use of Funds from the European Regional Development Fund, the European Social Fund and the Cohesion Fund in the programming period 2007 to 2013, which is a single and unified regulation replacing the previous, fragmented legislation which consisted of more government decrees and ministerial decrees. These former decrees had been adopted since 2004 and frequently modified afterwards. The reason for the frequent modifications, which posed an administrative burden on the managing institutions on the one hand and weakened the confidence of the beneficiaries in the stability of the system on the other, was the limited relevant experience and the general novelty of EU-funded programmes. The unified regulation created a stable regulatory framework and enabled a strong coherence between the different areas of implementation.

Although the idea came up several times, neither the 2004–2006, nor the 2007–2013 financial period saw Parliament Act-level legislation directed specifically at the Cohesion Policy and the use of funds. However, there are statutory-level provisions in different Parliament Acts touching upon the use of funds, for example managing the conflict of interests of those taking part in the project selection, or focusing on the procedures related to funds with irregularities, including reporting and financial correction procedures.

Beyond the legislative level, a detailed Operation Manual was gradually created from 2007 for the relevant institutions, replacing the previous separate manuals of the implementing bodies. The manual also provides practical guidance (templates, checklists etc.). The Manual was issued as a Ministerial Decree in 2011 (Decree of the Minister for National Development, 24/2011).

The institutional framework

The EU general regulation on Cohesion Policy lays down the obligatory structure and the tasks of the national institutions which are responsible for the proper use of structural resources. The legislation makes a clear framework for the use of development funds,

[8] Molnár Anna- Viszoczky Emese, 'The regulatory background of the implementation of the National Strategic Reference Framework in Hungary' (National Development Agency 2011).

for the implementation of Operational Programmes, determining the responsibility of member states; this responsibility also extends to the establishment and operation of the programme management and control system. The European Commission can 'only' control the functioning of national institutions and impose sanctions if they do not work properly.

Member states have to designate managing, certifying and audit authorities for every operational programme. The managing authority is a national, regional or local public authority or a public or private body designated by the member state. It is responsible for managing and implementing the operational programme in accordance with the principle of sound financial management. The certifying authority is a national, regional or local public authority or body designated by the member state to certify statement of expenditure and applications for payment before they are sent to the Commission. Member states may designate one or more intermediate bodies to carry out some or all of the tasks of the managing or certifying authority under the responsibility of that authority. The audit authority is a national, regional or local public authority or body, functionally independent of the managing authority and the certifying authority, designated by the member state for each operational programme and responsible for verifying the effective functioning of the management and control system – so its primary role is to control the controlling systems.

The member state should also set up a monitoring committee for each operational programme, in agreement with the managing authority. The monitoring committee, consisting of all relevant stakeholders should examine and help the continuous implementation of the operational programme. The managing authority and the monitoring committee ensure the good quality of the implementation of the operational programme.

Member states have to follow three objectives when deploying the resources:

- all of the resources should be deployed (absorption of the financial resources – a primary role of the managing authority),
- the use of resources should conform to the regulations (a mission for the audit authority),
- resources should be deployed efficiently and effectively, in accordance with the topical objectives (this is controlled by the managing authority and the monitoring committee).

In Hungary, there is a partly centralized institutional framework. Between 2007 and 2013 the system was more centralized, having all managing authorities in one government body, the National Development Agency (Nemzeti Fejlesztési Ügynökség, NFÜ). The common institutional basis of the managing authorities of different operational programmes was secured; however, the management of programmes was far from the ministries, where the respective policy was developed. In 2013, a decision was made that the managing authorities should be integrated into the respective ministries in the 2014–2020 period. The heads of these managing authorities will be Deputy State Secretariats of the ministries in the future. Thus, the National Development Agency formally ceased operation.

As opposed to the period between 2007 and 2013, when Hungary had 7 national operational programmes, 7 regional operational programmes and one operational programme of implementation, the period between 2014 and 2020 will see, besides the programme of implementation (coordination), one regional (covering all NUTS2 regions besides the capital

region), four sectoral operational programmes, two rural development programmes, and one separate programme for the capital region (central Hungary):

- Competitive Central-Hungary Operational Programme
- Economic Development and Innovation Operational Programme
- Environmental and Energy-Efficiency Operational Programme
- Human Resources Development Operational Programme
- Hungarian Fishery and Aquaculture Operational Programme
- Integrated Transport Development Operational Programme
- Territorial and Settlement Development Operational Programme
- Rural Development Programme
- Coordination Operational Programme

Therefore, the following years will see an institutional framework which is more transparent, has got more to do with the creation of policy, and serves the implementation of simplified programming.

A certifying authority has to be designated in order to verify the payment and legitimacy of the expenses occurring in the course of the deployment of funds. Funds are paid after they are spent, both within the relation of the beneficiary and the member state and within the relation of the member state and the EU. Claims can be submitted based on the payments already made by the project developer. A certification of expenditure should be submitted to the appropriate organisation of the EU by the certifying authority based on the verified payments made to the beneficiaries. The duties of the certifying authority are fulfilled by the Hungarian State Treasury in relation to every operational programme.

The audit authority in Hungary is the Directorate General for Audit of European Funds, which was expressly formed to control the use of EU resources in 2012 by separating it from the Government Control Office.

The main procedures related to the use of the Funds

As we have seen, it is completely up to the member state which projects it chooses to support from among the ideas for development. The most important task of the institutional system is the operation of the system of proposals. Government Regulation No. 4/2011 defines the basic principles to be followed during the procedure of the institutional system responsible for funding, as well as the fundamental rights of those applying for funding, which concern all stages of the procedure. The organisation responsible is obliged to abide by the provisions of the laws and make sure everyone involved abides by them throughout the whole procedure.

In Hungary, the most important data of the tenders invited by the managing authority are presented in advance by action plans covering two or three years and approved of by the Government. The managing authority publishes the planned date of the invitation of tenders – previously approved of by the ministers concerned – within 15 days of the approval of the action plan. After consulting the minister responsible for the topic, the managing authority prepares the call and the draft of the funding contract and opens them for public discussion. An implementation study should be conducted if the amount of funding for the development exceeds one billion HUF.

As a first step after the submission of proposals, the managing authority or the contributing organisation acting on its behalf checks if the project proposal fits the admissibility criteria set out in the call and either accepts or refuses it; then it notifies the applicant. Following acceptance, funded projects are selected during a project selection procedure in a simplified evaluation process, a selection procedure consisting of one round or a key-project procedure (there is no competition in this case; the Government decides whether to give funding to the project or not).

The procedure of preparing and making a decision about funding has to be performed in the order of reception until the available resources run out in case of a continuous call; after the tender stage set out in the call has been completed, in the order of the applications submitted before the deadline, according to what extent they meet the acceptance and evaluation requirements in case of a multi-stage tender. Accepted project proposals have to be evaluated. If the decision about funding is made without consideration and only depends on the extent to which the project meets the selection requirements, we call it a simplified evaluation process.

If the request for assistance submitted by the applicant does not meet the requirements set out in the call and the call provides an opportunity to correct the deficiencies within a time window of 7 days, the applicant should be asked to correct their request and notified about all the deficiencies and faults. Corrections and completions can be made once.

The managing authority makes a decision about the project proposal within 30 days as a general rule. The managing authority is obliged to justify the decision in case it is unfavourable, subject to something, or reduces the total expenses or funding. If the amount of the funding for the project proposal exceeds one billion forints, the decision is made by the Government Committee of National Development upon the advice of the minister responsible for development policy instead of the managing authority. The managing authority notifies the applicant about the decision.

The total expenses or funding of a project proposal can be reduced, if the planned expenses contain elements which are not accountable, not necessary for the achievement of the objective of the project or disproportionately high. If the funding of the project proposal is subject to conditions, the conditions to be met by the applicant have to be provided in the funding decision.

The managing authority enters into a funding contract with the successful applicants and beneficiaries within 30 days of the decision about funding, which is a civil contract. In case of funding in course of a simplified evaluation process the organisation responsible shall not make a funding contract but issues a funding document during a more simple procedure, which establishes a civil legal relationship by accepting the proposal and gives the detailed regulations pertaining to the acts of providing and using the funds. The funding contract contains the detailed conditions for the deployment of the funding and establishes the rights and duties of the contracting parties. The equality of the beneficiary or project developer of the funding contract and the managing authority before the law can pose a practical problem. Although the contract is based on civil law by nature, it also contains elements of public law. Regulation No. 4/2011. prescribes several obligations of public procurement to successful applicants. These should be fulfilled by the applicant or the beneficiary even if they are not supposed to invite tenders based on the Act on Public Procurement.

The applicant or the beneficiary may file an objection to the decision within 30 days, which should be dealt with in 30 days.

The task of member states – in all stages of the use of the resources – is to prevent, reveal and correct irregularities, and to make the beneficiary refund the amounts paid without justification and the interest on overdue payment if necessary (financial correction). If the beneficiary cannot refund the amount paid without justification, it is the member state that is responsible for repaying the lost amounts to the EU budget, if it is an established fact that the loss occurred because of the negligence or a mistake of the member state. Irregularities may be established by both the managing and the audit authorities.

The authorities can only establish irregularities – as opposed to objections – and initiate irregularity proceedings after the funding contract has been made or the funding document has been issued, as opposed to objections. The reason for this is that the infringement of financial interests can only take place in this stage. As a general rule, the irregularity proceedings are conducted by the contributing organisation. A decision has to be made within 45 days of the initiation of the proceedings. The irregularity proceedings may be concluded by establishing the occurrence of an irregularity and by prescribing legal consequences or some other measure to be taken, and it may also be concluded by establishing the non-occurrence of irregularities. The beneficiary may lodge an appeal against the irregularity ruling within 10 days, on one occasion.

The use of resources may be checked by the organs defined in the law, the call, the funding document and the funding contract. The beneficiary is obliged to provide all the information and assistance necessary for the audit. Audits may be conducted prior to the decision about funding, during the use of the funds, and on the completion of the supported activity, after the conclusion. The managing authorities are responsible for the audits first and foremost as they are the 'closest' to the projects to be audited. The two main auditing tools are document-based auditing (in case of every request for payment) and on-the-spot auditing, which can also be conducted by taking samples.

5. The implementation of the Common Agricultural Policy of the EU in Hungary

The implementation of the Common Agricultural Policy (CAP) has also been an ongoing process since the accession of Hungary to the European Union in 2004. Since agriculture represents a traditionally important part of the economy of the country, the availability of a significant level of agricultural aid in the framework of the CAP is considered to be a major policy tool for strengthening economic capacities in rural regions.

The institutions responsible for the implementation of the CAP in Hungary are as follows:

1. **The Ministry of Rural Development.** Besides its many other tasks, the ministry is responsible for the strategic coordination and the formulation of the legal background for all CAP-related support schemes and framework rules. The ministry carries out the representation of Hungarian viewpoints at the different institutional levels of the European Communities. Furthermore, it serves as a competent authority responsible for the accreditation of the appointed paying agency. The ministry also carries out

the creation of the Rural Development Program, as well as tasks related to informing farmers and farmers' organizations about the CAP.

2. **The Agricultural and Rural Development Agency (Mezőgazdasági és Vidékfejlesztési Hivatal, MVH).** As the single appointed paying agency for the CAP in Hungary, MVH deals with the actual day-to-day implementation of CAP subsidies and other market regulation schemes. MVH is an independent legal entity which is supervised by the Ministry of Rural Development. MVH is responsible for the application, control and payment processes for agricultural aid schemes of the European Agricultural Guarantee Fund (EAGF), the European Agricultural Fund for Rural Development (EAFRD), the European Fisheries Fund (EFF), as well as national aid schemes. In this capacity, MVH manages applications, performs administrative controls, conducts on-the spot checks, maintains registry systems, executes payments, issues formal decisions and reports, and provides information on CAP-related questions to farmers. MVH consists of a central office located in Budapest and 19 county offices located at county seats.
3. **Institutions performing delegated and other tasks.** The legal background of the EU for the CAP allows for the delegation of certain tasks related to the implementation of the CAP by the paying agency to other relevant organizations concerned. MVH has made extensive use of this possibility, the most important co-operating organizations are:
   - The **Central Agricultural Office** is a main agricultural control organization; it operates as a plant production, soil protection, breeding, forestry, hunting, fishing and wine-growing authority as well as a food-chain inspectorate. It mainly provides the paying agency with the execution of specialized on-the-spot-checks for different aid schemes and in the field of cross-compliance. It also operates the identification and registry system of animals kept for agricultural purposes.
   - The **Institute of Geodesy, Cartography and Remote Sensing** is responsible for the management and maintenance of the Land-Parcel Identification System (LPIS), which is a spatial database that forms the basis of all agricultural area-related aid measures.
   - Other co-operating organizations include the institute for agricultural engineering, local action groups, controlling bodies for ecological farming, national parks, water management authorities etc.

4. **Other agricultural organizations**, such as the Hungarian Chamber of Agriculture, private and public bodies included in the Farm Advisory System, the Institute for Agricultural Training and farmers' organizations offer invaluable help in the process of informing and training agricultural producers as well as offering advisory services and technical help related to the CAP.

The national legal background of the CAP is based on Acts of Parliament, Decrees of the Government and of the Minister for Rural Development. The framework for general procedural rules for all state authorities is detailed in Act of Parliament No. CXL. of 2004, which naturally applies to the CAP-related procedures of the Hungarian paying agency (MVH) as well. Furthermore, to reflect the specificities of CAP procedures, a separate Act was passed

by Parliament (No. XVII. of 2007), which adjusts and elaborates the procedural rules of the general framework.

In general, all procedures can be segmented into an application phase (whereby an application is submitted to the paying agency in electronic or paper-based form), an authorization phase (whereby all administrative and on-the-spot checks are performed, and support amounts are calculated), and a payment phase (whereby support is paid and reported). Beneficiaries are issued formal decisions in all cases, and they have the right of appeal against the decisions. With the increase of the number and complexity of the CAP support measures, the proportion of e-government solutions is increasing considerably. Concerning support measures related to the area of agricultural lands, practically the entire process of allocating the aid amount is performed electronically (totally without the use of paper-based documents). In the future, such solutions seem to be instrumental in the efficient and successful implementation of the Common Agricultural Policy.

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Public services

1. The definition of public services

'Under public services (…) we mean providing such kind of tasks, which need public organization under certain conditions, to some extent and serve common social needs .'[1] 'Public services are accessible for everyone; these services are characteristically provided by the state and local self-governments, or as responsible organs they ensure the providing of the public services by other – own or private – bodies. The regulation of public services is extremely diversified in point of financing, organizational methods, the prescriptions of providing services and the recipients. This regulatory frame appears in different levels of law, but mostly in act, and even cardinal acts contain the details.'[2]

2. The classification of public services

Public services can be classified from different points of view, like on the basis of the subject (1), providing level (2), organizational way (3), providing organs (4) and providing conditions of public services (5).

The classification on the basis of the subject of public services means basically the delimitation of public tasks according to their types. So we can differentiate first the public services with the feature of public authority, 'which are provided by the administration in a monopoly position, which are the stately characteristics of administration reflected in, which the administration is qualified as traditional by.'[3]. The public services with the feature of public authority are therefore the administrative services, like public processes for deciding right or duty for the recipients, verifying data, facts or entitlements, official registration, official control, infringement proceeding and enforcing administrational sanction. According to the typology[4] of Tamás Horváth M. the public industrial services are in the second class. 'To the public industrial services appertain characteristically the establishment and maintenance of networked infrastructure and organization of services

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1 Horváth M. Tamás, Helyi közszolgáltatások szervezése [Organizing of Local public services] (Dialóg Campus 2002) 15

2 Előházi Zsófia,'Házon belüli' beszerzés a helyi közüzemi és kommunális szolgáltatások szervezésében' ['In-house' acquisitions in organising of local public utilities and communal services] in Horváth M. Tamás (ed), Kilengések – Közszolgáltatási változtatások (Dialóg Campus 2013) 173.

3 Lőrincz Lajos, A közigazgatás alapintézményei [The basic institutions of Public Administration] (HVG Orac 2007) 240.

4 Horváth (n 1) 47–48.

related to these'[5], like road maintenance, rail passenger and freight transport services, street lighting, supply of natural gas and electrical energy supply. Public industrial services are typically provided by local self-governments, but providing demands covering the territory of the whole country, these public services are organized by the central administration. Communal public services, the third class, contain mostly maintenance-like tasks, which come forward primary on a local level. Such services include the maintenance of public cemeteries, refuse collection, disposal and treatment services, cleaning of publicly owned land, chimney cleaning services or organizing and providing local public transport services. The fourth class is housing management, which is a typical task of local self-governments and actually less significant among the public services because of the transition started in 1989. To the fifth class belong the human services, which 'appear as the assurance of the human infrastructure in institutional or other organizational form. Human services are the educational services, medical supply and public cultural activities.'[6] The last class contains the law enforcement services. 'Law enforcement traditionally means the prevention of imminence against public order and public security'.[7] So this category consists of fire service, disaster recovery, local law enforcement and public sanitation activities.

The classification of public services on the basis of their providing level involves the distinction of the several territories covered by public services. This classification is obviously in close relationship with the organization of administration, because the public services are provided by the administration, the bodies established by the administration and the organs contracted with the administration and administrational bodies. According to the current Hungarian administrational system, public services can be classified on the basis of their providing level into the following categories: central, regional (more than the territory of a county), county, district and municipal level. During the evolving of supply levels it must take notice of several factors. The current political conceptions, the available resources, the financing possibilities and the principal of subsidiarity play a significant role. It could be noted that in Hungary 'in the last few years, a recentralizing process has started instead of the former decentralizing tendencies in the local public administration, which has crucial importance for the organizing public services, but this process doesn't trend only to the local public administration or to the enlargement the efficiency of local public services, because it means the concentration of power, which serves political aims.'[8]. The available resources are basically the necessary assets for providing public services and human resources. Before the change of regime, all the properties necessary to providing public services were owned by the state, among which after the change of regime the following were transferred to the local self-governments: landed properties located in the administrative area of the certain local self-government; watercourses and lakes serving local aims; local public utilities; educational, cultural, medical, social, sport and other institutes managed

5 Előházi (n 2) 175.

6 ibid 175.

7 Szikinger István, Rendőrség a demokratikus jogállamban [The Police in democratic State of Law] (Sík 1998) 83.

8 Szigeti Ernő, 'A közigazgatás területi változásai' [Territorial changes of public administration] in Horváth M. Tamás (ed), Kilengések – Közszolgáltatási változtatások [Swings – Changes in Public Services] (Dialóg Campus 2013) 286–287.

and governed by the local council; public and residential buildings managed by the local council; all the funds, savings, stocks, property claims and other rights representing assets of the local council; all movables managed by the local council; productive, commercial and service companies established by the local council; joint stock and its net income. After 2010, a part of the public services were organized on the district and county level instead of the local level, which meant also the transferring of the assets needed for providing public services. The organizational change concerned first of all the human services like healthcare, public education and public cultural activities. These public services are now provided by the state through its own – reorganized or newly established – institutes, instead of the local (municipal or county) self-governments. The primary reason for this change is the more efficient and cost-saving supply, not hiding the aim of reduction of the high debt caused by local (principally county) self-governments, and centered providing these public services. For the other public services organized typically in municipal level are responsible the local self-governments, but under strongly ruled, progressive and available control of the state toward ensuring the legality and efficiency.

There are basically four types of public service organization: in own sphere of authority (1), cooperation of several administrational and public bodies (2), participation of civil associations and church (3), or by business agreements (4). The providing of public services in own sphere of authority happens by administrational bodies and public bodies established (governed) by the administration and para-administrative organs. The services supplied by the administrational bodies are mainly administrative proceedings and services, the para-administrative organs are able to perform all sorts of public services. The cooperation of administrational and other public bodies can happen in every sort of public task, for example inter-municipal associations or agreements between the state and the local self-governments. The civil associations and the Church take part primarily in the providing of human public services; business agreements are typical in the field of industrial and communal public services.

The organs providing public services and the organizational types are closely related to each other. 'The legal form significantly defines the economic, organizational and usage conditions of the public services'[9] The legal forms of the organs can be local self-government, budgetary authority, business association, cooperative, foundation and public foundation, civil association, public corporation. Thus the public services in own sphere of authority can be provided by local self-government, budgetary authority, inter-municipal association or by para-administrative organs which latter could be business associations, cooperatives, budgetary authorities, public foundations and public corporations. The legal forms of civil associations are typically foundations and associations, but sometimes act in the form of non-profit public benefit business associations. The organs which provide public services by business agreements characteristically are for-profit business associations.

On the basis of providing conditions we can differentiate public services which basically need and those which rather don't need national property to be provided. The elementary function of national property is to be used for public aims and sufficing public need, which means usage for public services. 'The significant part of public property is connected

[9] Előházi (n 2) 176.

to the (…) public services, which justifies that the management of public property must play a main role in the regulatory models of public services.'[10] Public services are financed by public funds, so in this classification the public funds as national property won't be taken into consideration.

Most of the public services need material conditions, which could be also movable and immovable properties. These elements of property are essential for providing public services, because they are so closely related to the public tasks that without them the ensuring of services is impossible. So the public services which basically need national property as a main condition are those which mean the maintenance or operation of national property, like public industrial services, housing management or a part of communal public and human services. Public industrial services are typically connected to the operation of basic infrastructure, so these public tasks are realized by the usage of infrastructural property. Housing management contains management tasks related to flats and houses owned by the state or local self-government, like renting, upkeep and restoration, so this public service would make no sense without housing stock. Those communal public services which basically need an exact property for providing, like maintenance of landfills or public cemeteries, are similar in their nature to the public industrial services, because both of them represent public services based on operation of national property. Among the human services there are numerous public tasks which could be only supplied if certain material conditions exist according to the law, like public education and healthcare, because these tasks compulsorily require the available movable and immoveable property. For as much as provider bodies are owned by the state or local self-government, the role of national property is outstanding among these public services.

On the basis of providing conditions, in the other category of public services belong those which basically are not connected to the available national property, like public services with the feature of public authority, law enforcement services or a part of communal public and human services, because these public services only need national property as a complement. Complementary nature means on the one hand that the public task is not about the operation of national property, and on the other hand that public service doesn't connect closely to the existence of national property. In public services with the feature of public authority, the character of the task is essential, namely authorization and cognizance, because these services typically tend towards determining right or duty or verifying data. In law enforcement services, public power counts first and foremost, because 'the imitation and saving of public order and public security is the exclusive right and duty of the state.'[11] The main character of those communal public and human services, which don't need national property in order to be provided, is the serving itself, namely the activity. For such public tasks, it

[10] Hegedűs József, Tönkő Andrea: 'A területi közszolgáltatások szabályozási modelljei vagyongazdálkodási szempontból' in Horváth M. Tamás (ed), Kilengések – Közszolgáltatási változtatások [Swings – Changes in Public Services] (Dialóg Campus 2013) 53.

[11] Madai Sándor, 'A rendészeti feladatellátás, mint közszolgáltatás' [Police task supply] in Horváth M. Tamás (ed), Kilengések – Közszolgáltatási változtatások [Swings – Changes in Public Services] (Dialóg Campus 2013) 221.

is naturally necessary to possess national property, but it's not the material condition of these services. For example, chimney cleaning and combustion technology services, municipal solid and liquid refuse collection services, social services and family doctor service.

3. The organs responsible for public services

The Fundamental Law of Hungary contains among other the basic frames for providing public services, which determine the scope of duties and authorities of the state organs and local self-governments. According to the Article XXII of the Fundamental Law of Hungary, the state shall strive to access to public services for everyone. Therefore primarily it is the duty of the state to evolve and continuously sustain the public service system. Of necessity the state isn't able to organize the supply of the public needs up to the smallest territorial level, so Article 34 paragraph (1) of the Fundamental Law of Hungary declares the cooperation of the state organs and the local self-governments to achieve community goals. Pursuant to the European Charter of Local Self-Government – which was proclaimed by Act XV of 1997, and Hungary accepted all the articles as compulsory – the principle of subsidiarity must be vindicated in the field of public services, which means that public tasks shall be organized by those authorities closest to the citizen; allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy. 'Local public service tasks are those public activities which could be interpreted in relatively delimited manner among the frame of settlements or other territorial units.'[12] Therefore the local self-governments shall be the providers of the local public services, because these organs represent the most direct connection point for the people, both physically and by virtue of their responsibilities. 'The power for managing local issues can be general, i.e. the power can cover several territories or aims, and can be confined to only one task, one certain group, a "sector" of issues.'[13] General power means that the management of local issues is a fundamental right of the local self-governments, which appears as a general clause or a taxative list in the highest-level law of the member states. The power of local self-governments according to the principle ultra vires follows from the 'will of the sovereign state'[14], which means that the right of the local self-governments to manage local issues and provide local public services doesn't originate from the recognition of the right to self-determination. General power and power according to the principle of ultra vires are mixed in the Fundamental Law of Hungary and in the new act on local self-governments, but the effect of the principle of ultra vires feels stronger in the detailed rules.

With respect to the organs which are responsible for public services, the task management opinion of the state has a basic significance, which is the extent of centralization and decentralization. 'In the regulation of public tasks there is an expectation […] for the

[12] Horváth (n 1) 16.

[13] Pálné Kovács Ilona, Helyi kormányzás Magyarországon [Local governance in Hungary] (Dialóg Campus 2008) 48.

[14] ibid 48.

legislator which is to examine whether the task is local public issue or not. This task can be performed optimally at the local or state level. Furthermore, the legislator has to examine the need for performing the task in addition to where it is ti be performed, with what content, by whom is expected and where the task can be supplied economically and at a professionally reasonable level.'[15] Therefore the structure of the certain state, the expectations of the people and the aspiration of public power fundamentally defines the rules of the organization system of the public services.

The structure of the state can be classified with respect to the public services by the territorial division of the power. According to the typology of Ilona Pálné Kovács,[16] we can differentiate the unitary and federal states. Unitarian states may be divided into city-states, classical unitarian or centralized states, the devolution or decentralized states and regionalized states. 'The unitarian state is under central control, the sovereignty of the central government and the power of legislation is not divided between the governments of the member states.'[17] In contrast, the trait of a federal state is that 'the member states and the federal state shares the sovereignty, there is obvious separation of power, which means that the authority of the federal state and the power of the member state covers clearly defined areas.'[18]

The most of the member states of the EU are classical unitarian or centralized states. These countries dispose two-level administration, which is composed of a municipal and county level. In these states, public services are provided by central state organs and deconcentrated organs, so the local self-governments fulfill delegated state tasks; the independent public service tasks are minimal. Decentralization and the right for self-governance is recognized at the constitutional level, but in the United Kingdom and in Ireland the centralization is mostly typical, so the power of the local self-governments is according to the principle of ultra vires, which means the they can practice their power only by an act.

In the devolution or decentralized states, the power is territorially shared between the state and the local elected bodies. In these states, the local self-governments have a major importance in performing public tasks and services.

The regionalized unitarian states recognize the right of the municipalities for self-determination, but the classical local self-governmental tasks are under the power of the regions. There are more area organizational levels, so the municipality, the county, the region and in some states areas with special privileged status, which follows from ethnical or former colonial trait. Federal states have three-level administration: municipal, provincial and federal levels. Typically the municipal level is recognized as the lowest level, but the constitutions contain mostly the rules of power-sharing between the provinces and the confederacy, the rules of power-sharing between provinces and municipalities is regulated in the provincial legislation.

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[15] Kéki Zoltán, 'Az önkormányzatok feladat- és hatáskörének vizsgálatáról' [Research on functions and scope of Local Self-Governments] in Ferenc Csefkó (ed), A magyar önkormányzati rendszer továbbfejlesztése (Magyar Önkormányzati Szövetségek Társulása 2001) 125.

[16] Pálné Kovács (n 13) 32–35.

[17] ibid 32.

[18] ibid 33.

The expectation of the people regarding public services is basically to satisfy their needs at the highest level according to the possibilities of the providing organ. The sectoral legal rules of the public services define in detail the content and the level of the public services. In regards that the providing organs have a duty to provide comprehensive information and the people used to have resort regularly, in several cases daily to these public services, the people have up-to-date information about their rights for public services. In some of the public services – because of their nature – the people can contribute, which means first of all public control, and secondly it can mean contribution and the right to decision-making. It's an expectation for the organs which are responsible for public services or are providing public services, that their activities shall be transparent. 'Transparency is a consciously developed character pervading the whole organ and a way of operation.'[19] The transparently functioning organ 'provides information, makes itself transparent, is available, supplies in a certain way, listens to the people, allows a say in, cooperates and allows participation, is accountable, lets decision pass through, and lets tasks and power pass through – namely power, providing over resources and responsibilities related to these.'[20] Because of the open operation, the people have the possibility to evolve and to develop on their own the providing of the particular public service according to their needs. Typically the public tasks supplied by local self-governments are mostly appropriate to take the people into the providing, because the basic organizational character of the local self-governments is the participation of the people in the operation.

The ideas of the government in power have a significant effect on the organization of providing public services. In accordance with the dominant ideology, they may allow the creation of a system which supports the wide social involvement and the permitting of the transfer of decision-making power, in which the local self-governments are the key players. In addition to many advantages, of course, it involves a number of drawbacks that cause the varying quality and organization of public services. The current Hungarian public power efforts are opposite to this, which can be seen in centralization, district-centralization to standardize the quality of services by a central organization and continued state control. To this end, the following major changes have been made: certain public tasks – typically the human public services – were nationalized, a significant fraction of the public services has been returned into the responsibility of para-administrative organs, the functions of local self-governments have been reduced and their providing has been under more pronounced state control, the newly established county and district government agencies carry out public organizational tasks; new deconcentrated and central agencies have been created for the management of public services.

The organs which are responsible for the providing of public services are the state (organs) and the local self-governments. The law specifies that certain public functions and public services are provided, by which body and what powers. In terms of national importance, strategically

[19] Gáspár Mátyás, 'A nyitott önkormányzás lényege és technikái' [The essence of open local governance and techniques] in Csefkó Ferenc (ed), A magyar önkormányzati rendszer továbbfejlesztése [The improvement of Hungarian Local Government System] (Magyar Önkormányzati Szövetségek Társulása 2001) 138.

[20] ibid 138.

outstanding tasks required in the territory of the whole country, unified organization and control of the central authorities act like ministries and other central budgetary authorities, which activity has mostly public power characteristics, but also a number of organizing public functions. The sphere of public bodies covering several counties are those deconcentrated organs whose activities cover a region or bigger district as for example the Inspectorates of Environment and Water, which typically provides public power tasks. The characteristic middle level of Hungarian administration is the county, which is no longer determined the county self-governments but county government agencies established on 1st January 2011. The 'significant portion of the territorial state administration bodies has been integrated into the government agencies. So the capital and county government agency consists of an organizational unit directly led by the government representative (ordinary office) and sectoral specialized administrative bodies.'[21] The county government agency is responsible for the following – not, or not exclusively, public power like – public services: social services, child protection and guardianship matters; public health; consumer protection; labor safety duties. Between the middle and local level an old-new administrative unit has been established, which is the district. The district is typically a jurisdiction unit of a deconcentrated public entity with the same area like the former small regions, because the district offices operate as the sub-office of the county government agencies. Earlier, in the multi-purpose regional local government, associations were embodied in the present territory of the district, but the relevant act was repealed by the Parliament from the 1st January 2013. At the municipal level the presence of the local self-governments is typical, but most of their duties were taken over by the deconcentrated bodies of the state which organs more strictly control the operation of local self-governments – on legal basis. The public services provided by the local self-governments are specified in the Article 13 of Act CLXXXIX of 2011 on the Local Self-Governments of Hungary, which are the following: settlement operations, basic healthcare, hygiene maintenance, nursery care, cultural services (library, local public education), housing management, local environment and nature protection, water management, local law enforcement tasks, market operation, sport matters, waste management, district heating services, homeless services, water utilities services, public parking service. It is clearly stated that the direct access to the public services will be provided by local self-governments, but under strict state control.

4. The organization of public services

The organization of public services can be basically classified in four ways: the administration itself supplies the public services, cooperation of public bodies, participation of civil associations and church, the supply of public services is performed by business agreement.

When the administration itself supplies the public services it can happen in two ways: the administration itself or by its para-administrative organ supplies the public task.

[21] Pálné Kovács Ilona, Tuka Ágnes, Schmidt Andrea, Vadál Ildikó, Kákai László, Regionalizmus és területi kormányzás [Regionalism and territorial Governance] (PTE Bölcsészettudományi Kar Politikai Tanulmányok Tanszék 2011) 222.

During the task management of the administration, the provider organ is responsible at the same time for the supply and ensuring the access to the public services; that organ provides the services by its own body. These tasks are defined typically by the law, which means that the subject of the regulation is the addressee of the task, their powers, competences, subject matter and scope of the tasks. Typically these services are the public power services, namely authority services and those public services which due to their strategic nature cannot be delegated to the state, local self-governmental system of institutions and organizations outside the administration. In this case, the administration – whose legal form is budgetary authority – operates a hierarchical organization; the staff consists of civil servants, and its function, beyond as required by law, is further regulated by the organ inside. Accordingly, the providing the relevant public service is governed by organizational and operational regulations, guidelines for supplying certain activities, regulations concerning of the right of publication rights and management regulations. Certain departments of the public administration body are authorized to carry out a specific public task with which a decision is taken by the manager or the person with delegated authority designated by the manager. The provision of public services can take place therefore in bound form and within strict frameworks.

During task management by para-administrative organs, public services are provided outside of the organization of the public body but under its supervision and control. The para-administrative organs are usually established by the provider organ, and in most cases are the property of that organ. The para-administrative organs operate typically in the legal form of a budgetary authority, company or public foundation. According to the typology of Lőrincz the public institutes operate in budgetary authority form, and provide mostly human public services. The establishment of the budgetary authority may occur under the rules of the Act CXCV of 2011 on national budget. Accordingly, the founding organ – by publishing the articles of incorporation – establishes the budgetary authority. The articles of incorporation contain the main data of the organ and its activity, such as the name, main place and possible premises; the whole appellation of the law providing the establishment, if the budgetary authority is established by the force of law; its public task, main activity, its designation of special tasks and specific classes of national budget; its competence and operational scope; the name and main place of its governing body; classification of management; the mandating order of its leader; and designation of employment relationships for employees.[22] The structure and the operation of the budgetary authority are very similar to the administrative organs, but its action affects the method of operation. Due to the fact that the sustentive organ of the budgetary authority is the organ which is responsible for public services, the financing of the public task is performed by this organ. The budgetary authority secondarily may carry out business activities in that case if the founder specifically allowed it during its establishment. Because human public services are free or discounted, only in a few cases is it possible that the business activity be actually relevant. The public foundations are mainly to provide the public human services, but by their nature they can play part in fulfillment in other types of public services. Public foundation, exclusively the

[22] Article 5 paragraph (1) of 368/2011. (XII. 31.) government decree on the enforcement of national budget.

Parliament, the government and local self-governments can create voluntarily or be ordered by law to purpose of a public task. Functionally, the rules of the foundation are applied to it, but because of the subsidy given from the national budget, its financial management is controlled by the State Audit of Hungary in the legal and practical aspects. As a commercial company, the public utilities are involved in performing the task, typically in the area of municipal and utility services. With regard to the principle of responsible management, which is a defining standard for organs functioning in the system of national budget, the administrative organs may establish exclusively limited liability companies and private limited companies. For these two types of company, the founder (owner) is required only cash or in-kind contribution representing its shareholding, and during the operation is not responsible for the company's actions. Taking into account the rules of the Act CXCVI of 2011 on National Property, this kind of company may act only as a transparent organ, because this is the precondition of providing public services. In the case of commercial companies, Act CVIII of 2011 on Public Procurements contains specific prescriptions such as in-house procurement. In-house procurement means that for the organ which is responsible for providing public services is allowed to contract directly, without any special processes with a commercial company for supply a public task, if the following criterions are given: the certain commercial company is exclusively or partly owned by the organ (or with other state, local self-governmental organs jointly) which wants to contract; over the commercial company the responsible organ – in regards of its task related to the public task, the performance of public services or the organizing of the supply – has completely controlling rights regarding management-like tasks; the responsible organ is capable of fundamental influence of the company's strategic aims and important decisions; furthermore, after the contract, the achieved net sales of a given fiscal year of the company is derived with at least 80% from the execution of the contracts signed with the responsible organ (derived from the execution of the contracts, those contributions which are based on these contract and the public service is supplied for third parties, regardless of the fact that the consideration of the public service is paid for by the responsible organ or that person who has resort of this service).

The cooperation of public bodies means the common providing of public tasks by those public organs which are not within hierarchical relations with each other. This cooperation is realized by the state (organs) and local self-governments, or between the local self-governments, but the state organs together can appear as common providers of public services.

The cooperation of state and local self-governments can be take place typically in the following cases: providing tasks on the basis of exclusive rights, the transfer of public task or project-based cooperation. 'Exclusive rights' means rights established by law, or some other exclusivities based on acquired title, like concession rights. Based on the exclusive rights, the responsible organ may provide the service in question by agreement or by order. An example is the organization of local public transport, which the local government has to provide, but this task can only be provided by agreement with the state-owned transportation companies, because other organs are not entitled to provide such tasks. The transfer of public tasks can be provided by agreement, too, in many cases under the approval of the superior body. The transfer of public tasks may have purely financial liability, but possibly also the material conditions for ensuring the provision of public services, which can be a

transfer of ownership. Project-based cooperation means short- or medium-term common providing of a public task or the temporary common provision of a certain service. Such cooperation is not a longer-term perspective, and is constructed on the basis of common interests inducing the relevant agreement. In many cases the public service in question must be supplied during a specified period or common initial engagement is needed between the bodies involved for continuously providing a certain public service. Typical projects funded by the European Union are those that call this type of collaboration to life.

Local governments are typically embodied in the form of inter-municipal association. According to the prescriptions of Act CLXXXIX of 2011 on the Local Self-Governments of Hungary, the representative bodies of the local self-governments may agree on establishment of an inter-municipal association with legal personality for providing one or more local self-governmental tasks and functions in a more efficient and appropriate way. This act regulates in detail the establishment, function and annulment of the inter-municipal association. The inter-municipal association has rights to establish a budgetary authority, commercial company, non-profit organ or other organ for providing the public services within its responsibility, so it has freedom for organizational development in its own competence. While previously the concerning act defined the types of inter-municipal associations, the 'Chapter IV. of the new act on local self-governments doesn't specify the forms of inter-municipal associations, but general rules of every form of inter-municipal associations.'[23] The inter-municipal association provides a wide range of possibilities to organize the territorial level of public services, which is a more efficient and economical operation, but also the autonomy of the local self-governments remains in respect of the task performance. Nevertheless, the inter-municipal association as service organizational solution is not popular among the circle of local self-governments, because so far an organizational model following a sufficient legal and financial incentive system, which would be used in the creation and long-term survival of inter-municipal association, has not been developed. 'Based on the principle of partnership, a design, development and funding model must be developed, the use of the resources of those involved can be more effective, and the public, social and private sector can contribute to the strengthening of the economic viability of local communities.'[24]

The participation of civil associations and the Church in providing public services – as indicated above – is typical in the field of human public services. The civil association operates in association or foundation form. According to Act CXCVI of 2011 on National Property, national property can be exclusively used free for providing public tasks, utilized to the extent necessary for the performance of public function or for asset management. According to act CLXXV of 2011 on the right of association, public benefit status, operation and support of civil associations, the civil association may take part in the provision of a public task if it has public benefit status, which means also the possibility for them to sign a public service contract with

[23] BM Önkormányzati Feladatok Főosztálya [Tasks of Local Government Division of Ministry of Interior], 'A helyi önkormányzatok társulásairól szóló szabályozás változásai' [The changes of the regulation of the partnerships of Local Self-Governments] 14 Jegyző és Közigazgatás http://www.jegyzo.hu/index.php?oldal=egycikk&id=2345 accessed 4th December 2013.

[24] Kiss László, 'A társulási viszonyok reformja' [The reform of partnership relations] in Csefkó Ferenc (ed), A magyar önkormányzati rendszer továbbfejlesztése [The improvement of Hungarian Local Government System] (Magyar Önkormányzati Szövetségek Társulása 2001) 82.

a responsible organ. Nonprofit activities under this act are considered those activities which serve directly or indirectly a public duty defined in the deed of foundation to contribute to the meeting of common needs of society and the individual person. Public benefit status is created by registration, which requires the fulfillment of many operational and economic preconditions. Public benefit activity means at the same time the consummation of special management and accounting prescriptions, with which reporting requirements are added as well. The civil association usually provides the public task by a supply contract or cooperational agreement, but a public service contract may be signed; the use of these contracting types depends on the character of the providing task. The role of Church in the field of public services is defined first of all in Act CCVI of 2011 on the right to freedom of conscience and religion, as well as the status of churches, denominations and religious communities. Under this act, the Church can take part in providing the following public tasks: medicine matters, education and training, higher education, healthcare, family, child and youth protection, cultural services, sports matters, animal, nature and environmental protection, social activity. Church facilities are relatively widespread, because among the communal and human public services a number of tasks can be supplied, but the human public services are more typical in terms of the tradition of Church activities. The public services provided by the Church may happen in their own right, which that is in addition to the supply of the state or local self-governments, or instead of the responsible organs by agreement. In the latter case, pre-conditions may not be imposed for recipients, furthermore the financing of the task and the provision of the facilities ensure the responsible organ.

By business agreement, those public services may be contracted out which are profitable, so this organizational way is important in the case of communal public services or public industrial services. The business agreement may be contracted directly only in exceptional cases, because the principle is to choose the supplier as a result of a competition. The nature, extent, subject and processing rules of competition are laid down by law; accordingly, the legislature distinguishes three following main types of procedure: public procurement process, concessional process and competitional process under the rules of the Act CXCVI of 2011 on national property.

Procurement procedures are required to be conducted for the conclusion of the contracting entities to realize their specified scope and value of purchases, which is a highly detailed and bound form of competition. The subject of public procurements are supplies, works, service orders, service and work concessions; in the case of public services we can speak as a subject of procurement about service order, service and work concession. The procurement process starts with a publicly announced or a directly sent tender notice, which contains the main data of the contracting authority, the subject and amount of the public procurement, the ground of refusal applicable to the participating economic operator, the specifications of which a minimum must be met in order to fulfill the procurement contract, and the evaluation criteria of the public procurement. In the notice must be published the receipt of tenders, at which time the bids submitted by participants shall be opened. Following the opening process, the tenders will be evaluated. In the case of valid qualifying bids will be decided according to the evaluation criteria[25] which operator may be contracted.

[25] Lowest price or most economically advantageous tender.

According to Act XVI of 1991 on concession, the efficient operation of the exclusive state, local self-governmental or inter-municipal association's property, as well as the activity referring to the exclusive jurisdiction of the state or the local self-government may be performed on the basis of concession contract as one of the possible ways. Under the concession process, the winner of the concession procedure becomes entitled under the contract signed with the state or local self-government to the operation of the public property or to the performance of the exclusive economic activity, where appropriate, by concession fee provided in return to the state or the local self-government. At the conclusion of the concession contract with the state or the local self-government, a tender must be launched. The tenders – unless the national defense or national security reasons require a closed tender – are open. The concession procedure starts in principle with a published call, which should include the assessment of the application criteria and the characteristics of the concession activity. The winner of the tender is the one who offers the best tender overall based on the contest specifications. The concession contract may be concluded for a fixed period, with a maximum time of thirty-five years.

According to Act CXCVI of 2011 on national property, the competition process is not aimed at performing unbundled access to the contracting out of a public task, but it is directed to the utilization of national assets, which elements predominantly mean the material conditions of a given public service, as such the assets at the same time adhering to the task. In accordance with the provisions of the act, in the case of the utilization of property for consideration, the competitive tendering is compulsory if the market value of the concerned property exceeds 25 million HUF. During the competition the most economically advantageous bidder is to be preferred. The act does not specify the types of competitive procedures, so the state organs and the local self-governments are free to establish these rules: commonly bidding and tendering procedures are used.

5. Changes in the provision of public services in the light of the regulation in force

Based on the foregoing, we can conclude that the Hungarian public service system after 2010 the following changes were affected:

d) as direct provider of public service or as authorized inspector of public services, the state came to the fore;
e) decreasing of task and power of the local self-governments as responsible organs;
f) 'contracting back' of public services;
g) appreciation of the Church as a public service provider.

Through the central development of districts, the state transposes certain public services from the jurisdiction of local self-governments under the power of deconcentrated state organs, primarily the county and district governmental agencies. At the same time, the state with the transformation of legislation concerning the local self-governments brought under control the provision of local self-governmental public services from both the legal and man-

agement point of view. 'Looking at the service side of the organization, the huge tasks of the local self-government are transferred to other organs: in the case of healthcare institutions, to a central body, in the case of other county agencies, to the county maintainers centers under central management.'[26] The organization of municipal education – except for nursery and kindergarten – became a state task; a centralized organ provides these services. With respect to the local self-governments the government agencies has strong control powers that affect the organization of public services through the control over the decision-making. Under the current law, legal supervision can be carried out with 12 kinds of tolls, among which the withdrawal of power, taking legal and disciplinary procedures, and the removal of the aid for local self-governments from the central budget can be found.

From the task and power of the local self-governments were removed a significant part of the administrative powers, by virtue of which primarily the activities of the clerk have changed, which means the clerk is no longer responsible for providing local administrative services after the establishment of governmental agencies. Act CLXXXIX of 2011 on the Local Self-Governments of Hungary fundamentally influenced the local government's role in public services; as opposed to the former general task delegation, this act assigns to differentiate the public tasks, depending on what kind of economic performances, population numbers and how large an administrative area the local self-government possesses. The act exhaustively lists the local public affairs and public responsibilities, in addition to which the local self-government is only obliged and entitled to provide other public services if the law expressly refers to this responsibility, or public functions within the competence of another local self-government voluntarily assumed by it, provided that it is justified by the public need, which can perform more economically and at least the same professional level and without recourse to additional state aid.

The 'contracting back' of public services appears in two ways. First, through the state expansion described above, and secondly by the displacing of for-profit companies. One of the most typical examples of the latter is public parking service, because the law states that this public service can only be provided by local self-government, a budgetary authority established exclusively for this public service, a 100% local self-government-owned business entity with legal personality, or a business entity with legal personality owned 100% by that company, as well as inter-municipal associations. Thus, the existing contracts are not renewed, modified, their territorial scope is not extended, and only after their expiration may such an organization provide the parking public service that meets the legal requirements.

The role of the Church has intensified on the basis of new legislation already described, especially in the field of human public service. After the change of regime, several – formerly ecclesiastical – institutes were again under ecclesiastical maintenance; however, since 2010, some local self-government institutions have had the provision of public services carried out by churches, which help in the local public tasks.

[26] Horváth M. Tamás, 'Kiszervezés – visszaszervezés Változtatások a magyar helyi közszektorban 2010–2012' [Outsourcing – 'backsourcing'. Changes in Hungarian local public sector 2010–2012] in Tamás Horváth M. (ed), Kilengések – Közszolgáltatási változtatások [Swings – Changes in Public Services] (Dialóg Campus 2013) 244.

The overall conclusion is that in the process of Hungarian 'contracting back' the thoughts of the ideal of local self-government are undoubtedly depreciated.'[27] The obvious reason is the disfunctioning of local self-government, that the local self-government structure as established under the previous legislation assumed in respect to the lowest settlements the ability, that the local public needs – provision of which did not belong to the power of another state organ – can be supplied by the local self-government, but that was not true. Currently, public services are organized under centralized idea that is able to provide a uniform standard, but there is a real danger that the distance from the local population eventually leads to the dissatisfaction of the recipients of public services.

Further reading

Christopher HOOD – Martin LODGE, *The politics of public service bargains: reward, competency, loyalty – and blame* (Oxford University Press 2006)

Salamon LESTER M., *Partners in public service: Government-nonprofit relations in the modern welfare state* (John Hopkins University Press 1995)

Janet V. DENHARDT and Robert B. DENHARDT, *The New Public Service: Serving, Not Steering* (M.E. Sharp, Inc. 2007)

[27] ibid 246.

Part VI.

PROCEDURAL LAW AND E-GOVERNMENT

Act on Administrative Proceedings

1. The Significance of Administrative Proceedings

The codification of the domestic Act on General Rules of Administrative Proceedings and Services (hereinafter: GRAPS) lags well behind the codification of the Western-European acts on administrative proceedings and the domestic criminal and civil law, however, there is no doubt that we have been enriched by a stop-gap legislation by passing the first act on state administrative proceedings prepared at the beginning of the 1900s.

In his classical monograph on public administration, Zoltán Magyary, one of the most important Hungarian legal scholars, writes about administrative proceedings that 'the concept of the proceedings is the defined order of activities appropriate for achieving certain goals.'[1] His disciple, József Valló emphasized in his study[2] about administrative proceedings in 1937 that 'the administrative proceeding adjusts itself to the aims it has to fulfil (…).'

We believe that both authors made their mark on today's administrative experts.

Both of them aimed at – among others – elaborating an act on administrative proceedings that might have been appropriate to fulfil the needs of the legal relationship of authorities of that age. It was not an easy task even at that time: as Valló says in his work quoted[3], 'administrative law is an early study, so it is natural that neither its positive law nor its literature reaches the level of deployment or sophistication which was created in the field of criminal law in the last century.' This tendency changed somewhat in the second half of the 20th century, and soon administrative law and its certain subfields grew out of the 'status of a stepchild'. At that time in the legal system of the states that were much more developed than ours, criminal and civil substantive law was separated and codified, and later the proceedings already existing in practice were enshrined in law.

The law regulating the general rules of administrative proceedings and its later amendments, and the establishing of the new Act on proceedings passed in 2004 formed and forms an integral part of the codification process that tends to provide an efficient and citizen-friendly public administration by developing the structure of the state, a more appropriate operation of state authorities and providing citizens' rights to a greater extent.

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1 Magyary Zoltán, Magyar közigazgatás [Hungarian Public Administration] (1st edn, Magyar Királyi Egyetem 1942) 592.

2 Valló József, Közigazgatási eljárás. A közigazgatási eljárás célja, természete, alapelvei és eddigi tételesjogi szabályozása; a közigazgatási eljárás törvényi szabályozásának előkészítése [Administrative Proceedings. The Aim, Nature, Principles of Administrative Proceedings and their Positive Legal Regulations; The Preparation of the Legal Regulation of Administrative Proceedings] (1st edn, Magyar Közigazgatástudományi Intézet 1937) 7.

3 Valló (n 2) 4.

The process of the appropriate establishment of administrative procedural law shall never be considered to be finished. Consequently the codification of this field still has considerable social significance.

The significance of the first domestic act on administrative proceedings is that the legislator has provided a powerful tool with its establishment to strengthen lawfulness, and resolved the most important proceeding problems and created an order regulated by law in a wide range of issues directly affecting thousands of citizens. As a result, regarding lawfulness the legislator has settled an extremely important dimension of the rules of state administrative activities by eliminating the previous uncertainties, procedural loophole experienced even in basic issues and the precarious common law elements of state administrative proceedings.[4]

2. The Legal History of Administrative Proceedings[5]

2.1. The First Codifications of Administrative Proceedings

It was Act IV of 1869 on the Exercise of Judicial Power that first paved the way for the development of domestic administrative proceedings, which set the requirements for separating judiciary from public administration.

Although Article XLIII of 1869 allowed the review of financial state administrative decisions also in our country by establishing the *Financial Administrative Court*, the administrative procedural rules were yet to be elaborated. Act XXVI of 1896 on the Hungarian Royal Administrative Court regulating the proceedings of the *Hungarian Royal Administrative Court* which was established according to the Austrian model, settled several procedural issues which became one of the bases for future administrative regulation, despite the fact that the institution of the administrative court cannot be regarded as something existing for a long time in the Hungarian legal system.

Besides this, at the beginning of the 20th century several laws were made which were progressive with regard to the creation of the uniform procedure code. Particular examples include, but not limited to the Act XX of 1901 on Simplification of Public Administration, Act XXX of 1929 on the Structuring of Public Administration, and its amendment in Act XVI of 1933 on the modification and amendment of Act XXX of 1929.

Soon, uniquely in Europe, the Austrian administrative procedure code was made (*Allgemeines Verwaltungsverfahrensgesetz* – hereinafter referred to as AVG).[6] Shortly, as a

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4 Fonyó Gyula, Az államigazgatási eljárási törvény magyarázata [The Interpretation of the Act on State Administrative Proceedings] (KJK 1976) 11–12.

5 See detailed: Boros Anita, 'A túlszabályozás csapdájában – A Ket. általános eljárásjogi kódex jellegének végnapjai' [Trapped in Overregulation, the Last Days of the General Proceeding Code Nature of GRAPS] (2012) 5 Új Magyar Közigazgatás 2–15.

6 Karl Irresberger, 'Länderbericht Österreich' in Europäisches Verwaltungsverfahrensrecht, Beiträge der 70. Staatswissenschaftlichen Fortbildungstagung vom 20. bis 22. März 2002 an der Deutschen

result, the first procedure codification drafts were made, such as the previously mentioned Valló's study, and later in 1939 the Administrative Proceedings and in 1942 the draft legislation on general administrative regulation by Jenő Szitás.

In 1949 the administrative courts were abolished, some of their competences were transferred to the civil court and other issues to the organized arbitration boards managed by public administration, but the greater part could only be put in issue within public administration.

The draft legislation on the general regulations of state administrative proceedings was finished in the summer of 1956, and the National Assembly passed the Act IV of 1957 on the General Rules of State Administrative Proceedings (hereinafter referred to as GRSAP) a year later. It was Bulgaria, Czechoslovakia, Poland and Yugoslavia that had uniform law on state administrative proceedings of that time among the socialist countries.

Act IV of 1957 wanted to be a 'flexible primary' regulation[7]. Accordingly, one of the most important characteristics of the regulatory concept was that the special procedure norms could not diverge from the majority of the statutory provisions, except where the procedure act made it possible to be subsidiary on the whole, or allowed the divergence from certain issues regulated by the act.[8]

In the course of the overall review of GRSAP in 1980–81, besides several issues, even the relationship between GRSAP and the special procedure regulations was reviewed, however, parallel with the increasing number of special procedure norms the primary and general nature of Act I of 1981 were neglected. This tendency grew even stronger after the years of the regime change, though Act I of 1981 amending GRSAP was amended several times either according to the Constitutional Court's decision or due to national economic reasons.[9]

According to the minister's reasoning Act I of 1981 on Modification and consolidation of the Act IV of 1957 on the General Rules of State Administrative Proceedings (uniformly abbreviated as MCA[10]) amending GRSAP had a significant role in establishing the single system of state administrative proceedings, simplifying and accelerating the administration of authorities and consolidating the rule of law. 'The act helped state administration carry out its tasks successfully with the single regulation of proceedings, settling the procedure attitude towards customers appropriately, introducing the system of binding remedy and increasing the stability and respect of authority decisions, and, at the same time, it allowed the customers to get to know their rights and even exercise them. As a consequence, MCA

Hochschule für Verwaltungswissenschaften Speyer (1st Edition, Duncker und Humblot 2004) 42–43.

7 Kilényi Géza (ed), A közigazgatási eljárási törvény kommentárja [Commentary on the Act on Administrative Proceedings] (KJK 2005) 16.

8 Boros Anita, 'Koncepcionális javaslatok a Ket. felülvizsgálatához' [Conceptional Proposals on the Review of the Act on Administrative Proceedings] (2010) 3 Közjogi Szemle 18.

9 cf. Kilényi (n 7) 17.

10 The abbreviation of the act is rather different in the literature, as it is reflected in the minister's reasoning about Act I of 1981: 'Áe. (MCA) is the abbreviation for the original Act IV of 1957 by the majority. With regard to our previously published studies on this topic, and for the sake of clarity, Et. (GRSAP) is the abbreviation for Act IV of 1957 and Áe. (MCA) for Act I of 1981.'

became an important means of establishing legal certainty and strengthening state and citizens' discipline in authority administration.'[11]

The review aimed at reaching the following goals:

a) maintaining the well-established regulations known both by the customers and administrators,

b) further standardisation of procedural regulations and, in the interest of this, limiting the field of proceedings removed from the scope of GRSAP, and enforcing the principle that the special procedure regulations can only diverge from GRSAP, or regulate certain independent procedural institution if authorised by law,

c) further simplifying the proceedings so that it is beneficial for both the citizens and the proceeding body,

d) achieving the goals of the proceedings parallel with establishing the guarantees of proceedings regarding the customer's rights, and declaring the regulations strengthening the reputation of the authority's decision.[12]

MCA was in effect for a long time to the complete satisfaction of those who applied the law. However, the conditions of 1981 were not permanent. MCA was altogether amended thirty-six times until it was repealed in 1981, however, its regulations were 'entrenched' in the blood circulation of law application, and even the court's case law gave answers to the loopholes emerging in the course of law application.

As Géza Kilényi also said, 'Although Act IV of 1957 included modern and progressive provisions at that time, the world has changed a lot since it was established nearly half a century ago. Consequently both in the world of science and in governmental circles it has been recognised that the act on proceedings has fulfilled its historic role and the time has come to change it for a new, state-of-the-art act.'[13]

2.2. The Effective Regulations of Administrative Proceedings

The Government Decree of 1052/1999 (V.12) provides that 'Act IV of 1957 on the General Rules of State Administrative Proceedings shall be reviewed. A codification committee shall be set up for preparatory work. A proposal for a single act on administrative proceedings shall be submitted which is appropriate to modern public administration.' As a result, the codification committee was established, which finished the elaboration of the regulatory concept of the act on proceedings on 31st December 2001 and the text of the new act on proceedings in June 2002.

The new act on proceedings passed in 2004; Act CXL of 2004 on the General Rules of Administrative Proceedings and Services is a significantly longer and more complex law

[11] 'Vita az Államigazgatási eljárás általános szabályairól szóló 1957. évi IV. törvény módosított és egységes szerkezetbe foglalt szövegének javaslatáról' [Reasoning for the proposal for the amendment and consolidated text of Act IV of 1957 on the General Rules of State Administrative Proceedings] (1981) 30 State and Administration 542.

[12] Reasoning for the proposal… (n 11) 542.

[13] Kilényi (n 7) 19.

than its predecessor was, which reflected the expectations of sectoral portfolio interests, thus it also drafted certain rules which cannot be considered as general procedure regulations.

The original act soon proved to have deficiencies, so Act LXXXIII of 2005 (often called the 'omnibus act') came into effect on 1 November 2005 and in Article XII tried to correct the deficiencies of the provisions of GRAPS, which was not even in effect on the same day as Act LXXXIII.[14] Parallel to this, the Expert Committee of Administrative Proceedings was established, which made an effort to support law application activity with 'methodological resolutions'.

After that, GRAPS had been amended nearly ten times by 2008, consequently an overall GRAPS revision was carried out in Act CXI of 2008 (hereinafter referred to as the Revision Act), the primary task of which was to deregulate the contradictory rules which were inapplicable in law application, and make the proceedings simpler, faster and more efficient. Besides this Act CXI of 2008 on amending Act CXL of 2004, and Act LVI of 2009 on amendments related to the transposing of Directive 2006/123/EC on services of internal market came into effect, the latter primarily aiming at settling the rules that arose due to the implementation of Directive 2006/123/EC (hereinafter referred to as Internal Market Directive).

The Revision Act included several provisions which aimed to decrease the burden on customers while putting unnecessary burdens on the authority, and, besides its advantages, it raised several deficient and contradictory problems, or issues resulting in future problems of legal interpretation.[15] Unfortunately not even the Revision Act continued to exist up to its second birthday as, in practice, it soon turned out that the loopholes and problems of legal interpretation had not disappeared from GRAPS.[16] With regard to this fact, in the second half of 2010 the 'clarification' of GRAPS started, although, from the point of view of law-making, not in an elegant manner: besides the forty-six parts of Act CXXVI of 2010 on the Establishment of the County Government Office and Government Office of the Capital and the Amendment of the Establishment of the County Government Office and Government Office of the Capital and Territorial Integration (hereinafter referred to as GOTI) the regulations of GRAPS were also amended. Not only did this GRAPS amendment affect the provisions on establishing government offices but also the cardinal issues such as calculating deadlines according to calendar or working days.[17]

The Parliament passed Act CLXXIV of 2011 on the amendment of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services and Certain Related Acts, and of Certain Acts on the Revision of Ministerial Authority (hereinafter: RMA), which supplemented or amended the regulations of GRAPS in several points.

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[14] Boros Anita, 'A közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény 2011. január 1-jétől módosuló (legfontosabb) rendelkezései' [On the (most important) provisions on Act CXL of 2004 on the General Rules of Administrative Proceedings and Services to be amended on 1 January 2011] 3.

[15] Boros Anita: Bizonyítás a közigazgatási eljárásjogban II. A közigazgatási bizonyítás gyakorlata [Providing Evidence in Administrative Proceedings II. The Practice of Providing Administrative Evidence] (MKK 2010) 16. Kilényi (n 7) 36.

[16] Boros (n 15) 16., Kilényi (n 7) 36.

[17] Boros (n 14) 4.

Act XCIII of 2012 on the establishment of districts and the amendment to the related acts modified certain provisions of GRAPS significantly and thoroughly again in 2012. Besides this, many 'minor' amendments were made over the years; however, we would rather not introduce them now. Nevertheless it is sure that the frequent 'law-making paradigm shift' related to certain legal institutions does not favour consolidating the legal practice of administrative proceedings or set up an appropriate professional staff of proceedings.

3. The most important rules of administrative authority proceedings

3.1. The legal relations of administrative authority proceedings and the stages of proceedings

The activity of law enforcement application is one of the special forms of administrative law application. Consequently, law enforcement application is a narrow concept of administrative law application, as there are administrative bodies which apply the law but do not exercise authority and thus are not deemed authorities. However, there is also a case when certain activities of an administrative body – which is described as an authority even in its name – are not deemed to be of authority nature.[18] Administrative proceeding is the formal order of preparing, making and enforcing *acts*, which are decisions appropriate for legal reaction, i.e. the regulated procedure for making acts is the procedure of certain administrative bodies.[19] [20]

Administrative law enforcement procedure means the authorities empowered with public authority and the customers getting in contact with it, and the total number of the proceedings of other actors whose regulations are stipulated by GRAPS or other administrative acts. The *legal relationship of administrative authority proceedings* is a particular legal relationship which is established between the main and sub-persons of the abovementioned procedure. Its subject is a case handled by authority, and the content can be apprehended in the procedures that can be established by the subjects of the legal relationship.[21]

As a main rule, an administrative authority proceeding is divided into *main proceeding (also known as the stage of first instance proceedings), legal remedy stage and enforcement stage.*

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[18] Even the German law of administrative proceedings deals with the issue from the aspect of activity. See Steffen Detterbeck, Allgemeines Verwaltungsrecht (Beck 2008) 52.

[19] Patyi András (ed.), Közigazgatási hatósági eljárásjog [Law of Administrative Proceedings] (Dialóg Campus 2009) 17.

[20] cf. Berényi Sándor, Martonyi János, Szamel Lajos, Magyar államigazgatási jog. Általános rész [Law of Hungarian State Administration, General Part] (BM Tankönyvkiadó 1978) 308.

[21] See Szűcs István, Az államigazgatási hatósági eljárás főbb elméleti kérdései [Main Theoretical Issues of Administrative Proceedings] (KJK 1976) 48–49.

The main proceeding is the so called *regular stage* of GRAPS: it means that in case the legal relationship of the proceeding is established, the first instance proceeding has also started with the commencement or effect of the main proceeding activity. In this sense, the commencement of the proceeding and the start of the administration deadline are separated from each other: the start of the administration deadline is when the customer – e.g. with the submission of the request – or the authority carries out the first authority activity; in case of procedure upon request it is the following day of the submission of request, and in case of procedure *ex officio* it is the first day of the procedure. The main proceeding ends with the authority's closing decision of first instance proceeding: it may be an order of terminating the proceeding or rejection without substantive examination of the case, or a substantive decision. In the course of the main proceeding the authority examines several things and then it has to make a decision. Most of the proceedings come to an end with this, and they only continue if the necessary conditions are fulfilled by the entitled (e.g. submitting the request for legal remedy within deadline). With regard to this the *legal remedy and enforcement stages* are the possible stages of the proceeding. The legal remedy stage is carried out if the customer or other party to the proceeding who wishes to exercise his or her right to legal remedy and can do it with regard to GRAPS, or a decision-review is carried out *ex officio*. Similarly, the enforcement stage is only carried out if state intervention is needed in order to enforce those determined by the decision of the authority.

3.2. The principles of administrative proceedings

Several principles also defined in the *Fundamental Law of Hungary* shall prevail in administrative proceedings. According to this the *Fundamental Law* lists many of these principles which are not repeated in GRAPS – nor in other acts on proceedings – with regard to the fact that their effectiveness cannot be limited to any branch of law[22]. Similarly, principles that are principles of administrative law – and not of proceedings – are not stipulated in our act on proceedings. Taking the technical aspect of the regulation, it is worth emphasising that the principles of administrative proceedings – on the level of general proceeding norm – shall be enshrined in GRAPS as GRAPS is the legislation of general administrative proceedings.[23]

The principles of administrative proceedings are primarily the administrative authority and the customer – some of them are other persons participating in the proceeding – for whom the conduct to be followed and other rules are drafted in the course of the proceeding. Different rights are also included in the principles. This is also the case in our effective act on proceedings: *besides certain principles of proceeding, particular customer rights* also appear, such as the right to fair administration, a decision taken within the deadline stipulated by legislation, or the use of the mother tongue.

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[22] Baranyi Bertold, Barabás Gergely, Kovács András György (ed), Nagykommentár a közigazgatási eljárási törvényhez [Detailed Commentary for the Act on Administrative Proceedings] (Complex 2013) 23

[23] See Ivancsics Imre, Szamel Lajos, Az államigazgatási eljárás [State Administrative Proceedings] (JPTE 1996) 16

The function of the principles drafted in GRAPS aims primarily to help get to know the aim of the legislator and the main pursuit of the act, and help in the course of law application, particularly when there is no concrete legal norm to clarify the fact.[24]

According to the principle of *lawfulness and being subject to law,* the administrative authority is obliged to keep the provisions of the legislation and have them kept in the course of the proceedings. The principles identified in Section 1 Article 1 of GRAPS are filled with content by the rules enshrined in GRAPS, later and, of course, the special procedural rules.

The *purpose limitation of exercising authority*[25] is closely related to the principle of lawfulness. As Zoltán Magyary describes it, legality means that public administration can only intervene in the citizens' legal relationship as long as the laws are fully applied, and for specific purposes and in specific ways.[26] The competence of the administrative body is always determined by sectoral legislation[27]. In case the authority proceeds in its competence stipulated by law but there is no concrete legal base to be applied to the fact revealed in the case, the authority shall make its decision in line with the purposes defined by law. Another phrase of Section 1 Article 1 of GRAPS is also closely connected to this: the administrative authority exercises its power with regard to *the power of discretion and equity* defined by the legislator, and the specific characteristics of the case.

Section 1 Article 1 also specifies the requirement of powers with regard to the *specific characteristics of the case.* Consequently it is extremely important for the administrative authority that in the course of applying the rules of competence – with regard to the other principles – the authority carries out the certain procedural activities in order to reveal the fact of the case on the whole.

The legislator has also been exhaustive in procedural principles in Section 2 Article 1 of GRAPS: besides the abuse of power, this section stipulates on professionalism, simplicity, cooperation and the rules of conduct for the administrator of the authority.

In the requirement for the *prohibition of the abuse of power,* GRAPS states that the administrative authorities shall not misuse their powers. The concept of the abuse of right appears in several Constitutional Court decisions, such as Constitutional Court Decision of 31/1998 (VI.25), which provides that 'the prohibition of the abuse of right is not limited to a single branch of law, but this prohibition prevails in the entire legal system. Its general prevalence can be derived from Section 1 Article 2 of the Constitution – which is Section 1 Article B of the effective Fundamental Law. This is how it prevails in public law, too, where this prohibition is equally governing for the conduct of the legislative and law-applying bodies and the customers. Consequently the principle of the intended exercise of rights appearing in administrative proceedings means, on the authority's side, that the authority shall proceed so and in a manner that has been defined by the legislator.

If the authority proceeds where it has no competence, it is deemed a reason for voidness according to Section 1 Article 121 of GRAPS.

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[24] Boros Anita, Közérthető közigazgatási hatósági eljárás [Easy to Understand Administrative Proceedings] (Complex 2012) 22

[25] This principle often appears in the legal literature as the principle of intended exercise of authority.

[26] cf. Magyary (n 1) 76

[27] We note that Section 2 Article 83 of GRAPS can also be regarded as rule of competence.

Administrative efficiency[28] has particular significance in public administration. Efficiency is the ratio between the efforts made to reach the goal and the result achieved.[29] In this context, Section 2 Article 1 of GRAPS describes the principle of *professionalism*, *simplification* and *cooperation*. The proceedings shall be organized quickly with the appropriate use of possibilities provided by legislation. The principle of *speed* and *cost saving* specified in Article 7 of GRAPS is closely connected to it, according to which the authority, in order to achieve cost saving and efficiency, organizes its activity so that the least cost shall be borne by the customer and authority, and the proceeding can be closed as fast as possible.

The main actor of the proceeding is the customer, or in certain case types, the customers. Obviously a significant part of the customers does not have previous administrative or legal training, thus *the right to information*[30] and *the principle of cooperation* specified in Article 5 of GRAPS will be of great importance.

Section 2 of Articles 1 and 6 deal with the concept of *good faith*.[31] Good faith is primarily a moral category, the content of which is not only the citizens' conduct towards each other but also refers to the relationship between the citizen and authority.[32]

The principle of proceeding in good faith shall primarily – at least according the principle provisions of GRAPS – be interpreted with regard to the main actors of the proceeding, i.e. the authority and customer: the customer is obliged to proceed in good faith in the administrative proceeding.

The good faith of customers in the proceedings shall be presumed, and the burden of proof for bad faith lies with the authorities. We note that the sanction of bad faith may be a *procedural penalty*. GRAPS, however, according to the rules of procedural penalty, not only sanctions the customer for bad faith but also the bad faith of others participating in the proceeding.[33]

GRAPS specifies the rules of conduct which are listed in the category of bad faith: according to this customers may not engage in conduct aimed at misleading the authorities or delaying the decision-making process or the enforcement procedure.

Another case of the rules regarding good faith is when GRAPS stipulates the conduct of good faith for the authority (administrator).[34] According to this, officers of authorities shall act in good faith, under the law, bearing in mind the rights and lawful – including economic – interests of the customers.

The *defence of rights obtained and exercised in good faith* shall not be confused with the exercise of rights in good faith. The administrative authority defends the customers'

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[28] cf. Magyary (n 1) 78–79.

[29] See Lőrincz Lajos, A közigazgatás alapintézményei [Basic Institutions of Public Administration] (HVG-Orac 2005) 66.

[30] Within the EU regarding the proceedings of the Commission see the decisions of the cases of T-151/07 and T-50/00.

[31] Kilényi Géza, 'A jóhiszeműség problémája az államigazgatási eljárásban' [The Problem of Good Faith in State Administrative] (1979) 30 Állam és Igazgatás 481–497; Kilényi Géza, 'Az ügyfél jóhiszeműségének vizsgálata az államigazgatási eljárásban' [The Examination of the Customer's Good Faith in State Administrative Proceedings] (1961) 12 Állam és Igazgatás 520–530.

[32] Boros (n 15) 211.

[33] Section 1 Article 61 of GRAPS.

[34] Section 2 Article 1 of GRAPS.

rights obtained and exercised in good faith, the limits of which are solely defined by statutory law. The essence of the principle is that the enforcement proceeding, due to its nature of public authority, shall not intervene in the exercise of obtained rights even through public authority after a limited period, i.e. the customer trusting in the decision can continue to exercise his/her rights.[35]

In close connection with this, administrative authorities may limit the rights and the lawful interests of customers to the extent required for the protection of public interest and the rights and lawful interests of the adverse party.

Equality before the law is the principle that can be deduced from the Fundamental Law. According to Article XV of the *Fundamental Law*, every person shall be equal before the law. Every person shall have legal capacity. Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, colour, gender, disability, language, religion, political or other views, national or social origin, financial, birth or other circumstances whatsoever. Taking this into consideration, GRAPS provides that customers enjoy equality before the law. In this context, GRAPS states that in the proceedings of the authorities all customers shall have equal rights before the court of law and shall be treated without undue discrimination, bias or prejudice.[36]

The provision of Section 2 Article 2 of GRAPS is closely connected to this principle, according to which administrative proceedings must be conducted without any discrimination or restrictive treatment aimed at or resulting in any violation of the principle of equality before the court of law, or any diminishment in the legal rights of customers and other parties to the proceeding granted under the Act. A part of this provision drafts the requirements for *equality for all customers*.[37] However, the requirements referred to above shall not only be pursued against the customers, but other parties to the proceedings as well.

The rules to be enforced in case of violating equal treatment are provided for by a separate act.[38]

Section 3 Article 1 of GRAPS provides for the *principle of admissible evidence*. Our legal system recognizes several evidence systems, the two endpoints of which are the systems of admissible and inadmissible evidence. Admissible evidence means that any available evidence can be used to prove the facts, whereas in the system of inadmissible evidence, only the evidence set forth by law.[39] According to Article 50 of GRAPS, the authority is obliged to clear the fact necessary for making decision. This provision can be deduced from the principle of *ex officio*: it is the authority that rules over the case and has to make a decision. In order to provide a sound basis for the decision, i.e. to decide on the ground of true facts, the authority

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35 Boros (n 24) 27

36 See Articles 20–21 of Charter of Fundamental Rights.

37 According to the resolutions on the Uniformity of the Law in Public Administration of 1/2002 (…) the prevalence of the principle of equality before the law (equality for all customers) is not impaired if the administrative body changes its previous legal practice which was based on false interpretation and proceeds lawfully according to legislation.

38 Act CXXV of 2003 (…)

39 In the system of the positive admissible evidence, the value of evidence is also defined accurately by the law. In the system of the negative admissible evidence, the legislator defines the minimum extent of evidence connected to the decision. See detailed: Boros (n 15) I. 49–52

carries out evidence proceedings if necessary. In order to clarify the facts, the evidence that is appropriate to make the clarification of the facts easier can be used.[40] GRAPS also helps the law applier with listing the most frequently applied evidences as examples in Section 4 Article 50. The evidence to be applied in the case – at least according to GRAPS.[41] – is chosen by the authority freely. However, these rules are only the general rules of evidence. The legislation of administrative agencies rather define further specific rules of evidence, so most typically they stipulate the range of annexes to be attached to the application.[42] Besides this, GRAPS also has provisions which somewhat 'break' the principle of admissible evidence, e.g. when it entitles the legislator to provide in the course of legislation for the authority to make its decision on the ground of specific evidence, or prescribe the application of a certain means of evidence in any act.[43] The new Section 1b Article 86 of GRAPS can also be put into this category, according to which in proceedings for making entries and deleting data from official registers, only the means of evidence deemed admissible by the relevant legislation may be used by the authority for that purpose.

Taking into consideration the abovementioned, we regard the evidence system of GRAPS rather a *system of admissible evidence that can be limited by act*.[44]

The principle of *ex officio* is one of the characteristics of administrative proceedings. Accordingly, the principle of *ex officio* proceeding prevails under the law, which has several other elements as well: the authority can initiate proceedings on its own initiative, i.e. *ex officio*. According to the principle of *ex officio*, the proceeding carried out ex officio is also the authority's duty, even if the proceeding has been initiated upon request. The characteristic of proceedings initiated and carried out *ex officio* is that even the enforcement is initiated by the authority – supposing that its conditions exist.[45]

As we have already mentioned previously, according to the principle of ex officio the administrative authorities shall *ex officio* ascertain the relevant facts of the case and specify the type and extent of evidence admissible, independent from the customers' requests concerning evidence, however, in the process of ascertaining the relevant facts of the case all circumstances that may be of importance shall be taken into consideration.

The administrative authorities may review – under this Act – their own rulings and resolutions (hereinafter referred to as 'decision') and those adopted by other authorities under their supervisory power; and may take measures ex officio to have their decisions corrected, supplemented, revised or withdrawn.

The *right to fair administration and decision within deadline stipulated by law* appears in most international and European legal documents. The right of due process appears in the administrative proceedings as the right to fair administration.

Some years ago Act CLXIII of 2009 on the Protection of Due Process and the Amendment of the Related Laws was passed, according to which, based on the requirements of due

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40 Section 4 Article 50 of GRAPS.

41 First version of Section 4 Article 50 of GRAPS.

42 cf. Boros (n 15) II. 11-61

43 Section 5 Article 50 of GRAPS.

44 cf. Boros (n 15) 44

45 See Christian Pestalozza, 'Der Untersuchungsgrundsatz' in W. Schmitt Glaeser (ed), Verwaltungsverfahren (Richard Boorberg Verlag 1977) 185–215

process, the proceeding person or the decision-making body shall proceed without bias or prejudice, with care for the legitimate interests and reasonable circumstances of the parties to the proceeding in the course of exercising discretion, within the prescribed deadline.

The requirements of the *decision within reasonable deadline* – in our case the deadline stipulated by law – appears in several international and EU sources of law, for example in that of the European Court of Human Rights and the Court of Justice of the European Union. GRAPS specifies different deadlines: the administration deadline is 30 days; the failure to meet it is sanctioned by GRAPS in different ways. The legislation, of course, determines the maximum deadlines, and sanctions its failure to meet.

The principle of the administrative authority's liability for damages is a very important principle. According to this, Administrative authorities shall be subject to civil liability for damages caused by any unlawful proceedings.

The idiom of 'not lawful proceedings' may include not only the unlawful decisions or the unlawful silence of the authority but any unlawful procedural activity.

It may also occur that the administrative authority causes damage to the customer or other person in the course of a completely *lawful proceeding*. The compensation for lawful damage is indemnification. The range of cases is not listed in GRAPS, it is mentioned in connection with only two procedural activities in Section 14 Article 153, namely with regard to causing damage by the expertise activity and on-site survey.

The prevalence of *the right to information* is very important in administrative proceedings: as we have mentioned, a significant part of the customers are in need of the authority's help, consequently the quality of information can make the administration significantly easier or harder. However, the principle states that administrative authorities shall ascertain that the customer and other parties of the proceeding are properly informed of their rights and obligations, and shall promote the exercise of customers' rights.

It involves that the administrative authority informs the customer proceeding without legal representation of the provisions of the act prevailing in the case, his/her rights and obligations, and the legal consequences of failure to fulfil obligation; furthermore, in case of a natural person it informs the customer of the conditions of getting legal assistance, but, of course, obligation to provide information for customers proceeding with legal representatives may also be stipulated by law with regard to the complexity of the case.

Information can be provided in different ways. We may say that the right to information has some partial entitlement in administrative proceeding: the authority, with the limits set forth by law, provides the customers and their representatives, and others concerned with access to file, holds a public hearing in cases defined by law and communicates the decision with those concerned. In the course of giving information, the most important aspect the authority has to pay attention to is data management, which is stipulated by Articles 17-17/A of GRAPS.

Regarding also the right to information the latest amendment of GRAPS has introduced a new principle in its system: the *increased protection of minors' interests*,[46] according to which administrative authorities shall inform incompetent persons and persons of limited

[46] See Szüdi János, 'A gyermek mindenek felett álló érdeke' [The Child's Interest above All] (2006) 53 Magyar Jog 275–286

legal capacity, as well as any other party to the proceedings who is deemed incompetent or of limited capacity, of their rights and obligations, and of the procedural steps pending by way of the means most suitable for such person's age, health condition and intellect, while ensuring proper atmosphere.

The concept of persons of legal capacity, limited legal capacity and incompetent persons is defined by the Civil Code.

According to Section 1 Article 3 of the Convention on the Rights of the Child, drafted 20th November 1989, New York 'Each decision on children made by the public and private institutions of social protection, courts, administrative authorities and legislative bodies the child's interest above all is taken into consideration.'[47]

According to Section 5 Article XV of the *Fundamental Law of Hungary*, special measures shall be adopted to protect children, women, the elderly persons and persons living with disabilities. According to Section 1 Article XVI, every child shall have the right to the protection and care required for his or her proper physical, mental and moral development. Several rules of guarantee of this principle emerge in the later provisions of GRAPS, such as the rules of hearing witnesses or access to file.

The *principle of free choice among the forms of contact* is also connected to the right to information, which states how the authority and customer and other parties to the proceeding can keep procedural contact, and how the authorities communicate with each other.

According to the principle in question the customer and other parties to the proceeding submitting the request for initiating the proceeding can freely choose from the forms of contact (Article 28/A) under GRAPS.

According to the main principle of the use of language in Hungary, the official language in administrative proceedings shall be Hungarian. In the course of the proceeding the main principle always prevails, despite the fact that in the procedure the law enables the use of another language (too) for certain beneficiaries.

Accordingly, the proceeding of the *consular official and the minister responsible for foreign policy, and in the course of international legal assistance* the use of other language than Hungarian is also possible, since occasionally they contact persons that require the use of other languages than Hungarian in the course of the proceeding.

According to GRAPS, special rules of language use prevail regarding nationalities: in addition to Hungarian, another language to be used in the proceedings may be set forth in a resolution by bodies of nationality self-governments of communities, and regional and national self-government of minorities within their jurisdiction. Persons acting on behalf of nationality organizations and the natural persons falling within the scope of the Act on nationalities may use the language of their respective nationality in administrative proceedings.

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[47] See Kisida Erzsébet, 'A Gyermek jogairól szóló egyezmény érvényesítése' [Enforcing the Convention on the Rights of the Child] (1994) 43 Magyar Közigazgatás 113–116; Kecskeméti Edit, 'A Gyermek Jogairól szóló Egyezmény végrehajtása' [Enforcing the Convention on the Rights of the Child] (1992) 2 Acta Humana 16–24; Weller Mónika, 'A gyermek jogai a nemzetközi egyezmények alapján' [Children's Rights According to International Conventions] in Harmathy Attila (ed), Polgári jogi dolgozatok [Papers on Civil Law] (MTA ÁJI-ELTE ÁJK 1995) 293–334

It may also happen, of course, that the authority contacts a person who is *not a Hungarian citizen and does not speak Hungarian*. GRAPS makes a difference between whether the authority initiates an *ex officio* proceeding with immediate measures in the case of the person within the period of his or her stay in Hungary, or the natural person asks for immediate legal protection from the Hungarian administrative authority, and the case when the customer who does not speak Hungarian asks the authority to use his or her mother tongue in the judgment of his or her request. In the former case the authority is obliged to ensure that the customer shall not face a penalty because he or she does not speak Hungarian. In this case the costs of translation, interpretation and sign language are borne by the authority. In the latter case the costs of translation and interpretation shall be borne by the customer.

In connection with the translation, it is an important rule that if there is any deviation between the Hungarian version and the foreign translation of any decision adopted by the administrative authorities, the Hungarian version shall be the authentic one.

3.3. The scope of GRAPS

The *scope of the act* describes that a certain act prescribes rights and obligations for persons and organizations (persons covered), includes the rules on living conditions (objects covered), and states which territories (territories covered) and what periods (periods covered) its provisions prevail, and that its provisions in these territories and on these persons shall be applied.[48]

The *objects covered* of GRAPS describe in what administrative cases GRAPS shall be applied.

'Official matters of an administrative nature' shall mean:

a) all actions where the administrative authority
- defines any right or obligation concerning a customer
- verifies any data, fact or entitlement
- maintains official records and registers or
- conducts a regulatory inspection;

b) procedures for admission into and removal from the register for engaging in activities, where engaging in a specific profession is rendered subject to membership in a public body or other organization of the like, not including disciplinary and ethical proceedings.

[48] See Toldi Ferenc, Az államigazgatási rendelkezések megsemmisítése és megváltoztatása [Abolishing and Changing State Administrative Provisions] (KJK 1965) 88–89; Tamás András, 'Az államigazgatási jog megújításáról' [About the Renewal of State Administrative Law] (1998) 44 Magyar Közigazgatás 449; Kovács András, 'A közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló törvény és a különös eljárási szabályok viszonyrendszere' [The Relationship between the Act on the General Rules of Administrative Proceedings and Services and the Rules of Specific Proceedings] (2007) 54 Magyar Jog 283–294; Petrik Ferenc, 'A törvény hatálya' [The Scope of Act] in Petrik Ferenc (ed), A közigazgatási eljárás szabályai. Kommentár a gyakorlat számára [The Rules of Administrative Proceedings, Commentary for Practice] /18th supplement/ (HVG-Orac 2009) 75

Besides this, there are several proceedings part of which seems to be administrative proceeding (because it is proceeded by an administrative authority, e.g. the police), or it is not an administrative proceeding at all (because the proceeding belongs to a different branch of law, e.g. election proceedings), but nonetheless it is an administrative proceeding. These are the *so called proceedings excluded from the scope of* GRAPS:

1. misdemeanor proceedings
2. elections
3. the preparation and conduct of a national referendum
4. territorial issues
5. higher education admission procedures
6. citizenship proceedings, with the exception of the issue of citizenship certificates.

Examining the *persons covered* of GRAPS, it can be stated that GRAPS includes provisions on customers and other parties to the proceeding. Consequently the legal relationship of the administrative authority is only established if at least two actors take part in the proceeding, on one side the customer, on the other side the authority, with regard to the fact that they are the necessary subjects of the administrative proceeding. Besides there may be several actors of the proceeding whose participation in the proceeding depends on the nature and complexity of the proceeding, such as the witness, expert, interpreter, the owner of the object of the survey, the customer's representative and the mediator of the authority.

GRAPS also states that a natural person shall be considered to have legal capacity in terms of administrative proceedings if he or she is considered legally competent under civil law. In the cases defined by law persons of limited capacity shall also be considered to have legal capacity in terms of administrative proceedings. When in doubt, the competent authority shall *ex officio* investigate the status of legal capacity and – in lack of it – shall summon the customer's legal representative, or request the appointment of a guardian *ad litem* with the relevant documents attached, or – where an act or government decree so provides – provide for the appointment of a guardian *ad litem* at its own discretion, upon laying down the detailed rules for the appointment of a guardian *ad litem*.

On the other hand, *customer capacity* means that independent from the fact, for example, that the customer is an adult having legal capacity, he or she cannot be the subject of any administrative proceeding.

It is an important rule that besides the customer submitting the request on initiating the procedure, another customer may also take part in the proceeding (mostly customers of adverse party), of whom the authority has to judge at the start of the proceeding whether they have customer capacity or not. If the authority refuses the customer status regarding these customers it *makes* a separate *order against which a separate appeal may be lodged*.

The other subject of the legal relationship is the authority: in the administrative proceeding always only one authority shall proceed. Certain settlement principles serve their selection: *jurisdiction, scope and competence mean the rules of the division of labour in administrative proceedings.* These concepts answer the question of what types of authorities are entitled to proceed in certain enforcement cases and in what territory.

The jurisdiction identifies which country's administrative authority shall proceed in the administrative case.

The proceeding of the type of authority of the country's administrative bodies is stated in the rules of scope.

The territories covered of GRAPS, apart from some special cases[49], mean the application of GRAPS in the territory of Hungary.

While studying the periods covered of GRAPS, it is important to stress that GRAPS came into effect on 1st November 2005. In the case of the proceedings started after 1st November 2005 and repeated proceedings, the rules of GRAPS shall be applied; in the case of the ongoing proceedings and those initiated before 2005, the predecessor of GRAPS, MCA prevails. This principle also prevails in cases of provision amending GRAPS, but they come into effect at a later date.

3.4. First instance administrative proceedings

3.4.1. Opening the proceeding

Proceedings of the authorities are opened upon the customer's request or *ex officio*.

The competent authority shall be required to launch proceedings *ex officio* within its sphere of competence if it is set forth by legal regulation, instructed by its supervisory organ, or ordered by the court, or if it gains knowledge of a life-threatening or potentially devastating situation.

Unless otherwise prescribed by an act or government decree, notice shall be sent concerning the opening of proceedings:

- to the customer, if known, within eight days after having taken the first procedural step in *ex officio* proceedings;
- to the customer, if known, other than the customer who submitted the request for the opening of the proceedings, within eight days after the receipt of the petition if opened upon request.[50]

Except when otherwise provided for in the relevant legislation, petitions may be submitted to the competent authority in writing or orally. A petitioner may be required to appear in person by law, where any fact or circumstance that is deemed essential for adopting a decision in the case cannot be obtained otherwise.

Furthermore the request, if the conditions prescribed by law exist, may be submitted by phone, model form or in case of electronic contact online or using an electronic form by applying a kind of software.

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[49] For example the territory of diplomatic missions are regardes as Hungarian territory with regard to the rules of international law.

[50] Szabó Lajos – Gyergyák – Darák (n 48) 91; Patyi András – Boros Anita, 'Az ügyfélre és más eljárási szereplőkre vonatkozó általános szabályok' [General Rules on Customers and Other Participants of the Proceeding] in Patyi (n 19) 261.; Balla Zoltán, 'Az alapeljárás' [The Basic Procedure] in Balla Zoltán (ed), A közigazgatási hatósági eljárás és szolgáltatás általános szabályai [General Rules on Administrative Proceedings] (Rejtjel 2013) 68–161.

Petitions shall be submitted with the enclosures prescribed by the relevant legislation attached. The customer may not be requested to enclose the official assessment of a special authority or the special authority's prior express consent.

It is a very important rule that, apart from the data necessary for the identification of the customer, verification of any data that is considered public information or shall be included in the records of an authority, a court or the Magyar Országos Közjegyzői Kamara (*Hungarian National Chamber of Notaries Public*) as prescribed by law may not be requested from the customer.

A petition shall be assessed based on its contents, even if it fails to coincide with the designation used by the customer.

Natural persons shall submit their requests for the opening of the first instance proceedings to the authority vested with powers and competence for the proceedings in question, to the one-stop shop in the cases set forth by Government decree or, if not precluded by law, at the authority of competence by reference to his home or work address, vested with similar powers, or failing this at the office of the city clerk by reference to his address or employment, who shall forward it to the competent authority.

A single request or several requests for the exercise of a right can be submitted collectively if so provided in an act or government decree, to an authority designated by such act or government decree (hereinafter referred to as 'participating authority').

In case the proceeding is initiated upon request, it is first examined by the authority. The authority *rejects the request without examination* if, for example, the Hungarian authority has no jurisdiction over, scope of or competence in the proceeding, and there is no place for transferring the request, the request aims at impossible goals, or a deadline or date is prescribed for the submission of the request by law and the request is early or late.

The administrative time limit shall be reckoned from the day following the date of the delivery of the petition to the competent authority, or on the date when the first procedural step is taken if the proceedings are opened *ex officio*. Resolutions, rulings for the termination of the proceedings, and rulings of appellate authorities on the annulment of first instance decisions and reopening the case shall be adopted within thirty days from the date specified in Subsection (5), and measures shall be taken to have the decision published within the same time limit. The head of the competent authority may – except where excluded by law – extend the administrative time limit – before it expires – in justified cases on one occasion, by up to thirty days, or by up to fifteen days in the cases described under Subsection (2) hereof.

The rule of guarantee provided by GRAPS is that in the event of the authority's failure to comply with the relevant administrative time limit for reasons beyond the control of the customer and other parties to the proceeding, the authority shall refund the duties and other charges the customer has paid in connection with the proceedings; if the time required for the proceedings has exceeded the administrative time limit by a factor of two, the amount of refund payable to the customer shall be double the amount of duties and other charges the customer has paid for proceedings.

3.4.2. Most important activities of basic procedure

I. Representation

Where the customer is not required by an act to proceed in person, the customer may be substituted by his legal representative or by a person designated by the customer or his legal representative, and in all cases the customer may proceed together with his representative. If the customer is not involved personally, the authority shall check the representative's authorization for representation.

Another type of representation is the *guardian ad litem*: if the customer is a natural person whose whereabouts are unknown or is unable to handle the case in person, and does not have a legal representative or proxy, the competent authority shall contact the guardian office – with the relevant documents attached – to delegate a guardian *ad litem*, or – where an act or government decree so provides – shall provide for the appointment of a guardian *ad litem* at its own discretion, upon laying down the detailed rules for the appointment of a guardian *ad litem*.

If the customer has a representative, the authority shall send the documents to the representative; however, a summons instructing the customer to appear in person shall be served only upon the customer, with his representative notified at the same time. A customer with legal capacity may request the authority to deliver the documents to him, regardless if there is a representative involved in the case.

II. Exclusion

GRAPS distinguishes between two types of exclusion rules: in case of reasons for *absolute exclusion,* those concerned (administrator, authority) shall be excluded from the proceeding, whereas in case of reasons for *relative exclusion* those concerned may be excluded.

Accordingly, any person whose right or lawful interests are directly affected in a case may not participate in proceedings pertaining to that case, nor any person who has made a testimony or who participated as a liaison officer, or as the customer's representative, an official witness or an expert, furthermore, the holder of the subject-matter of the inspection.

Any person who had a role in first instance may not participate in the second instance. Any authority whose right or lawful interests is directly affected in a case may not participate in proceedings pertaining to that case. Any authority whose head is subject to any grounds for disqualification in connection with a case may not participate in proceedings pertaining to that case.

The town/city clerk of a community may not participate – in the capacity of an authority – in any proceedings in which the local government of his area of competence, any organ of this local government or the mayor is involved as the adverse party, or if the impending resolution may impose an obligation or right upon the local government, said organ or the mayor, or may result in any commitment on their part relating to the subject-matter of the proceedings.[51]

[51] Boros Anita – Patyi András, 'A kizárás' [Exclusion] in Patyi (n 17) 183–192

Regarding the reason for relative exclusion, GRAPS states that any person who is considered biased may not participate in a proceedings.

The head of the authority shall adopt a decision on the subject of exclusion and shall appoint another officer if necessary, and shall also decide as to whether the procedural steps taken by the excluded officer should be repeated or not. The ruling adopted on exclusion shall be delivered to the customer.

Where any grounds for exclusion emerges in connection with the head of the competent officer or authority, the case shall be transferred – unless the relevant legislation provides otherwise – to another authority designated by the head of the supervisory organ that is vested with similar powers and competencies.[52]

III. Operation of administrative departments

There are several specialized administrative proceedings which require the cooperation of more bodies of special scope (sectoral). A typical example of this is for instance the construction of a fuel station, when the so called *administrative departments* are obliged to provide a preliminary assessment with regard to the provisions of administrative authority territory represented by them. The assessment of the specialized authority includes whether the customer's request can be met, and if yes, on what conditions, and answers the proceeding authority to the questions included in the request.

The administrative department is contacted by the *authority entitled to make the decision* on the case, whose decision is bound by the provision of the specialized authority.

An act or government decree may require the authority of competence to adopt a decision on the merits of the case to obtain the opinion of another authority (hereinafter referred to as 'specialized authority'). The specialized authority shall provide an assessment in connection with issues for which it has competence in administrative actions, or failing this it is conferred under its competence by an act or government decree.

The resolution issued by the specialized authority is binding to the proceeding authority.[53]

IV. Clarifying the facts

In administrative proceedings, the evidence is the totality of the evidence of the customer, authority and other participants, which serves the establishment of the facts and their grounds realistically.

The main procedure, the preparation of the decision-making shall only start after the scope and competence, and the compliance of the request have been defined. Its first element is to clarify the facts. In order for the authority to make a decision on a sound basis and facts, it has to make sure whether the facts included in the customer's request and the evidence revealed are real.

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[52] Pomázi Miklós, 'A kizárás kérdése a gyakorlatban' [The Issue of Exclusion in Practice] (2011) 1 Közigazgatás a gyakorlatban 10-12

[53] cf. Baranyi – Barabás – Kovács (n 22) 387-403

We distinguish two types of facts:
– statutory definition (enshrined in act),
– statement of facts (which happen in reality).

Both types of facts consist of facts. The facts of statutory definition are mostly constant according to the law, whereas the statement of facts is varied. In clarifying the facts, the pair of the facts of the statutory definition shall always be found among the statement of facts.

The aim of evidence is that the authority states what has happened in the case as closely to reality as possible – it shall give the appropriate statutory definition of the statement of the facts – and make a lawful decision based on clarified facts.[54]

According to the principle of *ex officio* the authority shall ascertain the relevant facts of the case in the decision-making process. If the information available is insufficient, the authority shall initiate an evidence procedure. In the proceedings of the authorities such evidence shall be admissible if it is suitable to facilitate the ascertainment of the relevant facts of the case. GRAPS also lists the most frequent evidence as examples. According to this, evidence shall, in particular, mean the customer's statement, a document, a testimony, a memorandum of inspection, expert opinion, a memorandum drawn up in a regulatory inspection and physical evidence.

The authority shall select the evidence deemed admissible at its own discretion. The authority may be required by law to base its resolution solely on certain specific means of evidence, furthermore, legislation may prescribe the use of certain specific means of evidence as mandatory, and that certain specific bodies have to be consulted beforehand.

The authority shall assess each piece of evidence separately and in its totality, and establish the facts according to its conviction based on this assessment.

The rule of guarantee of GRAPS is that if the authority did not notify the customer concerning the opening of proceedings, and has conducted an evidence procedure for the case, the customer shall be notified within eight days from the conclusion of such procedure so as to inspect the evidence – subject to the regulations governing access to documents for inspection – to present his views within eight days, exercise his right to make statements, and present a request for additional evidence.

V. The decisions of the authority

The administrative act is the administrative authorities' activity of legal importance (aiming at reaching legal effect), which either consists of stipulating binding rules of conduct (normative acts), or results in the establishment of or change in the concrete administrative relationship, or the termination thereof (individual acts). The administrative authority may close the proceeding with different decisions. Accordingly, we distinguish between decision types taken in a general sense and of special ones.[55]

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[54] cf. Boros (n 15) 11–61.

[55] See detailed: Molnár Miklós, A közigazgatás döntési szabadsága [Discretional public administration] (KJK 1994) 125; Tilk Péter, 'A hatóság döntései és a hatósági szerződés az új eljárási törvényben' [The Decisions of Authorities and the Contracts of Authorities in the New Act on Proceedings] (2006) 53 Magyar Jog 85–94.; Ivancsics Imre, 'A Ket.-ben szabályozott döntések rendszere' [System of Decisions

Regarding the general decision types GRAPS provides that the authority shall exclude cases by way of resolution, and deliver rulings on other issues during the process.

GRAPS taxatively defines what content elements the provisions and orders have.

GRAPS regulates the rules of e.g. the contracts concluded by authorities, approval of agreements, or official cards and certificates issued by authorities included in the *special decisions*.

If permitted by legal regulation, the authority of first instance may enter into an administrative agreement with the customer, in lieu of passing a resolution, with a view to a settlement in cases within its competence that is the most suitable for the public and customer alike.

Administrative agreements must be in writing. GRAPS defines some special rules (e.g. the rules of contract modification, breach of contract), but the background legislation of the contracts concluded by authorities is included in the *Civil Code*.

In cases of certain conditions, the authority approves the agreement of adverse parties in the form of resolution.

With regard to the certification issued by authorities and the official cards it is worth emphasizing that at the customer's request, the authority shall issue official instruments for the verification of a fact, status or some other data. The authority shall issue an official certificate in cases specified in the relevant legislation – containing the information prescribed therein – for the permanent verification of the data or rights of the customer.

A decision shall be conveyed in a separate official instrument, drafted in a memorandum, or entered upon the case file. A decision shall be drafted in a separate official instrument if it is delivered by service of process or by way of electronic means, or if the customer requests delivery of a decision that was originally conveyed orally.

In the section on decisions, GRAPS regulates the issue of *res judicata of form*, i.e. it defines the date from which the decision shall not be changed by what is known as ordinary remedy, i.e. appeal. The authority's first instance decision shall be declared binding if:

- it was not appealed, and the deadline for appeal has expired;
- the right to appeal was waived or the appeal was withdrawn;
- no appeal may be filed, including independent appeals against rulings; or
- the authority of appellate jurisdiction sustained the decision of the authority of first instance.

The decision of the second instance shall take effect upon delivery.[56]

Regulated in GRAPS] in Fazekas Marianna – Nagy Marianna (eds): Tanulmányok Berényi Sándor tiszteletére [Studies in Honour of Sándor Berényi] (ELTE 2010) 163–176; Szabó Lajos, 'A hatósági döntések (határozat, végzés) tartalmi elemeit érintő változások' [Changes Affecting the Contents of Authority Decisions (resolutions, orders)] (2011) 1 Közigazgatás a gyakorlatban 2; Boros Anita, 'Határozat avagy végzés? – vagy egyik sem? I.' [Resolution of Order? – or Neither? I.] (2011) 1 Közigazgatás a gyakorlatban 4.; Boros Anita, Határozat avagy végzés? – vagy egyik sem? II. [Resolution of Order? – or Neither? II.] (2011) 1 Közigazgatás a gyakorlatban 7–10.

[56] See on this topic: Kovács András, 'A közigazgatási jogerő és a végrehajthatóság' [Administrative Res Judicata and Enforceability] (2008) 63 Jogtudományi Közlöny 426–444.; Paulovics Anita: 'Jogorvoslat és jogerő a magyar közigazgatási eljárásjogban' [Remedy and Res Judicata in Hungarian Adminis-

Resolutions shall in most cases be delivered to the customer and to all persons upon whom it confers any rights or obligations and also to the special authorities involved in the case and to other authorities or government bodies specified by the relevant legislation. Rulings shall be delivered to the customer and to the other parties upon whom it confers any rights or obligations, and also to the persons and bodies defined by the relevant legislation.

GRAPS regulates the rules regarding notification about the decision in detail, particularly the rules about sending by post and the presumption of delivery connected to it, information by notice published, the person authorised to accept the delivery or the trustee.

VI. Legal remedies in administrative proceedings

According to Section 7 Article XXVIII of the *Fundamental Law* 'Every person shall have the right to seek legal remedy against any court, administrative or other official decision which violates his or her rights or lawful interests.' According to this GRAPS stipulates on the spheres of legal remedies in administrative proceedings.

Legal remedies in connection with administrative decisions are: redress procedures upon request and *ex officio* review procedures of decisions.
Redress procedures available upon request are:

- appellate procedures;
- judicial review;
- reopening procedure;
- proceedings opened based on a resolution of the Constitutional Court.[57]

Administrative decisions are reviewed *ex officio*:

- by the authority that has adopted the decision of its own motion;
- within the framework of oversight proceedings;
- upon prosecutor's intervention.[58] Resolutions of the authorities may be appealed independently. A ruling of an authority may be appealed independently if permitted by law; in other cases the right to pursue remedies against rulings may be exercised within the framework of remedies available against resolutions, or failing this against rulings for the termination of the proceedings.

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trative Procedural Law] (2008) 64 Jogtudományi Közlöny 357–369.; Varga Zs. András, 'Jogerő és végrehajthatóság a hatósági eljárásban' [Res Judicata and Enforceability in Authority Proceedings] in Patyi András (ed), Közigazgatási jog II. Közigazgatási hatósági eljárásjog [Administrative Law II. Administrative Procedural Law] (Dialóg-Campus 2007) 440–462.

[57] We note that the so called equity proceedings were also listed in the legal remedies upon request eralier, however, constitutional doubts arose, so in September 2009 the rules on this legal institution were repealed, as GRAPS regulated it as a general procedural act the legal institution, the applicability and application of equity became questionable because GRAPS did not define reasons for equity. Thus the equity proceedings provided the authorities with dicretionary right in a manner that violated legal certainty so that it was possible to withdraw or modify not unlawful resolutions.

[58] See detailed: Rixer Ádám: 'A Ket. jogorvoslati rendszere' [General Rules on Administrative Proceedings and Services] in Balla (n 50) 224–89.

VII. Legal remedies upon request

The most important rules of *appeal* can be summarised as follows:

- The customer may appeal any first instance resolution. The right to appeal is not bound to specific titles; an appeal may be made for any reason that the person affected deems unjust. Submission of an appeal may be rendered subject to the obligation to state the reasons by an act. Moreover, an act may also provide that the appeal may only be submitted with respect to the decision contested, that the appeal must be factually related, and it must be based on any infringement or injury directly resulting from the decision,
- the resolution can only be challenged by an appeal against the resolution, or in the lack of this, the resolution on terminating the procedure, except when the resolution can be challenged by independent appeal (e.g. in cases of requests refused without examination, termination of the proceeding, or resolutions on suspending the proceeding),
- unless otherwise prescribed by an act or government decree, an appeal shall be lodged within fifteen days following the date of the delivery of the decision,
- the right conferred in the decision appealed may not be exercised and the appeal shall have a suspensory effect in terms of the implementation of the decision, except when the decision is enforceable under this Act notwithstanding any appeal, or if the authority has declared the decision enforceable, abolishing the suspensory effect of the appeal,
- the authority of first instance shall forward the appeal to the authority of appellate jurisdiction within eight days following the time limit for appeal – or within fifteen days where a special authority is required to participate – unless the authority has withdrawn or supplemented the appealed decision or made the requested amendment or correction, or if it dismisses the appeal without any examination as to its substance, and also if the appeal is withdrawn before being forwarded,
- the authority of the second instance shall either sustain, reverse, or annul the decision. In the cases defined by law the authority of the second instance may not establish an obligation more severe than what has been adopted in the first instance decision under the right of deliberation. The authority of the second instance shall have powers, regardless of whether it is stated in the appeal or not, to prescribe a new deadline in the appellate procedure where it is deemed justified on account of the appellate procedure.

The detailed rules of judicial review are not drafted in GRAPS but in the *Code of Civil Procedure* (Act III of 1952) and in the Act on Non-contentious Administrative Proceedings[59]. GRAPS only states that except for the resolutions not to be appealed independently the judicial review of the decision can be initiated if no appeal could be lodged, or any of those entitled to appeal has exhausted the right to appeal in the administrative proceeding.

[59] A Polgári perrendtartásról szóló 1952. évi III. törvény módosításáról és az egyes közigazgatási nemperes eljárásokban alkalmazandó szabályokról szóló 2005. évi XVII. törvény [Act XVII of 2005 on Modification of Act III of 1952 on Code of Civil Procedure and the applicable rules at non-contentious Administrative Proceedings].

According to Section 2 Article 330 of the *Code of Civil Procedure*, the complaint referring to the violation of law shall be submitted to the administrative body of first instance within 30 days of notification of resolution to be reviewed or sent by registered post. The administrative body of first instance submits the complaint with the documents of the case to the body having passed the second instance administrative resolution within 5 days, which transfers them – with its statement on the complaint – to the court within fifteen days. If the complaint includes a request for the suspension of execution, the administrative body proceeding in first instance submits the complaint and the documents of the case to the administrative body proceeding in second instance within three days, who transfers them to the court within eight days.

The principle of being subject to claim prevails in the trial, i.e. the extent of the judicial review is limited by the claim submitted by the applicant.

The court – except for the violation of procedural rules not affecting the merits of the case – terminates the unlawful administrative resolution, and requires the administrative authority having made the resolution to initiate a new proceeding if necessary, and may change some administrative resolutions that are taxative defined in the Civil Code of Procedure.

If the customer has obtained any fact, information or evidence after the operative date of a final resolution that had already existed before the resolution was adopted, but it was not presented during the proceedings despite being of essence for the judgment of the case, a request for reopening the case may be lodged within fifteen days after gaining said knowledge, provided that it carries the potential to produce a resolution that is more beneficial for the customer.

A request for reopening the case shall be judged by the authority of first instance. In the reopened proceedings, the authority may either amend or withdraw the final resolution, or adopt a decision consistent with the new evidence presented. If in conclusion of the reopened proceedings the final resolution containing some obligation is expected to be reversed or withdrawn, the authority shall *ex officio* take measures to have the pending procedure suspended.

The essence of the proceeding to be initiated according to the Constitutional Court's decision is that where a constitutional complaint is submitted by a party against any legislation or statutory provision that is contrary to the Fundamental Law, on the basis of which the resolution for approval of the settlement between the parties was adopted, and the Constitutional Court annuls the legislation or statutory provision in question, if the Constitutional Court has not declared the annulled legislation or statutory provision applicable in the case invoking the proceedings of the Constitutional Court, the party may submit a petition within thirty days following the date of delivery of the Constitutional Court decision to the authority which approved the settlement for the amendment or withdrawal of the resolution.

The same rules shall prevail if the Constitutional Court declares only the possible interpretation of a statutory provision unconstitutional on the basis of the complaint.

VIII. Methods of decision review to be initiated ex officio

The authority, if it finds that its decision that has not been judged by an authority or supervisory organ vested with powers to hear appeal cases or by a court of jurisdiction for administrative actions is unlawful, shall amend or withdraw the decision in question.

Apart from the erroneous entries made in official records and registers and in official certificates, and from the resolution of facts in citizenship certificates, a decision may not be amended or withdrawn if it would compromise any right that was acquired and exercised in good faith.

The authority shall be entitled to conduct the procedure referred to in Subsection (1) – with the exception of when the procedure is launched based on a decision of the Constitutional Court or upon intervention by the prosecution – only once and, unless otherwise prescribed by law, within one year from the date the decision was delivered. Where the judicial review of the decision is pending, the authority may withdraw its decision before a counterclaim is lodged on the merits.

In case of an oversight proceeding, the supervisory organ shall have the power to examine *ex officio* the proceedings of the competent authority, and its decision, and shall consequently:

- take the measures necessary to eliminate the infringement, if any;
- exercise the supervisory competence.

If the decision of the authority is found to be unlawful, the supervisory organ may reverse or annul such a decision. If necessary the supervisory organ shall adopt a ruling to annul the unlawful decision and shall order the authority to reopen the case.

According to Act CLXIII of 2011 on the Prosecution Service (hereinafter: PS), the prosecutor controls the lawfulness of independent effective or enforceable decisions which have not been reviewed by court, and measures taken by administrative authorities and law application bodies other than courts. The prosecutor's notice is regulated by the detailed rules of PS and states that unless otherwise provided by law the prosecutor calls for the elimination of the infringement in case of

- infringements affecting the decision of the administrative authority within a maximum of one year from the date of its coming into effect or the ordering of execution,
- determining liability,
- decisions on depriving or limiting rights until the right to execution lapses, or decisions on ensuring the claim or sequestration as long as the condition exists.

IX. Execution in administrative proceedings

The decisions of the administrative authorities on determining rights are carried out with the majority of the customers. However, it often occurs that in cases of decisions on liability there is no voluntary compliance. In order for the ruling to prevail, the authority intervenes with force if necessary and the third procedural stage is carried out, i.e. the execution.[60]

In the course of execution not only the rules of GRAPS but Act LIII of 1994 on Judicial Execution (hereinafter: JE) shall also be applied.

[60] See detailed: Gyurita E. Rita, 'Végrehajtás' [Enforcement] in Patyi András (n 19) 567–600; Szilvásy György Péter, 'Végrehajtás' [Enforcement] in Balla (n 50) 289–320.; Boros Anita, A közigazgatási hatósági eljárás kézikönyve [Manual on Administrative Proceedings] (Menedzser Praxis Kiadó 2013).

The order of execution is possible if all the following conditions appear:
- lack of voluntary compliance,
- effective decision (determining liability),
- no lapse of claim.

The authority of first instance shall monitor compliance with the obligation prescribed in the enforceable decision of its own motion in *ex officio* proceedings, or upon the customer's request in proceedings opened upon request, or may do so if the customer did not lodge a request therefore in proceedings opened upon request, but the authority has had competence to conduct the procedure *ex officio*. If compliance cannot be determined from the information available, the authority shall – if necessary – conduct a regulatory inspection within eight days following the deadline, or from the date of receipt of the request for inspection in the proceedings opened upon request.

The authority of first instance shall launch the enforcement procedure if it finds that the obligation prescribed in the enforceable decision was not fully discharged by the deadline for performance or if performed in non-conformity with the prescribed requirements.

Unless otherwise prescribed by an act or government decree, enforcement shall be carried out by the authority of first instance. The body carrying out the enforcement procedure may enter into an agreement with an independent court bailiff to execute the enforcement, however, only the authority initiating the enforcement shall have competence to adopt a ruling in the process.

GRAPS regulates the collection, the rules of certain activity and the enforcement of domestic resolution abroad or foreign resolution within the country in the framework of enforcement.

4. Emerge of Administrative Proceedings in Foreign Legal Literature

The number of publications of administrative proceedings in foreign languages is rather low. The sources of literature are primarily German but we can also find some English publications of some issues.

A part of the sources of literature deals with the development of administrative proceedings or constitutional issues of legal institutions.[61] The issue of judicial review in cases of administrative provisions is of significant importance as most states of Europe have established administrative courts separated from the independent, ordinary courts. In Hungary,

[61] Fazekas Marianna, 'Reform des Verwaltungsverfahrenrechts in Ungarn' in Hermann Hill – Rainer Pitschas: Europäisches Verwaltungsverfahrensrecht Beiträge der 70. Staatswissenschaftlichen Fortbildungstagung vom 20. bis 22. März 2002 an der Deutschen Hochschule für Verwaltungswissenschaften Speyer (Duncker und Humblot 2004) 251–262. Fazekas Marianna, 'Changes of Administrative Procedure between 1990 and 2006' in Jakab András, Takács Péter, Allan F. Tatham (eds): The Transformation of the Hungarian Legal Order 1985–2005 (Kluwer 2007) 127–142

courts that do not have an independent code of administrative procedure in the system of ordinary courts proceed in the course of judicial review of administrative decisions. Taking this into consideration, the foreign language sources focus on whether the abovementioned structure of the courts proceeding in administrative cases is appropriate, and on the issue of establishing the independent administrative court and code of procedure.[62]

The third category of literature includes the analysis of certain amendments of GRAPS[63], the general or comparative analysis of certain procedural activities, and the analysis of the relationship of EU and member state administrative proceedings.[64]

Further reading

BALÁZS István, 'Eastern Europe in Transition. The Case of Hungary. The Readjustment of Public Administration, Programs and Aspects of the Transformation of Public Administration in Hungary between 1990–2012' (2012) 53 Acta Juridica Hungarica 115–132

BOROS Anita, 'Verwaltungsverfahren im Vergleich zwischen Deutschland und Ungarn – die wichtigsten Unterschiede im Bereich der Verwaltungsgrundsätze und des Grundverfahrens' in Christin Schubel – Peter-Christian Müller Graf – Oliver Diggelmann – Stephan Kirste – Ulrich Hufeld (eds), *Jahrbuch für Vergleichende Staats- und Rechtswissenschaften – 2012* (Nomos 2012) 147–160

BOROS Anita, 'The implementation of the Services Directive in Hungary' in Ulrich Stelkens – Wolfgang Weiss – Michael Mirschberger (eds), *The Implementation of the EU Services Directive. Transposition, Problems and Strategies* (Springer 2012) 283–309

FAZEKAS Marianna, 'Reform des Verwaltungsverfahrenrechts in Ungarn' in Hermann Hill-Rainer Pitschas: *Europäisches Verwaltungsverfahrensrecht Beiträge der 70. Staatswissenschaftlichen Fortbildungstagung vom 20. bis 22. März 2002 an der Deutschen Hochschule für Verwaltungswissenschaften Speyer* (Duncker und Humblot 2004) 251–262.

FAZEKAS Marianna, 'Changes of Administrative Procedure between 1990 and 2006' in Jakab András-Takács Péter-Allan F. Tatham (eds), *The Transformation of the Hungarian Legal Order 1985–2005* (Kluwer 2007) 127–142.

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62 Rozsnyai Krisztina, 'Probleme der ungarischen Verwaltungsgerichtsbarkeit aus rechtsvergleichender Perspektive' (2004) 45 Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio Juridica 187–209; Balázs István, 'Eastern Europe in Transition. The Case of Hungary The Readjustement of Public Administration, Programs and Aspects of the Transformation of Public Administration in Hungary between 1990–2012' (2012) 53 Acta Juridica Hungarica 115–132

63 Fazekas Marianna, 'Erneuerung des Verwaltungsverfahrensrechts in Ungarn' (2002) 43 Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio Juridica 141–154; Boros Anita, 'Das ungarische Verwaltungsverfahren' (2007) 53 Verwaltungsrundschau 55–60; Boros Anita, 'Die wichstigste Regeln des ungarischen Verwaltungsverfahrens und die Veränderungen des Verwaltungsferfehrensgesetzes' (2011) 102 Verwaltungsarchiv 206–223.

64 Boros Anita, The implementation of the Services directive in Hungary. In.: Ulrich Stelkens, Wolfgang Weiss, Michael Mirschberger (eds), The Implementation of the EU Services Directive. Transposition, Problems and Strategies (Springer 2012) 283–309

Administrative Sanctions: Sanctioning Power of Public Administration

Introduction – administrative repression in national and supranational aspects

Nowadays, the non-criminal repressive sanctioning systems are growing wild in confused legislative surrondings without secure requirements of principle in many European countries. Serious attempts have been made in Hungarian and increasingly in international dimensions to clarify conceptually the growing sanctioning power of public administration, especially to work out the minimum requirements of substantive and procedural law for sanctions of punitive natures. This research considers the confusing, and at times contradictory, terminology used in European legislations and literature to describe administrative (non-criminal) penalties and the offence to which they respond.

In terms of several instruments of the Council of Europe and the European Union, administrative sanctions are more and more highlighted as real alternative solutions of criminal sanctions.[1] Recommendation No (91)1 of CE points out that European administrative authorities acquired considerable powers of sanction as a result of the growth of the administrative state as well as a result of a marked tendency towards decriminalisation. These types of sanctions are thought to be able to ensure appropriate deterrent and preventive effect in fight against some of dangerous phenomena treated traditionally by means of criminal law enforcement.[2] As to the background of the increasing importance of administrative penalties, criminal policy recently tends to transpose its problems resulted mostly in the enlargement of repression into the administrative punitive area that is based on a more uncertain and less elaborated theory than criminal law dogmatism. The creation of a system of pseudo-criminal sanctions of administrative nature may open the floor for penalties applied without proper constitutional guarantees such as culpability principle, in particular in the judicial practice of regulatory and minor offences.[3] One may realize some

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1 The Convention on the Protection of the European Communities' Financial Interests (97/C 191/01) requires Member States to lay down criminal penalties for the punishment of the conduct constituting fraud, but in cases of minor fraud Member States may provide for non-criminal penalties, mainly administrative penalties.

2 See Recommendation No. R (91) 1 of the Committee of Ministers to Member States, Council of Europe, Explanatory memorandum

3 See Mireille Delmas-Marty, Punir sans juger. De la répression administrative au droit administratif penal, (Economica 1992); Regulatory theorists also warn against the over-use of the criminal law in

unconstitutional aspects followed by displacing administrative penalties from the scope of culpability principle of criminal law in the process of extension of administrative repressive system.[4] The legislative technique of decriminalisation as a way of the removal of an offence from the criminal sphere corresponds to a very widespread trend in the European legal system, one of them has been encouraged by the Council of Europe. Social changes, new attitudes, technical and economic circumstances are leading the States to reassess the elements of offences and classify them as regulatory one. We are also concerned with the difficult and precarious task of drawing the borderline between the qualification by the national legal system, considering primarily the universal requirements of principles of substantive and procedural body of criminal law, enforced mainly through constitutional courts and the European Court of Human Rights (ECHR) in Europe. In relation to European states, it may be asked then whether, administrative penalty retains its punitive character and/or may still be included in the concept of criminal offence. At this point, the ECHR's view is that the rule of law infringed no change of substantive content it prescribes conduct of a certain kind and makes the resultant requirement subject to a sanction that is punitive. These alternative measures often presuppose a decision not institute formal criminal or judicial proceedings. Some forms of procedures, just like the analogous one of decriminalising offences so as to rid them of the stigma of a sentence or dejudicalising certain parts of the criminal law, belonging to the one as the same criminal policy whose aim is precisely to apply those types of treatment that fall outside the criminal law and hence go beyond the scope of substantive principles of criminal law. The Association International de Droit Pénal (AIDP) pointed out in its resolution of 1989 the tendency in which as to its scale administrative penal law has been approaching criminal sanctions. This improvement of administrative repression urges a broader application of principles of substantive criminal law in the same manner as due process principle applies in that domain. The national legislation and the jurisprudence shall also consider by analogy particularly the principle of culpability. It is useful to note that the relevant verdicts of the ECHR prescribes that legal forms such as criminal offences, non-punishable offences, contravention, public welfare offences are not of importance in relation to the compulsory enforcement of principles of

the regulatory area. There has been an exponential growth in the number of criminal offences such that the 'criminal law is devoid of any justificatory principle' and the notion of criminality is now debased (de facto 'criminalising' regulatory contraventions). Theorists urge a statement of principle on this issue which states that the distinction between criminal and non-criminal penalty law and procedure is significant and adds to the flexibility of regulatory law. Legislators should exercise caution about extending the criminal law into regulatory areas unless the conduct being proscribed clearly merits the moral and social censure and stigma that attaches to conduct regarded as criminal

[4] About the German critics concerning the extension of administrative repression see Cordier, Frey, Matees in Viski László, Közlekedési büntetőjog [Criminal Law of Traffic offences] (KJK 1974) 199.; According to judgement He Kaw Teh v The Queen (1985) 157 CLR 523. in common law one of the reasons for the expansion of the administrative penalties regime in the sectorial administration is to increase the likelyhood of punishing offenders given the lower standard of proof and the fewer procedural protections available to the defendant in an administrative action.

fair process.[5] Rec.(91)1 of CE also establishes that it is desirable to contain the proliferation of administrative sanctions by submitting them to a set of principles.

In addition to the national systems, the administrative repressive power of the EU organs for the protection of Community's interests and EU law indicates new perspectives in European administrative penal law.[6] Recently, a special aspect of this topic has been raised in the field of EU and UN counterterrorist sanctioning regime incorporating counterterrorist blacklists of the UNSC. The UN and EU blacklisting regimes, in particular the travel restrictions, financial sanctions restrict a large number of fundamental human rights. Those sanctions are fairly seen as administrative-labeled sanctioning system which aims at discarding and excluding international as well as national criminal justice review. The reasons and justification for taking this counterterrorist (CT) sanction policy out of the criminal justice are due to the need for the efficiency, the urgency in enforcement of sanctions. Through administrative-labelling the international administrative-type special bodies qualify themselves as more efficient and more responsive vehicle to address terrorism, and the criminal justice system is seen as an old-fashioned, inefficient way to impose, enforce or control CT sanctions.

By creating pseudo-criminal sanctions, the efficiency problems of criminal regime are placed into a more uncertain sphere which opens the floor for sanctions applied without proper judicial guarantees and due process standards.[7]

1. The evolution of the system of administrative sanctions in the Hungarian legal system

The administrative sanction is the coercive measure or penalty imposed by administrative bodies (regulators) on anti-administrative behaviour, for example any behaviour disturbing the public order or the public administration.[8] Substantive administrative sanctions and other

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[5] See Bittó Márta, 'A magyar szabálysértési jog és az Emberi Jogok Európai Egyezménye' [The Hungarian Contravention Law and the ECHR] (1991) 32 Állam- és Jogtudomány 23., 155–174., 158.; Delmas-Marty (n 3); Mireille Delmas-Marty – C. Teitgen-Colly, 'Vers un droit administratif pénal?' in The system of administrative and penal sanctions in the Member States of the European Communities I. National Reports (ACSC-EEC-EAEC 1994).

[6] See more in Kis Norbert, 'Szupranacionális közigazgatási szankciók az EU-ban' [Supranational Administrative Sanctions in the EU] in Kondorosi Ferenc, Ligeti Katalin (eds) Az európai büntetőjog kézikönyve [Handbook of The European Penal Law] (Magyar Közlöny Lap- és Könyvkiadó 2008) 373–398.

[7] See more in Kis Norbert, 'How to Return the Supranational Administrative-type Counterterrorist Sanctions to the Criminal Justice System?' (2010) 1 Nouvelle Études Pénales /Proceedings of the AIDP regional Conference/ 107–119.; Kis Norbert, 'Financing of Terrorism' (2007) 78 International Review of Penal Law/Revue Internationale de Droit Pénal 157–178.

[8] The basic concept and the activity of Hungarian public administration is analyzed in Kis Norbert – Cserny Ákos, 'The Government and Public Administration' in Csink Lóránt, Schanda Balázs, Varga Zs. András (eds), The basic law of Hungary: A First Commentary Dublin: (Clarus Press 2012) 135–156.;

type of administrative sanctions shall be examined distinctively. *Substantive sanction* is the penalty imposed on the violation of substantive law, through decision on the merit. *Other administrative sanctions* shall be marked off, as the sanctioning instruments of constraint such as enforcing measures applied during the procedure, on-the-spot disciplinary measures, or fines for delay in the procedure.[9]

Administrative sanctions are examined in this chapter, in the field of sanctions of administrative substantive law. *Administrative penal law* – a discipline of German origin (*Verwaltungsstrafrecht*) – comprises the evolution, the history of regulation and theory of *administrative sanctioning power* into a disciplinary framework.[10]

Sanctioning by public administration has evolved as a field *out of the repression by penal law and criminal jurisdiction*. *Administrative penal law is the set of norms determining the conditions of the application of repressive sanctions imposed in administrative procedure by administrative organs.* The expansion of administrative penal law (Verwaltungsstrafrecht, la repression administrative) has various explanations in terms of legal policy. Historically, the introduction of administrative repression against infringements was motivated *by decriminalisation as a means of relieving criminal jurisdiction*. However, the establishment of *speedier, more effective and more deterrent administrative sanctioning* system means parallel or alternative to penal law has become an even more determining reason.

According to the processual approach, administrative sanctioning power means the '*sanctioning jurisdiction' diverted from the judiciary way into the administrative competence.* The first instance of consideration can be the administrative authority, and the legal court will examine the case if the person involved does not agree with the resolution. The diverted legislation is laid down by positive law. There is a different model, according to which the law enforcer (administrative organ, prosecutor) takes the decision of diversion (e.g. in England[11], the so-called 'correctionalism' proposals were made in Hungary, too).

The system of administrative sanctions is *associated with the rules of administrative procedure*, however the procedural principles are based on the theses of the '*fair procedure*'

Patyi András, Varga Zs. András, Általános közigazgatási jog [General Administrative Law] (Dialóg Campus 2012) 351.

9 Kis Norbert, Nagy Mariann, Európai közigazgatási büntetőjog [European Administrative Penal Law] (HVG-Orac 2007) 8–10., 300.

10 Jacques Mourgeon, La répression administrative (LGDJ, 1966); Main research papers on administrative penal sanctions of Hungarian Law are as follows: Papp László, 'A közigazgatási büntetőbíráskodás problematikája' [Theory of administrative penal judiciary] (1992) 42 Magyar Közigazgatás 336.; Máthé Gábor, 'A közigazgatási büntetőjog elmélettörténetéhez' [On History and Theory of Administrative Penal Law] in Degré Alajos emlékkönyv [In Memoriam Degré Alajos] (Unió 1995) 149.; Geller J. Balázs, 'A "büntetés" fogalma az emberi jogok és alapvető szabadságok védelméről szóló Egyezmény 7. Cikkének 1. bekezdésében' [The concept of 'penalty' in ECHR Article 7 Paragraph 1] (1997) 44 Magyar Jog 105 – 107.; Nagy Marianna, A közigazgatási szankciók elmélete [Theory of Administrative Sanctions] (Osiris 2002); Kántás Péter, 'Adalékok a közigazgatás szankciórendszeréhez' [On Administrative Sanctions] (2003) 50 Belügyi Szemle 45–65.; Torma András, A közigazgatási szankció helye és szerepe az EU jogában [The role and place of Administrative Sanctions in EU law] (2005) 1 OLAF 153–177.

11 B. Macrory 'Making sanctions More Effective' /Macrory Review, Better Regulation Executive, Final report/ (Cabinet Office 2006) http://www.cabinetoffice.gov.uk/regulation/penalties

principle declared in the European Convention on Human Rights, and elaborated through the legal practice of the European Court of Human Rights. *Impeachment and sanctioning remain within the gravity of substantive legal principles of penal law.* Administrative penal law is on the borderline of administrative law and penal law, at the same time shows the *specifically mixed features of the above-mentioned legal branches*. This can be explained by the fact that there is no uniform and coherent system of principles and concepts of this legal discipline. The sanctioning system of public administration is expanding in many European countries, within a confused codification environment, in the lack of secure principal requirements.

The administrative penal power has evolved in Hungary in a dual system. A separate *Contravention* law (szabálysértés) was introduced and the category of so-called 'minor criminal offences' (kihágás) was abolished in 1955, which means an evolutionary borderline.

a) The prior period until 1955 in Hungary

The infringers of obligations, prohibitions and instructions defined by administrative regulations and the persons who contravene the conditions of permissions *had been sanctioned through the uniform sanctions of public law, e.g. the penal law.* The uniform sanctioning of administrative offences in this time was the lowest level of the trichotomy of penal law, the *minor criminal offences*. Independent from this, some *other sanctions of administrative law* can be found as well: restriction of rights, close-down of institutions, suspensions and revocation of permissions. The body of minor criminal offences had included different fact patterns: *'smaller offences'* of criminal nature and regulatory offences, e.g. *'civil disobedience'*. The idea of 'administrative penal law' was based on this dualism of minor offences, which had an impact on the legislation and the jurisprudence as well.[12]

Minor offences as forms of criminal law were defined by the act of law XL of 1897, and their litigation by the act XXVII of 1880. in a way that the so-called *administrative penal authorities* received certain competence besides the local (township) courts. The requirement of 'jurisdiction by courts' has been broken and the penal power of administration (administrative penal organs: the magistrate, the sheriff and the vice prefect) was introduced by this step. Besides the penal law of minor offences, also the first types of *administrative fines* have appeared which had been distinct from the criminal fines and had been applied in cases of *regulatory transgression (áthágás)*.

In the last period of the history of minor criminal offences, the effect of the general part of the penal code (Act II of 1950) did not cover the specific part of the penal law any more. This was generally defined by the statutory rule nr. 35. in the year 1951. and the regulation of the Council of Ministers 59/1952. (KESz) which was created for its enforcement. The KESz had retained the *dualism of administrative and judiciary penal activities*. Besides the police, the Local Governement (Executive Committee of the Local Coouncil) has also received general competence. In the end, the competence of the police to consider minor offences has been terminated by the statutory rule nr. 16. in the year 1953., thus general

[12] Angyal Pál, A közigazgatási jogellenesség büntetőjogi értékelése [Criminal Law-based assessment of administrative offences] (MTA 1931).

competence was shared by the courts of law and the Executive Committees of the local Councils. The abolishment of minor offences law in 1955 was a significant step in the evolution of independent administrative sanctioning. The fact patterns of minor offences have been either upgraded to 'real crimes' or reclassified to offence through one single legislative act. *The dual system of administrative sanctioning has been preconditioned by the parallel evolution of minor offences and transgression.*

b) The period after 1955.

Act on Contravention law has been the uniformly codified field of administrative penal sanctioning from 1955 to 2012. The 'penal-like' character of contravention law can be explained by the fact that offences had been created partially by the 'decriminalised' minor offences fact patterns (statutory rule nr. 17 of the year 1955) after the introduction of contravention law (statutory rule nr. 16. of 1953). *Offences of criminal nature together with the ones of administrative (non-criminal) nature* were considered as the basic forms of regulatory offence, in this way the legislative formally complied with the principle of separation of jurisdiction and administration. According to the ideas and the written law of the time, the fact patterns of offence obviously constituted an independent *type of sanctions of administrative law.* As culpability (mens rea) – based form of responsibility, it used to impose fines on the infringers of the law. Right from the beginning, various links to the penal law characteristic to the former minor offences law have featured the new legal institution as well. The detention, introduced in 1959 as a penalty independently imposable for certain fact patterns by the police was determining in the 'penal-like' system of contravention law.[13]

The first coherent Act of contravention law (Act I of 1968) and the Government Decree 17/1968 (IV.24.) on certain offences have included the whole legal material into a unified system: its general provisions, rules of procedure and enforcement as well as its specific provisions allowed the enforcement of contraventionlaw for decades. However, the codification of contravention law *could not meet the expectation of becoming the general sanction of administrative law.* Not all types of fines could be incorporated into the act, *supervisory fines and other restrictive sanctions continued to exist.* The *supervisory sectoral fines* imposed in case of infringements by administrative supervisory organs remained more effective in the eyes of the law enforcers due to their more flexible set of legal principles. Especially in the field of environmental protection, more and more 'non-contraventional' types of fines have been introduced from the 1970's. These fines were applied gladly by the individual sectors, as on the one hand they were 'strict-liability' based therefore not even the negligence of the perpetrator had to be proven, and on the other hand, their amount linearly increased with recurrence. Besides that, the income from these fines went to separate state funds, thus the sectors themselves could dispose of them. Contravention law was gradually loosing its relevance in

[13] Máthé Gábor, 'Verwaltungsstrafrecht oder Nebenstrafrecht?' in Mezey Barna (ed), Strafrechtsgeschichte an der Grenze des nächsten Jahrtausendes (Gondolat 2003) 122–150.; Nagy (n 10).

the 1980's and simultaneously, the legislature *introduced more and more sectoral fines out of contravention law.*

The renewal of contravention law was enforced by the Hungarian accession to the European Convention on 'the Protection of Human Rights and Fundamental Freedoms'. From this, the assurance of *judicial review of the contravention procedure* has emerged as a basic requirement. Also in this connection, the Constitutional Court called on the Parliament in its resolution 63/1997 (XII. 12.) to pass the necessary legislation. The result was the Act LXIX of 1999 act of law on contraventions which is not in effect any more.

The dualist way of development is characterised by the fact that contravention law was supposed to give a unified framework to all sectoral administrative sanctions. However, the idea of unified protection of administration has failed, as administrative sanctions out of contravention law have evolved in an even wider range. The sectoral administrative legislation has 'diverted' the repressive system of instruments of protecting the administration from the contravention codification and has created a separate system of sanctions in each sector. The basic reasons of *the double track of administrative repression* have been the following:

- The idea of 'minor criminal law' compared the system of sanctions of the contravention law to that of the criminal law, thus it did not allow the system become more severe and differentiated, while the sectoral legislation has done so by going beyond all theoretical dilemmas.
- The contravention liability having a 'penal-like' (*mens rea*) system of conditions has proved to be too tight and rigid for administrative repression.
- The principles of contravention law were not flexible enough to directly put across sectoral specificities.
- The forms and guarantees of procedure were not in line with administrative routine and pragmatism.

The new Act on Contravention Law (Act II of 2012) was adopted in 2012 and entered into force in September 2013. The fundamental changes of new legislation were as follows:

- the scope of the contravention law are limited to criminal-type minor offences,
- nulla poena sine lege and criminal law 'necessity-test' are to apply in contravention law,
- minor administrative offences are transferred to administrative law to be sanctioned,
- the authority of public administration remained on all contravention, except contraventions to be sanctioned by imprisonment.

In fact, the dual structure of sanctions of administrative law enforcement has been reinforced by the new legislation of contravention law, however, the overlaps of two mechanisms have seriously decreased.

The dual structure of administrative sanctioning

2. Theoretical basics of administrative sanctioning

The theoretical questions of administrative sanctioning concern the differences between judicial penal power (Justizstrafrecht) and administrative penal power, as well as their relations. The history of theory was determined by the fact that the contravention law and after 1955 contravention law was considered as the main field of administrative penal sanctioning. As a consequence, theory was less concerned with non-contravention-systems of administrative fining (sanctioning) and the relations to them. Focusing on its principal requirements and the demarcation from criminal law, e.g. the placement of minor offences within the legal system, *the problems of administrative penal power have appeared only in regard to the contravention law, and not in the whole range of administrative sanctions.*

This approach justifies administrative repression being diverted from the criminal jurisdiction and focuses dominantly on the qualitative and quantitative differences between contravention law and penal law.

aa) *The qualitative difference-theories* try to define an independent framework of administrative penal power, however it is difficult to find theoretically sufficient distinctive features between the nature of criminal wrong and that of administrative infringement, as it is a question of judgement: what makes an act of offence criminal? The boundaries are relative and unclear in their principle basis. The pioneer theorists of administrative penal law have tried to find *specialties in the legal nature of contravention from which they expected 'legal principles of administrative penal law' distinctive from criminal law.* They believed that while the mission of criminal law is the protection of law and order (*Rechtsordnung*), the contravention 'only' protects the *community welfare objectives* (*Wohlfahrt*) and the administrative order (*Verwaltungsordnung*). The ideas featuring the early period of the evolution of administrative penal law highlight as a difference the merely formal illegality of administrative offence (*Verwaltungswidrigkeit*) – a notion of German origin. J. *Goldschmidt* regarded the administrative offence as *mere disobedience, morally neutral offence*. According to *Wolf*, the administrative penal law is administrative law in the material sense, and *only formally penal*. The ideas based on moral distinction of the nature and the rules of these two fields of law have also slowly gone under. According to the currently mainstream idea, *there is no qualitative difference between acts violating criminal law and administrative offences in respect to the legal subjects and interests to be protected (interests).*[14]

ab) It is a more widely accepted idea that the *gravity of harm and risk on society*, e.g. the quantitative criterion is the determinant *in the distinction* of an act violating criminal law or an administrative offence. The theory of gradual difference is widely accepted in the comparison of criminal law and administrative offences. However, the gradual

[14] James Goldschmidt, Das Verwaltungstrafrecht (Heymann 1902).

difference between criminal sanctions and administrative substantive sanctions is not justified in the whole spectrum of administrative penal law. Criminal law and administrative repression are more and more parallel and complementer policy tools. Fines of some sectorial regulations (competition law, commercial law) are often much heavier than financial penalities of criminal law imposed on the same offence.

ac) Certain of ideas call for the redirection of administrative penal law to criminal law (*criminalization theory*). Not in its whole, as within administrative penal law the administrative penal power is refused only in case of criminal infringements. Criminalization could be interpreted for the full spectrum of administrative penal law: in this case, repression could be possible only by criminal law through the judicial way. The moderated version of this theory aims to solve the dilemmas of contravention law by criminalising the petty offences endangering the public order, thus urging the restoration of criminal trichotomy (recriminalisation).
One can assume that researchs only comparing the contravention law with criminal law could not answer all the questions of the complex and extended sanctioning system of administration. It examines only a segment of the expanding administrative sanctioning system, within this, only focuses on the distinction from criminal law as the main set of legal principles.

b) The European Convention on Human rights has basically marked out the new prospects of the theory based on the fair trial standards. This idea makes administrative penal law free from the dogmatic thesis according to which 'penal sanctioning is equal to criminal jurisdiction' and states that administration can also practice sanctioning power within the frames of fair trial principal guarantees. The thesis of this approach is that *the conceptual and principal frames of penal power shall be defined by the features (aim and level) of the sanction that can be imposed, not by the legal categorization of the offence*. It shall be decided on the basis of *the sanction-test* whether to apply the system of the criminal field, independent from the classification of legal branches (e.g. in the administration as well). The ECHR has anchored in the Öztürk v. Germany case (ECHR, *Öztürk v. Germany judgement* of 21 February 1984, Series A no 73) by introducing the sanction-test under what conditions can the legislation take the sanctioning out of the principal domain of criminal law. The guarantees of the 6th and 7th Articles of the European Convention on Human Rights are also to be considered under the principal domain. According to the judicial practice of the European Court of Human Rights the application of criminal and administrative penalties has uniform requirements regarding the rules of penal procedure. The European Convention on Human Rights has made the *'criminal character' of the case dependent on the legal nature of the case, the aim and the level of the sanction* and independent from the legal classification. Based on this *triple criterion, administrative sanctions can mainly be regarded as ones of 'criminal character' in the interpretation of the ECHR as well*. The ECHR has poorly elaborated this test for the principles of substantive penal law, p.ex. subjective criminal liability (see 7th Article of the Convention).[15]

[15] The uncertainty of differentiation between administrative or criminal qualification is proved in the theory of administrative law as well as in the judicial practice of the ECHR. The ECHR recognizes that domestic legislation has free option to qualify an offence as administrative one, but by this act the enforcement of due process is not ruled out in the proceedings of the given offence. Having regard to substantive

All repressive (penal) sanctions theoretically belong to the same principal domain, independent from their classification into legal branches (criminal, labour, administrative). Penalty has such an inherent system of requirements in content which prevails as the unchanged matter of penalty independent from the nature of the offence. Ensuring the necessary substantive and procedural guarantees, administration can ultimately receive penal power for offences of any character and gravity – this is verified also by our written law in effect. All this is confirmed by 'the difference theories' as well in such an extent that they also could not provide adequate distinctive features of qualitative or quantitative character for differentiating the principal safeguarding system of criminal law and administrative penal law (or rather the quantitative distinction only concerned contravention law).[16]

3. European models of administrative sanctioning

The Member States of the European Union can be classified into three main groups in respect to administrative sanctioning.[17]

a) The first group consists of those states in which *all types of administrative offences and their sanctioning are mainly subject to an act of law providing unified system of substantive and procedural rules*. For instance, *Germany, Italy, Austria, Bulgaria and Portugal* belong to this group. Within the group, some countries can be identified that only the smaller part of administrative penal power is regulated by the unified substantive and procedural code as the 'contravention-like' form of offence. The Czech, Slovak and the Hungarian systems can be listed here. There is regulated 'administrative penal law' in the German system, while in Hungary only contraventions are coherently codified which is only a narrow section of the real penal power of administration. The so-called OWiG (Gesetz über Ordnungswiedrugkeiten, Act of Law on Infringements) gives a framework in the *German system* to the group qualified to be infringements (Ordnungswiedrigkeit) including all types of administrative offences and sanctions. The German regulation provides standards to follow not only for Hungarian administrative penal law, but it is more often mentioned as the model of unified regulation of administrative sanctions in other European countries

principles, in particular to the requirement of culpability it would also be necessary to clarify in a similar manner to the practice of Art. 6 to what extent the offences and sanctions have fallen out of the principles of substantive criminal law in the process of decriminalisation, in other term to what extent the administrative penal law may be independent from the constitutional criteria of criminal responsibility.

16 The resolution of the 14th International Congress of AIDP (1989) also stated that administrative label, efficiency and proactive reasoning can not justify the lack of fair trial standards: administrative-type retributive sanctions require application of the basic principles of criminal law and of due process. Special emphasis was put on the defendants' right to be informed of the charges and evidence brought against him, the right to be heard, including the right to present evidence and the recourse to the judiciary and to adversary proceedings should be possible.

17 National systems have been increasingly affected by the EU-level administrative sanction policy. National implementation of EU interests and EU law shall meet the requirement of effective and deterrent toolkit.

(England, Netherlands). Thus, the German model is likely to become in time the pattern for administrative penal policy for the European countries. A coherent and comprehensive substantive and procedural regulation (Verwaltungsstrafgesetz, VStG 1991) can be found in the *Austrian system* as well, which may be a model also for Hungarian administration.[18]

b) The second group comprises the countries which *apply the penal power of administration, however administrative sanctioning has no codified basis and a coherent system, for example Belgium, Spain, Greece, France and Holland.*

There is a legal regime in *France* as well which is defined as administrative penal law and is similar to our contravention law, but it is none of the competence of administrative bodies. Trichotomy is continuous in France, and the slightly dangerous offences threatening the norms of social coexistence are considered by the courts as contraventions. Therefore the penal power of administration covers only those sanctions which serve the enforcement of a substantive regulation and which are applied by administrative bodies.[19]

c) The third group is constituted by those countries, which *are exploring the penal power of administration named 'civil sanctions'.* In this model, the traditionally exclusive means of sanctioning regulatory offences are the penal law and penal procedure. Offences of minor gravity, non-criminal character are considered as regulatory offences. In the English legal system 2005 was the year when those revolutionary changes were launched which aimed to introduce the extensive and regulated system of regulatory penalties.

In 2005, Philip Hampton published his report '*Reducing Administrative Burdens*', which identified a practical obstacle to delivering a proportionate and effective system of regulatory enforcement: there was inflexibility in an enforcement regime that restricted regulators to processes of criminal prosecution. Several papers proposed many sanctioning options for consideration including administrative sanctions, venues for hearing regulatory cases, as well as alternative sanctions to be used by the judiciary such as reputation related sanctions or corporate rehabilitation, and the role for restorative justice. The Macrory review suggested that the criminal law is used too readily in regulatory situations and recommended that the Government review the drafting and formulation of criminal offences relating to regulatory compliance, with a view to considering whether some offences should be decriminalised.[20]

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[18] Delmas-Marty – Teitgen-Colly (n 5); Kis-Nagy (n 9) 149–180.

[19] The system of administrative and penal sanctions… (n 5) 179.; Mourgeon (n 10); Étienne Picard, La notion de police administrative (LGDJ 1984); Rapport de la commission du rapport et des études du Conseil d' État, du 8 mars 1984; J. de Bresson, Inflation des lois pénales et législation ou réglementations techniques (RSC 1985) 241.; Kis-Nagy (n 9) 190–210.

[20] B. Macrory recommended to designing the appropriate sanctioning regimes for regulatory non-compliance, and that the regulators should regard to the following six Penalties Principles
1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance

d) The supra-national level of administrative penal law *is the EU Sanction Policy that is protecting the community interests of the EU and the community law.* The European Union needs such a system of legal protection which can provide the community policy and the law of the EU serving it with adequate safeguards against infringements. A part of these is so-called supranational legal interests, which does not automatically become the part of the domain protected by national laws (criminal law or administrative repression). The concept of supranational legal interests means the community values to be protected which are specifically related to the law and community interests of the European Union, and go beyond the sphere of interest of a given Member State. Such a supranational legal interest is the budget, the subsidies and the transparency of the administration of the Union for instance. The sectoral EU legislation mainly becomes – directly or through transformation – the part of national law (e.g. in the fields of agriculture, competition, occupational safety, etc.), however, the protection of these can also be subject to community-level action.[21]

4. The concept and aims of administrative sanctions in the Hungarian law

The literature of the discipline classifies administrative sanctions into two groups: *enforcement measures and penalties. Enforcement measures* targeting for the restoration of a certain legal state have the aim to *realise rights and obligations in the future, with a preventive mean*. Contrary to that, *penalty is a sanction imposed for an unlawful act committed in the past aiming for a proportionate repression*. Among these sanctions there are action-type sanctions of mixed character which show the features of both types of enforcement. Administrative sanctions show a colourful picture in written law according to their aim, sort and level.

4.1. Administrative repression

The penalty (repressive sanction) is the enforcement of liability for a violation of law through a proportional sanction. The fundamental instrument of administrative repression is the administrative fine. *Repressive sanction has a concept going beyond the legal*

The Regulatory Enforcement and Sanctions Act 2008 created an extended, more flexible and modern sanctioning toolkit that aims to be better able to meet the needs of regulators. The reforms were designed to bring consistency into the sanctioning toolkits across the system.
See Macrory (n 11).

[21] See more in Ch. Harding, European Community Investigations and Sanctions (Leicester University 1992); European Commission Report: The System of Administrative and Penal Sanctions in the Member States of the European Communities I. National Reports (ACSC-EEC-EAEC 1994); Kis (n 6) 373–398.; Kis Norbert – Máthé Gábor, European Administrative Penal Law (BCE 2004).

branches. It is not exclusively connected to criminal law. The penal monopoly of criminal law ceased to exist in legal systems with the evolution of administrative penal law. Conceptually, repression is not a purpose of the penalty. Penalty has its purpose in itself: in the public declaration of legal integrity, in the retribution without any regard to the purpose. Penalty is not necessarily connected to target tracking or adequacy-for-purpose, as its application may be imperative, just and reasonable even if it is not effective or does not fulfil any purposes. The principle saying that offence deserves penalty can prevail without target tracking, effectiveness and efficiency (resolution Nr. 23/1990. (X. 31.) of the Hungarian Constitutional Court).

The sanction brings about the effect of individual and general prevention *(prevention through repression)* besides its repressive e.g. penal purpose. Repression and prevention do not exclude each other. This is verified in the criminal law that is *the specific and general preventive purpose of penalty as proportional retribution is expressed by the Penal Code*.

Repressive sanction is to be categorized as penalty. Regarding the primary legal feature of fine, it is a penalty. However, domestic regulation does not designate administrative fines as penalties – in order to avoid doctrinal disputes with criminal law. Even criminal law regards 'fines' applicable on legal persons as measures rather than penalties. Contrary to that, fine is a penalty under the Act on Contravention and in our view administrative fines shall be considered likewise.

Council Regulation No 2988/95 on the protection of the European Communities financial interests marks of community administrative penalty from preventive measure. Measures are the obligation to pay or repay, the loss of the security provided and the failure or revocation of receipt of an advance (Article 4). Contrary to the measure, co*mmunity administrative penalty is based on the condition of liability* (intentionally or by negligence); under this category the following penalties are enlisted: payment of an administrative fine, total or partial removal of an advantage granted by Community rules, exclusion from or withdrawal of the advantage and other penalties of a purely economic type (Article 5.). Measures (e.g. partial or total restriction of operating entitlement, restriction of rights connected to assets, restriction of preferences or advances, etc.) are also applicable on the basis of violition committed in the past; and they do not lose their penal nature even if they involve performance constraint.

The main problem of Hungarian regulation: it does not lie in the lack of formal terminology of administrative penal sanction either as a penalty or as a measure. Obviously, in case of an adequate regulation the liability and procedural condition could be harmonised in a coherent way to the category of penalty or that of measure: according to its inherent features penalty requires subjective liability and increased legislative (principle of legality) and procedural safeguards; while measures can hold on to the practice of objective liability and less strict procedural safeguards in proportion to their security-reparative character.[22]

[22] Kis Norbert, A bűnösségi elv hanyatlása a büntetőjogban [The decline of the principle of culpability in penal law] (Unió-Gondolat 2004) 192–219.

4.2. The preventive purpose of the administrative sanction

The conjunctive purpose deriving from the preventive effect of the sanctions of penal type: *individual and general prevention. Fine primarily carries repression*, it enforces the penal demand of the State, but it also has a preventive effect. *A substantial part of domestic sanctions regarded as measures has primarily a preventive purpose at the same time retaining its penal character.* These are also imposed because of and as an answer for acts of violation committed in the past; however their effect and purpose mainly aim to prevent the future reiteration of the violation. Such sanctions are the measures that temporarily or permanently restrict the practice of the given right.

Measures of penal type can also be found in substantive criminal law; e.g. disqualification from driving or professional activity (which are expressly regarded by the Criminal Code as penalties); in contravention law: disqualification from driving as a measure of penal type. The penal character of the measures is intensified by the fact that the subject of the sanction usually perceives it as a punishment. The repressive character is also confirmed by the extent of the detriment caused by the given measure (e.g. revocation of an allowance). Terminology is inconsistent, but it is essential that the repressive-preventive character of the fine and the preventive purpose of the repressive measure be acknowledged.

4.3. Reparation, restoration

Beyond the purposes of penalties and enforcement measures, reparative measures and measures of restoration can be placed within the frames of distinct systems of safeguards and principles. *The aim of reparation is to ensure the restoration of the original situation. Legal integrity aims at resettling the lawful status after the violation of law.* The measure aiming at the enforcement of reparation can prevail with limited procedural safeguards, without the establishment of liability (the return of the objects involved in the contraventionor seizure for the benefit of the state). Reparative-restorative administrative sanctioning is getting preferred in the development of European national and EU administrative sanctioning policy. This development has such a background in legal policy that the perpetrator pays the multiple 'price' of the violation to the violated sector, with the aim of reparation. If this 'price' is high beyond the damage caused, it is not reparation any more but penalty regarding its legal nature.

5. The administrative fine

5.1. Defining elements

The administrative (substantive law) fine is the general type of administrative penal sanctions. It should be distinguished from fines imposed for procedural failures (defaults). Fine is the *personalised sanction* related to the violating person. If it is not paid by the infringer or 'passed on' to other person by the public administration, the repressive function of the

fine is not able to occur. Repression by fine should not only have an individual preventive effect on the infringer, but also prevents them from future violations. The other theoretic purpose of penal doctrine, *general prevention*, shall also be applied. The general preventive effect, raising the legal awareness of other persons but the infringer, can apply through the consistent and rigorous fine-setting practice. *Fine combined with compensation function* is getting increasingly common in legislation (e.g. environmental industry, forest protection fine). In fact, public administration does not claim for damages according to civic liability, hence the reparative function is set hidden in the level of the fine. A precise calculation formula is included into the fine set in the law, which incorporates the damage caused. However, precise regulation of fine calculation is a rare exception in Hungarian law.[23]

5.2. The extent of fine

It can be stipulated 'numbers game' concerning the regulation of administrative fine-setting in Hungary. Regarding the extent of fine there cannot be found one regulation similar to another one either numerically or methodologically in the domestic fine system. The concept of administrative fine is different in every sector; moreover, there are even different fine policies within the sectors. The regulation of possible extent of sanction is a matter of *legal certainty*. Obviously there is a *wide discretion on setting of fine*, however, circumstances of the extent of sanction shall be regulated. In Hungary the usual regulatory method of administrative legislation sets the frameworks of fine scale (lower and higher end of the scale or only the minimum) and the calculation of the fine to be paid is the subject of legislator's discretion after considering the circumstances of the case concerned. Authorities are usually entrusted with the assessment of the gravity of violation, the aggravating and mitigating circumstances occurring during the setting of fine levels; it is less common (e.g. construction fine) that these factors are taken into consideration by the legislature. Regulation, regarding the extent of the fine, shows and also determines to what extent the fine is considered absolute, dominant or just supplementary in the given sector. This idea of the legislature does not necessarily apply to law enforcement, since the cumulative application of administrative fine and other penal measures as well as contravention sanctions is left to the discretion of the authorities.

5.3. Principle of proportional fine

General application of *principle of proportional sanction* is still missing from the Hungarian regulation. The sanction proportional to the gravity of violation is the fundamental principle of penal doctrines. Disproportional punishment is unjust and unfair. Criminal and contravention law declare that the punishment imposed should be consistent with the

[23] Models of fine-setting and calculation in Hungarian law is overviewed in Kis-Nagy (n 9) 89–100.; It is worth making comparison with that UK law models of fixed and variable monetary penalties that are analyzed in Macrory (n 11) 57–60.

gravity of the act. Therefore disproportional punishment also constitutes *unlawfulness*.[24] Legal regulation not applying the principle of proportionality *is contrary to the rule of law principle (legal certainty)*. The Hungarian Constitutional Court dealt with the principle of proportional punishment in view of constitutionality of criminal law (Decision 14/2002 (III. 20.) Constitutional Court). According to the Court (1.4) 'from constitutional point of view the function of imposing penalties by normative regulations is to allow the imposition of penalty to the perpetrator in consistent with proportionality and the circumstances of guilty […] Legal restriction by the penalty – concerning its level – shall be in accordance with the principles of proportionality and necessity as well as ultimat goal of criminal law'. (1214/B/1990. AB Decision, ABH 1995. 571., 576.) […] *The legislature regulating the administrative sanctions shall be held to account for these constitutional requirements.*

In the context of rule of law principle Hungarian Constitutional Court has underlined in many occasions that 'One of the fundamental requirements of the rule of law is that the public authorities operate in an organizational structure and procedure defined by the law and *operate transparently and predictably within the limits* of the law.' [56/1991. (XI. 8.) AB Decision, ABH 1991. 454.] *The absolutely indefinite administrative penal system does not provide a predictable and foreseeable procedure either to law enforcers or to legal entities.* The lack of legal *uniformity* in fine-setting practice is closely related to the problem of legal uncertainty. Freedom of discretion assuring individualisation shall be applied by law enforcement, although this cannot lead to absolute indefiniteness and enforcer deviations.

Proportionality shall be observed at two levels: legislative individualisation and law enforcement individualisation (individualisation: individualised sanction imposed on the infringer, objective aspect, for the act, subjective aspect).

- *Legislative individualisation* means that the item of fine set by the law shall be proportional to the abstract material gravity of the punishable act. The requirement of proportionality can be achieved by setting fine levels and regulating the imposition circumstances. These requirements are fulfilled poorly by the domestic legal regulation.
- *Law enforcement individualisation* means that the authority, within the limits of the law, sets the exact level of the fine considering the exact material gravity of the act and respecting the purpose of individual and general prevention. Law enforcement proportionality is being violated, if the authority practice imposes fine irrespective of these conditions. The law enforcer's decision reasoning on fine-setting would be an important proof of law enforcement proportionality; however, it is hardly taken seriously by the authorities. It is partially because the law constituting the fine is also poor on fine-setting. Legislature is also responsible for securing the individualisation of law enforcement, which can be enhanced by the legal regulation of proportionality and imposition circumstances.

[24] The principle of proportionality is also required by the Council of Europe Recommendation on Administrative Sanctions (No. Rec (91)1) and the Council of the EU Regulation No. 2988/95 on administrative sanctions).

5.4. Regulation on the extent of fine in Hungary

There are several regulation models:

1) *Relatively definite system* is when the lower and higher end of the fine scale is set.
2) *Absolutely definite system* is when there is a detailed calculation formula on defining the level of
3) *Absolutely indefinite system* is when the higher end of the scale is not set.
4) *Complex regulation system* of fine-setting when the regulations mentioned under 1)-3) points include *fine-setting criteria*.
5) *Relatively definite complex system* (points 1. and 4.) could be considered ideal and a regulation to be uniformly followed, which supports the recognition of proportionality even by the detailed regulation on imposition circumstances. The crucial aspect of the Hungarian administrative sanction system is that the starting point of fine-setting for both the legislation and law enforcement is 'the highest fine possible' and not the concept of necessary and proportional fine. Proportionality is neither applied in legal regulations, which causes problems to the entire legal sanction system, since *indefinite administrative sanction may be much heavier than criminal penalties for the same offence*.

The application of a*bsolutely definite system* is getting more common too. The regulation offers objective criteria on imposition and calculation to law enforcer. This scheme eliminates or minimizes law enforcement discretion on fine-setting. Elimination of law enforcement discretion (individualisation) is not a constitutional issue. According to the *AB 498/D/2000.* Decision of the Hungarian Constitutional Court the legislature is not obliged to grant discretion power to the law enforcer in exercising administrative competence.

General problem on the proportionality of administrative penal system is: *regarding the rules on fine-setting, it does not provide differentiation between natural and legal persons*. Fines to impose on natural persons by law enforcement shall obviously be based on circumstances different from that of legal persons. The preventive effect of the framework could be sufficient to a natural person, but insufficient to a corporation; while there are measures that could be necessary against a corporation, but could be disproportional and unfair to a natural person. There are rare exceptions like public procurement or insurance fines which have various, adjusted items to different entities.

5.5. The aggravating and mitigating factors of fine-setting

Aggravating and mitigating circumstances, entities and objects covered by fine-setting regulations would significantly improve proportionality and legal uniformity. These are rarely, using inconsistent listings, defined in domestic legislation. Legislative failure is aimed to be unified by *the internal guidelines and policies of the authorities* on fine-setting practice. However this *soft-law* cannot sufficiently guarantee legal certainty and predictable law enforcement. Circumstances like nature and extent of damage and danger caused, number of people concerned in the violation, repetitive nature of the violation, sector specific details of these aspects etc. should be considered as objective circumstances in fine-setting individu-

alization. In some areas imposition criteria can be considered 'developed', like fine-setting practice of the Hungarian Competition Authority (Notice No. 2/2003).

Subjective fine-setting circumstances shall be examined according to the different entities of fine. In case of a natural person the financial status, family circumstances, the degree of subjective liability (deliberate perpetration, grossly or slightly negligent perpetration) should be examined. In order to apply special prevention sufficiently individualisation, according to circumstances of entities, shall be given much room during fine-setting. In case of business entities or persons (e.g. private entrepreneur) the financial status determines primarily the amount of fine which is enough to achieve the repressive effect. However, even the objective proportionality related to gravity of the violation must not be lost sight of. Pursuant to the concept opposing the fine-setting method according to the individual circumstances of the subject, only the objective circumstances of the case, by measuring infringers in different situations to same standards, shall be taken into account in fine-setting.[25]

6. Administrative sanctioning measures

There is an other type of administrative sanction besides penalties: *substantive sanctioning measures.* The two instruments of administrative repression, applied by the EU legislation as well, are administrative penalty and preventive measure. Distinction between measures and penalty sanctions is recognized both by criminal law and contravention law.

The *target system* of measures is *of mixed nature*. Primarily penal purpose, primarily preventive purpose, reparative purpose and legal protection purpose measures will be distinguished.

Unlike fine penalties measures

- apply more differentiated legal sanctions,
- are more specified and individualised sanctions,
- can be imposed, mostly, on purely objective basis (based on the fact of violation).

The common characteristics of penal and preventive measures are also imposed because of and as an answer for acts of violation of law, however, their aim and effect is (also) to prevent future reiteration of the violation. The penal character of the measures is intensified by the fact that the subject of the sanction usually perceives it as a punishment. The repressive character is also confirmed by the extent of the detriment caused by a given measure (e.g. revocation of an allowance). Regulation usually offers the law enforcement the possibility to apply measures along with fines. Even in the absence of the explicit delegating provision: measures may be applied cumulatively together with fines and other measures. Measures are mostly considered strict liability (so-called: objective) sanctions by the Hungarian

[25] In the UK system of Variable Monetary Administrative Penalties regulators are required to develop and publicise a method for calculating the penalty for regulatory non-compliance. Macrory showed examples of aggravating and mitigating factors which regulators could take into account when determining the appropriate level of Variable Monetary Administrative Penalty in Macrory (n 11) 50.

regulation. The administrative sanction system offers a wider range of sectoral measures that have very little in common to generalize.

7. Personal element of the administrative sanction: 'Who is to blame for administrative offence by sanction?'

7.1. Natural persons

The subject of the administrative penal sanction is a natural person or an organization that shall be imposed by legal sanction in order to achieve the penal purpose. Principle of *rule of law* requires making legal entities aware if sanctions as legal consequence of their administrative offence can be imposed on them. Predictable and uniform law enforcement demands to make the authority clear on who and on what they can impose administrative penal sanction exclusively or in parallel (with more). Theoretical evidences concerning the subject of sanction are also postulated by other fields of law, although applied the least in provisions establishing administrative sanctions. Fundamental civic and corporate rights, besides legal certainty, are put in danger if it is not clear who was intended to be sanctioned by the legislature. *Administrative penal sanction can only be imposed on persons accountable for the violation of law. The accountability for violation establishes the legal liability for violation: this is an objective criteria of liability.* The legal liability, the accountability established, is sanctioned. Person(s) liable for the violation ant the subjects of administrative penal sanctions shall be same. The liability for the violation can be established by the accountability criteria. *If the criteria of liability are not applied in the accountability of the person commiting the violation, the violation of human dignity has to be concluded.* In European constitutional legal practice legal restriction caused by the repressive sanction shall be *necessary and proportional* to the subject of the sanction. These two criteria cannot be applied if the accountability of violation to the given person is not based on clear and fair conditions.

Accountability of violation shall be based *on objective and (possibly) subjective criteria*. These shall establish the blameworthiness and imputability of the violation by the given person of a corporation. Repressive legal sanction could affect many other persons indirectly through the person of the sanction (e.g. the penalized legal person is forced to cut wages); the victims of these indirect sanctions are not considered as subject of the sanction. *The person to be imposed by the administrative sanction shall be defined by the law*; this is the criteria of legal certainty. *The negative key issue of administrative sanctions: criteria of attribution of the offence, e.g. who and based on what critera shall be accountable.*

If the legislation provides exact answers to the questions above: it is called the *legal attribution of the violation.* It can be assumed that the administrative sanction is imposed on the person commiting the administrative offence. The common definition of perpetrator does not exactly clarify the subjects covered by the sanction; its legal definition is based on the subjective and objective criteria of accountablitiy. This is the same system in criminal and contravention law too; not only those considered perpetrator establishing the fact patterns, but others are also accountable (e.g. accomplices, legal persons, leading officer

of a business). However, sanctions extending the definition of perpetrator require definite legislative criteria. The subjects covered by the puntitive sanction shall be defined by the legislation. *It is a guarantee requirement, that the legislation shall exactly clarify who shall (imperative) or may (facultative) be imposed by sanction.* The result of poor differentiating of persons to be sanctioned is that the Hungarian administrative legislation usually *does not make distinction between the sanction criteria of natural and legal persons.* The fine-setting factors and objectives are also not differentiated according to the subject of the sanction, and highly underregulated as well.[26]

7.2. Special liability of leaders

The absence of regulation on *attribution of liability and sanctions to leading officials of organizations* results in uncertain legal practice in both administrative and contravention law.[27] *Accountability provisions* on natural persons *should clarify the possible sanctioning criteria of leading officials for administrative offences committed in organization (leading official accountability*). In Hungarian regulation persons defined as leading official are often described as persons to be accountable for the offence committed within the organization: vicarious liability (e.g. public procurement and insurance supervisory fines). The criteria of liability needs to be regulated in these cases as well, since neither this type of regulation can authorise an absolute liability of leading officials.

In our view, the model should be the due diligence criteria of leading officials' accountability:

- ensuring compliance with the obligation infringed was under the controlling or directing responsibility of the leading official,
- failed to comply with their controlling, directing or supervisory obligations due diligence,
- compliance with controlling, directing or supervisory obligations due diligence would have anticipated or prevented the violation of law.

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[26] Strict liability and vicarious-approach based attribution principles related to Hungarian regulatory sanctions are broadly analyzed in Kis (n 23) 143–216. and Kis-Nagy (n 9) 66–73. A comparative study can be found in Kis-Máthé (n 22) 76–130., that is based on the following studies: A. Légal, 'La responsabilité pénale du fait d' autrui' in Mélanges Jean Brethe de la Gressaye (Bière 1967) 477.; N. Catala, La responsabilité pénale du fait de l' entreprise, (Masson 1977); A. Ashworth, 'The value of strict liability' (1969) 2 Crim. L. R. 5–18.; G. Richardson, 'Strict Liability for Regulatory Crime' (1987) 19 Crim. L. R. 294–306.; M.Delmas-Marty (n 3); Mireille Delmas-Marty – J.A.E. Vervaele, The Implementation of the Corpus Iuris in the Member States (Intersentia 2000) 256.

[27] Special liability of leaders in Hungarian law is analyzed in Kis (n 23) 176–184.; and Kis-Nagy (n 9) 38–50. A comparative study can be found in Kis-Máthé (n 22) 76–130., that is based on the following studies: Robert Legros: La responsabilité pénale des dirigeants de sociétés et le droit pénal general (RDPC 1963); B. Fisse, 'Vicarious Responsibility for the Contractors' (1968) 1 Crim. L. R. 536.; P. R. Glazebrook, Situational Liability in Reshaping the Criminal Law (Stevens 1978); Droit Pénal des Affaires Tom.I. (1990) P. U. F.; C. Wells: 'Culture, Risk and Criminal Liability' (1993) 25 Crim. L. R. 551.

7. 3. Administrative sanctions of corporations

Corporate administrative penal liability is at the center of regulatory shortcomings regarding the subject of the sanction for many reasons. Legal practice as well as legal literature is leading towards (increasingly strict) sanctioning of legal persons. *In the absence of regulated accountability citeria legal persons are often to be held liable for any employees' infringements (absolute liability).* This *legal uncertainty* on the one hand, endangers safe operation of business operators and, on the other hand, constitutes a negative factor of business competitivness. Although the approximation of the economy's legal environment to EU standards is an important element of EU membership, today it is most unlikely that there would be uniform liability criteria for administrative sanctioning of legal persons. This is why in European and Hungarian legislation the *regulation, transparency and legality* of this area is getting increasing importance.[28]

Development of corporate administrative penal liability (sanctioning) share similar charachteristics with the majoirity of European legal systems. One of the features they have in common is that sanctioning criteria and scope has no regulated, legal form. *Council of Europe Recommendation* (R.91./1.) declaring legality of administrative sanctions underlines the following for a reason: 'Legality is not limited to natural persons as protection of constitutional rights apply to all legal entites, including both natural and legal persons.'Analogy between the criteria of corporate criminal and corporate administrative penal liability is a widespread opinion, e.g. *the application of corporate criminal accountability doctrines for corporate administrative penal sanctioning.* Harmonization process reflected in integration documents of the Council of Europe and the EU indicates the increase of a new paradigma which considers administrative sanctions as a real alternative to criminal law. Emphasis is on the requirement, regardless the specification of legal branches, to *set a well-functioning repressive and preventive sanctioning mechanism*. EU documents *offer and require detailed liability regulations regarding repression against corporations as well*.

In our view, *basic questions of corporate administrative penal liability to be clarified regarding accountability in Hungarian legislation are as follows*

a) What kind of legal persons are subject to liability: public institutions, government bodies?
b) Regulatory type model of corporate liability: vicarious (indirect) or direct liability?

[28] Corporate liability for regulatory offences in Hungarian law is analyzed in Kis (n 23) 220–325.; and Kis-Nagy (n 9) 38–50. A comparative study can be found in Kis – Máthé (n 22) 114–119., that is based on the following studies: G. Couturier, 'Répartition des responsabilités entre personnes morales et personnes phisiques' (1993) 6 Revue des Sociétés 308–313.; Wells (n 28) 552; J. Pradel, Droit Pénal Comparé (Dalloz 1995) 383–386.; G. Heine (ed), Overview in Environmental Protection – Potentials and Limits of Criminal Justice (Freibourg 1997) 45.; Robert Roth, 'Responsabilité pénale de l' entreprise: modeles de réflexion' (1997) 61 Revue de Science Crim. 357–381.; H. Alvart, 'Establishing a Basis for criminal Responsability of collective Entities' in A. Eser – G.Heine – B.Huber (eds), Criminal responsability of Legal and Collective Entities (Iuscrim 1998) 145.

c) General characteristics of violations of law to account for?
d) Does the action required to be committed in the interest of the legal person?
e) Does the action required to be included to the activities of the legal person?
f) Does the action required to fall under the responsibility of the perpetrator natural person?
g) Is committing an act of negligence also included to accountability?
h) Does the action require to be related to organizational failure or errors or omissions of the leading official are enough?
i) What is the definition of organizational failure?
j) Is 'breach of duty' a general condition?
k) Is proving diligence of leading official a cause of exemption?
l) Does the leading official, who breached duty required to be held responsible for in parallel?
m) Is the parallel sanctioning of offender employee and legal person possible for the same violation of law?

General criteria, not only liability and accountability, but *sanction-setting criteria*, of corporate administrative penal sanctions, *should be regulated so as to secure transparent set of conditions.* This effort recalls a decade of unsuccessful endeavour to substantively unify, theoretically elaborate and codify administrative sanctions. Hungarian contravention law is unable to integrate all instruments of administrative repression; this is the reason, but not the only one, why it is (and will) *not able to solve the regulatory problems of corporate administrative repression*. Concerns are neither dogmatic nor constitutional. Introduction of corporate criminal law in Hungary (Act CIV of 2001) proved that non-individual sanction system can be separated from individual liability. However, the sectoral scope of contravention law has weakened within the administrative sanction system, dozens of sectoral penal mechanism, which are the source of problems, does not fall within the scope of contravention law which makes the contravention law not suitable for integrating corporate administrative repression. *A uniform regulaton including administrative sanctions of corporates shall be adopted within the general legal framework of the act on administrative penalties and measures.*

8. Culpability criteria of administrative sanctions

Administrative sanction implies the liability of the subject of sanction for the violation of law. There are two reasons why liability criteria of administrative sanctions have become a controversial issue in Hungarian law. First, the prevailing attitude in sanctions is that administrative sanction is a so-called strict liability sanction which can be imposed regardless liability investigation, based on the fact of the violation, in order to constrain regulatory compliance. Secondly, the legislative approach, which *puts the liability (positive and negative) criteria beyond the regulation*, has flourished in the legislation of administrative sanctions even without the theoretical critics.

8.1. In terms of liability classification of legal sanctions to be imposed on natural persons strict liability sanctions can be distinguished from subjective liability sanctions. Liability criteria and classification.

Strict (objective) liability means that the fact of offence constitutes the imposition of the sanction on the addressee of the obligation. Sanction is not conditional upon the person's mens rea (guilty mind) or their accountability for conduct. The fact of violation (question of fact) establishes the sanction regardless further examination of liability.

Subjective liability means that offender's culpability, negligence or intention are required to be sanctioned. Hungarian regulation mostly sets incoherent and variant subjective liability criteria:

- positive liability criteria: accountability and negligence formulas
- negative liability criteria (causes for exemption).

Two forms of liability have *mixed rules* that *regulate (objective) causes excluding liability (e.g. force majeure, Statue of Limitations): these are not-purely objective sanctions.*

According to the widespread practice of authorities the administrative fines and measures are strict liability sanctions. (Moreover, objective nature of the sanction is sometimes unlawfully interpreted by domestic practice of authorities. E.g. construction fine can also be imposed on persons who are not accountable for the violation of law, not only on the builder, but on the future, bona fide buyer of the real estate. The main principle of strict liability concept is that subjective liability (culpability, negligence) is *rarely and inconsequently condition* of the administrative sanctioning of a natural person in positive law.

a) Objective liability sanction is when the fact of offence is incontestably established: administrative fines and penalties are applied e.g. in the following areas: *person* and property protection, fire safety, health protection, construction, heritage protection, fish farming and fish protection.

b) Strict liability sanction: e.g. the regulation of *wastewater fine* contains special causes excluding unlawfulness so it cannot be considered purely objective. *Sewage emission fine* contains force majeure causes for exemption (excluding liability).

c) Subjective liability sanction: accountability is the condition of liability in the following administrative fines: *animal health, agricultural land and soil protection* and f*orest management.* Due diligence liability mechanism is applied exceptionally for *tax penalty* and *capital market supervision fine.*

8.2. Strict liability in administrative sanctions

The spread of strict liability in administrative repression cannot be only explained by spontaneity and anomalies of sectorial legislation. Strict liability has *historical, theoretical and legal policy explanations*.

a) *The concept based on the legal nature of administrative offence.* The explanation supporting strict sanctions is that the administrative punishment is a sanction *not resulting in moral blame and stigmatization*, not assuming moral judgement or disapprobation; it is just 'a reaction to violation of law by penalty'. Sanctions

without moral content can be imposed for morally indifferent violations. No ethical judgement imposed on the sanctioned's act or negligence is required for sanctions not transmitting moral disapprobation; sanction is an automatic reaction to violation. Liability is 'bearing the consequences of judgement on the conduct', using the above written and the formal logic the theory of sanction without liability can even be fitted to the system of administrative sanctions too. Theories built on the moral boundaries of the different nature and laws of the two legal fields have failed due to the lack of quality difference between legal interests protected by the criminal law or administrative law.

b) *The concept referring to the minor gravity of violation of law* claims that administrative offences pose less harm on society than crimes. Minor hazard posed on society means leniency (softer treatment), fewer considerable legal consequences. The fundamental problem is that this concept is *unable to coherently justify that administrative offence presents less threat than criminal offence*. The administrative offences have often higher gravity then its criminal law paralell; these are particularly manifested in the administrative measures, which often cause graver legal consequences than criminal sanctions for the same offence.

c) *Concepts explaining strict liability by referring to the non-repressive purpose of the administrative sanction.* The repressive nature of administrative sanctions would require the real investigation of liability, which are not compatible with strict liability. Thus, concepts denying the repressive nature of administrative sanctions underline the law enforcement function of the sanction. Instead of repression (retribution, punishment), the enforcement of law-abiding behaviour is regarded by this approach as the feature of administrative sanctions.

Coming to the critical conclusion, objective sanctions cannot be effective and repressive without liability basis. Preventive impact can only affect people who are guilty of violating the law. Consequently, principle of fairness and reasonable penal policy *require law enforcement to apply the criteria of culpability regarding natural persons in repressive sanctions*. Regarding contraventions, a form of administrative penal sanctions, Constitutional Court defined *subjective liability criteria* in No. 63/1997 Decision. Contravention law does not differ from administrative offence sanctioning in terms of nature, type and the purpose of the sanction. *Therefore, constitutional requirements of violations (presumption of innocence, principle of attributability, exclusion of strict liability) shall also be implemented in other areas of administrative penal sanctions*.[29] According to the 2.b point of the resolution on administrative sanctions issued by AIDP (International Association of Penal Law) administrative penal liability of natural persons should be based on personal fault (intent or negligence). Similarly, liability criteria are also set in *Council of the European Union Regulation No. 2988/95 on administrative sanctions* for administrative penalties (intention or negligence). *Spread of the culpability sanction practice could lead administrative*

[29] Resolution 63/1997 of Hungarian Constitutional Court abolished the vicarious liability of directors (Art 6 al 2. of Act on Contraventions 1968) for the contravention committed by his employee without requirement of personal fault or ommission of director. HCC states that personal punishability (by penalty under Act of Contraventions) needs culpability (intention or negligence).

sanctioning back to its original purpose: effectiveness, preventive and repressive effect. Objective sanctions applying purely objectiv liability are unfair. *In terms of legislation a uniform and comprehensive regulation on administrative penal liability would be desirable.* Falling that, discretion of law enforcement shall rule complemented by the suggested positive and negative liability formulas of liability individualization.

9. The complexity of administrative repression in the legal system

The place of administrative repression in the legal system is basically determined by *its relation to the penal sanctions of other legal branches*. The common historical origin of administrative penal sanctions is the criminal law, which relation to the administrative penal power and their joint relations to other, like violation and civil (e.g. Company Registry), penal sanctions result in the complex repressive system. *Questions of constitutionality, legal principles and effectiveness are raised in relation to this complex sanction mechanism*. *Parallel repression* also exists in Hungarian legal system; the rationality of the sanction can be assessed by its purpose, nature and gravity.

The parallel between legal branches within one legal system is defined as the horizontal dimension of parallel repression. *The parallel between the national and supranational (European Union) dimension of repression is the vertical dimension* of parallel repression.[30]

Both horizontal and vertical dimensions of parallel repression can be distinguished in two forms of cumulation:

- *homogenous cumulation* in a sense that administrative penal sanctions of different sectors are accumulated,
- *heterogeneous cumulation* in a sense that penal sanctions of different legal fields (criminal law, contravention law, administrative law) are accumulated.

The cumulation of punitive (repressive) sanctions can be divided into three clusters in respect to administrative sanction:

a) Punitive (repressive) sanctions, especially fines (penalty), are applied to the same violation of law parallel in several legal fields: in criminal law, in contravention law and in administrative law (*heterogeneous cumulation*) /9.1./.
b) Parallels can also be found within the system of administrative penal sanctions. E.g. different sectorial substantive penalties on the same violation of law, based on the same fact patterns can be applied in cumulation (*homogenous substantive cumulation*: administrative penal sanctions of different sectors are accumulated) /9.2./.
c) Same sectorial administrative sanction can be imposed repeatedly for the same violation of law (*homogenous procedural cumulation:* same sanction of same sector is accumulated) /9.3./.

[30] The model options of sanction cumulations has been worked out in Kis-Nagy (n 9) 120–135.

9.1. The heterogeneous cumulation

The accumulation of sanctions of different sectors raises concerns about prejudice to the fundamental right not to be punished twice for the same act. Doctrine call this the *'Ne bis in idem'* principle.[31] The right include the criminal proceedings and punishments in the narrow sense. It is applied as a constitutional requirement only to double criminal punishments for the same act (no. 42/1993. Hungarian Constitutional Court Decision). The prohibition of double punishment beyond criminal law is based on the fundamental right of *right to human dignity*, but moreover it is considered as a requirement of rational legal policy.

Parallel application of *administrative penalties and criminal sanctions* for the same act of the same person is neither debated nor prohibited by law. This is still regarded as problematic, since one could hardly convince why administrative offence investigated in criminal proceeding should be evaluated twice, investigated in an administrative proceeding as well, and why a natural person should be fined by an administrative sanction too. Take the criminal and administrative duplication of tax fraud, for instance, from Criminal Code, which is a double (!) criminal and administrative repression.

The ideal solution would be that administrative fines shall not be imposed on natural persons for criminal offences, if already punished for a criminal offence by criminal sanction. However, the parallel application of administrative and criminal penal sanctions is not prohibited by domestic law.

The Act CIV of 2001 establishing the criminal liability of legal persons has become an issue in Hungarian law: *the parallel administrative and criminal sanctioning of legal persons for the same case.* There is no obstacle to the parallel administrative and criminal sanctioning of legal persons in positive law. It would be a pure solution in theory if administrative fines could not be imposed on legal persons for administrative offences, if they were already fined for a criminal offence by criminal sanction. The concept standing in its way considers the criminal fine imposed on a legal person not as a punitive (repressive), but a reparative sanction (crime law repairs, administrative law punishes!). This paradoxical legal policy is partly demonstrated by the fact that the maximum fine to be imposed on corporates is higher for administrative offence than for crimes. The prosecutor's significant expediency and Article 18 paragraph 1 point c) of Act CIV of 2001 stating that court does not apply measures, if they cause unfair disadvantages to the legal person enable to eliminate the double sanctioning of corporates.

Prohibition of double sanctioning has to be held to account during *the parallel application of administrative and contravention penalties.* Administrative fine and contravention penalty imposed on the same natural person for the same act are administrative penal sanctions have the same purpose and legal nature. Administrative substantive and contravention sanctions (fines)

- both aim to repress the violation proportionally caused in the past and thus, prevent future violations;
- both aim to protect administrative operation through official sanctioning.

[31] This aspect of 'ne bis in idem' principle is scrutinized in Kis Norbert – Gellér Balázs – Polt Péter, National report on the principle of Ne bis in idem (2004) 75 International Review of Penal Law/ Revue Internationale de Droit Pénal 989–1007.

Double administrative sanctioning for the same act is *not an absolute prohibition*.

As stated in Article 3 of Council of Europe Recommendation R. 91./1 on administrative sanctions:*'A person may not be administratively penalised twice for the same act, on the basis of the same rule of law or of rules protecting the same social interest. When the same act gives rise to action by two or more administrative authorities, on the basis of rules of law protecting distinct social interest, each of those authorities shall take into account any sanction previously imposed for the same act.'*

According to the guidance of the Recommendation if the double administrative sanctioning is based on different rules of law protecting different sectorial interests, all authorities should respect the principle that penalties must be proportional. Contravention law and administrative substantive law are applied in parallel to ensure sectorial interest; therefore, concerns regarding the prejudice to limited prohibition of double sanctioning are fairly raised.

The issue of heterogeneous cumulation in Hungarian regulation have the following formulas: most frequently 'silent' regulation; rarely permissive regulation; rarely prohibitive regulation.

9.2. The homogenous substantive cumulation

The concerns of double sanctioning are less affected by *homogenous substantive cumulation* (public administration may impose different administrative sanctions in parallel with the same offence basis of sectorial and social aspects). This is when double administrative sanctioning is permitted by the Council of Europe Recommendation: a person may be administratively penalised twice for the same act, if it is based on different rules of law or of rules protecting different social interests (e.g. accumulation of consumer protection fine and health protection fine or quality protection fine). Fair law enforcement and respect for human dignity require all acting authorities to take into account the sanctions imposed for the same act by other authorities.

Homogenous substantive cumulation differs from parallel administrative law – contravention law sanctioning. Although sanctions are accumulated in the homogenous area of public administration, sectorial interests protected by the sanction are different. Homogenous substantive cumulation is common for example in the accumulation of:

- consumer protection fine and health protection fine or quality protection fine,
- competition supervision fine and procurement fine or consumer protection fine,
- fine for unequal opportunities and other (e.g. labour law) fines.

Only few provisions exclude homogenous substantive cumulation (e.g. consumer protection fine can only be imposed if, based on the same act, no other authority did before). Provisions permitting homogenous substantive cumulation are also rare (e.g. waste management fine, environment protection fine, health protection fine)

9.3. The homogenous procedural cumulation

Regulation regarding the relation between prohibition of double sanctioning and *homogenous procedural cumulation* often lays down that same sectorial administrative penal

sanctions can be imposed again (!) for the same violation of law. Multiple sanctioning could only be justified if the situation constituting a violation of law still exists after it was penalised. When the perpetrator is aware of the procedural legal guarantees and of the previous sanction of his unlawful conduct, it is not regarded as the double sanctioning of the same infringer, but as the sanctioning of the infringer retaining the unlawful conduct. Imposing multiple sanctions is not permitted if perpetrator is not aware of the first sanction of his unlawful conduct, thus has not been able to recognize the unlawful situation.

In view of the above written double sanctioning presupposes that the perpetrator is aware of the procedure sanctioning his unlawful conduct (period of grace). '*In absentia*' sanctioning (e.g. on the spot disciplinary measures), which is the most sensitive issues, can violate the concept on prohibition of double sanctioning by retaining unlawful situation unless perpetrator is aware (or was aware) of the proceedings on characterisation and sanction of his unlawful conduct and the unlawful situation is retained. Consequently, fine cannot be imposed immediately again, 'grace period' has to be awaited before repeating sanction.

9.4. The parallel between European Union administrative sanctions and national penal sanctions

The issue of the prohibition of double sanctioning also concerns the parallel application of national administrative penal sanctions and EU administrative sanctions for the same conduct.[32]

Administrative sanctions shall be applied for the purpose of protecting the European Communities' law and interests (so called *irregularities*). *Irregularity* means any violation of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accuring from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure (Article 1, paragraph 2 of Council (EC, EURATOM) Regulation No. 2988/95). Provisions on irregular conduct and related administrative measures and sanctions are implemented in sectorial sources of EU law (e.g. administrative measures applied in common agricultural policy). Sectorial Community regulations, expanding their material scope, form Community administrative penalties, which are set out by the preamble of the Regulation defining the general principles and rules community administrative sanctions.

The ways these Community sanctions are enforced are the following:

- Community sanctions are imposed by *EU* institution (supranational direct enforcement) e.g. EU Commission, Council of the EU;
- Community sanctions are imposed by *member state authorities* (indirect enforcement);
- protection of Community interest is provided directly by sanctions of national legislation within national competence (direct enforcement).

[32] The paralell mechanisms of national and EU-level penal sanctioning is overviewed in Kis (n 6) 373–398.

The prohibition of double sanctioning may occur in the following options:
Option 1) Parallel application of
a) Community administrative sanction imposed by EU institution and
b) National administrative penal sanction, based on Hungarian law and imposed by Hungarian authority,
for the same act.

Option 2) Parallel application of
a) Community administrative sanction imposed by Hungarian authority and
b) National administrative penal sanction, based on Hungarian law and imposed by Hungarian authority,
for the same act.

Option 3) Parallel application of
a) national sanction for the violation of Community interest and
b) sectorial sanction based on Hungarian law,
for the same act.

Option 4) Parallel application of
a) Community administrative sanction imposed by EU institution and
b) criminal sanction imposed by Hungarian Court,
for the same act.

Regarding options 1)–3): The EU Council (EC, EURATOM) Regulation No. 2988/95 (on administrative sanctions) does not explicitly prohibit double (Community and national) administrative sanctioning. Double administrative sanctioning for the same act is *not an absolute prohibition*. Concluding the Article 3 of Council of Europe Recommendation R. 91./1, Community administrative sanctions and national administrative sanctions protect different legal objects. The first protects the EU's financial interests and ensures the proper application of Community law, the national administrative sanction safeguards the rules of regulations and procedures. As the protected legal domain of the double sanctioning is different, sanctions can be imposed in parallel. According to the EC Recommendation all authorities shall take into account any sanction previously imposed for the same act (principle of proportional punishment).

Regarding option 4): According to the preamble of the Regulation (EC, Euratom) No 2988/95 the duality of EU administrative sanctions and national criminal sanctions, imposed on the same person for the same act, is considered to be resolved based on the principle of fairness.

Our conclusion is that Community administrative sanctions, national administrative and criminal sanctions can be applied in a parallel system. However, the principle of fair and proportional recognition of the other penal sanction imposed earlier for the same act shall be taken into account.

Closing remarks

Recently, public admininstrations have an increasing repressive power at national-level, at EU level as well as in international dimensions (UN bodies). Our study provides frames for a comprehensive sanction policy and urges legality in terms of administrative repression. With this objective we have made *de lege ferenda* proposal on a *Framework (Model) Code on Administrative Offences and Punitive Sanctions* securing guiding legal principles for administrative repression. Hopefully the model code will be taken in consideration by policy-makers, legislator and regulators in Hungary, and a reforming process based on the dialogue of academics and regulators similarly to the Hampton-Macrory reforms of UK law enforcement will be initiated in the near future. Our study has given an overview on the administrative penal power in Hungary that has evolved in a dual system since 1955. The dualist way of development has been characterised by the fact that contravention law was supposed to give a unified framework to all sectoral administrative sanctions. However, the idea of unified protection of administration has failed, as administrative sanctions out of contravention law have evolved in an much wider range. The sectoral administrative sanctioning legislation has 'diverted' the repressive system of instruments of protecting the administration from the contravention codification and has created a separate system of sanctions in each sector. No codified framework has been developed that could provide the sanctioning system of the different administrative branches with a common principal and regulatory framework. The main reasons for this were that sectoral regulations of administrative offences and sanctions have not been under coherent guiding legal principles on the one hand, one the other hand legislation has had no intention of passing an act of law in the midst of sectoral heterogeneity to regulate the common rules of sanctioning in line with the requirements of legal certainty. The new Act on Contravention Law (2012. évi II. törvény) narrowed the scope of the contravention law to criminal-type minor offences, thus a clear set of criminal law principles was extended to contraventions. However sectoral regulatory environment of administrative sanctions has remained uncertain and several legality concerns still exist. Altought, there are different legal models in respect to administrative sanctioning in Europe, legislative systems should undertake to provide a minimum framework guaranteeing legal uniformity and certainty to law enforcement regarding e.g. distinction between the sanction criteria of natural and legal persons, principle of proportional sanction, level of sanction, criteria of liability and accountability, in particular corporate administrative penal liability. Obviously there is a wide discretion on setting of fine, however, circumstances of the extent of sanction should have a more sophisticated regulation. The cumulation between criminal, contraventional and administrative repression (the horizontal dimension of parallel repression) should be guided by clear sanction policy and set of legal principles. The parallel between the national and supranational (European Union) level of repression as the vertical dimension of parallel repression also requires policy approach and a regulated guidance.

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E-Government, Infocommunication

1. Introduction

Infocommunications is a field consisting of communications, information technology and their point of convergence, constituting a diverse network and service system as an amalgamation of technology, economics, law and governance. This network and service system has been characterised by profound state intervention in various form, with different methods and contents throughout its history. In the past, these services were seen as natural or state monopolies, and as public services synonymous with a state-owned system. The liberalisation and privatisation sweeping across the world at the end of the twentieth century did not affect the need for state intervention. As the services shifted to a market environment, the basis, structure and quality of state intervention changed, but not the need for such intervention and regulation.

The infocommunications sector placed within a market environment calls for much more sophisticated and detailed regulatory (state intervention) system providing stronger guarantees. The establishment, maintenance and development of market competition, the adequate and safe provision of subscriber and network services ensuring consumer interests and the unified, technically adept operation of infocommunication networks guaranteeing continuous service call for broad legal regulation and the administrative enforcement of laws, almost exclusively the terrain of public law, and more specifically, public administrative law. (This is based on framework regulation in the European Union.)

Two main areas of specialised governance have emerged within state intervention and regulation in the area of modern infocommunications and IT: communications governance and electronic government (in particular electronic public administration).

These two main administrative areas are clearly distinct, as the more traditional specialised administration area of communications covers the regulation and administrative oversight of public, market-based communications and IT networks and services, while electronic government and public administration covers the management of the closed, non market-based government networks, the electronic foundations and development of governance and government, and the electronic operation and digital development of public administration.

This chapter loosely examines the regulation, legal institutions and administrative legal enforcement system of these two public administrative domains in Hungary.

2. The regulatory system of communications governance in Hungary

Hungary has traditionally been a pioneer in technical and technological innovation and development in the field of communications, especially in the age of Dualism (for instance

the world's first telephone centre was set up in Hungary in 1881), however by the time of the fall of Communism in 1989, Hungary's communications network was one of the most obsolete in Europe, and the nation featured one of the lowest teledensities (ranking just ahead of a single country, Albania, in terms of communications infrastructure development). The first international expert conference focusing specifically on telephony was held in Budapest in 1908, at the initiative of the Hungarian Post Office. The International Telegraph and Telephone Consultative Committee (Comité consultatif international) was established in the wake of the initiative and the conference, which shortly thereafter adopted its more well-known moniker of Comité consultatif international téléphonique, CCIF (International Telephone Consultative Committee). (The latter formed one of the main pillars of the subsequent ITU and its efforts.)

Once technological implementation was complete, the Hungarian Post Office took over communications in Hungary. A major milestone and cornerstone in the development of the communications market was the separation of administrative functions from the Hungarian Post Office in the wake of the organisational overhaul of the postal and communications sector in 1989 Separate independent state governance agencies were thus set up for overseeing postal and communications sectors, namely the Post and Communications Supervisory Authority and the Frequency Management Institute. Then in 1990, postal, communications and broadcasting were also separated, overseen by the Hungarian Post Office, Magyar Hírközlési Rt. (hereinafter: Matáv) and the Hungarian Broadcasting Corporation, Antenna Hungária, respectively.

The economic and social transformations that started unfolding in the early 1990s led to the drafting of fundamental legislation regulating communications sector operation and allowing its development: a) Act LXXII of 1992 on Telecommunications (hereinafter: Telecommunications Act), b) Act LXII of 1993 on Frequency Management and c) Act XLV of 1992 on the Post.

The Telecommunications Act announced a partial opening of the market based on the rules of the concession act, resolved the contents of the partially opened private sectors and thereby enabled the progressive emergence of a multiple-player communications marGRAPS (The regulatory system of the Telecommunications Act did not represent liberalisation of communications through the partial, limited opening of the marGRAPS) The Telecommunications Act divided public communications services into concession-based and other public communications services. The exclusive infrastructural and service state monopoly prevailing on the Hungarian communications market in the past was thus replaced by a concessions system, and the awarding of concessions contracts began.

Despite the concessions system, certain parts of the communications market, in particular public mobile telephony, saw the emergence of a special competition-based operating model.[1]

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[1] In 1993 the ministry in charge of the sector (Ministry for Transport, Communications and Water Management) announced a tender for GSM national mobile telephone services on the 900 MHz frequency range. Pannon GSM Hírközlési Rt. and Westel 900 Hírközlési Rt. were awarded concessions contracts. In 1999 the Ministry for Transport, Communications and Water Management announced a new tender for DCS mobile telephone services operating on the 1800 MHz frequency, as the allocation of new frequency ranges was necessary to accommodate the growing number of subscribers and comprehen-

In the context of the overhaul and reform of state and public administrative functions linked to communications, the Telecommunications Act's regulatory system separated state and financial management functions in the field of communications, setting up a unified communications authority and defining its basic operating principles, also regulating its framework of powers. Parliament merged the Post and Communications Supervisory Authority and the Frequency Management Institute to form a unified communications authority, the Communications Authority. The General Inspectorate for Communications had the public administrative legal status of a central agency under the management and supervision of the minister.

2.1. Liberalisation of the Hungarian communications market

Preparations for the liberalisation of the Hungarian communications market began in the second half of the 1990s in Hungary. The most important aspect of the preface to Hungarian liberalisation was the full liberalisation of the European Community market in January 1998, which exerted a substantial economic and communications policy impact on the Hungarian communications market and called for the adaptation of the relevant community legislation under the government's legal harmonisation programme. Hungary also signed an agreement in the context of the aforementioned GATS on the communications commitment (fourth procedural rule), undertaking to open up its communications market from 1 January 2002.

Act XL of 2001 on Communications (hereinafter: Communications Act) regulated the operation of the liberalised communications market and the fundamentals of state intervention and communications governance. The Communications Act laid down a unified regulatory framework for communications services, uniformly regulating the area and infrastructure of information transfer, specifically postal, communications and IT services, including mobile and landline telephony, data transmission, communications linked to national security and defence, radio and television broadcasting, programme distribution and transmission, alongside basic postal services and spectrum and identifier management. The Communications Act was a novel regulatory instrument in the sense that it covered a) the opening of the market, i.e. liberalisation b) the legal institutions and provisions governing the liberalised, competition-based communications marGRAPS The regulatory framework of the Communications Act thus not only achieved legal harmonisation with the relevant European Community legal sources, but also contained the provisions of European Community liberalisation and harmonisation directives in a unified and harmonised manner. The Communications Act thus introduced asymmetrical ex ante sector-specific regulation of competition within communications.

The Communications Act established the Communications Authority as a successor to the General Inspectorate for Communications, with greater independence and stronger administrative powers, operating as a body with national jurisdiction under Government

sive quality developments. The tender awarded DCS concession contracts to two Hungarian mobile operators, Pannon GSM Rt. and Westel 900 Rt., and a new player, Primatel (Vodafone Magyarország Mobil Hírközlés Zrt., hereinafter: Vodafone Zrt.).

supervision. The Communications Authority merges three public administrative bodies with national jurisdiction, namely the General Inspectorate for Communications, the Communications Decision Committee and the Communications Regional Office, which had not been linked by any relationship of control or oversight.

2.2 The current regulatory system of communications governance in Hungary

The liberalisation of communications emerged based on the Communications Act and in line with the idiosyncrasies of the Hungarian communications market, reshaping the operation of the sector and creating a new economic framework. The communications sector, now liberalised in a legal sense, slowly started inching towards genuine economic liberalisation and competition-based operation. (In parallel, based on these same processes, the European Community also undertook a comprehensive revision of its legal sources governing the communications sector

The revision of the Communications Act and the preparations for new statutory regulation of communications was therefore necessary in light of the developments of the Hungarian communications market, the new European Community regulatory framework and Hungary's legal harmonisation obligation arising therefrom.

Act C of 2003 on Electronic Communications (hereinafter: Electronic Communications Act) came into force on 1 January 2004 and harmonised Hungarian law with the new European Community regulatory framework governing electronic communications. The Electronic Communications Act no longer covered postal services.

For a number of reasons, including market development or the aforementioned outcomes in 2009 of the revision of European Community regulatory framework, the Electronic Communications Act was radically overhauled in 2011[2]. This amendment aligned the Electronic Communications Act with developments in communications and the economy, the emergence and spread of state of the art communications technologies, the convergence of IT, media and communications and changes in EU regulations. The amendment equipped the convergent regulatory authority (the National Media and Infocommunications Authority) with broad communications legislative powers, also radically overhauling the regulation of spectrum management, asymmetric competition law institutions (market analysis, SMPs, etc.), communications sector specific consumer and data protection, guarantees for subscriber services and administrative proceedings.

2.2.1. Scope of the Electronic Communications Act, the object and framework of electronic communications law

The Electronic Communications Act maintained its primary comprehensive nature within communications regulation in the sense that it governs the fundamental legal institutions of

[2] Act CVII of 2011 on the amendment of certain Acts on electronic communications amended the Electronic Communications Act in this regard.

activities and services comprising communications. Postal activities and services, i.e. postal regulation are therefore not covered by the Electronic Communications Act, but Act CLIX of 2012 on Postal Services (hereinafter: Postal Services Act) fundamentally relates to the former's system of rules, forming the underlying regulatory system for the latter.[3]

It should be noted nonetheless that the social relationships of IT regulation do not fall within the category of electronic communications in Hungary. Although services in the field of information society and IT regulation are transmitted in the context of electronic communications, their essence is not the transmission of signals on electronic communications networks.[4] Communications and IT are, however, jointly governed in terms of public administrative organisational structure, as the National Media and Infocommunications Authority wields IT regulation powers based on broad convergence.

The material scope of the Electronic Communications Act covers electronic communications carried out on or aimed at the territory of the Republic of Hungary, as well as any activity generating radio frequencies.[5]

2.2.2. The 'regulatory authority' of communications governance: the National Media and Infocommunications Authority

In line with the international trends of convergence of digital media, communications and IT, Hungary saw the need to merge the public administrative body in charge of communications and media governance. As a successor to the National Communications Authority (hereinafter: NHH)[6]and the National Radio and Television Commission, Parliament set up[7]the National Media and Infocommunications Authority (hereinafter: NMHH). Act CLXXXV of 2010 on Media Services and Mass Media (hereinafter: Media Act) came into force on 1 January 2011 and introduced rules governing the organisation, operation and legal status of the NMHH

The NMHH is an independent regulatory body, autonomous in terms of legal status pursuant to the Fundamental Law[8], helmed by the President of the NMHH.

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3 The rules of the Electronic Communications Act apply to fundamental legal institutions, the rules of administrative proceedings and the organisational system of the Postal Services Act.

4 The following legislation is thus outside the scope of the Electronic Communications Act: Act XXXV of 2000 on Electronic Signature, Act CVIII of 2001 on Certain Issues of Electronic Commercial Services and Information Society Services and Act XC of 2005 on the Freedom of Electronic Information.

5 Section 188 (15) of the Electronic Communications Act on definitions

6 The communications governance predecessor of the NMHH, the NHH, was established on 1 January 2004. The NHH had the status of central public administrative body, specifically a government agency, helmed by collegiate management. The Board was managed by a chairman, and the NHH was managed by the Board and the chairman pursuant to the Electronic Communications Act. The NHH was divided into two organisational units, the Board of the NHH (hereinafter: Board) and the Office of the National Communications Authority (hereinafter: Office). The Board and the Office had distinct, independent powers.

7 In Act LXXXII of 2010 on the amendment of certain Acts concerning media and communication

8 Article 23 of the Fundamental Law.

The President of the NMHH (hereinafter: President) has independent powers in communications governance, and also holds secondary supervisory organisational powers in the primary communications The Bureau of the NMHH (hereinafter: Bureau) is a body with national competence wielding independent powers

The NMHH's Media Council is also a body with independent powers. The fact that the Media Council qualifies as a public administrative body of autonomous legal status within the NMHH forms the basis of its status of independent body.

According to international and domestic theories on public administrative bodies, the NMHH is a so-called regulatory authority. For the sake of brevity, we will not address the emergence, theoretical foundations, unique legal status and operation of the regulatory authority.

The President's independent powers include priority administrative functions related to communications market liberalisation, competition development, market regulation and oversight. These include in particular: a) defining determining or affected markets (where competition is not fully effective), analysis of competition on affected markets, identification of SMPs on such markets and the definition of their obligations (hereinafter collectively: market analysis procedure), b) enforcement of obligations defined for SMPs, c) resolving legal disputes linked to the electronic communications regulation of communications service providers, d) administrative cases on communications network cooperation agreements (in the field of network legal relationships, e.g. interconnection, access).

(No legal remedy may be applied for against the President's official rulings of first instance; they can be contested directly in court.)

The Electronic Communications Act also defines many significant non-administrative functions for the President, affecting the entire communications sector. These include legislation preparation tasks, public hearings for service providers, preparation of reports and market analysis and assessment efforts on policy, market stimulation, tendering, user interests and efficient service.

The President also holds legislative powers for the communications sector, on the basis of the relevant provisions of the Fundamental Law and the Electronic Communications Act defining legislative competence.[9] The President of the NMHH holds quasi total executive powers in the field of communications governance on the basis of the Electronic Communications Act. (With the government holding the small remainder of legislative powers in communications governance,[10])

The Bureau also has national competence and jurisdiction, and is helmed by a Director-General. The Director General is appointed by the President.

The following areas are within the Bureau's administrative powers: administrative cases related to a) the commencement and particularly the reporting of electronic communications services, b) spectrum and identifier management, c) administrative record-keeping, d) electromagnetic troubleshooting, e) individual authorisation, f) market surveillance, g) subscriber rights and obligations and h) universal service.

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[9] Article 23 (4) of the Fundamental Law, Section 182 (3) of the Electronic Communications Act.

[10] for instance in the field of regulating preparations of communications for states of emergency. See Section 182 (1) of the Electronic Communications Act on the powers of the Government to issue decrees.

The Commissioner for Media and Communications

A priority objective of communications regulation in both the EU and Hungary is to protect subscriber and consumer rights and ensure services of adequate standard meeting their needs. In light of this objective, the Media Act establishes a unique public administrative body beyond the administrative toolset, for the protection of consumer rights when the administrative toolset proves insufficient. The Commissioner for Media and Communications is a unique public administrative body with no administrative powers, i.e. no legal powers in administrative cases, professionally (albeit not organisationally) independent from the NMHH. The proceedings of the Commissioner shall not be deemed as an official procedure, moreover, the Commissioner shall not have the right to exercise the powers vested with authorities. Its activities are mainly to inform, disclose, initiate procedures, consult with service providers and foster agreements in cases outside the administrative scope of communications governance (i.e. where the NMHH cannot intervene using public intervention tools) but which nonetheless bear relevance to consumer interests linked to communications services.

2.2.3. The ex ante sector-specific regulation introduced by the Electronic Communications Act and its legal institutions

As mentioned in the analysis of Community legislation, asymmetric regulation of competition and the networks among service providers form the cornerstone of communications market liberalisation and provide the backdrop for a smooth competition-based market structure.

The sector-specific regulation fostering competition set out in the Electronic Communications Act changed compared to the Communications Act in line with EU directives.

Based on the Electronic Communications Act, the President is not only in charge of identifying SMPs, but also of conducting market analysis procedures.

The Electronic Communications Act defines unique procedural rules for market analysis administrative proceedings, diverging from the Administrative Proceedings Act. On this basis, market analyses are continuous and have an administrative deadline of 3 years (the President must repeat such proceedings every 3 years). The President shall submit its draft resolution constituting the outcome of market analysis to national consultation, publishing its draft resolution for commenting by the affected service providers within a 20-day deadline. Following national consultation, the President must then discuss the draft resolution with the European Commission.

The President defines the obligations (outlined in the Electronic Communications Act) applicable in individual market analysis procedures by service providers identified as SMPs, in line with the outcomes of the market analysis and with a view to effectively fostering competition, taking into consideration the idiosyncrasies of each case. The "list' of obligations defined in the Electronic Communications Act (forming the pool of obligations applicable in specific market analysis procedures):

1) On the market of wholesale services: a) transparency, in respect of which the President may prescribe obligations guaranteeing transparent operation in relation to intercon-

nection or access, b) equal treatment, c) accounting separation, d) obligations related to access and interconnection, e) joint use of facilities and co-location f) cost-based prices and the controllability of fees, in respect of which the President may prescribe cost-based expense calculation and price-setting. There are several types of cost calculation methods, LRIC being the most widely used one in Europe.

2) On retail service markets: a) subscriber service fee obligations, b) carrier selection.

The President also has the power to enforce the obligations imposed on SMPs in market analysis procedure, for which the Electronic Communications Act lays down special procedural rules in respect obligations calling for unique forms of enforcement. Examples of such unique regulation of administrative proceedings include the acceptance of reference offers, the approval of accounting separation statements and the investigation of price squeezes.

2.2.4. Conditions for commencing electronic communications activities

The Electronic Communications Act explicitly states that any natural person, legal entity or unincorporated organisation is entitled to operate a communications network and provide communications services (only subject to restriction based on the objective criteria set out in legislation). Services can therefore be supplied freely insofar as they do not require any spectrum (spectrum use being tied to specific authorisation).

The legal institution for general authorisation – reporting.

The set of criteria for commencing services is linked to the notification of the Bureau, in the form of reporting. Reporting is a quick and effective legal institution, and allows market entry on a level playing field, free of any administrative consideration. Prior to launching a service, the Bureau must be notified of the date of service launch, purely for record-keeping purposes. In other words, the notification is in no way needed for allowing the NMHH to assess the case and grant authorisation based on administrative proceedings, but is merely a simple formality (e.g. specifying the name, address of the provider, and a brief description of the service).

The rules of the Electronic Communications Act (specifically based on the declarative content of the act of registration) provide for cases of lawful silence, i.e. the service provider is authorised to provide the service even if the Bureau did not confirm registration.

2.2.5 Individual authorisation powers linked to communications activities

A fundamental issue of public administrative law in terms of communications liberalisation and competition is the group of market activities subject to individual administrative authorisation in the form of preliminary intervention. This clearly renders provision of the service more difficult, tying it to strict substantive law conditions, especially if we take into account the regulations and redress procedures of administrative proceedings. Procedure subject to such authorisation:

a) *Authorisation of communications structures*

A license by the authority shall be required for the installation or building of electronic communications structures (including antennas, support structures for antennas and related structures) in the interest of enforcing general construction requirements and communications-specific infrastructural and competition requirements.

b) Use of radio spectrum

Spectrum constitutes a limited resource and forms exclusive state property. National Table of Frequency Allocations, determined by the President of the NMHH in a decree, defines the allocation of frequency bands, as limited resources, among radio service providers, their distribution among civil and non-civil users of spectrum, shared bands, the frequency bands assigned, maintained or planned for specific applications and the conditions for opening and emptying bands.

Radio spectrum traditionally calls for individual authorisation procedures, broadly prevailing in a liberalised communications sector based on the freedom of service provision (both internationally and in the EU). The authorisation system is warranted by Hungary's adherence to and statutory promulgation of the International Radio Regulation, which calls for subjecting spectrum use to licencing (leaving the rules of authorisation up to each country). In light of this, the Electronic Communications Act states that radio equipment using spectrum can only be installed if the NMHH has assigned spectrum for them based on the available spectrum in the context of a licencing procedure, and can only be operated in possession of a radio license issued by the Bureau.

c) The use of identifiers

Identifiers are also limited resources and comprise state property.

Identifier management and more specifically, telephone number management, also known as numbering, is regulated internationally. The numbering plan linked to identifier management is set out in the National Allocation Plan of Identifiers, a complex system or interdependent components harmonised with international requirements in many areas.

The regulated transfer of identifier usage rights to communications service providers and the regulation of identifier use (allocation) are therefore functions carried out by the authority. Preliminary authorisation (reservation) of identifiers (numeric fields) for later acquisition is also possible. Identifiers are reserved and allocated among service providers on a first come, first serve basis. The Electronic Communications Act explicitly states that Internet Protocol (IP) and electronic mail addresses as well as domain names are not subject to exclusive state ownership, and thus do not form the subject of the NMHH's administrative competence or authorisation powers.

2.2.6. Regulation related to subscriber and user interests and rights and consumer protection

Universal service

Pursuant to the Electronic Communications Act, universal electronic communications services are communications services available anywhere in the Republic of Hungary in a predefined quality at a price accessible to all users.

The set of universal services defined in the Electronic Communications Act:

a) access to the telephone network at a place according to the permanent residence, seat or premises of the user enabling the origination and reception of domestic and international calls, fax messages and data transmission calls through a subscriber access point at a fixed location, access to emergency call services and Internet access; b) the operation of one public payphone per thousand inhabitants and in each settlement with a lower number of residents and, at least 3% of the mandatorily installed public payphones shall be such as to be accessible to those with impaired hearing or movement; c) providing a nation-wide directory enquiry service; d) making the directory of subscribers accessible.

Universal service thus still only refers to a specific minimum set of public telephone services, not including mobile telephony or other services. The Electronic Communications Act defines contracting and supply obligations for universal service providers with a view to ensuring the set of universal services, outlining the group of eligible users, the conditions of contracting and the scope of the supply obligation. The Electronic Communications Act also regulates the obligation to provide affordable services, granting price-setting powers. Universal service providers are defined by the President.

Subscriber legal relationships and regulation of subscriber services under the Electronic Communications Act

The protection of subscriber and user rights and interests is a priority area of the Electronic Communications Act, expressed not only among the act's objectives, but also in the comprehensive and in-depth rules governing subscriber and user rights and interests defined therein. In this context, the Electronic Communications Act regulates: a) subscriber legal relationships, specifically subscriber agreements, their substantive elements, amendment, termination and general contract terms and conditions, b) the uninterrupted provision of and access to subscriber services, sets of conditions for the suspension or restriction of service, c) subscriber reports and complaint handling by service providers, d) quality requirements for subscriber services, e) subscriber notification obligations, f) assistance telephone numbers, operator service, and g) number portability.

Two legal relationship frameworks contain the conditions for using subscriber services based on the Electronic Communications Act: a) the general contract terms and conditions of service providers and b) individual subscriber agreements.

The elements of these two areas falling under the freedom of contract, in particular their creation, subject, much of their content and termination are governed and limited in detail by communications regulation. The provisions of public administrative law must be

adhered to for explicitly regulated elements of the subscriber legal relationship, with no deviation allowed. Otherwise, the rules of civil law govern subscriber agreements.

The Electronic Communications Act defines the following subscriber rights: a) The telephone service provider of subscriber services shall operate a customer service. b) The telephone service provider shall guarantee free access to emergency call services, including access to the single European emergency call number '112'. c) The telephone service provider shall grant its subscribers access to any national operator service.

The Electronic Communications Act, in line with the relevant EU directives, stipulates a number portability obligation for both mobile telephone and non-geographic subscriber numbers. Number portability is a fundamental legal institution of competition on the communications marGRAPS

3. eGovernment

The world keeps changing and we also change with these processes. At the same time our expectations change and so do certain elements of certain terms too. Democracy does not mean the same as in ancient states of Hellas. Citizens expect from a state more then just to defend their properties or to ensure the freedom of religion. The model of commanding public administration changed in the first half of the 20th century and the primacy of the hierarchic relationships began to fade.

The hierarchic public administrational structure, formulated by Max Weber, was characterised by administrational professionalism and political neutralism. Its primary objective was to reach the goals settled by the state. The Anglo-Saxon has other base of the executive authority in contrast with the European public administrational structure. In the face of the unconditional primacy of the public interest that characterizes the European model, the Anglo-Saxon model is characterized by the harmonization of the interests: it emphasizes the primacy of the balance-system. It has to be mentioned those efforts which firstly arose the implementation of the economic experiences to the public administration. Just think of the rationalization and efficiency-improver researches in Fayol's and Taylor's works.[11] This development had such a significant effect on the administration that it has been declared in the 70's and 80's – based on scientific research work – that certain administrational tasks would be worthy to pass to the private sector in order to increase the effectives. This is the beginning of the scientific movement, called New Public Management (NPM) or New Governance. The salient features of NPM are the systematization of the tools, aims, and experiences of processes in a scientific aspect. It also amends the practical experiences with new methods, and theories. Practically it deals with 'the modernization of institutional system and the new ways of governance'. Its aim is to modernize the state and public administration in an economic way.

We know that the European Union does not formulate any detailed expectations in respect of the member states' public administration; the only requirements are to be transparent, reliable, and to operate on the ground of democratic principles. However the situation

[11] See, e.g., Frederick W. Taylor, The Principles of Scientific Management, New York, Harper Bros., 1911.

has changed much since this principle formulated. The European Union's former priorities have changed and are still changing in this aspect. The enlargement had particularly unexpected effects in regard to the Union's operation as a supranational community.

Public administration and the co-operation of administrational systems plays an important role in solving the problems of enlargement, the integration cooperating with the Union. As the operation of public administration has a direct effect to the everyday life of the citizens, the Union is not allowed to ignore the objective to harmonize the public administrations of the member states.

3.1. Actions of the European Union

3.1.1. eEurope programmes

Let us see the most important steps on the way building a well-equipped eGovernment in the European Union. First of all we should take a look to the eEurope Action Plan 'families'. eEurope is part of the Lisbon strategy to make the European Union the most competitive and dynamic knowledge-based economy with improved employment and social cohesion by 2010.[12] In eEurope 2002 there is a chapter called e-Goverment, which contents – next to cheaper, faster, more secure Internet etc. – the following:

'EU institutions and national public administrations should make every effort to use information technology to develop efficient services for European citizens and business. Public administrations should:

- develop internet-based services to improve access of citizens and businesses to public information and services,
- use the Internet to improve the transparency of the public administration and to involve citizens and business in decision making in an interactive fashion. Public sector information resources should be made more easily available, both for citizens and for commercial use,
- ensure that digital technologies are fully exploited within administrations, including the use of open source software and electronic signatures.
- establish electronic marketplaces for e-procurement, building on the new Community framework for public procurement.'

The Action Plan introduced draft common list of basic public services. For eGovernment, the following two indicators are the basis for benchmarking:

- percentage of basic public services available online,
- use of online public services by the public.

[12] eEurope, An Information Society For All, Communication on a Commission Initiative for the Special European Council of Lisbon, 23 and 24 March 2000

To make these indicators operational, Member States have agreed to a common list of 20 basic public services, 12 for citizens and 8 for businesses. Progress in bringing these services online is measured using a four stage framework:

1.) posting of information online;
2.) one-way interaction;
3.) two-way interaction;
4.) full online transactions including delivery and payment.

Public Services for Citizens:

1.) Income taxes: declaration, notification of assessment
2.) Job search services by labour offices
3.) Social security contributions (3 out of the following 4):
   - Unemployment benefits
   - Family allowances
   - Medical costs (reimbursement or direct settlement)
   - Student grants
4.) Personal documents (passport and driver's licence)
5.) Car registration (new, used and imported cars)
6.) Application for building permission
7.) Declaration to the police (e.g. in case of theft)
8.) Public libraries (availability of catalogues, search tools)
9.) Certificates (birth, marriage): request and delivery
10.) Enrolment in higher education / university
11.) Announcement of moving (change of address)
12.) Health related services (e.g.interactive advice on the availability of services in different hospitals; appointments for hospitals.)

Public Services for Businesses

1.) Social contribution for employees
2.) Corporation tax: declaration, notification
3.) VAT: declaration, notification
4.) Registration of a new company
5.) Submission of data to statistical offices
6.) Customs declarations
7.) Environment-related permits (incl. reporting)
8.) Public procurement

As it is seen the European Union can be much more characterized by the strengthing of service providing character and not by the definition of such requirements that make us to use the attainments of eGovernment in each segment of the public administration. The European Administrative Space plays a significant role by the change of its duties enabling the member states' legal system to accept this way of thinking. There exist appears also a new approach in the European Union. Nowadays the long-term plan that the public administrational services should be accessible on a same high level in each member state

of the European Union. This means that the uniformity should be worked out, from the view of the services, not from the view of organisation.

In the next significant step eEurope 2005 Action Plan involved among the key targets the interactive public services, accessible for all, and offered on multiple platforms. Under the eEurope 2002 Action Plan, Member States agreed to provide all basic services online by end 2002. The proposed actions of eEurope 2005 were following:

- broadband connection for all public administrations;
- interoperability framework to support the delivery of pan-European e-government services to citizens and enterprises;
- interactive public services;
- electronic public procurement;
- Public Internet Access Points;
- culture and tourism – e-services to promote Europe and to offer user-friendly public information.

Seen in the list above much has been achieved in this area but many services still have limited interactivity.

3.1.2. IDA programmes

The IDA (Interchange of Data across Administrations) programme was started in 1995 as a result of a Community Decision that helped set up IT infrastructure, establish common formats and integrate business processes across the EU. In 1999, two interrelated Community Decisions signalled the start of a second phase of the IDA programme, referred to as IDA II. The purpose of the programme, which was managed by the Directorate-General for Enterprise, was to support rapid electronic exchange of information between Member State administrations. Its mission was to coordinate the establishment of trans-European telematic networks for the public administrations in the participating countries.

With an annual budget of about € 24 million, IDA II set about encouraging the application of information technologies to sectoral policy areas and promoting the interoperability of national infrastructure. Initially pursuing a predominantly back-office focus, towards the end of its lifespan in 2004 the programme began to concentrate on the development of services aimed at businesses and citizens.

The second phase of the IDA Programme (IDA II) entered into force following adoption by the European Parliament and the Council of Decisions Nos 1719/1999/EC and 1720/1999/EC (The Guidelines and Interoperability Decisions) on 12 July 1999. In total, IDA II financed projects of common interest in nineteen different policy areas. The EU's data interchange requirements cannot efficiently be met by uncoordinated actions from individual Member States. There was therefore a need to ensure overall coordination in order to achieve integration of the administrative systems across the EU.

By Decision of the European Parliament and of the Council (the IDABC Decision) the five year programme on interoperable delivery of pan-European e-Government services

to public administrations, businesses and citizens (the IDABC programme) was launched on 1 January 2005 as follow-on to the IDA and IDA II programmes.[13]

The objective of the IDABC programme is to identify, support and promote the development and establishment of pan-European eGovernment services and the underlying interoperable telematic networks. It is designed to help to achieve targets set in the area of eGovernment by

- continuing to promote the introduction of information technologies to policy domains, especially where this is facilitated by legislation,
- building a common infrastructure for cross-border information exchanges between public administrations in order to ensure efficient communications,
- encouraging the emergence of novel services for businesses and citizens.

The evaluation report of the IDABC programme was largely positive describing the programme as being in line with the eGovernment policy priorities of the European Commission, as expressed in the i2010 strategy. The programme plays a unique role to foster the integration of Europe through interoperable public administration and is on track when assessing the implementation. However, the report on the IDABC programme also offers some suggestions for improvement for future programme management to be taken into account during the implementation of the follow-on programme (ISA – Interoperability Solutions for European Public Administrations).

3.1.3. eGovernment Action Plan 2011–2015

The European Commission's eGovernment Action Plan 2011–2015 supports the provision of a new generation of eGovernment services. It identifies four political priorities based on the Malmö Declaration:[14]

- Empower citizens and businesses
- Reinforce mobility in the Single Market
- Enable efficiency and effectiveness
- Create the necessary key enablers and pre-conditions to make things happen

The Action aims to help national and European policy instruments work together, supporting the transition of eGovernment into a new generation of open, flexible and collaborative seamless eGovernment services at local, regional, national and European level.

The main goal is to optimise the conditions for the development of cross-border eGovernment services provided to citizens and businesses regardless of their country of origin. This includes the development of an environment which promotes interoperability of systems and key enablers such as eSignatures and eIdentification. Services accessible across the EU

[13] Corrigendum to Commission Decision 2004/387/EC of 28 April 2004 – Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on the interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens (IDABC)

[14] Ministerial Declaration on eGovernment approved unanimously in Malmö, Sweden, on 18 November 2009

strengthen the digital single market and complement existing legislation in domains like eIdentification, eProcurement, eJustice, eHealth, mobility and social security, whilst delivering concrete benefits to citizens, businesses and governments in Europe. The Commission will lead by example in further implementing eGovernment within its organisation.

The objective is to increase the take-up of eGovernment services: the target is that by 2015 50% of citizens and 80% of businesses should use eGovernment services.

3.2. eGovernment in Hungary

3.2.1. The definition of electronic administration

The most difficult task is to determine the definition of electronic administration because it is an evolving section of law without recognised concepts shared by the majority of experts. Creating a definition is complicated because the 'classical' notions of administrative law cannot be used without modification in the area of electronic administration. The reason for it is the feature of electronic administration (shortly e-administration or e-government) that it is not only a concept of administrative law but it appears in courts – e.g. during the registration of companies – and in every other field where the services offered by the state are combined with the elements of public law.

Before reviewing the prevailing rules of electronic transaction of affairs we should examine the place of these rules within the legal system. On the one hand our task is simple as these regulations are in connection with administrative law, so they belong to public law. But on the other hand it is not such an evident issue if we examine the question from the point of infocommunication law. In this regard this section of law is a part of jurisprudence but it is not a separate branch of law, which incorporates all provisions of electronic administration.

In order to provide a comprehensive view of electronic administration we have to examine the relevant notions. According to the preamble of the Act on Administrative Procedures: 'The concept of e-government became a universal factor of improving the prospects for the future. Its scope is wider than central governmental administration; it covers the whole system of administration.' János Verebics created the broadest concept. According to him the electronic administration is 'the utilization of infocommunication technologies and information tools by state organs'.[15] Although this definition is suitable for examining all matters belonging to this subject, but this concept is too general. Gábor Polyák defined electronic administration as follows: 'The widest sense of electronic government is the utilization of digital information and communication technologies in the relationship between the government and the society. The realization of e-government is a modernization process affecting all levels of administration, where the quality of relationships is transformed based on technological development.'[16] This concept is precise enough and not too excluding, however, the concepts of government and administration are used as synonyms. So the final definition is based on this notion: in

[15] Verebics János, Elektronikus kormányzat és jogi szabályozás in: Infokommunikáció és Jog, 1. szám, 2004. június, p. 5.

[16] Dósa Imre, Polyák Gábor, Informatikai jogi kézikönyv, Budapest, KJK-Kerszöv, 2003. p. 246.

a wide sense electronic administration is the adaptation of infocommunication technologies in the relationship between the state and the society, while in a narrow sense it is the entirety of legal rules governing the electronic transaction of affairs. Hereinafter we will examine the latter, to be precise, the provisions of the Act on Administrative Procedures. (GRAPS).[17]

3.2.2. Electronic documents in authority proceedings

The provisions of the GRAPS are milestones in establishing electronic administration in Hungary. However, we have to be aware that the former act, the Act on State Administration did not excluded the requisition of electronic way theoretically after the adoption of the Act on Electronic Signature (hereinafter called AES).[18] Still, the most important step in making the operation of electronic transaction of affairs possible was the recognition of validity and conclusive force of electronic statements by the Parliament through adopting the AES This act came into force on the 1 September 2001 and amended some provisions of the Act on State Administration at the same time in order to ensure the prevailing of the advantages of authentic electronic communication in administration.

As far as our theme concerned one of the most important provisions of the AES was the incorporation of the followings to the procedural act: '…legislative provisions shall ensure the option for submitting applications in electronic documents'. Besides altering the regulations for applications the possibility of adopting electronic documents occurred within provisions in connection with documents and resolutions of administrative organs. In contrast with the prevailing rules at that time the completely electronic arrangement of affairs was exceptional because it required the permission of legislative provisions.

The GRAPS views the electronic transaction of affairs from a completely new point. The electronic conduct of administrative authority affairs is the general rule and the traditional transaction of affairs – based on paperwork – is exceptional. These exceptions shall be declared only by acts, decrees of government or local government. Therefore certain sectors cannot avoid meeting the obligation of establishing electronic administration by departmental orders.

However, excluding all exception is unfeasible and the reasons for this are various: one cause is digital illiteracy particularly among old people in regions lagging behind. Similarly in underdeveloped regions parties concerned are not equipped with suitable technological instruments and internet-connection, which are basic and essential conditions of electronic transaction of affairs. Besides these factors legal rules can also prohibit the exclusive adaptation of electronic documents e.g. in the section of family law and law of succession.

Local governments are also empowered to prohibit the electronic conduct of issues in some cases by decrees because a great number of Hungarian settlements are not properly equipped with technical tools to establish communication systems with clients in electronic way.

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[17] 2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól - Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

[18] 2001. évi XXXV. törvény az elektronikus aláírásról - Act XXXV of 2001 on Electronic Signatures

3.2.3. Contacting administrative organs

In electronic transaction of affairs the recognition of the validity and conclusive force of statements made via electronic way is of crucial importance. But these statements and electronic documents have to meet certain conditions. They have to be appropriate for the authentic personal identification of the client submitting the statement or application and have to ensure the unchangeability of documents. It means that the supervision of the content of sent and received documents shall be ensured as well as that statements and these content cannot be gainsaid (undeniability).

The electronic signature ensures the above mentioned criteria. In information and communication technology the public key infrastructure makes them possible and their legal conclusive force is the same as the paper ones. In legal regulations the principle of technology-neutrality shall prevail, which means that statements of legal force can be made with any technological process meeting the requirements declared by law, however, there is not known more appropriate method for these purposes than the public key infrastructure.

Now we have to examine the different conclusive forces of electronic documents. The AES and the law of civil procedure set up three levels according to conclusive force. The first category comprises the 'simple' electronic signature, which does not have stated conclusive force. In litigation the appreciation of the document is based on the free discretion of the court. The client can independently create such an electronic signature. The second category includes the electronic signature of advanced security. It can only be created with the help of an independent organ, the so-called authentication provider, which task is the identification of the user (by issuing and registering a certificate belonging to the signature) and the insurance of the appropriate technical instruments. Its conclusive force is not declared by law but a document with this signature is considered as a written document if the writing form is required for the validity of the statement.

The third category is the qualified electronic signature. In technical terms it is an electronic signature of advanced security, but its certificate is issued by a qualified authentication provider, which has to meet stricter conditions and security requirements. The National Communication Authority registers all authentication providers and supervises their operation. Documents signed by qualified electronic signature have the same conclusive force as private documents representing conclusive evidence. When an authority issues an electronic document with qualified electronic signature in connection with its operation, it has to be regarded as a public/notarial document.

In order to arrange authority cases in electronic procedures, one has to possess at least electronic signature of advanced security.

Those, who have electronic signature of advanced security, can directly get in touch with the authority in electronic way. Besides this option the client can submit the application via the central electronic system of the Government. Clients, who are not supplied with electronic signature of advanced security or qualified electronic signature, but would like to arrange cases in electronic way, have to utilize this central system.

3.2.4. The client gate

As we could see, it cannot be required that everybody possess electronic signature of advanced security but accession to electronic transaction of affairs must be ensured for anybody. In order to solve this problem the client gate was established in the central system. It is an information instrument, which ensures the identification of the client and its safe connection with organs providing electronic administration and services through the central system.

The central system can be reached on a website called www.magyarorszag.hu. On this site we can find affairs sorted according to the main topics, offices and types of affairs. To be able to commence administrative authority proceedings we have to enter the client gate. While entering we are required to give our user name registered in advance and the password belonging to it.

To obtain the abovementioned user name and password our personal attendance is necessary at the central organ keeping records on private data and residences or at the document bureau operated by the notary public in charge of district duties or at other organs defined by a government decree. The document bureau is easily accessible by citizens, so it is frequently visited to initiate the establishment of a client gate.

For the establishment of a client gate the identification of the client is essential. The client shall prove his identity by an official certificate appropriate for personal identification and give his natural identification data (e.g. his name, place of birth and date, his mother's name, etc.). In the case of foreigners their passport is suitable for identification.

The statutory duty of the client is to give his e-mail address in the course of identification that can be utilized for the electronic transaction of affairs. The authority will send all electronic mails for this address for the transaction of affairs, so it has to be suitable for utilization in official cases. The client is responsible for the disadvantageous consequences deriving from choosing his address improperly.

Following the identification the registration procedure is as follows: the client may give a user name, which cannot be the same as other user name given previously. The client shall be given a code via e-mail that can be used only once. The client can only enter with it for the first time and then he formulates a new password. This new password and user name (together the client gate) is valid for a maximum period of five years. The client can define a shorter period of validity. The password can be amended without limitation within this period and after the termination of the client gate with repeated, personal identification.

In the GRAPS it is not explicitly declared that this specific identification code is confidential but it is stated that the client shall bear the responsibility if the specific identification code is revealed by a third person due to the fault of the client and if this third person misuse this code. Therefore it is not obligatory but advisable to keep this identification code in private.

For the electronic transaction of affairs no other data may be requested from the client getting in touch with the authority through the client gate, but this shall not concern the obligation to provide the data necessary for the conducting of the procedure,

as provided for by the rules of law. So after identification in the electronic proceeding the client is handled in that way as he would be personally present at the authority.

In the GRAPS the electronic transaction of affairs is the general rule, but electronic administration cannot be applied in some cases – as the Act defines. We have to remark that legislative provisions can make exceptions of these rules and therefore these affairs can also be conducted electronically.

We tried to present the regulation which can be considered a milestone in the world of the administrative right. Beyond the general rules – because of the character of the area – many partial rules have been created which were not presented in the study, but the cognition of the fundamental provisions is the most important step for recognising the development opportunities. We must not believe that the only way of modernisation of the public administration is exclusively a technological question.

Part VII.

CIVIL SERVICE

The Civil Service System in Hungary

Introduction

The aim of this book and all papers in it are twofold: on the one hand, the paper deals with public administration, and on the other, with the administrative law of Hungary. In Hungary and in most countries of the Central and Eastern European (hereinafter: CEE) region many students of Public Administration have difficulties differentiating between administrative law and administrative reality, or the earlier is substituted for the latter, as public administration is discussed almost solely within the framework of legal scholarship.[1]

Paradoxically, the very same region is well-known in Europe for the wide gap between law on paper and law in reality or, in another formulation of the same phenomenon: for the divergence of formal and informal rules in society[2]. This is exactly the case regarding civil service laws.[3] Consequently, we faced the difficult decision if we should refer more to the reality (law in action) or to the legal texts (black letter law). An additional difficulty of reviewing legal rules stems from the high level of volatility of institutions, including legal rules; another feature of Hungary shared, again, with other CEE countries. The valid legal rules greatly differ from those that determined the previous twenty years, and may be amended or abandoned by the time this book is printed.

We tried to find a compromise in this paper between these contradictions, with all the possible advantages and disadvantages of a compromise. We were ready to give up theoretical stringency in order to provide the reader with both the most relevant legal regulations and also with a general overview of the functioning civil service. We also refer to main historical changes and tendencies.

Thus the paper is divided into three major parts. In part 1, we provide some general background information on civil service. In part 2, we briefly describe major elements of

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1 See, for instance, Szamel Lajos, 'Közszolgálati jog, a közigazgatás személyzete' in Ficzere Lajos (ed), Magyar közigazgatási jog. Általános rész. [On civil service laws and on the personnel of public administration] (Osiris 1998)

2 Gerda Falkner, Oliver Trieb, 'Three Worlds of Compliance or Four? The EU-15 Compared to New Member States' (2008) 46 Journal of Common Market Studies 293.; Antonova Dimitrova, 'The New Member States of the EU in the aftermath of enlargement: Do new European rules remain empty shell?' (2010) 17 Journal of European Public Policy 137.

3 Jan-Hinrik Meyer-Sahling, 'The Durability of EU Civil Service Policy in Central and Eastern Europe after Accession' (2011) 24 Governance 231.; Gajduschek György, 'Civil Service in CEE Countries: Where Institutions do not Work?' (2013) 5 NISPAcee Journal of Public Administration and Policy 161.; Katarina Staronová, Gajduschek György, 'Civil Service Reform in Slovakia and Hungary: The Road to Professionalization?' (Christine Neuhold, Sophie Vanhoonacker, Luc Verhey, Civil Servants and Politics. A delicate Balance (Palgrave Macmillan 2013) 151.

civil service such as selection and appointment, remuneration, career, labor relations or termination of service. In part 3, based on our research carried out in the past few years and relying on international comparative research, we attempt to provide an evaluation of the Hungarian civil service. Most of all we will position this system on a merit/non-merit theoretical scale. Furthermore we attack the problem of politicization, its level, and its potential causes. Finally, we try to answer the question of how the Hungarian civil service – generally – fits into the European landscape.

1. General overview

Who are civil servants?

Civil servants are among those employed in the public sector and paid from the budget. This definition, however, is too wide. According to the latest available statistics of the Central Statistical Agency, out of the 3.99 million persons employed in Hungary, 1.102 million were employed in the public sector in the July-September 2013 period[4]. Out of this, only about 105.000 persons were civil servants. Other categories employed in the public sector are uniformed services (police, intelligence services, and the army, with a special constitutional status); judges, prosecutors, political appointees (members of Parliament, local elected councils and mayors), and – by far the largest group of about half a million persons – public servants (nurses, doctors, teachers, social workers, etc. of public institutions). All these categories named collectively as public employees. The legal status of each of the categories listed above is regulated by Parliament Acts.[5]

Civil servants are those public employees who work in offices of central and local public administration, namely in the offices of the Ministries, central and territorial level agencies, as well as in offices of municipalities and independent agencies.[6]

We use the term 'civil servants' in this paper as it fits best to the international usage and also to the Hungarian regulation until 2010. However, as of 2010 this group is further divided into two main groups whose legal status is also different in some aspects: those known as 'cabinet civil servants', who work in offices under the ultimate hierarchical control of the Cabinet (ministries, central agencies and their regional units), and all others, who do not. If we want to differentiate this latter group we will call them non-cabinet civil servants. Due to the changes that shifted – in 2–3 steps – several functions previously carried out by municipalities to central agencies, the number of cabinet civil servants has largely increased parallel to a drop in non-cabinet civil service personnel. The proportion of the latter group

[4] KSH 'Gyorstájékoztató' [Hungarian Statistical Office Quick Informations] (Hungarian Statistical Office website) <http://www.ksh.hu/docs/hun/xftp/gyor/fog/fog21309.pdf > accessed 19 November 2013

[5] Employees of public companies like the Hungarian Railways or Postal Services are employed according to the labor law and are not considered part of the widely defined public employees.

[6] Additionally, civil servants work in administrative offices of the Parliament, the President, the Constitutional Court, the Ombudsmen and the State Audit.

supposedly decreased from about 40% in 2010 to 30–25% in 2013, though reliable data are not available in this regard.[7]

Regulation of the civil service:

The Hungarian civil service system is regulated by public law.

The fundamental right of citizens to hold public office is included in the Hungarian Constitution that states that the status of cabinet civil servants shall be regulated in a Parliamentary Act. This is Act No 199 of 2011; previously, for about two decades, this was Act No 23 of 1992 'On the Legal Status of Civil Servants'; briefly: the Civil Service Act (or Code). Several Cabinet Decrees regulate various elements of the civil service in greater detail. For instance, Cabinet Decrees exist on the performance appraisal, another on the professional requirements for certain civil service positions, etc.

Most of our paper is based on the analysis of the Civil Service Act accompanied with comments on the application of this law in reality.

A historical outline

In the long-term historical development of the Hungarian civil service system (hereinafter: CSS) in Hungary, four major periods may be distinguished. The first period lasts until 1918, when the Austro-Hungarian Monarchy collapsed. The second is the inter-war period of 1918–1944. The third major period of 1948–1989 relates to the Communist regime. The final, post-1990 period is tackled in more detail.

The Austro-Hungarian Monarchy followed the Prussian-German model of state administration and introduced modern administrative techniques, including the merit-based civil service system, into central government agencies. Local governments remained autonomous and were managed mostly by pauperized, largely unprofessional and corrupt Hungarian noblemen. Nepotism, clientelism was the rule rather than the exception in this system.

After WWI, in the newly independent Hungary, a merit system was formed, though not without inheriting some previously existing negative features. Still, from a historical perspective, the CSS of this period may have been closest to the merit-based ideal.

After 1949, the CSS became very similar to all other communist countries'.[8] The Communist Party became the real decision-making body, and the government apparatus operated as an implementing apparatus. Recruitment, promotion and all relevant HR decisions were under political control. Civil servants had to be loyal to the Communist political regime. This system could be described as a classical spoils system, with the systematic lack of regular elections. Paradoxically, this led to a gradual improvement in quality of human resources. From the sixties on, the work experience and the education level of civil servants

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[7] It has been difficult to obtain data regarding civil service. It has been especially so since about 2006.

[8] Gajduschek György, 'Socialist and Post-Socialist Civil Service in Hungary' (Jakab András, Takács Péter, Allan F. Tatham, The Transformation of the Hungarian Legal Order 1985–2005, (Kluwer Law International 2007) 123.

increased. By the seventies, most managerial positions were filled in with professionally capable candidates. Meanwhile, scholars of Public Administration tended to advocate the merit system by reviewing its advantages over the politically dominated personnel system. Several elements of a merit system were introduced from the late seventies.[9]

The notion and ideal of a depoliticized civil (and public) service system became a major value in itself by 1990, and was a central tenet in the democratic transition. This may explain why Hungary was the forerunner in the region adopting the first comprehensive civil service act in the CEE region. The main manifest goal of the law was, as it is expressed in the preamble of the Act No 23 of 1992 to assure that '…public affairs are dealt with by politically neutral, highly professional, impartial civil servants that strictly follow the legal regulations'.

Prime Minister Antall personally supported the new law. Later, during the internal administrative discussions and then in the Parliamentary debate, the original merit-based arrangement of the Concept largely 'softened', yet it was still generally regarded as merit-based CS law – both by Hungarian and foreign analysts. The Act regulated all relevant segments of a CSS. It discussed in a relatively detailed manner recruitment, selection and appointment (oath, etc.); promotion (promotion according to seniority); pay (based on the pay table, salary scale); appraisal (personal appraisal at this stage only); training; liability of civil servants; termination of service, including dismissal (in a relatively long section discussing conditions of dismissal).

However, major non-merit elements were already to be found in this law. Most importantly:

No central CS Unit was established. Instead, major CS decisions were deployed at the 'head of PA organizations' (hereinafter: office heads). Decisions about appointment and dismissal, elevation to a managerial position and special pay arrangements could be made by the office heads of each and every major administrative unit. These heads are the administrative state secretary of a Ministry, director of a central agency, head of county units of the same agency, etc.

Since the Civil Service Act was adopted in 1992, it has been amended more than one hundred times, that is, every two-three months on average.[10] Some of these amendments were crucial. The scope of civil service changed in 2001, when two out of the previously four categories, namely physical workers and clerical staff (typists, etc.) were outsourced, though after the next election, the clerical category became again part of civil service. In 2010, several merit system requirements for appointment, promotion and dismissal were suspended and a few months later the previously unified civil service was divided into two categories (cabinet and non-cabinet civil servants) regulated by two separate Acts.

While the changes of the laws were almost permanent, some major reform periods may be differentiated. The 2001 reform aimed at strengthening the loyalty of civil servants. Most importantly, wages were significantly increased and the compression ratio of the pay scale almost doubled. This way, the wage gap between private and public employment

[9] ibid 123; Linder Viktória, 'Balancing between the Career and Position based Systems. Some Aspects of Recent Developments in Civil Service Legislation in Hungary.'(2011) 52 Acta Juridica Hungarica 64.

[10] Without mentioning the constant changes of the secondary legislation (government decrees, decisions, etc).

significantly narrowed, especially in professional positions. Several other changes took place, most of which aimed at strengthening the merit element of the CSS. As part of the reform, a corps of senior civil servants was established and mostly filled in at the end of the election cycle.[11] At the same time the performance appraisal and performance pay, a typical non-merit institution, was also introduced.[12]

The 2006–2008 reform period brought major changes in the selection procedures, as an entry exam was introduced that had to be passed before one became eligible for applying for civil service positions. The selection became to some degree centralized, especially in case of managerial positions. All vacant public positions had to be publicly advertised. A reserve list system was designed. Whereas these elements strengthened the merit-oriented nature of the system these initiatives had somewhat surprisingly been inspired by market-based solutions and New Public Management ideology. The performance appraisal system became more formalized, at the same time the importance of performance pay has increased as, in some cases, it could be higher than 50% of the total salary. Some of these reforms were reversed before 2010 and all of them were abolished after the 2010 elections.

In 2010, the largest changes occurred in the civil service system since 1992. Among other policies, the cabinet introduced and applied with retroactive effect a new arrangement for the termination of service. Civil servants could be laid off without a stated reason, with two month's notice (previously the civil servant was placed on a reserve list for 6 months with a full salary) and severance pay not higher of ca. €7200. This arrangement was actually worse than the one guaranteed by the Labour Code for all workers in the private sector. At the same time, all previous, objective selection procedures (entry exams, etc.) were terminated for an unspecified interim period. Seemingly, the cabinet aimed at replacing the administrative elite with persons whom the new political elite personally trusted. All rules that hindered this effort were suspended or terminated. Meanwhile the new Cabinet declared its devotion to strengthening the merit system and to filling positions with young candidates speaking foreign languages.

At the very end of 2011 a new Civil Service Act (No. 199/2011) was adopted. The Act in fact reestablishes the system that leaves all decisions to office heads; however, most of these office heads were freshly appointed after 2010. The style of the law is different from the pre-2006 period. Previously lawmakers seemed to be somewhat shy about admitting the fact that political power prevails. The new law seems to be more 'outspoken' in this regard. Good examples could be the new reason of potential dismissal: the fact that 'the civil servant has lost the confidence of his/her supervisor'.

[11] This corps was abolished by an amendement of the civil service law in 2007.

[12] Linder (n 9) 64.

2. Major elements of the civil service system

Admission and recruitment

The importance of recruitment is outstanding in human resources management (hereinafter: HR and HRM). Guaranteeing the fundamental right for citizens to hold public office is of constitutional relevance. Quality of recruitment is perhaps the most significant determinant of the quality of civil service. Naturally, selection is crucial for applicants who may reasonably expect a fair, unbiased, merit-based procedure.

However, except for a brief period from about 2008–2009, the recruitment and selection of civil servants has remained practically unregulated in Hungary.

As in most CSS-s, the law names general admission requirements that everyone who applies for a civil service position has to meet. The most important such requirements are Hungarian Nationality (with limitations set up by EU laws); reliability proven by a clean police record; legal capacity (over 18, and in full mental capacity). The Civil Service Act also requires a minimum of secondary school education and at least a bachelor's degree in ministries in non-clerical positions. In some positions, additional requirements may be set up, such as a specific security check or 'declaration of financial interest' (on major properties and income sources).

Job-specific requirements may be set up by the laws or the office heads. These requirements most typically refer to school degrees. In some positions, such as for bookkeepers, this is a general requirement. Some specific positions are also related to certain degrees. E.g. a municipal chief executive officer must hold a degree in Law or Public Administration. A Cabinet decree names about three hundred civil service positions and determines the required schooling background, though quite vaguely, as most positions may be filled in with both secondary and university education, and also with various degrees.[13] Other requirements, such as work experience, managerial experience, experience in civil service (i.e. seniority), or in certain civil service fields (e.g. finance for a managerial position in the field) are hardly ever defined. Seniority (2 years) is required in case of chief executive for municipal offices, for heads of lower-level 'territorial' Cabinet offices.[14] The office head may set up any additional requirements for the vacant positions.

Recruitment decisions are left to office heads. The office head may use different types of HRM methods for selecting the right person for the position, as the procedure is also left undetermined by the law. This feature – with a short interruption in the 2008–2010 period – seems to be a quite stable element of the Hungarian CSS. The present, 261-paragraph-long (and about 1500-sub-paragraph-long) law devotes half a sub-paragraph (45.§ (1)) to recruitment procedures, which basically states that the office head may decide on the selection procedure, including the opportunity to invite only one candidate to the position. Vacant positions do not need to be openly advertised, nor is any kind of competitive selection required; the office head may arbitrarily make a decision within the loosely defined educational frames.[15]

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[13] 71% of all positions that may require higher education may be filled in with a law degree.

[14] There are about 1500 civil servants in these positions, that is, about 1.5% of the CS.

[15] In a representative questionnaire survey administered in 2005 among civil servants we found that 45% of the respondents were informed about the vacant position via 'acquaintances', and only 17% through

It is quite telling that an OECD report[16] depicts Hungarian selection procedures as closer to a position system that allows large leverage for the managers to make this decision.

Most civil servants are appointed for an undetermined period, which is interpreted as tenure. Still, as in most CSSs around the world, the number of civil servants employed for a fixed period[17] or working with an employment contract is increasing.

Remuneration

The 'normal' civil service wage depends on seniority; the type of the agency[18] (central, territorial, local); level of education of the civil servant; performance pay arrangement; and if the person is a cabinet or non-cabinet civil servant.

a) The core of remuneration is the base salary. The base salary is calculated according to the pay (or promotion) tables, reviewed in Annex 1. Numbers in the right column of the table is multiplied by the civil service salary base, determined annually in the budget, which allows reaction on inflation.[19]
b) The second element is the salary supplement, which depends on the type of the agency and is different in Class I and II. It is fixed in the proportion of the base salary. This is also a significant amount of salary, as it ranges between 15–80%.[20]
c) The above two elements are specified in the Civil Service Act and are valid for all cabinet civil servants. There are some other, legally regulated components of remuneration. Allowances may be based either on statutory provisions or on the discretionary decision of the head of the administration. A civil servant may get allowance for working in dangerous or adverse conditions, having specific skills, etc.
d) Civil servants may receive other types of compensation based either on statutory provisions (e.g. anniversary bonuses) or on discretionary decisions (e.g. premium or award, etc.)

The performance appraisal and performance related pay is present in the Hungarian CSS since 2002. We will address this issue in the next section.

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public advertisement.

16 OECD, 'Government at a Glance 2009' <http://books.google.hu/books/about/Government_at_a_Glance_2009.html?id=TE5DAQAAIAAJ&redir_esc=y> 79

17 Typically for the replacement of another civil servant on a long leave (e.g. giving birth), or for carrying out a specific task.

18 Where is the agency situated in the hierarchy? Generally, the prestige of the agency is crucial. I.e. the Office of the President or Constitutional Court has the highest score in that regard, and local agency units the lowest.

19 However, in the past 7 years, this amount has not increased. So the gross base salary of a senior advisor (higher education, 10 years in service) was about 550 Euro in 2013.

20 This is 50% for Class I civil servants of ministries and several agencies that increases the gross salary of the abovementioned advisor to about 810 Euro a month. However, the same supplement is only 15% for Class II civil servants who thus earn 350 Euro, gross. For non-cabinet civil servants the salary supplement is solely an optional part of the wage. The elected council sets up if there is a supplement and if so, what percentage.

An in-depth analysis, however, may reveal several other ways to circumvent the normativity of the remuneration system. The 'personal wage', introduced by the Civil Service Act of 1992, allows that office heads may set up a specific salary for some civil servants. No wage ceiling has been set up by the law. The only limitation is that only a certain per cent of civil servants employed by the given organization may receive a personal wage. We have reliable statistical data only for the 1994–2001 period, while the proportion of those receiving a personal wage changed from 1443 to 4287 persons. In 2001 the personal wage was terminated for central government offices.

There are several other ways to provide some civil servants with a relatively high wage. The most obvious way is to promote one into a managerial position, which is easy and yields a relatively high wage. This issue is addressed in the section below on promotion.

There are several other specific posts named in the Civil Service Act that provide office heads with the leverage to provide higher wages for some. These posts are, among others, the 'professional and political consultant' positions and various titular positions.

In 2010, the pay table of clerical staffs, the most vulnerable CS group, was abolished. It is now determined by the office head in a way that it cannot be less than the guaranteed minimum wage and cannot exceed six times the civil services salary base.[21]

Finally, a presumably large but unknown proportion of those working for/at offices of public administration are employed under different legal arrangements than civil service laws, such as working (labor law) and business or service contracts (civil law). In these cases, naturally, there is no upper limit for the remuneration.[22]

Evaluation of civil servants

For a long time the personal appraisal functioned as a stable system of evaluation of Hungarian civil servants. The personal appraisal evaluates personal 'features' (e.g. reliability, honesty), competencies and to some degree the performance of civil servants. The main function of personal appraisal in career CSSs is to measure and lay down in writing major elements of 'appropriateness' of the civil servant, in order to base further HR decisions, most importantly promotion, on these data. According to Hungarian law a civil servant may kept in a lower pay category for longer period, or may be promoted earlier into a higher one, based on personal appraisal results. However, personal appraisal results have no impact in reality. Personal appraisal results are not mentioned by the laws regarding other types of promotion (e.g. promotion to managerial positions).

After 2001, performance appraisal, a typical non-merit institution, was introduced into the CSS as well. Unlike in the general international practice, the performance appraisal system in Hungary was introduced in one step, for all civil servants, with a possibility to decrease or increase civil service wages quite significantly based on the performance appraisal results.[23]

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[21] In 2013 it means for employees having a secondary-level education (obligatory in the Hungarian CSS) an amount between €380–770

[22] There are some agencies or types of agencies where employment contracts (usually concluded for a determined period of time) are the general forms of employment.

[23] Linder (n 9) 64.

Since 2002, all Hungarian civil servants are appraised at least annually. During the last decade the personal and performance appraisal systems have been functioning in parallel and the latter have been taking several forms since 2002: evaluations were carried out using different types of indicators, measured and evaluated by different methods, and resulted in various consequences, such as various possible deviation from the 'normal pay', (+10; +20; +40; +50+%, -0, -20%, etc. over time) or bonuses in the remuneration system. Performance appraisal results may also be a reason for dismissal. Presently the base salary of a civil servant may be increased by 50% or decreased by 20% for the current year. In addition to the salary increment the appraisal may provide ground for further bonuses to be paid.

A stable element of performance pay, however, is that it is determined by the office head, somewhat strangely as the method aims at allowing immediate supervisors to give feedback. Office heads of larger organizations hardly have any information on the performance of civil servants at the lowest level. Parallel to the performance appraisal, the 'old' personal appraisal remains another form of evaluation, although without any real function.

It is quite telling that a study[24] comparing 19 countries found Hungary among those that least rely on performance assessment in HRM decisions (placing 17th), but lay great emphasis on performance-related pay (placing 6th).

Career and promotion

The Hungarian CSS seems to be, at first glance, a career system. Civil servants have the legally guaranteed right for promotion based on seniority. This is basically an automatic way of promotion, as there are hardly any training requirements, and personal appraisal has no real impact on it as well. This type of promotion is based on the pay/promotion table as reviewed in Annex 1. The table is divided into two main classes. A separate table (Class III), not reviewed here, existed for civil servants in clerical positions. Physical workers of offices have not been civil servants since 2002. Strangely enough, differentiation between Class I and II is based on the given person's education (Class I, BA or above degree; Class II, secondary education)[25] and not on the attributes of the position. Consequently, the same task may be carried out by two persons, doing the same job, but one earns twice as much as the other. This has been a permanent feature of the CSS since 1992. By seniority, one steps up on grades with titles referring to higher prestige and providing higher salary. To get from Class II to Class I, one needs to obtain a college or university degree.

Please note that though the compression ratio between the lowest and highest salary on the promotion table doubled in 2001, it is still quite small; seniority is indeed modestly rewarded.

Other career paths, though much less precisely regulated, may yield much higher rewards. We have already mentioned some opportunities fixed in the civil service code the office head may rely on to reward some favored civil servants with higher income (e.g. professional or political councilor; titular chief executive, etc.). These titles make the promotion system more

[24] OECD (n 16) 79.

[25] The law doesn't differentiate between BA, MA or Ph.D. degrees.

flexible. The proportion of such positions may be maximized by law, and that is the major restraint for arbitrariness of most of these decisions. As we have seen already in the case of personal salary, this is hardly a real barrier as it is set quite high and has been increasing over the years.

A major career path is to become a manager in civil service. Managerial positions provide a relatively high salary. Remuneration of managers is based solely on the level of managerial position and does not reflect seniority at all. It is a constant feature of the CSS that the lowest managerial wage is significantly higher than the highest possible non-managerial civil service wage. Another permanent element of the regulation is that the office head may promote anyone to, and demote anyone from, managerial position, without much legal constraint. (Anyone may be a manager who holds at least a BA; i.e. no seniority, not even job experience is required, performance appraisal results are irrelevant, etc.)

Training

The training system for civil servants has been in continuous development since 1992. For years the Hungarian Institute of Public Administration had been responsible for the forming of the system. After several restructurings, it is now the National University of Public Service, which is generally responsible for the training and further training of civil servants. Still, agencies may organize or order job-specific training courses from other sources, as well.

The stable elements of the training system are the two generally compulsory exams. Civil servants have to pass the basic civil service exam within the first two years of service. The Advanced Exam is needed for civil servants in Class I to be promoted into an 'advisor' position or managerial positions.

Other types of training may be compulsory, voluntary or a condition for promotion. Large-scale ad-hoc training sessions may be introduced if major legal changes take place (e.g. over ten thousand civil servants were trained when the new Administrative Procedures Act was adopted). Vocational training (e.g. for bookkeepers) may also be organized for specific branches or professions.

Taking part in training courses is a right and duty of civil servants as they are entitled to take part in training courses that are necessary to fulfill their job appropriately. The same is an obligation as well. According to a government decree valid from 2013, civil servants are obliged to obtain credits by attending training courses annually.

Conflict of interest

Conflict of interest cases are legally determined. These include economic, political, professional, and personal types, as well. The paragraph below mentions a few, presumably the most important limitations set up by the law.

The civil servant shall not take part in the legislative (including EU and elected local government positions) and the judiciary branches of power; shall not have a leading position in a political party. Economic activities are limited as well. Work activity is allowed only with the written consent of the office head, except for scholarly, artistic, educational (intel-

lectual) work, acting as sports trainers or referees and participating in volunteer activities. A civil servant shall not manage, but may own, a private company. Relatives of the civil servant cannot work as his or her subordinates in any capacity. Activities which might harm the prestige or dignity of civil service are generally prohibited, according to an amendment adopted in 2011. Conflict of interest procedures are regulated in the Law. Conflict of interest may be a reason to terminate service by virtue of law.

Labor relations

Chamber

The new legislation coming into force in 2012 established the *Chamber for cabinet civil servants*. The Chamber is a self-governing professional labor organization, a public legal body with units in the 19 counties and the capital of the country. The membership for tenured government officials is mandatory. The declared main tasks of the Chamber are the advocacy of interest of government officials, participation in the codification of legal norms relevant for the cabinet civil service, the preparation of the code of ethics.

Consultation

The *National Consultation Council* provides the frameworks of a *tripartite* labor *consultation*. The three parties in consultation encompassed by the Council are i) the representatives of the Government, ii) the nationwide trade union federations and confederations of public employees (three in public service plus two regularly invited trade unions) and iii) the representatives of the associations of local governments.

The Civil Service Code regulates the main elements of the *consultation* even for *agency level* and enumerates questions that are obligatory to discuss with the unions. In case of labor disputes, the head of the organization and the trade union leader are supposed to seek to settle the problem.

Labor dispute

The labor dispute of non-cabinet civil servants may be handled by the Court. For cabinet civil servants the newly (in 2012) established *Arbitration Board* serves as a first instance. Against the decision of the Board, civil servants may appeal to the Court, as well.

Strike

Civil servants generally have the right for strike in order to defend their economic interests. Cabinet civil servants may go on strike only if the competent trade unions and representative of the Cabinet have agreed on the conditions. During the strike the satisfactory level of public services should be guaranteed.[26]

[26] Based on these two preconditions, we presume that the Cabinet may easily block the strike by not reaching an agreement with the Unions. However, we have no experience in that regard so far.

Termination of service

Lifetime tenure is a central tenet of merit systems. The Hungarian CSS does not provide civil servants with this privilege. Civil servants may have been laid off for the same reasons as a company worker may be: termination of activity, termination of the organization or its unit where the civil servant worked, reorganization, downsizing, incapability of service, or as a consequence of disciplinary procedure. Incapability may be proven by one personal evaluation. Demmke-Moilanen (2010: 178; Table 31.) proves that there are more official reasons of termination than in several West-European countries that follow a non-merit CSS policy.

The 'easy layoff' policy has been a permanent characteristic of the CSS since 1992. However, the style of regulation has changed, as until 2006 the text of the regulation attempted to hide this fact behind a façade of numerous but superficial paragraphs, in fact not providing any real guaranty against dismissal. In 1997 the institution of a reserve list was introduced but legally it did not guarantee deployment to another civil service position, and – according to statistical evidence – it did not work in reality at all.[27] Since 2006 and, for different reasons, especially after 2010 the laws are more frank, making it clear that dismissal of civil servants is as easy as it would be in the private sector. Since 2010, two new reasons for dismissal have been introduced: 'behavior that is incompatible with civil service status' and 'loss of the superior's confidence'.[28] The earlier is not really defined, whereas the latter refers to a strange term 'professional loyalty'.[29]

In certain cases the service is terminated by the force of law. Such cases are: non-terminated conflict of interest situation, not submitting declaration of financial interest by those for whom this is obligatory, not passing the basic administrative exam, by the deadline determined by the law. The general pension age is 62, though some may remain in service up to 70.

The civil servant is generally entitled to two month's notice – for one month of which the civil servant is to be exempted from work. If civil servants are dismissed by the government for reasons not in the liability of the civil servants they are entitled to severance pay, which depends on the length of service, carried out specifically at the given office (not the civil service generally) and varies between the value of one to eight month's salary.

Employment may be terminated by mutual agreement. In that case the legal arrangement depends on the agreement of the two parties. Naturally, termination may be initiated by the civil servant, as well. In that case, the two-months' notice applies as well.

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[27] Gajduschek György, Közszolgálat. A magyar közigazgatás személyi állománya és személyzeti rendszere az empirikus adatok tükrében [Civil Service and the Civil Service System in Hungary. A theoretical, legal and empirical analysis] (MKI-KSZK 2008) 288.

[28] The latter may be a reaction to the decision of the Constitutional Court that declared dismissal without giving a reason unconstitutional, as this makes it impossible for the employee to turn to the court. This new arrangement gives a reason and the opportunity to turn to court, but proving that the reason is valid could be quite simple as the manager who fired the person appears in court and reports the fact s/he indeed lost trust in the given civil servant.

[29] According to the Civil Service Act of 2011, 66 § (2): '… The civil servant is obliged to perform his duties with professional loyalty for his/her superior. Professional loyalty means first of all the liabilities for the professional values determined by the superior…' (sic!)

3. Analysis

Interpreting the merit system in Hungary[30]

Scholars and practitioners of public administration in Hungary sharply differentiate between the merit system and the non-merit system that is mostly identified with the spoils system (not with the position system).

At the very beginning of the transition process, the merit system appeared as an ideal, as it was in sharp contrast with the spoils system of the overthrown Communist regime's personnel policy. The merit system had long been considered the best means to prevent politicization by setting up strict and detailed rules for each and every element of civil service.[31] In this narrative shared by most actors, various elements of a merit-based CSS serve to prevent politicization. Selection criteria are precisely determined, and a systematic, objective selection method applied. Remuneration is specified in the law, typically with a pay scale in the center of it. It depends mostly on education level, seniority and the passing of various exams, which are objective criteria as well. The career is predictable, based on objective criteria, most importantly: seniority that may be modified based only on personal appraisal carried out regularly and also regulated in great detail. Dismissal is almost impossible, a difficult legal procedure: several rankings of 'worst' at consecutive personal appraisals, the CS factuality of which could be defended at court, are required. A powerful central unit functions that is responsible for forming CS strategy as well as for operative coordination of CS throughout various PA organizations.

All these rules of a merit system prevent or minimize subjective decisions by setting up decision criteria and determining decision procedures, typically involving more than one person. Blocking subjectivity, in turn, can prevent political intrusion based on non-merit criteria. This is a widely shared view of a merit system in Hungary. The pressure of EU to introduce merit-based civil services in accession countries (mostly of the CEE region) may be motivated by the same belief, as well.[32]

On the nature of the Hungarian CSS

The changes of CSS were recurrent, large-scale, with frequent 180º alterations, as we reviewed in Part 1 and 2 of this paper. Still, throughout these chaotic changes some crucial elements remained surprisingly intact.

Most decisions have been left to the office heads. As there are no relevant legal regulations, guaranties by setting up precise requirements for every civil service position and there are no procedural rules either; practically anyone may be appointed to

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[30] See: Lőrincz Lajos, A közigazgatás alapintézményei [Basic institutions of Public Administration] (HVG-ORAC 2007) 271.

[31] For the same reason, the merit system had been identified with having merit system laws. Barbara Nunberg, 'The State after Communism. Administrative Transitions in Central and Eastern Europe' (World Bank Regional and Sectoral Studies 1999) 256.

[32] Meyer-Sahling (n 3) 231.

any position, including managerial positions. Office heads themselves may be appointed in the same manner. Administrative state secretaries in ministries are appointed by the Prime Minister based on the proposal of the minister. Appointment of heads of the so called 'independent agencies' are initiated by the prime minister and appointed by the president. Other central agencies' heads are appointed either by the Prime Minister or the minister. Heads of local units of central agencies (called deconcentrated organs) are appointed by the heads of central agencies. Heads of municipal offices have been appointed by the representative body or by the mayor (changed back and forth during the past 20 years; both are elected political entities). Office heads are either appointed directly (and may be dismissed any time without giving a reason) by a politician, or are appointed by an administrative head appointed on a political basis. And there are hardly any real legal guaranties against arbitrary decisions of office heads as we can see:

Selection and appointment: It has not been obligatory to publicly advertise vacant civil service positions since 1992. Selection criteria are very widely defined in most cases, if defined at all. There are no relevant procedural rules. This has been the rule in the whole period, except for a feeble attempt at change between 2007 and 2010. In brief, office heads may appoint anyone to almost any position, including managerial ones.

Wage and career: The normal career path, based on seniority according to the pay table, is not really rewarding. At the same time there are several other opportunities for office heads, reviewed above, to promote or provide some with higher wages.

Dismissal: The civil servant may be dismissed for the same reasons as a worker at a private company. The rules regarding dismissal hardly provide more job security than the Labor Code.

In brief, there is no real barrier to political intrusion into HRM decisions, and this feature of the Hungarian CSS is surprisingly stable. If there is any change that is typically the exacerbation of the situation.

Politicization and the failure of merit-system

Most analysts would agree that the merit system failed to prevent politicization in Hungary and generally in post-communist countries.[33] If so, two questions may be raised: (a) Why

[33] Meyer-Sahling (n 3) 231.; Klaus H. Goetz, 'Making sense of post-communist central administration: modernization, Europeanization or Latinization?' (2001) 8 Journal of European Public Policy 1032.; On Hungary: Staronová – Gajduschek, György (n 3) 123.; Gajduschek, György – Linder, Viktória, Report on the Survey on 'Mobility between the Public and Private Sectors with Special Regards to the Impact of the Financial Crisis' (European Public Administration Network. Hungarian Presidency of the Council of the European Union. The 56th Meeting of the Directors-General Responsible for Public Administration 2011) 243. <http://www.eupan.eu/files/repository/20110908154310_Mobilitybetween-public-privatesectors.pdf>

there is such strong pressure towards politicization and (b) why is the merit system unable to prevent that?

We have already answered the second question: basic elements, and exactly *the* basic element of a real merit system are missing. The system is full of loopholes. There are so many of them that they may hardly be considered 'mistakes'; these loopholes are seemingly systematic ones. Why, despite all those efforts, does no functioning merit system exist in Hungary – similarly to other CEE countries?

Naturally, one reason is the political culture. There has never been strong and persistent political will to restrict political intrusion. Elsewhere[34] we argued that this is not just 'culture not obtained yet'. Politicization has a radically different function in the CEE than in the Western countries, where, if it is present, it is a means to reward party supporters, activists, etc. In the CEE region and in Hungary, however, political selection of civil servants serves formation of personal loyalty lines. In these countries, networks of personal loyalty frequently replace institutions. Institutions, such as a neutral, professional civil service loyal always to the ruling party, seemingly do not work. Politicization seems to be the only way the elected head (Lord, to use Weber's term) of the executive branch can control, coordinate and direct the administrative apparatus. That's why even politicians devoted to the merit idea need to give up this endeavor under the pressure of reality.[35]

In fact, frequently politicization is rather personalization or clientelism, even nepotism, as not political but personal loyalty is required. For instance, the administrative state secretaries, professional heads and – theoretically – career civil servants in the Hungarian CSS spent on average 553 days in office, which is roughly identical to the period in office for the ministers (517 days, and less than for political state secretaries; 560 days).[36] This indicates that once a minister is replaced by another one, frequently within the same election cycle, from the same party, the administrative state secretary shares the minister's fate. It seems that the administrative state secretaries' position is regarded rather as a secretary assisting the minister with dealing with office issues and thus is based on personal trust, instead of considering it as a position ensuring professionalism and continuity of administration.

Nevertheless, it is not just the pressure of politicians that explains why the classical merit system has failed in the region. Some causes stem from the specific situation at the change of regime when the merit system was supposed to be created and then stabilized. Most preconditions for such a system were missing. To mention but the most important ones:

- The GDP of 1989 dropped by about 25% by the time the law got into effect, meanwhile the taxation system hardly worked. In this budgetary condition civil service wages could only be quite modest. This fact together with a clearly defined but natu-

[34] Gajduschek György, 'Civil Service in CEE Countries: Where Institutions do not Work?' (2013) 5 NISPAcee Journal of Public Administration and Policy 161.

[35] Of course, this seems to be a chicken-egg problem. Whether politicians need to create networks of personal loyalty (thus personalizing the system) because there are no reliable institutions, or there are no reliable institutions as they are broken down and destructed by – regularly reproduced – personal loyalty networks?

[36] Ványi Éva, 'A magyar kormányzati elit 1990–2010 között' [Hungarian elite in the Executive 1990–2010] /PhD thesis/ (BCE 2013)

rally not yet very elaborated pay-table system just did not allow hiring and retaining high-quality personnel especially in fields where the business sphere generated sharp competition. (E.g. lawyers, professionals speaking foreign languages, IT experts, etc. could easily earn 10+ times more in the business than in the public sector in that period. There were no applicants for several vacant positions.) This tension might be solved with the personal wage, providing the necessary flexibility, but at the same time providing full freedom for office heads in setting up salaries for some undefined civil servants.

- The transition of the political system from an authoritarian to a democratic regime and the economy from semi-planned to a competitive market system require a full and fundamental change of roles, functions, scope and size of government. Whole sectors of administration need to be terminated, some others may be created, and in most fields new types of knowledge and skills are needed. Assuring that no civil servants would be dismissed in this period was not just perfectly irrational but also an insoluble challenge.
- After the collapse of communism, public administration was full of cadres of communist administration. In Hungary, the situation did not occur as sharply as in most neighboring states, still most senior managerial positions had to be replaced. The replacement was based on an admittedly political foundation, that these appointees were loyal to the new political leaders. As a consequence, after the next election, the new ruling parties were reasonably suspicious of those administrative leaders who were selected on the basis of political loyalty. So they replaced them with their confidants.[37]
- Let's add to this that drafters of the law were well-educated scholars of the field, who knew well the theory of merit system and were familiar with the academic literature but had no knowledge or experience regarding the details and intricacies of a CSS functioning in practice. In other words, drafters were presumably just unable to create a system (from scratch) that would work well in reality.

Mismatch in civil service reforms

Having look at the history of CSS reforms in Hungary one may detect a strange mismatch between declared goals and reality on the one hand, and international trends and Hungarian reform attempts on the other.[38]

As we indicated in Part 1, the official aim of the adoption of the Civil Service Act in 1992 was to establish a merit-based system, and this remained the declared goal until 2006–2007. However, as we reviewed in Part 2, this attempt clearly failed in reality and legal regulation provided systematic loopholes that allowed spoils-system practices in everyday HRM. The 2006–2007 reforms acknowledged the arguments of New Public Management

[37] Still this does not explain why the scope of replacements has not diminished, but rather increased with each election.

[38] Lőrincz Lajos, 'Közigazgatási reformok: mítoszok és realitás' [Administrative Reforms: Myth and Reality] (2007) 2 Közigazgatási Szemle 3.

(NPM) and openly criticized the merit system, promising major reforms in it. However, this was the only attempt to form a central civil service unit, to establish a normative system assuring selection based on merit, to start a functioning reserve list, a typical merit CSS institution preventing the lay-off of civil servants. Nevertheless, some of these attempts remained draft laws; others resulted in enacted laws that were not or not fully implemented.[39] The Cabinet that gained power in 2010 declared the importance of a professional civil service but terminated, suspended and changed all regulations that prevented large scale replacement of civil servants based on purely political considerations.

There is also a mismatch between local and international (that is: 'Western') tendencies. A merit-based ideal motivated the drafting of Civil Service Act in 1992. By this time New Public Management (NPM) approaches prevailed, harshly attacking the merit-based CSS for its rigidity, which prevents motivation and sanctioning of underachievers. Some fifteen years later, when the heyday of NPM was seemingly over, the professional literature reviewed several problems caused by NPM generally, and specifically in the field of CSS[40], and the end of NPM was widely declared, even in practice after 2008. Nevertheless, Hungarian CSS reform declared its intent to move into NPM direction.[41]

Hungarian civil service system on the map

How can we classify the CSS of Hungary, by using the international categorizations, in a way that differentiates between merit and other types of CSSs, the latter typically being identified with the position system? The Hungarian CSS is seemingly neither a merit system nor a position system. Although on the surface it may look like a merit system, we have argued that major elements of a merit system have always been missing. Most comparative studies from the past decade agree that the Hungarian system is closer to the position system.[42]

The position system – from a legal point of view – may be described as one that does not differentiate between public and private employment, as both are regulated by the labor law. Merit systems, on the contrary, are characterized in this view with detailed regulation by public laws. Thus, in a position system, managers have more discretionary powers in HRM decisions, including promotion, wage and dismissal, that may make civil servants more vulnerable to malpractice and arbitrary HRM decisions. However, we found that dismissal of a civil servant may take 1–3 years in Scandinavian position systems, whereas

[39] For example, a very detailed many-steps selection system was introduced into the civil service regulation, which was quite alien in the given administrative environment and it had never been fully applied in reality.

[40] For instance, the flagship institution of NPM in CSS, performance pay, especially in the form introduced in Hungary, by that time was almost unanimously criticized and rejected.

[41] Linder (n 9) 64.

[42] E.g.: Cristoph Demmke, Timo Moilanen, 'Civil Services in the EU of 27. Reform Outcomes and the Future of the Civil Service' (Peter Lang 2010); OECD (n 16).

in Hungary a civil servant may be laid off within two months.[43] And similar arrangements may be found in most CEE countries. Similarly, we may expect arbitrary decisions in terms of remuneration, promotion, etc. in a position system, but we find the opposite, especially in comparison to the CEE countries. In the latter, we find detailed rules and at the same time several systemic loopholes allowing arbitrary decisions by the politically appointed office head, with no other functioning norms or an incentive system to prevent arbitrariness. In most countries following position system, collective agreements provide much stronger guarantees (simply as they work in reality) than the laws in CEE countries. These laws may be circumvented or easily changed by the new majority after elections, etc.

In sum, Hungary belongs to a specific category of 'CEE countries' that may be characterized by detailed civil service laws that do not prevent politicization. This fact and frequent changes in the regulation and practices create large and increasing uncertainty among civil servants (as opposed to the security of merit-based civil service, and even of well-functioning position systems). In other words, under the merit-system-looking legal façade, there is a strong and worsening spoils system. Empirical results seem to support this conclusion.[44]

Further readings:

In comparative perspective:

Danielle BOSSAERT – Christoph DEMMKE *Civil Services in the Accession States* (EIPA 2003)

Cristoph DEMMKE – Timo MOILANEN, *Civil Services in the EU of 27. Reform Outcomes and the Future of the Civil Service* **(**Peter Lang 2010)

Antoaneta L. DIMITROVA, 'Europeanization and civil service reform in Central and Eastern Europe' in Frank Schimmelfennig – Ulrich Sedelmeier, *The Europeanisation of Central and Eastern Europe* (Cornell University 2005) 71.

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Jan-Hinrik MEYER-SAHLING, 'Civil service reform in post-communist Europe: the bumpy road to depoliticisation' (2004) 27 West European Politics 71.

[43] Linder Viktória, 'Státusz és pályabiztonság a közszolgálatban' [Status and Job Security in the Civil Service] in Fazekas, Marianna, Új generáció a közigazgatástudományok művelésében [A new Generation of Public Administration Scholars] (ELTE ÁJK 2013) 197. <http://www.ajk.elte.hu/file/Uj_generacio_konf_kotet_2013.pdf> Gajduschek – Linder (n 33).

[44] Gajduschek – Linder (n 33), This view may be in accordance with the leading expert of the field as elaborated in: Meyer-Sahling (n 3) 231.

Jan-Hinrik Meyer-Sahling, 'The Durability of EU Civil Service Policy in Central and Eastern Europe after Accession.' (2011) 24 Governance 231.

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Specifically on Hungary:

Gajduschek György 'Politicization, Professionalization or Both? Hungary's Civil Service System' (2008) 40 Communist and Post-Communist Studies 343.

Gajduschek György, 'Socialist and Post-Socialist Civil Service in Hungary' in Jakab András – Takács Péter – Allen F. Tatham, *The Transformation of the Hungarian Legal Order 1985–2005* (Kluwer Law International 2007) 123.

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György István, 'The civil service system of Hungary' in Tony Verheijen – Alexander Kochegura, *Civil Service Systems in Central and Eastern Europe* (Edward Elgar 1999) 131.

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Annex 1. Pay / Promotion table[45]

Category I for civil servants with third level education			
Grades	**Number of pay steps within the grades**	**Years of service**	**Coefficients belonging to pay grades**
Trainee/junior clerk	1	0–1	3,1
Draftsman (fogalmazó)	2	1–3	3,2; 3,3
Advisor (tanácsos)	3	3–8	3,5; 3,7; 3,9
Senior-Advisor (főtanácsos)	4	8–16	4,2; 4,4; 4,6; 4,8
Chief Advisor (vezető tanácsos)	3	16–25	5,1; 5,3
Senior Chief Advisor	4	25–37	5,6; 6,0

Category II for civil servants with secondary level education			
Grades	**Number of pay steps within the grades**	**Years of service**	**Coefficients belonging to pay grades**
Trainee	1	0–2 years	1,79
Officer	5	2–12 years	1,9; 2,0; 2,2; 2,25; 2,3
Head officer	7	12–31 years	2,5; 2,6; 2,65; 2,7; 2,8; 2,85; 2,9
Senior officer	4	31–37 years	3,3; 4,0; 4,2; 4,4

[45] A simplified version of the official pay table prepared by the authors.

Indexes

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English – Hungarian Vocabulary

act – eljár *v.*
Act CLXXXIX of 2011 on the Local Self-Governments of Hungary – Magyarország helyi önkormányzatairól szóló 2011. évi CLXXXIX. törvény
act (of Parliament) – törvény *n*. (e.g. Act CXCIV of 2011 on the economic stability of Hungary)
administration – 1. igazgatás *n.* 2. kormányzás *n.*
administrative action – hatósági eljárás *n*.
administrative agreement – hatósági szerződés *n*.
administrative jurisdiction/authority – közigazgatási hatáskör *n*.
administrative State Secretary – közigazgatási államtitkár *n*.
administrative time limit/term/period/deadline – ügyintézési határidő *n*.
alteration of the decision within its own sphere (scope) of authority – döntés saját hatáskörben történő módosítása, visszavonása *n*.
amendment to the constitution – alkotmánymódosítás *n*.
appeal – fellebbezés *n*.
appointment – kinevezés *n*.
article, paragraph, point [e.g. Article 9 paragraph (3) point g)], [abbreviation: Art. 9 (3) g) of …] – szakasz (cikk), bekezdés, pont: [e.g. 9. § (3) bek. g)] *n*.
artificial person – jogi személy *n*.
ascertaining the relevant (legal) facts of the case – tényállás tisztázása *n*.
assembly (municipal~) – közgyűlés *n*.
associated representative body – társult képviselő-testület *n*.
audit performed on the spot/on-spot audit – helyszíni ellenőrzés *n*.
audit – pénzügyi, számviteli ellenőrzés *n*.
authority – hatóság *n*.
autonomous regulatory body – önálló szabályozó szerv *n*.
autonomous state administration body (organ) – autonóm államigazgatási szerv *n*.
base salary – alapilletmény *n.*
basic health care – egészségügyi alapellátás *n*.
binding force of the decision of the authority – hatósági döntés jogereje *n*.
bond issues – kötvénykibocsátás *n*.
borrowing – hitelfelvétel *n*.
branch office – kirendeltség *n*.
Budget Council – Költségvetési Tanács *n*.
budgetary organisation/authority/agency – költségvetési szerv *n*.
business property – üzleti vagyon *n*.
cabinet civil servant – kormánytisztviselő *n*.
capital self-government – fővárosi önkormányzat *n*.
card – igazolvány *n*.
cardinal act (of Parliament) – sarkalatos törvény *n*.
cardinal statute – sarkalatos törvény *n*.
care of homeless people – hajléktalan-ellátás *n*.
career/career path – életpálya *n*.
censure motion – bizalmatlansági indítvány *n.*
central office – központi hivatal *n*.
central budgetary authority/body/organ – központi költségvetési szerv *n*.

Chairman of the Assembly – közgyűlés elnöke *n*.
change of regime – rendszerváltás *n*.
chair – vezet *v.*
check, checking – közigazgatási ellenőrzés *n*.
random check – szúrópróbaszerű ellenőrzés *n*.
on-the-spot-check/on-spot check – helyszíni ellenőrzés *n*.
specific/special check – célzott ellenőrzés *n*.
child care/child welfare services – gyermekjóléti szolgáltatások *n*.
citizen – választópolgár *n*.
civil organisations/entities – civil szervezetek *n., pl.*
civil servant – közszolgálati tisztviselő *n*.
civil service – közszolgálat *n*.
clerical staff – ügykezelő *n*.
clerk – jegyző *n*.
committee – bizottság *n*.
committee of the representative body – képviselő-testület bizottsága *n*.
chairman of the committee/president of the committee – bizottsági elnök *n*.
common office – közös hivatal *n*.
competence – illetékesség *n*.
compulsory tasks of the local government – kötelező önkormányzati feladatok *n*.
confidence vote – bizalmi szavazás *n*.
conflict(s) of interes – tösszeférhetetlenség *n*.
Constitutional Court – Alkotmánybíróság
constitutional statute – alkotmányerejű törvény *n*.
constitutionalisation – alkotmányozás *n.*
constitution-making – alkotmányozás *n.*
continuous surveillance – folyamatos felügyelet *n*.
contravention – szabálysértés *n*.
control – ellenőrzés *n.*
legal control – törvényességi ellenőrzés *n.*
political control – politikai ellenőrzés *n*.
public internal financial control – államháztartási belső ellenőrzés *n*.
general control – általános ellenőrzés *n*.
overall control – általános ellenőrzés *n*.
internal control – belső ellenőrzés *n*.
controll – felügyel/ellenőriz *v.*
council – képviselő-testület *n.*
council of the part of the settlement – településrészi önkormányzat *n*.
county – megye *n*.
county town – megyei jogú város *n*.
county Government Office – megyei kormányhivatal *n*.
county self-government – megyei önkormányzat *n*.
office of the county self-government – megyei önkormányzati hivatal *n*.
court (ordinary ~) – bíróság (rendes ~) *n*.
court review – bírósági felülvizsgálat *n*.
cultural service – kulturális szolgáltatás *n*.
debt settlement – adósságrendezés *n*.
decisions of the authority – hatóság döntései *n*.
declaration of assets – vagyonnyilatkozat *n*.
declaration of town – várossá nyilvánítás *n*.
decree – rendelet *n*.
statutory decree – törvényerejű rendelet *n*.
government decree – Kormányrendelet *n*.
decree of the Prime Minister – Miniszterelnök rendelete *n*.
ministerial decree – miniszteri rendelet *n.*
decree of the Governor of the National Bank of Hungary (e.g. Decree No. 3/2010 (I. 28.) of the Governor of the National Bank of Hungary) – Nemzeti Bank elnökének rendelete *n*.

decree of the head of an autonomous regulatory body – önálló szabályozó szerv vezetőjének rendelete *n.*
decree of the National Defence Council – Honvédelmi Tanács rendelete *n.*
decree of the President of the Republic – Köztársasági Elnök rendelete *n.*
local regulation – önkormányzati rendelet *n.*
delegated administrative task – átruházott államigazgatási feladat *n.*
delegated minister – kijelölt miniszter *n.*
delivery of decisions – döntés(ek) közlése *n.*
department – főosztály *n.*
deputy mayor – alpolgármester *n.*
Deputy Minister of State – helyettes államtitkár *n.*
Deputy Prime Minister – Miniszterelnök-helyettes *n.*
Deputy State Secretary – helyettes államtitkár *n.*
differentiated installation of tasks – differenciált feladattelepítés *n.*
direct – irányít *v.*
direction – irányítás *n.*
strategic direction – stratégiai irányítás *n.*
general direction – általános irányítás *n.*
central direction – központi irányítás *n.*
financial direction – pénzügyi irányítás *n.*
disclose – közzétesz *v.*
disclosure – közzététel *n.*
district – járás *n.*
district clerk('s office) – körjegyző (hivatala) *n.*
district heating – távhőszolgáltatás *n.*
district of the capital – fővárosi kerület *n.*
disricts' headquarter town – járásszékhely város *n.*
electronic administration (e-administration) – elektronikus ügyintézés *n.*
enforcement – végrehajtás *n.*
environmental (public) health – környezet-egészségügy *n.*
establish/declare conflict of interest – összeférhetetlenséget megállapít *v.*
ex ante (law) review – előzetes normakontroll *n.*
exclusion – kizárás *n.*
exclusive business activity – kizárólagos vállalkozási tevékenység *n.*
facultative tasks of the local government – önként vállalt (fakultatív) önkormányzati feladatok *n.*
failure of the decision-making and task performance obligation – önkormányzati határozathozatali, illetve feladat-ellátási kötelezettség elmulasztása *n.*
failure to legislate – jogalkotási kötelezettség elmulasztása *n.*
fee – díj *n.*
fine – bírság *n.*
first instance procedure – első fokú eljárás *n.*
form of government – kormányforma *n.*
form of state – államforma *n.*
Fundamental Law (*Fundamental Law of Hungary*) – Alaptörvény (*Magyarország Alaptörvénye*) *n.*
General Rules of Administrative Proceedings and Services – a közigazgatási hatósági eljárás és szolgáltatás általános szabályai *n.*
government – kormányzat *n.*
Government – Kormány *n.*
Government Office (*County Government Office*) – Kormányhivatal (*Megyei Kormányhivatal*) *n.*
Government Office (*Capital/Metropolitan Government Office*) – Kormányhivatal (*Fővárosi Kormányhivatal*) *n.*

Government Representative – kormánymegbízott *n*.
government(al) agency – kormányhivatal (e.g. NAV) *n*.
government(al) client service desk – kormányablak *n*.
hand in an appeal – fellebbezést benyújt *v*.
head – vezet *v*.
head office – törzshivatal *n*.
Head of State – államfő *n*.
historical constitution – történeti alkotmány *n*.
housing – lakásgazdálkodás *n*.
Hungarian State Treasury – Magyar Államkincstár *n*.
inaugural session – alakuló ülés *n*.
incompatibility – összeférhetetlenség *n*.
indignity – méltatlanság *n*.
inter-municipal association – önkormányzati társulás *n*.
inter-municipal association with legal personality – jogi személyiségű önkormányzati társulás *n*.
internal control – belső kontrollrendszer *n*.
internal governance – belső irányítás *n*.
judge – bíró *n*.
judicial review – bírósági felülvizsgálat *n*.
juridical person/juristic person (*pl*. persons) – jogi személy *n*.
law – 1. jog 2. jogszabály *n*.
law enforcement agency – rendvédelmi szerv *n*.
lead – vezet *v*.
legal capacity – jogképesség *n*.
legal certainty – jogbiztonság *n*.
legal instruments of state administration – közjogi szervezetszabályozó eszköz *n*.
legal notice – törvényességi felhívás *n*.
legal person – jogi személy *n*.
legal remedy – jogorvoslat *n*.
exhaust (means of) legal remedy – jogorvoslati lehetőségeket kimerít *v*.
legal source – jogforrás *n*.
legal supervision – törvényességi felügyelet *n*.
legal supervision fine – törvényességi felügyeleti bírság *n*.
levy a fine – bírságot kiszab *v*.
litigation – peres eljárás *n*.
Little Constitution (1946) – kisalkotmány (1946) *n*.
local tax – helyi adó *n*.
local environment and nature protection – helyi környezet- és természetvédelem *n*.
local public safety – helyi közbiztonság *n*.
local public transport – helyi közösségi közlekedés *n*.
local public affairs – helyi közügy *n*.
local referendum (*pl*. referenda) – helyi népszavazás *n*.
local self-government (also local government) – helyi önkormányzat *n*.
lodge an appeal – fellebbezést benyújt *v*.
Lord Mayor – főpolgármester *n*.
maintain – fenntart *v*.
maintenance – fenntartás *n*.
make a declaration on property – vagyonnyilatkozatot tesz *v*.
manage – vezet *v*.
management – vezet *v*.vezetés *n*.
mandatory tasks of the local government – kötelező önkormányzati feladatok *n*.
martial law – rendkívüli állapot *n*.
mayor – polgármester *n*.
mayor's office – polgármesteri hivatal *n*.
measures of the authority – hatósági intézkedés *n*.
member of the Constitutional Court – alkotmánybíró *n*.
merger of the municipalities – községegyesítés *n*.
metropolitan self-government – fővárosi önkormányzat *n*.
Minister of State – államtitkár *n*.

Minister of State for administration – közigazgatási államtitkár *n*.
ministry – minisztérium *n*.
minutes – jegyzőkönyv *n.*
misdemeanour – szabálysértés *n*.
modification of the decision within its own sphere (scope) of authority – döntés saját hatáskörben történő módosítása, visszavonása *n*.
motion of no confidence – bizalmatlansági indítvány *n.*
municipal property (property of the self-government) – önkormányzati vagyon *n*.
municipal representative (also member of the representative body) – önkormányzati képviselő *n*.
municipality – helyi önkormányzat *n*.
naming public land – közterület elnevezése *n*.
national municipal alliance – országos önkormányzati érdekszövetség *n*.
National Roundtable – Nemzeti Kerekasztal *n*.
non-cabinet civil servant – köztisztviselő *n*.
non-governmental organizations (NGOs) – civil szervezetek *n*., *pl*.
non-marketable property – forgalomképtelen vagyon *n*.
normative decision – normatív határozat *n*.
normative order – normatív utasítás *n*.
obligatory tasks of the local government – kötelező önkormányzati feladatok *n*.
Office of Government Issued Documents – okmányiroda *n*.
official – tisztviselő *n*.
official certificate – hatósági bizonyítvány *n*.
Official Journal – Magyar Közlöny *n*.
official register – hatósági nyilvántartás *n*.
operate – üzemeltet *v.*
order – utasítás *n*.
order a local referendum – népszavazást kiír *v.*
other legal instruments of governance – állami irányítás egyéb jogi eszközei *n*.
oversee – felügyel *v.*
own income – saját bevétel *n*.
own revenue – saját bevétel *n*.
papers *pl*. – *igazolvány n.*
participation of special authorities – szakhatóság közreműködése *n*.
pass – igazolvány *n*.
People's Republic – népköztársaság *n*.
performance appraisal – teljesítmény-értékelés *n*.
personal appraisal – minősítés *n*.
petition – kérelem *n.*
political guidance – politikai irányítás (iránymutatás) *n.*
preliminary review – előzetes normakontroll *n*.
posterior (law) review – utólagos normakontroll *n*.
preschool – óvoda(i ellátás) *n*.
present an appeal – fellebbezést benyújt *v.*
President of the Assembly – közgyűlés elnöke *n*.
President of the Republic – Köztársasági Elnök *n*.
preventive review – előzetes normakontroll *n*.
primary health care – egészségügyi alapellátás *n*.
Prime Minister – Miniszterelnök *n*.
principles and basic provisions – alapelvek és alapvető rendelkezések *n*.
procedural costs/expenses – eljárási költség *n*.
procedure – eljárás n.
procedure of first instance – első fokú eljárás *n*.
proceed – eljár *v.*
proceeding – eljárás n.
commence/initiate/launch/start proceeding – eljárást indít *v.*

suspend proceeding – eljárást felfüggeszt *n*.
costs of proceeding – eljárási költség *n*.
***ex officio* proceeding** – hivatalbóli eljárás *n*.
proceedings opened/based on a decision of the Constitutional Court – Alkotmánybíróság határozata alapján indítható eljárás *n*.
Procurator General (before '89) – Legfőbb Ügyész *n*.
prosecutor's intervention – ügyészi felhívás *n*.
protection of public order – rendvédelem *n*.
protocol – jegyzőkönyv *n.*
provide public service – közszolgáltatást nyújt *v.*
provision of public service – közszolgáltatás nyújtása *n*.
public administration – közigazgatás *n*.
public authority – közhatalom *n*.
public employee – közszolgálatban dolgozó *n*.
public prosecutor – ügyész *n*.
public servant – közalkalmazott *n*.
public service – közszolgáltatás *n*.
publication of decisions – döntés(ek) nyilvános közzététele *n.*
pursue activity – tevékenységet végez *v.*
qualified majority – minősített többség *n*.
record in the minutes – (rendőrségi) jegyzőkönyvbe vesz *v.*
regional development – területfejlesztés *n*.
regulation – önkormányzati rendelet *n*.
regulation on/of organizational and operational procedures – szervezeti és működési szabályzat *n*.
regulatory inspection – hatósági ellenőrzés *n*.
remuneration – 1. díjazás *n*. 2. illetmény *n*.
report – 1. beszámoló *n*. 2. jegyzőkönyv *n.*
representation – képviselet *n*.
representative body (also council) – képviselő-testület *n*.
resolution – határozat *n*.
restricted marketable assets (only plural)/restricted marketable property – korlátozottan forgalomképes vagyon *n.*
retrial procedure – újrafelvételi eljárás *n*.
review procedure – döntés-felülvizsgálat *n*.
revoking of the decision within its own sphere (scope) of authority – döntés saját hatáskörben történő módosítása, visszavonása *n*.
Roundtable of the Opposition – Ellenzéki Kerekasztal *n*.
ruling – végzés *n*.
salary scale – illetmény táblázat *n*.
scope of authority – hatáskör *n.*
self-care – öngondoskodás *n*.
separation of powers – hatalommegosztás (hatalmi ágak elválasztása) *n*.
session – ülésszak *n*.
settlement administrator – ügysegéd *n*.
settlement development – településfejlesztés *n*.
settlement-level municipality – települési önkormányzat *n*.
settlement planning – településrendezés *n*.
settlement operations – településüzemeltetés *n*.
small region – kistérség *n*.
social care/services – szociális ellátás/szolgáltatások *n*.
source of law – jogforrás *n*.
Speaker (of the Parliament) – Házelnök *n.*
special administrative agency – szakigazgatási szerv *n*.
state administration – államigazgatás *n*.
state administrative jurisdiction – államigazgatási hatáskör *n*.

state administrative duty/task – államigazgatási feladat *n*.
state administrative affair/case/issue/matter – államigazgatási ügy *n*.
state administrative organs/bodies/agencies/authorities – államigazgatási szervek *n*.
liability for damages caused by a state administrative office/body/organ – államigazgatási jogkörben okozott kárért való felelősség *n*.
State Audit Office – Állami Számvevőszék *n*.
State Budget (*State Budget Act*) – költségvetés (*~i törvény*) *n*.
state of danger – veszélyhelyzet *n*.
state of emergency – szükségállapot *n*.
state of national crisis – rendkívüli állapot *n*.
state of preventive defence – megelőző védelmi helyzet *n*.
state secretariat – államtitkárság *n*.
State Secretary – államtitkár *n*.
state subsidy – állami támogatás *n*.
statement/declaration of the failure of legislative obligation – jogalkotási kötelezettség elmulasztásának megállapítása *n*.
statute – törvény *n*.
submit an appeal – fellebbezést benyújt *v*.
substitute measure – helyettesítő aktus *n*.
supervise – felügyel *v*.
supervision – felügyelet *n*.
supervisory procedure – felügyeleti eljárás *n*.
official supervision – hatósági felügyelet *n*.
administrative supervision – közigazgatási felügyelet *n*.
legal supervision/legality supervision – törvényességi felügyelet *n*.
supervision and control – felügyelet és ellenőrzés *n*.
Supreme Prosecutor/Prosecutor General (after '89) – Legfőbb Ügyész *n*.
surveillance – államigazgatási szervek felügyelete *n*.
task financing/task funding – feladatfinanszírozás *n*.
taxation procedure – adóügyi eljárás *n*.
tenured civil servant – kinevezett közszolgálati tisztviselő *n*.
term – ciklus (parlamenti ~) *n*.
town – város *n*.
town clerk – főjegyző *n*.
transition – rendszerváltás, átmenet *n*.
unfit property – forgalomképtelen vagyon *n*.
uniformed services – hivatásos állományú kategóriák *n*.
unit – osztály *n*.
uniformity decision (~ resolution) of the Curia – Kúria jogegységi harátozata *n*.
vice-clerk – aljegyző *n*.
vice-mayor – alpolgármester *n*.
village – község *n*.
voluntarily assumed tasks of the local government – önként átvállalt (alternatív) önkormányzati feladatok *n*.
waste management – hulladékgazdálkodás *n*.
wastewater management – szennyvíz-kezelés *n*.
water management – vízgazdálkodás *n*.
water utility services – víziközmű szolgáltatás *n*.

Hungarian – English Vocabulary

a közigazgatási hatósági eljárás és szolgáltatás általános szabályai *n.* – General Rules of Administrative Proceedings and Services
adósságrendezés *n.* – debt settlement
alakuló ülés *n.* – inaugural session
alapelvek és alapvető rendelkezések *n.* – principles and basic provisions
alapilletmény *n.* – base salary
Alaptörvény (*Magyarország Alaptörvénye*) *n.* – Fundamental Law (*Fundamental Law of Hungary*)
aljegyző *n.* – vice-clerk
alkotmánybíró *n.* – member of the Constitutional Court
Alkotmánybíróság – Constitutional Court
Alkotmánybíróság határozata alapján indítható eljárás *n.* – proceedings opened/based on a decision of the Constitutional Court
alkotmányozás *n.* – constitutionalisation, constitution-making (*both correct*)
alkotmánymódosítás *n.* – amendment to the constitution
alpolgármester *n.* – vice-mayor, deputy mayor
autonóm államigazgatási szerv *n.* – autonomous state administration body (organ)
államforma *n.* – form of state
államfő *n.* – Head of State
állami irányítás egyéb jogi eszközei *n.* – other legal instruments of governance
Állami Számvevőszék *n.* – State Audit Office
állami támogatás *n.* – state subsidy
államigazgatás *n.* **–** state administration
államigazgatási hatáskör *n.* – state administrative jurisdiction, (scope of) authority
államigazgatási feladat *n.* – state administrative duty/task
államigazgatási ügy *n.* – state administrative affair/case/issue/matter
államigazgatási szervek *n.* – state administrative organs/bodies/agencies/authorities
államigazgatási jogkörben okozott kárért való felelősség *n.* – liability for damages caused by a state administrative office/body/organ
államtitkár *n.* – Minister of State, illetve State Secretary
államtitkárság *n.* – state secretariat
átruházott államigazgatási feladat *n.* – delegated administrative task
belső kontrollrendszer *n.* – internal control
beszámoló *n.* – report
bizalmi szavazás *n.* – confidence vote
bizalmatlansági indítvány *n.* – censure motion, motion of no confidence
bizottság *n.* – committee
képviselő-testület bizottsága *n.* – committee of the representative body
bizottsági elnök *n.* – chairman of the committee/president of the committee
bíró *n.* – judge
bíróság (rendes ~) *n.* – court (ordinary ~)
bírósági felülvizsgálat *n.* – judicial review, court review
bírság *n.* – fine
bírságot kiszab *v.* – levy a fine
ciklus (parlamenti ~) *n.* – term

civil szervezetek *n.*, *pl.* – civil organisations/entities/ esetleg non-governmental organizations (NGOs)
differenciált feladattelepítés *n.* – differentiated installation of tasks
díj *n.* – fee
díjazás *n.* – remuneration
döntés közlése és nyilvános közzététele *n.* – delivery and publication of decisions
döntés saját hatáskörben történő módosítása, visszavonása *n.* – modification/revoking/alteration of the decision within its own sphere (scope) of authority
döntés-felülvizsgálat *n.* – review procedure
egészségügyi alapellátás *n.* – primary health care/basic health care
elektronikus ügyintézés *n.* – electronic administration (e-administration)
eljár *v.* – act/proceed
eljárás n. – proceeding, procedure
adóügyi eljárás *n.* – taxation procedure
eljárási költség *n.* – costs of proceeding/ procedural costs/expenses
eljárást megindít *v.* – launch/start/ commence/initiate proceeding
eljárást felfüggeszt *n.* – suspend proceeding
első fokú eljárás *n.* – procedure of first instance, first instance procedure
hivatalbóli eljárás *n.* – *ex officio* proceeding
peres eljárás *n.* – litigation
ellenőrzés *n.* – control
hatósági ellenőrzés *n.* – regulatory inspection
törvényességi ellenőrzés *n.* – legal control
közigazgatási ellenőrzés *n.* – check, checking
pénzügyi, számviteli ellenőrzés *n.* – audit
helyszíni ellenőrzés *n.* – audit performed on the spot, on-the-spot-check, on-spot audit/check
célzott ellenőrzés *n.* – specific/special check
politikai ellenőrzés *n.* – political control
államháztartási belső ellenőrzés *n.* – public internal financial control
szúrópróbaszerű ellenőrzés *n.* – random check
általános ellenőrzés *n.* – overall control, general control
belső ellenőrzés *n.* – internal control
Ellenzéki Kerekasztal *n.* – Roundtable of the Opposition
előzetes normakontroll *n.* – preliminary review, ex ante (law) review, preventive review
életpálya *n.* – career/career path
feladatfinanszírozás *n.* – task financing/ task funding
fellebbezés *n.* – appeal (procedure)
fellebbezést benyújt *v.* – hand in/submit/ lodge/present an appeal
felügyel *v.* – supervise, controll, oversee
felügyelet *n.* – supervision
államigazgatási szervek felügyelete *n.* – control (surveillance)
felügyeleti eljárás *n.* – supervisory procedure
folyamatos felügyelet *n.* – continuous surveillance
hatósági felügyelet *n.* – official supervision
közigazgatási felügyelet *n.* – administrative supervision
törvényességi felügyelet *n.* – legal supervision, legality supervision
felügyelet és ellenőrzés *n.* – supervision and control
fenntart *v.* – maintain
fenntartás *n.* – maintenance
forgalomképtelen vagyon *n.* – unfit property/non-marketable property
főjegyző *n.* – town clerk

főosztály *n*. – department
főpolgármester *n*. – Lord Mayor
fővárosi kerület *n*. – district (of the capital)
fővárosi önkormányzat *n*. – capital (metropolitan) self-government (also council of the capital)
gyermekjóléti szolgáltatások *n*. – child care/child welfare services
hajléktalan-ellátás *n*. – care of homeless people
hatalommegosztás (hatalmi ágak elválasztása) *n*. – separation of powers
határozat *n*. – resolution
hatóság *n*. – authority
hatósági bizonyítvány *n*. – official certificate
hatóság döntései *n*. – decisions of the authority
hatósági döntés jogereje *n*. – binding force of the decision of the authority
hatósági eljárás *n*. – administrative action
hatósági ellenőrzés *n*. – regulatory inspection
hatósági intézkedés *n*. – measures of the authority
hatósági nyilvántartás *n*. – official register
hatósági szerződés *n*. – administrative agreement
Házelnök *n*. – Speaker (of the Parliament)
helyettes államtitkár *n*. – deputy Minister of State, deputy State Secretary
helyettesítő aktus *n*. – substitute measure
helyi adó *n*. – local tax
helyi környezet- és természetvédelem *n*. – local environment and nature protection
helyi közbiztonság *n*. – local public safety
helyi közösségi közlekedés *n*. – local public transport
helyi közügy *n*. – local public affairs
helyi népszavazás *n*. – local referendum (*pl*. referenda)
helyi önkormányzat *n*. – local self-government (also local government, municipality)
hitelfelvétel *n*. – borrowing
hivatásos állományú kategóriák *n*. – uniformed services
hulladékgazdálkodás *n*. – waste management
igazolvány *n*. – card, pass, papers *pl.*
illetékesség *n*. – competence
illetmény *n*. – remuneration
illetmény táblázat *n*. – salary scale
irányít *v.* – direct
irányítás *n*. – direction
stratégiai irányítás *n*. – strategic direction
politikai irányítás (iránymutatás) *n*. – political guidance
általános irányítás *n*. – general direction
központi irányítás *n*. – central direction
pénzügyi irányítás *n*. – financial direction
belső irányítás *n*. – internal governance
járás *n*. – district
járásszékhely város *n*. – disricts' headquarter town
jegyző *n*. – clerk
jegyzőkönyv *n*. – report, minutes, protocol
rendőrségi jegyzőkönyvbe vesz *v*. – record in the minutes
jogalkotási kötelezettség elmulasztásának megállapítása *n*. – statement/declaration of the failure of legislative obligation, (…) failure to legislate
jogbiztonság *n*. – legal certainty
jogforrás *n*. – source of law, legal source
jogi személy *n*. – legal person, artificial person, juristic person, juridical person (*pl*. persons)
jogi személyiségű önkormányzati társulás *n*. – inter-municipal association with legal personality

jogképesség *n*. – legal capacity
jogorvoslat *n*. – legal remedy
jogorvoslati lehetőségeket kimerít *v*. – exhaust (means of) legal remedy
jogszabály *n*. – law, legal regulation (both correct)
képviselet *n*. – representation
képviselő-testület *n*. – representative body (also council)
kérelem *n*. – petition
kijelölt miniszter *n*. – delegated minister
kinevezett közszolgálati tisztviselő *n*. – tenured civil servant
kinevezés *n*. – appointment
kirendeltség *n*. – branch office
kisalkotmány (1946) *n*. – Little Constitution (1946)
kistérség *n*. – small region
kizárás *n*. – exclusion
kizárólagos vállalkozási tevékenység *n*. – exclusive business activity
korlátozottan forgalomképes vagyon *n*. – restricted marketable assets (only plural) (also restricted marketable property)
Kormány *n*. – Government
kormányablak *n*. – government(al) client service desk
kormányforma *n*. – form of government
kormányhivatal (e.g. NAV) *n*. – government(al) agency
Kormányhivatal (*Megyei Kormányhivatal*) *n*. – Government Office (*County Government Office*)
Kormányhivatal (*Fővárosi*) *n*. – Government Office [*Capital/Metropolitan Government Office*]
kormánymegbízott *n*. – Government Representative
kormánytisztviselő *n*. – cabinet civil servant
kormányzat *n*. – government
költségvetés (*~i törvény*) *n*. – State Budget (*State Budget Act*)
költségvetési szerv *n*. – budgetary organisation, budgetary authority, budgetary agency
Költségvetési Tanács *n*. – Budget Council
körjegyző (hivatala) *n*. – district clerk('s office)
környezet-egészségügy *n*. – environmental (public) health
kötelező önkormányzati feladatok *n*. – mandatory (compulsory, obligatory) tasks of the local government
kötvénykibocsátás *n*. – bond issues
közalkalmazott *n*. – public servant
közgyűlés *n*. – (municipal) assembly
közgyűlés elnöke *n*. – Chairman of the Assembly (also President of the Assembly)
közhatalom *n*. – public authority
közigazgatás *n*. – public administration
közigazgatási államtitkár *n*. – Minister of State for administration, administrative state secretary
közigazgatási hatáskör *n*. – administrative jurisdiction/authority
közjogi szervezetszabályozó eszköz *n*. – legal instruments of state administration
közös hivatal *n*. – Common Office
központi hivatal *n*. – central office
központi költségvetési szerv *n*. – central budgetary authority/body/organ
község *n*. – village
községegyesítés *n*. – merger of the municipalities
közszolgálat *n*. – civil service
közszolgálatban dolgozó *n*. – public employee
közszolgálati tisztviselő *n*. – civil servant
közszolgáltatás *n*. – public service
közszolgáltatást nyújt *v*. – provide public service
közszolgáltatás nyújtása *n*. – provision of public service
Köztársasági Elnök *n*. – President of the Republic

közterület elnevezése *n.* – naming public land
köztisztviselő *n.* – non-cabinet civil servant
közzététel *n.* – disclosure
közzétesz *v.* – disclose
kulturális szolgáltatás *n.* – cultural service
Kúria jogegységi harátozata *n.* – uniformity decision (resolution) of the Curia
lakásgazdálkodás *n.* – housing
Legfőbb Ügyész *n.* – before '89: Procurator General, after '89: Supreme Prosecutor/Prosecutor General
Magyar Államkincstár *n.* – Hungarian State Treasury
Magyar Közlöny *n.* – Official Journal
Magyarország helyi önkormányzatairól szóló 2011. évi CLXXXIX. törvény – Act CLXXXIX of 2011 on the Local Self-Governments of Hungary
megelőző védelmi helyzet *n.* – state of preventive defence
megye *n.* – county
megyei jogú város *n.* – county town
megyei kormányhivatal *n.* – county Government Office
megyei önkormányzat *n.* – county self-government
megyei önkormányzati hivatal *n.* – office of the county self-government
méltatlanság *n.* – indignity
minisztérium *n.* – ministry
Miniszterelnök *n.* – Prime Minister
Miniszterelnök-helyettes *n.* – Deputy Prime Minister
minősített többség *n.* – qualified majority
minősítés *n.* – personal appraisal
Nemzeti Kerekasztal *n.* – National Roundtable
népköztársaság *n.* – People's Republic
népszavazást kiír *v.* - order a local referendum
normatív határozat *n.* – normative decision
normatív utasítás *n.* – normative order
okmányiroda *n.* – Office of Government Issued Documents
országos önkormányzati érdekszövetség *n.* – national municipal alliance
osztály *n.* – unit
óvoda(i ellátás) *n.* – preschool
önálló szabályozó szerv *n.* – autonomous regulatory body
öngondoskodás *n.* – self-care
önként átvállalt (alternatív) önkormányzati feladatok *n.* – voluntarily assumed tasks of the local government
önként vállalt (fakultatív) önkormányzati feladatok *n.* – facultative tasks of the local government
önkormányzati határozathozatali, illetve feladat-ellátási kötelezettség elmulasztása *n.* – failure of the decision-making and task performance obligation
önkormányzati képviselő *n.* – municipal representative (also member of the representative body)
önkormányzati rendelet *n.* – regulation
önkormányzati társulás *n.* – inter-municipal association
önkormányzati vagyon *n.* – municipal property (property of the self-government)
összeférhetetlenség *n.* – conflict(s) of interest, incompatibility
összeférhetetlenséget megállapít *v.* – establish/declare conflict of interest
polgármester *n.* – mayor
polgármesteri hivatal *n.* – mayor's office
rendelet *n.* – decree
törvényerejű rendelet *n.* – statutory decree
Kormányrendelet *n.* – government decree

Miniszterelnök rendelete *n.* – decree of the Prime Minister
miniszteri rendelet *n.* – ministerial decree
Nemzeti Bank elnökének rendelete *n.* – decree of the Governor of the National Bank of Hungary (pl. Decree No. 3/2010 (I. 28.) of the Governor of the National Bank of Hungary)
önálló szabályozó szerv vezetőjének rendelete *n.* – decree of the head of an autonomous regulatory body
Honvédelmi Tanács rendelete *n.* – decree of the National Defence Council
Köztársasági Elnök rendelete *n.* – decree of the President of the Republic
önkormányzati rendelet *n.* – local regulation
rendkívüli állapot *n.* – state of national crisis, martial law
rendszerváltás *n.* – transition, change of regime
rendvédelem *n.* – protection of public order
rendvédelmi szerv *n.* – law enforcement agency
saját bevétel *n.* – own revenue (also own income)
szabálysértés *n.* – misdemeanour/ contravention
szakasz (cikk), bekezdés, pont: [e.g. 9. § (3) bek. g)] *n.* – article, paragraph, point [e.g. Article 9 paragraph (3) point g)], [abbreviation: Art. 9 (3) g) of …]
szakhatóság közreműködése *n.* – participation of special authorities
szakigazgatási szerv *n.* – special administrative agency
szennyvíz-kezelés *n.* – wastewater management
szervezeti és működési szabályzat *n.* – regulation on/of organizational and operational procedures
szociális szolgáltatások *n.* – social care/ services
szükségállapot *n.* – state of emergency
társult képviselő-testület *n.* – associated representative body
távhőszolgáltatás *n.* – district heating
településfejlesztés *n.* – settlement development
települési önkormányzat *n.* – settlement-level municipality
településrendezés *n.* – settlement planning
településrészi önkormányzat *n.* – council of the part of the settlement
településüzemeltetés *n.* – settlement operations
teljesítmény-értékelés *n.* – performance appraisal
területfejlesztés *n.* – regional development
tevékenységet végez *v.* – pursue activity
tényállás tisztázása *n.* – ascertaining the relevant (legal) facts of the case
tisztviselő *n.* – official
történeti alkotmány *n.* – historical constitution
törvény *n.* – act (of Parliament); also possible: *statute* (e.g. Act CXCIV of 2011 on the economic stability of Hungary)
sarkalatos törvény *n.* – cardinal act (of Parliament) vagy cardinal statute
alkotmányerejű törvény *n.* – constitutional statute
törvényességi felhívás *n.* – legal notice
törvényességi felügyelet *n.* – legal supervision
törvényességi felügyeleti bírság *n.* – legal supervision fine
törzshivatal *n.* – head office
utasítás *n.* – order
utólagos normakontroll *n.* – posterior (law) review
újrafelvételi eljárás *n.* – retrial procedure
ügyész *n.* – public prosecutor
ügyészi felhívás *n.* – prosecutor's intervention

ügyintézési határidő *n.* – administrative time limit/term/period/deadline
ügykezelő *n.* – clerical staff
ügysegéd *n.* – settlement administrator
ülésszak *n.* – session
üzemeltet *v.* – operate
üzleti vagyon *n.* – business property
vagyonnyilatkozat *n.* – declaration of assets
vagyonnyilatkozatot tesz *v.* – make a declaration on property
választópolgár *n.* – citizen
város *n.* – town
várossá nyilvánítás *n.* – declaration of town
veszélyhelyzet *n.* – state of danger
vezet *v.* – manage, lead, head, chair
vezetés *n.* – management
végrehajtás *n.* – enforcement
végzés *n.* – ruling
vízgazdálkodás *n.* – water management
víziközmű szolgáltatás *n.* – water utility services

Editors and Authors of the Book

Anita **Boros** (BA, dr. jur., Ph.D.)
Positions: Senior Ministerial Adviser at Ministry of National Development, Associate Professor at the Faculty of Public Administration of National University of Public Service
Workplaces: Ministry of National Development, National University of Public Service (Faculty of Public Administration)
Fields of research: administrative procedure law, public procurement law, administrative procedure law in the EU and in the Member states, comparative administrative procedural law
Postal address: H–1031 Budapest, Szépvölgyi út 57–61 C 2/1.
E-mail: boros.anita@uni-nke.hu

Gyula Balázs **Csáki-Hatalovics** (dr. jur., Ph.D.)
Positions: Associate Professor
Workplace: Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Department of Administrative Law
Fields of research: public administration, e-government
Postal address: KRE, H–1042 Budapest, Viola u. 2–4.
E-mail: cshgyb@icloud.com

Lóránt **Csink** (dr. jur., Ph.D.)
Positions: Associate Professor
Workplaces: Pázmány Péter Catholic University
Fields of research: constitutional law, comparative law
Postal address: H–1088 Budapest, Szentkirályi u. 28–30.
E-mail: csink.lorant@jak.ppke.hu

Péter **Darák** (dr. jur., Ph.D.)
Position: President of the Curia of Hungary
Workplace: The Curia of Hungary
Field of research: administrative jurisdiction
Postal address: H–1055 Budapest, Markó u.
E-mail: international@kuria.birosag.hu

Zsófia **Előházi** (dr. jur.)
Positions: public procurement and legal expert, professional leader
Workplace(s): ONMERIT Consulting Ltd.
Field of research: public services
Postal address: H–1137 Budapest, Katona József u. 27. IV/3.
E-mail: zsofia.elohazi@onmerit.hu

János **Fazekas** (dr. jur., Ph.D.)
Positions: Assistant Professor
Workplace: Eötvös Loránd University, Faculty of Law, Department of Administrative Law
Fields of research: central government, regulatory authorities and autonomous bodies
Postal address: Eötvös Loránd University, Faculty of Law, Department of Administrative Law: H–1053 Budapest Egyetem tér 1–3.
E-mail: fazekas.janos@ajk.elte.hu

Adrián **Fábián** (dr. jur., LL.M., Ph.D., dr. habil.)
Positions: Associate Professor, Head of Department of Administrative Law
Workplace: Law Faculty, University of Pécs
Fields of research: local-self goverments, staffing in public administration, theory of public administration
Postal address: H–7622 Pécs, 48-as pl. 1.
E-mail: fabian.adrian@ajk.pte.hu

György **Gajduschek** (BA, MA, Ph.D., dr. habil.)
Positions:
– Senior Researcher, Head of research department
– Associate Professor
Workplaces:
– Institute for Legal Studies, Centre for Social Sciences, Hungarian Academy of Sciences
– Department for Public Management and Policy, Corvinus University, Budapest
Fields of research: bureaucracy, civil service, decision making in government, law and public administration
Postal address: H–1014 Budapest, Országház u. 30.
E-mail: gajduschek@gmail.com

Etelka **Gregóczki** (dr. jur., Ph.D.)
Position: Associate Professor
Workplace: National University of Public Service
Field of research: public finances
Postal address: NKE, Faculty of Public Administration: H–1118 Budapest, Ménesi út 5.
E-mail: etelka.gregoczki@uni-nke.hu

István **Hoffman** (dr. jur., Ph.D., dr. habil.)
Position: Associate Professor
Workplace: Eötvös Loránd University, Faculty of Law, Department of Administrative Law
Fields of research: municipal law, social law, legal regulation of the public services
Postal address: H–1053 Budapest, Egyetem tér 1–3. I/107.
E-mail: hoffman.istvan@ajk.elte.hu; hoffman.istvan@ajk.elte.hu

Zoltán **Józsa** (dr. jur., Ph.D., dr. habil.)
Position: Head of the Department of Public Administration Law and Financial Law
Workplace: Faculty of Law of Szeged University
Fields of research: comparative public administration, modernisation of public administration, local government structure and functions, public management.
Postal address: H–6722 Szeged, Rákóczi tér 1.
E-mail: jozo@juris.u-szeged.hu

Norbert **Kis** (dr. jur., Ph.D.)
Position: Associate Professor, Vice Rector
Workplace: National University of Public Service
Fields of research: criminal law, human rights, public administration
Postal address: NKE, Institute of International Studies: H–1118 Budapest, Ménesi út 5.
E-mail: kis.norbert@uni-nke.hu

Gyula **Koi** (BA, dr. jur., Ph.D.)
Positions: Adjunct Professor/Junior Research Fellow
Workplace(s): National University of Public Service, Institute for Public Law, Dept. for Comparative and European Public Law/Institute for Legal Studies of Social Research of HAS, Dept. for the Study of the Private, Criminal and Administrative Law Guarantees of Market Economy
Fields of research: Theory of Public Administration; Comparative Public Administration; Chinese Law
Postal address: H–1014 Budapest, Országház u. 30.
E-mail: Koi.Gyula@uni-nke.hu

István **Kukorelli** (dr. jur., Ph.D., dr. habil., Prof., DSc.)
Position: Professor of Public Law, Head of Department of Constitutional Law
Workplace: Eötvös Loránd University, Faculty of Law, Department of Constitutional Law
Field of research: constitutional law
Postal address: H–1053 Budapest, Egyetem tér 1–3. I/107.
E-mail: kukorelli.istvan@ajk.elte.hu

Andras **Lapsánszky** (dr. jur., Ph.D.)
Position(s): Legal Director, Associate Professor, Head of Department,
Workplace(s): National Media and Infocommunications Authority, Széchenyi István University, Deák Ferenc Faculty of Law and Political Sciences, Chair of Public Administration
Field(s) of research: public services, infocommunication
Postal address: H–1015 Budapest, Ostrom u. 23–25.
E-mail: lapsanszky.andras@nmhh.hu

Viktória **Linder** (BA, dr. jur., Ph.D.)
Position: Associate Professor
Workplaces:
– National University of Public Service, Faculty of Public Administration
– Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law
Fields of research: comparative civil service, public administration, administrative law
Postal address: NKE, H–1118 Budapest, Ménesi u. 5.
E-mail: viktoria.linder@t-online.hu; linder.viktoria@uni-nke.hu

Sándor **Móré (**dr. jur., Ph.D.)
Position: Assistant Professor
Workplace: Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Department of Administrative Law
Fields of research: protection of minorities, public administration
Postal address: KRE, H–1042 Budapest, Viola u. 2–4.
E-mail: more.sandor@kre.hu

András **Patyi (**dr. jur., Ph.D., dr. habil., Prof.)
Position: Professor of Public Law, Rector
Workplace: National University of Public Service
Field of research: Constitutional Law, Theory of Public Administration
Postal address: NKE, Faculty of Public Administration: H–1118 Budapest, Ménesi út 5.
E-mail: patyi.andras@uni-nke.hu

Ádám **Rixer** (BA, dr. jur., LL.M., Ph.D.)
Position: Associate Professor, Head of Department of Administrative Law
Workplace: Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law
Fields of research: public administration, civil society, human services, law and literature
Postal address: KRE, H–1042 Budapest, Viola u. 2–4.
E-mail: rixer.adam@kre.hu

Zsolt **Szabó** (dr. jur., Ph.D.)
Position: Adjunct Professor
Workplace: Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Department of Constitutional Law
Fields of research: comparative constitutional law, parliamentary law, legislative drafting, European constitutional law, law of EU-funding.
Postal address: KRE, H–1042 Budapest, Viola u. 2–4.
E-mail: szabo.zsolt@kre.hu

Ákos **Szerletics** (MSc.)
Position: Deputy Head of Department
Workplace: Mezőgazdasági és Vidékfejlesztési Hivatal (Agricultural and Rural Development Agency)
Field of research: Common Agricultural Policy
Postal address: H–1089 Budapest, Reguly Antal utca 43.
E-mail: szerletics.akos@mvh.gov.hu

István **Temesi** (BA, dr. jur., Ph.D.)
Position: Associate Professor, Head of Department of Administrative Law
Workplace: National University of Public Service
Fields of research: administrative law, administrative sciences
Postal address: NKE, H–1118 Budapest, Ménesi út 5.
E-mail: temesi.istvan@uni-nke.hu

András **Téglási** (dr. jur., Ph.D.)
Positions: university lecturer, legal advisor
Workplaces: National University of Public Service, Faculty of Public Administration, Department of Constitutional Law, Constitutional Court of Hungary
Field of research: constitutional law
Postal address: Constitutional Court of Hungary, H–1015 Budapest, Donáti utca 35–45.
E-mail: Teglasi.Andras@uni-nke.hu

András **Torma** (dr. jur., Ph.D., dr. habil., Prof.)
Positions: Professor of Public Law, Rector
Workplace: University of Miskolc
Field of research: Public Administration Law
Postal address: H–1029 Budapest, Örödgárok u. 72.
E-mail: jogtoa@uni-miskolc.hu; rektor@uni-miskolc.hu

András Zs. **Varga** (dr. jur., Ph.D., dr. habil., Prof.)
Positions: Professor of Public Law, Head of Chair, Dean
Workplaces: Faculty of Law and Political Sciences, Pázmány Péter Catholic University, Budapest
Fields of research: instruments of control of public administration, prosecution, ombudsmen, constitutional background of public administration, administration of the judiciary
Postal address: PPKE, H–1088 Budapest Szentkirályi u. 28–30.
E-mail: varga.zs.andras@jak.ppke.hu