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THE RIGHT TO GOOD ADMINISTRATIVE PROCEDURE AND ITS ELEMENTS

VÁCZI, Péter*

Introduction

The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.”¹ “Greater unity between its members” – the aim of the Council of Europe may be furthered in a range of different ways. Article 1 of the Statute of the Organization makes specific reference to the Council of Europe’s mission in maintaining and promoting human rights and fundamental freedoms as a way of achieving this “greater unity”. Administrative procedure requires common European regulation by all means, as this is that special field of law by which the administrative body directly meets the citizens. Consequently these cases carry danger that fundamental rights of citizens may be impaired – its occurrence in a constitutional state is undeniably not desirable by any means. Considering the present national administrative systems, the administrative official procedural law is being emphasized. Main tendencies in practice are to constrain the executive power of the state within constitutional frame of law and to guarantee gradually expand the fundamental rights of citizens, establishing the “good administration”. Regarding the European administrative law, does European administrative procedural law exist at all? What forms and levels of standardization can be expected? The answer can be given through the documents of the Council of Europe achieved in this field of law.

Having subscribed to the European Convention on Human Rights, Council of Europe member states have agreed to respect certain principles which therefore govern the relationship of their authorities with private persons, including in the branch of administrative law. Those principles have been further refined in several conventions and various recommendations and resolutions which were adopted unanimously by the Council of Europe Committee of Ministers and which, thus, reflect the standards applicable in member states in pursuance of their devotion to the Rule of Law as expressed in the Statute of the Organisation. As regards the significance and practical impact of Council of Europe Recommendations and Resolutions, it is important to observe the following: contrary to conventions which states may have ratified, recommendations and

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¹ Statute of the Council of Europe, Chapter I, Article 1.



resolutions have no legally binding effect on the states and governments. They do have, however, a moral and political effect on them. This effect stems from two facts: first of all, it is difficult, albeit possible, for a government to totally ignore for a long period of time certain standards to which all or most of the other democratic states of the region pledge commitment; moreover, there can be an obvious problem with a government's good faith in case a government itself is among those who have not only participated in the negotiations of a text, but also voted for its adaptation in the form of a recommendation, if such government later on refuses to conform to its own appeal.²

Fortunately, it seems so that the European legislator now focuses "not just on specific administrative acts, but also on the administrative procedures themselves. In other words, there has been a shift in emphasis from the outcome of administrative action (result) to the administrative behavior (functioning)."³ And at the end of this process, "the principle of good administration could be to administrative law what 'good governance' and 'good legislation' are to international law."⁴

Summary of the research result

The right to good administration is procedural in character. As for its legal nature, it enables an individual to demand that the administration acts in a manner prescribed by law, but cannot claim that it issues a particular decision or grants him certain benefits.⁵

There are various theories on the role of procedural rights. The first of them is the 'gateway theory' which says that the importance of procedural rights can be explained by an assumption that the attainment of substantive rights is conditional upon the existence of procedures. This theory regards procedural rights as 'gateways' to substantive rights. The other important theory in this field is the 'dignity theory'. According to it, procedural rights ensure that public authorities pay sufficient respect to the individual. Procedural safeguards are an end in themselves and not just means to an end. The main aim of procedure is to protect an individual and to ensure fairness of proceedings. These two theories can be contrasted with the 'instrumental theory' which declares that procedural rules are designed to ensure efficiency, organise administrative activities and serve as an instrument for the achievement of accurate decisions.⁶

² Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons. A Handbook (hereafter referred as "Handbook"). Directorate of Legal Affairs. Strasbourg, 1996., p. 6.

³ FORTISAKIS, Theodore: Principles governing good administration. *European Public Law*, Volume 11, Issue 2. Kluwer Law International, 2005. p. 217.

⁴ FORTISAKIS, p. 211.

⁵ KANSKA, Klara: Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights. *European Law Journal*, Vol. 10, No. 3. Blackwell Publishing Ltd. 2004. p. 301.

⁶ KANSKA, p. 301.

Before turning our attention to this process, we have to clarify the meaning of good administration. “The people’s confidence in and obedience to a government will commonly be proportioned to the goodness or badness of its administration.”⁷ The main task of the new federal government is to develop a good administration in order to gain confidence of the people and thus create a sense of common national citizenship.⁸ The expression has become somewhat fashionable and appears in various instruments both in European and in national level, but different authors give different definitions. According to Theodor Fortsakis, “the principle of good administration is at once a long-standing idea and a ground-breaking one. Its specific content has gradually been nurtured within the framework of the long-established concept of user protection and this principle, enshrined and elaborated on in various instruments and European case-law, now stands as one of the cornerstones of modern administrative law.”⁹ Good administration (some call as useful administration) means that “administrative bodies have a duty to exercise the powers and responsibilities vested in them by existing laws and regulations, by drawing on the prevailing concept of law, in such a way as to avoid an overly rigid application of the statutory provisions. In other words, not only must they avoid any unfair doctrinal approach but they must also endeavor to adapt the legal rules to social and economical realities.”¹⁰ The principle has an ambivalent function, “on the one hand, it acts as an umbrella, under which separate rules are clustered together around a common, guiding idea, namely the idea of good administration; [...] on the other hand, it can itself serve as a springboard for specific new rules relating to the same idea.”¹¹ The first interpretation is affirmed by Klara Kanska, who says that “the notion ‘good administration’ developed as an umbrella principle, comprising an open-ended source of rights and obligations”.¹²

The way to good administration

The Council of Europe started its work in the sphere of administrative law quite early, in 1977 when its first resolution on protection of the individual in relation to the acts of administrative authorities was issued.¹³ The ideological basis of the document was the ever-increasing importance of public administrative activities. Public authorities, in addition to their traditional task of safeguarding law and order, have been increasingly engaged in a vast variety of actions aimed at ensuring the well-being of the citizens and

⁷ A. Hamilton’s speech at the Constitutional Convention, 1787.

⁸ KANSKA, pp. 296-297.

⁹ KANSKA, Klara: Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights. *European Law Journal*, Vol. 10, No. 3. Blackwell Publishing Ltd. 2004. p. 301.

¹⁰ KANSKA, p. 301.

¹¹ A. Hamilton’s speech at the Constitutional Convention, 1787.

¹² KANSKA, pp. 296-297.

¹³ *Resolution (77) 31 on protection of the individual in relation to the acts of administrative authorities* (Adopted by the Committee of Ministers on 28 September 1977 at the 275th meeting of the Ministers’ Deputies)

promoting the social and physical conditions of society. This development resulted in the individual being more frequently affected by administrative procedures. Consequently, efforts were undertaken in the various states to improve the individual's procedural position vis-à-vis the administration with a view to adopting rules which would ensure fairness in the relations between the citizen and the administrative authorities.

For this reason, in its resolution the Council of Europe worked out five principles: right to be heard, access to information, assistance and representation, statement of reasons and indication of remedies. These five principles can be considered as the very first step towards good administration which means a part of the protection of the individual's fundamental rights and freedoms, which is one of the principal tasks conferred on the Council of Europe by its Statute. The resolution was later followed by many other resolutions and recommendations by the Council of Europe defining more and more substantial requirements regarding administration and administrative law, but the result of the systematic work was not gathered into one document.¹⁴

In 2003, Parliamentary Assembly carried out a recommendation¹⁵ in which it urged the member states to create the institution of ombudsman at national level where it does not already exist. In this document the Parliamentary Assembly stated that the governments of Council of Europe member states should adopt at constitutional level an individual right to good administration following the drafting of a model text by the Committee of Ministers and they also should adopt and implement fully a code of good administration, to be effectively publicized so as to inform the public of their rights and legitimate expectations. The Assembly further recommended that the Committee of Ministers draft a model text for a basic individual right to good administration as well as draft a single, comprehensive, consolidated model code of good administration, deriving in particular from Committee of Ministers Recommendation No. R (80) 2 and Resolution (77) 31 and the European Code of Good Administrative Behaviour, with the involvement of the appropriate organs of the Council of Europe – in particular the Commissioner for Human Rights and the European Commission for Democracy

¹⁴ See for example:

- Recommendation No. R (80) 2 concerning the exercise of discretionary powers by administrative authorities (Adopted by the Committee of Ministers on 11 March 1980 at the 316th meeting of the Ministers' Deputies)
- Recommendation No. R (84) 15 of the Committee of Ministers to member states relating to public liability (Adopted by the Committee of Ministers on 18 September 1984 at the 375th meeting of the Ministers' Deputies)
- Recommendation Rec (2003) 16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law (Adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)
- Recommendation Rec (2004) 20 of the Committee of Ministers to member states on judicial review of administrative acts (Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers' Deputies)

¹⁵ Recommendation 1615 (2003) *The institution of ombudsman*

through Law, as well as the Assembly – and in consultation with the European Ombudsman, thus providing elaboration of the basic right to good administration so as to facilitate its effective implementation in practice.

The Committee of Ministers fortunately took this advice and began to draft a model code of good administration. Finally, in 2007 this process led to a substantive document declaring the necessity of the institution of good administration and ruling its regulations. In the foreword the document refers to all the other recommendations made by the Council of Europe on the field of European administrative law mentioned above, and not only mentioned them but successfully incorporated their achievements as well.

Lawfulness

Public authorities shall act in accordance with the law. They shall not take arbitrary measures, even when exercising their discretion and shall comply with domestic law, international law and the general principles of law governing their organisation, functioning and activities. Public authorities shall act in accordance with rules defining their powers and procedures laid down in their governing rules and exercise their powers only if the certain facts and the applicable law entitle them to do so and solely for the purpose for which they have been conferred.

Since the ancient Greek philosophers, law is considered to be the main means to subject governmental power to control. As Aristotle said ‘government by laws is superior to government by men.’¹⁶ Nowadays jurisprudence distinguishes three aspects of rule of law. Firstly, the principle expresses a ‘preference for law and order within a community rather than anarchy’, which is the philosophical view of society linked with basic democratic notions. Secondly, the rule of law ‘expresses a legal doctrine of fundamental importance, namely that government must be conducted according to law, and that in disputed cases what the law requires is declared by judicial decision’. Thirdly, ‘the rule of law refers to a body of political opinion about what the detailed rules of law should provide’ in matters both of substance and of procedure.¹⁷

The concept of good administration is founded on the rule of law. According to this principle, ‘administrative authorities have to act on the basis and within the limits established by law’.¹⁸ The general meaning of lawfulness is that every person (natural and legal) as well as all the authorities are subject to the law but in two different ways: citizens and legal persons may do everything which is not prohibited to them, while state authorities only may act in such cases and only can do that which is subscribed for them by law. Lawfulness is considered as the very basic element of a state which is governed by

¹⁶ BRADLEY, A. W. and EWING, K. D.: *Constitutional and administrative law*. Twelfth Edition. Longman, London and New York. p. 101.

¹⁷ BRADLEY- EWING, p. 105.

¹⁸ KANSKA, p. 299.

law (rule of law), that is why all the principles are based on the assumption that the State accepts and adheres to the fundamental constitutional principle of the rule of law in the practice. As for the Council of Europe, the rule of law consists of three essential elements:¹⁹ firstly, everybody – whether natural or legal person – is subject to the law. Secondly, it must be possible for everybody to take knowledge of his or her rights and duties under the law. Thirdly, observance of the law can be controlled by judges who are independent in the exercise of their functions and whose judgments must be enforced.

The principle of lawfulness requires not only that administrative authorities shall not breach the law, but also that all their decisions must have a basis in law and that their content complies with the law. Furthermore, it requires that compliance by the administrative authorities with these requirements may be effectively enforced. Implicitly, the principle of lawfulness also means that the law as to the functions and powers of the administrative authorities should be validly enacted, furthermore sufficiently clear and specific. The principle also requires that unlawful administrative acts must be withdrawn. However, other principles which protect individuals' rights may take precedence over that rule.²⁰

Being such an elementary principle, lawfulness showed up quite early in the view of the Council of Europe. In the Recommendation No. R (80) 2 of the Committee of Ministers concerning the exercise of discretionary powers by administrative authorities²¹ it was declared that an administrative authority, when exercising a discretionary power, does not pursue a purpose other than that for which the power has been conferred. In the year 2000, the Council of Europe invented and extended the principle in a new recommendation²² stating that the public official should carry out his or her duties in accordance with the law and with those lawful instructions and ethical standards which relate to his or her functions; they should also act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities.²³ In decision-making, the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.²⁴

The rule of law bears with a high importance in Hungary as well. The Constitutional Court pointed out in many decisions that regarding the activities of public administration the subordination of public administration under the law is a requirement derived from

¹⁹ *Handbook*, p. 8.

²⁰ *Handbook*, p. 10.

²¹ Adopted by the Committee of Ministers on 11 March 1980 at the 316th meeting of the Ministers' Deputies

²² Recommendation No. R (2000) 10 of the Committee of Ministers to member states on the status of public officials in Europe (Adopted by the Committee of Ministers on 11 May 2000 at its 106th Session)

²³ See Article 4 of the Recommendation No. R (2000) 10.

²⁴ See Article 7 of the Recommendation No. R (2000) 10

the rule of law stated in the Hungarian Constitution.²⁵ It is necessary that the intervention of the public authorities into the private sphere must happen within the institutional limits determined by law and according to the procedure prescribed by law. The enforcement both of the lawfulness of administrative acts and of the rule of law must be secured.²⁶

The principle of lawfulness means in Hungarian administrative law that administrative acts have to be bound by law. This raises the following requirements for administrative acts: the administrative authority must be established by law, as well as the jurisdiction and competence of the authority, the act must be in accordance with legal rules and last, during the procedure the authority must comply with the processual prescriptions. The importance of the principle is well-shown by the fact that the Hungarian administrative procedural act contains it in the very beginning, in the first Article, as follows: 'In their proceedings administrative authorities must abide by the provisions of legal regulations, and must enforce them upon others.'²⁷ According to this rule, public authorities have to enforce the statutory instruments *ex officio*; they cannot wait for the petition or complain of the client or other party of the procedure.²⁸

Legal certainty

Public authorities shall act in accordance with the principle of legal certainty. They may not take any retroactive measures except in legally justified circumstances and shall not interfere with vested rights and final legal situations except where it is imperatively necessary in the public interest. It may be necessary in certain cases, in particular where new obligations are imposed, to provide for transitional provisions or to allow a reasonable time for the entry into force of these obligations.

The importance of this principle is well-shown by that some authors consider it (together with proportionality) as one of the key-elements of the measure of good administration.²⁹ Administrative authorities must be consistent in their administrative acts so as to respect the legitimate trust which private persons ought to be able to place in them. Private persons thus acquire vested rights which basically mean that administrative acts may not

²⁵ The Republic of Hungary is an independent, democratic constitutional state.' See Article 2 of the Act XX of 1949 (The Constitution of the Republic of Hungary).

²⁶ See Decisions 56/1991. (XL. 8.), ABH 1991, p. 454., 456.; 6/1999. (IV. 21.), ABK 1999, april, p. 107., 109.

²⁷ See the first sentence of Article 1. Par. 1. of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred as Ket.)

²⁸ For more see PATYL, András (ed.): *Administrative procedural law*. Dialog Campus. Budapest-Pécs, 2007. p. 92.

²⁹ FORTSAKIS, p. 209.

³⁰ *Handbook*, p. 13.

have retroactive effect unless expressly authorized by law or unless such acts are to the private person's advantage.³⁰

The principle of legal certainty was interpreted by the Hungarian Constitutional Court so many times that it can be regarded without exaggeration as the most often cited constitutional principle. Legal certainty is the essential element of the rule of law. It establishes an obligation for the state (mainly for the legislator) to ensure that the law in whole and its branches shall be clear, obvious, calculable and foreseeable for the addressees of the norm.³¹ The well-understandable attribute of the rule is a constitutional expectation.³² The grammatical phrasing of statutory instruments is always general, so it may be problematic to decide whether the rule could be used for a certain state of affairs. If the statement of the facts of the norm is too tight, it may restrict the judicature and hinder the regulation of the social relations. On the other hand, if the statement of the facts is too general, it might be widened by the judicature at his discretion. Such a rule may give an opportunity for a subjective decision and for a distinctive practice which results in the lack of a coherent and harmonized operation of law and infringes the principle of legal certainty.³³

The procedural guarantees ensuring personal rights and obligations are derived from the constitutional principle of legal certainty; without proper guarantees the principle of rule of law would be infringed.³⁴ Legal certainty puts up a dual demand against the legislator. First of all, the procedural safeguard of the stability of legal relations must be ensured; however, it shall not prevent the exercise of certain procedural rights for the clients. It follows the requirement of calculable and effective action of the administration on one hand and the insurance of the exercise of law for the individuals on the other. The balance must be secured by the Constitutional Court; it may lead to the violation of the Constitution if legal regulation would provide unilateral primacy for the one or the other.³⁵ Regarding public administration, legal certainty specifies the requirement for legislation to establish the procedural guarantees of stability of closed legal relations. It shall be noted however that legal validity (i.e. the use of legal remedies) is not enough for reaching the abovementioned; legal certainty needs other additional guaranteed in this field of law. The activities of public administration serve the protection of public interest or interests of a particular social group, the enforcement of law, etc. In case of an unlawful decision, not only the rights of the individual, but also the public interest may be infringed; for example when the act is favourable for the client but infringes the rights of other individuals (e.g. a building permission which infringes the environment protection

³¹ See Decision 9/1992. (I. 30.) ABH 1992, p. 59, 65.

³² See Decision 26/1992. (IV. 30.) ABH 1992, p. 135, 142.

³³ See Decision 1160/B/1992. ABH 1993, p. 607, 608.

³⁴ See Decision 75/1995. (XII. 21.) ABH 1995, p. 376, 383.

³⁵ See Decision 46/2003. (X. 16.)

prescriptions). For that reason, legality is also a constitutional principle regarding decisions of the public authorities.³⁶

Equality before the law

Public authorities shall act in accordance with the principle of equality. They shall treat private persons who are in the same situation in the same way and not discriminate between private persons on grounds such as sex, ethnic origin, religious belief or other conviction. Any difference in treatment shall be objectively justified.

Together with the principle of lawfulness, the general principle of equality is the other pillar of European administrative law. Since the EC Treaty expressly contains this principle,³⁷ it could less clearly deliver from the national legal systems (like the principle of proportionality). However, the developing role of the European Court cannot be neglected in this field either.³⁸ The rule can be applied with various degrees of rigour. If it is interpreted less strictly, the person concerned must prove that he is in a situation similar in all or at least the irrelevant cases are handled different. More strictly, the courts have to intervene whenever a person is treated differently from others who are in a comparable situation. This last interpretation gives the judiciary a more powerful mean for review.³⁹

The aim of this principle is to forbid unfair discrimination by ensuring that persons *de facto* or *de iure* in a similar situation should be treated on the same way. We cannot speak about the infringement of the principle of equality if the discrimination in the treatment rests on a reasonable ground. Unfair discrimination arises only in that case when the different treatment cannot be justified regarding the aim or the effect of the chosen measure. This principle does not exclude the possibility for the administrative authority to change its proceeding referring to the public interest or because of its former unlawful or improper practice. This latter issue can be interesting for the reason that by this point the question of equality is connected to the principle of legitimate interests.

Equality before the law means in general that where cases are objectively the same, their treatment must be the same and where cases are objectively different; there will normally be corresponding differences in treatment. However, this principle does not mean that the administrative authorities should not carefully and fairly consider each

³⁶See Decision 2/2000. (II. 25.)

³⁷See Article 6, 40 (3) and 119 of the EC Treaty

³⁸See among others Case C-224/00, *Commission v. Italy* [2002] ECR I-2965. and Case C-388/01, *Commission v. Italy* [2003] ECR I-721. Citing: TATHAM, Allan F.: *EC law in practice: a case-study approach*. HVG-ORAC Kiadó. Budapest, 2006. p. 32-36.

³⁹NOLTE, Georg: *General principles of German and European administrative law. A comparison in historical perspective*. The Modern Law Review, Vol. 57, No.2. Blackwell Publishing Ltd. 1994. p. 194.

individual case by reference to the applicable laws and rules; the laws and rules should not be so drawn up as to prevent the administrative authorities from treating every case in a manner appropriate to its circumstances.⁴⁰ There are also some limitations connected to this principle. Equality before the law cannot be invoked to justify applying an illegal practice more widely. Differences in treatment resulting from changes of general application in policy or practice with regard to the exercise of discretionary powers do not of themselves infringe this principle.⁴¹

The Hungarian Constitutional Court dealt in many decisions with the legal questions of equality.⁴² It stressed out in its earliest decision that the prohibition of discrimination does not mean that discrimination in every case, even aiming a higher social equality, is forbidden. This prohibition is applied to the fact that the law must consider every person equal (equal dignity) so the principle of human dignity cannot be infringed. The aspects of the distribution of rights and obligations must be determined with the same respect and prudence, considering all personal aspects the same.⁴³ The Court also pointed out that regarding discrimination, the central element is to decide who shall be considered as a member of a common group; the prohibition of discrimination is applied only to members of the same group.⁴⁴ If the legal regulation establishes different provisions for different group of people, the discrimination is not impermissible; it only arise within a comparable group of situation.⁴⁵ The Hungarian Constitution prohibits discrimination only in connection with human rights; the restraint however expands to the whole legal system if the discrimination affects the basic right to human dignity.⁴⁶

Equality before the law must be enforced in every procedure, certainly in administrative procedural law as well. According to the Administrative Procedural Code, 'In proceedings of the authorities all clients shall have equal rights in the court of law and shall be treated without undue discrimination, bias or prejudice. Administrative proceedings must be conducted without any discrimination or restrictive treatment aimed at or resulting in any violation of the principle of equality in the court of law, or any diminishment in the legal rights of clients and other parties to the proceeding granted under this Act. In all proceedings the principle of equal treatment must be strictly observed.'⁴⁷ The principle has a double function in this sphere. On one hand, it shows up as an independent case which has to be decided separately; on the other hand, it has

⁴⁰ *Handbook*, p. 11.

⁴¹ *Handbook*, p. 11.

⁴² Regulated in Article 70/A. of the Act XX of 1949 (The Constitution of the Republic of Hungary).

⁴³ See Decision 9/1990. (IV. 25.) ABH 1990, p. 46, 48;

⁴⁴ See Decision 1009/B/1991., ABH 1992, p. 479, 479-480.; Decision 49/1991. (IX. 27.) ABH 1991, p. 246, 249.

⁴⁵ Decision 21/1990. (X. 4.) ABH 1990, p. 73, 79.; Decision 881/B/1991. ABH 1992, p. 474, 477.; Decision 4/1993. (II. 12.) ABH 1993, p. 48, 65.

⁴⁶ See Decision 61/1992. (XI. 20.) ABH 1992, p. 280., 281.

⁴⁷ See Article 2. Par. 1. and 2. of Ket.

to be enforced in every single administrative procedure. However, equality before the law cannot serve as a ground for legitimize an unlawful situation, it cannot result that the official cannot depart from its former, false practice. In this case, the authority has to change its practice and has to act in accordance with law.⁴⁸ This rule is connected to the principle of objectivity stating that the administrative authority has to reach its decision on the ground of the relevant facts and must neglect those personal attributes which might infringe equality.⁴⁹

Impartiality

Public authorities shall act in accordance with the principle of impartiality. They shall act objectively, having regard to relevant matters only and not act in a biased manner. They shall also ensure that public officials carry out their duties in an impartial manner, irrespective of their personal beliefs and interests.

Nemo iudex in causa sua. Reflecting the ancient principle – no one shall be his own judge – to the field of administrative law, we must underline the requirement that persons by executing the power of the state cannot reach a decision affecting the rights or interests of the citizens if they are bound to the case concerned in any ways and so they are considered to partial which influences the decision in the end. Exclusion serves as a mean for the validation of the requirement of impartiality; its destination is to prevent the acting of such a person from who the impartial and same treatment cannot be expected. The proceeding of such a person or authority jeopardizes the enforcement of fair process and establishes the danger of the infringement of the principles of equal treatment and equality before the law.⁵⁰

The principle of impartiality concentrates to the institutional side of administration and to the objective standards of executive power. This guarantee has to be regarded as a leading principle of administrative law which is of particular importance where the administration enjoys discretion and therefore the possibility of judicial control is limited.⁵¹ Similar to other principles, this requirement was also developed in the case law of the Community Courts, initially connected to the right of defence and the right to be heard.⁵²

According to this principle, by reaching an administrative act, all factors relevant to a particular case should be taken into account while giving each its proper weight. Factors

⁴⁸ See Administrative Decision of the Hungarian Supreme Court Nr. 1/2002.

⁴⁹ PATYI, pp. 106-107.

⁵⁰ PATYI, p. 165-166.

⁵¹ SCHWARZE, Jürgen: 'The principle of proportionality and the principle of impartiality in European administrative law. *Rivista trimestrale di diritto pubblico*. 2003/1. p. 66.

⁵² See Case T-450/93, *Lisretal* [1994] ECR II-1177., Case T-167/94, *Nölle* [1995] ECR II-2589.

which are not relevant must be excluded from consideration. An administrative act must not be influenced by the private or personal interests or prejudices of the person taking it. Therefore, no civil servant or employee of an administrative authority should be involved in taking of an administrative act in a matter concerning his or her own financial or other interests, or those of his or her family, friends or opponents or in any appeal against an administrative act which he himself or she herself has taken, or where other circumstances undermine his or her impartiality. Even the appearance of bias should be avoided.⁵³

Impartiality by discretionary acts means that public authorities must objectively weight up all the interests involved in the case before reaching a decision; they must elaborate the complete case before taking any decision which means that they must gather enough data during the procedure and all the elements included in the case – and only those – must be aimed at value judgements.⁵⁴ They cannot grab out or exclude an element; the aspects not connected to the case concerned must be avoided.

Impartiality is a constitutional demand in Hungary too; it is guaranteed among others by the common rules of disqualification. The principle was developed on the field of justice where ensuring the independence and impartiality of the judge is essential. The Constitutional Court pointed out in its first decision in this sphere that the right to the impartial court establishes the claim to being fair-minded. It is an expectation for the conduct of the judge on the one hand and an objective requirement for the procedure on the other; all situations must be avoided where there might be any doubt regarding impartiality of the judge.⁵⁵ According to another decision, judges must be free of personal stereotypes (subjective element) and must also seem to be impartial; the regulation has to provide due guarantees to exclude any doubt.⁵⁶ In this decision the Court examined the principle of fair trial protected in Article 6 of the European Convention on Human Rights and underlined the importance of the test applied by the European Court of Human Rights. As to this test, at first, the conduct of the judge must be checked in the certain case, i.e. if there were any manifestation which can conclude to the lack of impartiality. Secondly, it is followed by the inspection if the applicant had any well-founded and objective reason to assume the impartiality of the judge. The principle of impartiality sets out the requirement of relative neutrality for the administration which means that all cases must be handled without any discrimination and favour.⁵⁷

⁵³ *Handbook*, p. 13.

⁵⁴ See SOLÍF, Julio Ponce: Good administration and European public law. The fight for quality in the field of administrative decisions. *European Review of Public Law*, Vol. 14, No. 4, Esperia Publications Ltd. 2002, p. 1520.

⁵⁵ See Decision 67/1995. (XII. 7.) ABH 1995, p. 346., 347.

⁵⁶ See Decision 539/B/1997. ABH 1998, p. 734., 736

⁵⁷ See Decision 521/B/2003.

“Any person whose right or lawful interest is directly affected in a case may not participate in proceedings pertaining to that case.”⁵⁸ The Hungarian Procedural Code rules the conditions of exclusion as well as the absolute and relative causes of it and the procedural order to apply.⁵⁹ It should be noted however that the requirement of impartiality in administrative procedure differs from other procedures. Namely, the authority could be interested in the certain case as the validator of the public interest which appears clearly when the public authority shows up as a party in the administrative lawsuit before the court after the administrative procedure.⁶⁰

Proportionality

Public authorities shall act in accordance with the principle of proportionality. They shall impose measures affecting the rights or interests of private persons only where necessary and to the extent required to achieve the aim pursued. When exercising their discretion, they shall maintain a proper balance between any adverse effect which their decision has on the rights or interests of private persons and the purpose they pursue. Any measures taken by them shall not be excessive.

The principle of proportionality concerns substantive administrative law and traditionally restrains the interference of administrative authorities into the private sphere of the persons. This principle, which traces back to German origins and is also recognised in public administrative law, was originally not at all common in all Member States. The application of the principle of proportionality was either limited to some exceptional cases or even completely unknown. For now, the situation has changed. In England, discretionary administrative decisions could only be challenged successfully if they fulfilled the requirement of the so-called ‘Wednesbury test’. According to this test, these requirements were only met if the decision of the authorities was so unreasonable that no reasonable authority could ever come to it. Today, English courts have gained more control over the proportionality of administrative decisions without, however, explicitly referring to the notion of proportionality.⁶¹ In France, those cases which concern the expulsion of EU citizens are now subjected to a full examination of proportionality. Similarly, in Italy it was only in the wake of the ECJ’s judgments that this principle has

⁵⁸ Art. 42 of Ket.

⁵⁹ PATYI, pp. 167-173.

⁶⁰ See PATYI, p. 108.

⁶¹ SCHWARZE, Jürgen: The convergence of the administrative laws of the EU Member States. *European Public Law*, Vol. 4, Issue 2, Kluwer Law International Ltd. 1998, p. 195.

attracted any attention. In other EU Member States, European origin is not always clearly ascertainable.⁶²

The principle was filtered into the judicature of the EU via the case law of the courts; for lack of written community law, the Court of Justice had to develop its essential content.⁶³ Today it can be regarded as an overriding principle seeking to restrict the scope of Community rules and to set limits to administrative actions which impose duties and interfere with the private sphere of the citizens.⁶⁴ Regarding the European jurisprudence, the principle both in German law as a homeland and in other states taken from there (e.g. England) can be divided into two components. The one is the suitability (*Geeignetheit*) means that a particular measure must be theoretically capable of achieving its aim, therefore a measure which is incapable of furthering its aim is necessarily excessive or disproportionate. The same can be said with respect to the other requirement, the necessity (*Erforderlichkeit*) which demands that the least restrictive of severe possible means must be used by the administrative authority. Nowadays the last principle is treated as an independent requirement by the German and European courts.⁶⁵ It can be regarded as an important tendency that the principle of proportionality influenced by community law gains space in such countries where former was not present (e.g. the UK). Therefore the rule can be considered as a typical instance for the way in which an unwritten legal principle that once had been created in the legal order of one member state and after that may finally gain acceptance in Community law and from there may also influence the laws of other member states.⁶⁶ Italy may be regarded like the abovementioned; however the Italian law contains a requirement similar to proportionality, the principle of *buon andamento*. This principle is an interpretation rule in fact, stating that all acts of the administration must be guided by proportionality and good faith.⁶⁷

The principle of proportionality implies on the one hand that the use of means commensurate to the aims to be pursued and on the other hand, the measures taken should strike a fair balance between the public interests and the private interests involved, so as to avoid unnecessary interference with the rights and interests of private persons.

⁶² SCHWARZE, Jürgen: The convergence of the administrative laws of the EU Member States. *European Public Law*, Vol. 4, Issue 2. Kluwer Law International Ltd. 1998, p. 196.

⁶³ See among others Case 11/70, *Internationale Handelsgesellschaft* [1970] E.C.R. 1125. About the case see TATLIAM, Allan F.: *EC law in practice: a case-study approach*. HVG-ORAC Kiadó. Budapest, 2006. pp. 25-26.

⁶⁴ SCHWARZE, Jürgen: The principle of proportionality and the principle of impartiality in European administrative law. *Rivista trimestrale di diritto pubblico*. 2003/1. pp. 53-54.

⁶⁵ NOLTE, Georg: General principles of German and European administrative law. A comparison in historical perspective. *The Modern Law Review*, Vol. 57, No.2. Blackwell Publishing Ltd. 1994. p. 193.

⁶⁶ SCHWARZE, Jürgen: The principle of proportionality and the principle of impartiality in European administrative law. *Rivista trimestrale di diritto pubblico*. 2003/1. p. 65.

⁶⁷ See SOLÉ, Julio Ponce: Good administration and European public law. The fight for quality in the field of administrative decisions. *European Review of Public Law*, Vol. 14, No. 4. Esperia Publications Ltd. 2002. p. 1515.

This principle applies to a hypothesis of administrative authorities not sticking to the limits which the laws assign to their acts. The observance of the principle of proportionality constitutes an all embracing requirement in a state governed by the rule of law. There must be a reasonable relation between the means chosen and the purpose pursued. This means that any restriction of the rights of the citizens must not only be suitable for the purpose indicated by the legislator, it must also be necessary that the purpose could not be achieved by another means which would impose fewer restrictions on private rights and interests. Moreover, the burden imposed on the private person must stand in a reasonable relationship to the benefit which the person concerned and the general public will draw from the act. A breach of the principle will only be acknowledged where the burden imposed on an individual has no acceptable relationship with the importance of the matter in question. The prohibition against using excessive means where more stringent means are not more promising as regards the achievement of the purpose pursued.⁶⁸

The principle of proportionality is one of the most often referred principles in the jurisprudence. According to Schwarze,⁶⁹ it consists of three main parts. First, it means that the measures of the state must be suitable for achieving the pursued aim. Second, these measures must also be necessary for that aim, i.e. the authority has no other, less restrictive mechanism at its disposal. Third, the measure may not be disproportionate to the restrictions that it involves.⁷⁰

Transparency

Public authorities shall act in accordance with the principle of transparency. They shall ensure that private persons are informed, by appropriate means, of their actions and decisions which may include the publication of official documents; they shall respect the rights of access to official documents according to the rules relating to personal data protection. The principle of transparency does not prejudice secrets protected by law.

It is generally recognized that a democratic system can function more effectively when the public is fully informed about the issues of public life, because to be informed is a prerequisite of acceptance, participation and adherence. It is, thus necessary that the public have, subject to unavoidable exceptions and limitations, access to the large quantities of record and information of general interest and importance which administrative authorities hold at all levels. Moreover, in order to protect the rights of the private person, it is most important that the person concerned be aware of the information held by the

⁶⁸ Handbook, p. 13.

⁶⁹ See SCHWARZE, Jürgen: Enlargement, the European Constitution and Administrative Law. International and Comparative Law Quarterly, Vol. 53. Part 4. 2004. p. 972.

⁷⁰ About the principle of proportionality also see TATIAM, Allan F.: *EC law in practice: a case-study approach*. HVG-ORAC Kiadó. Budapest, 2006. pp. 36-38.

administrative authorities concerning himself or his interests. Such openness is also likely to strengthen the confidence of the public in the administration. Without having to show any specific interest, everyone is entitled upon request to be given information which is the possession of an administrative authority within a reasonable time in the same way as anyone else by effective and appropriate means.

Within the Council of Europe, the principle of public access to official documents began to be developed in Recommendation No. R (81) 19 on access to information held by public authorities. An example of European co-operation in this field is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in Aarhus, Denmark, on 25 June 1998. Another recent example from the European Union is the adoption of Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. In the course of the last years, there has been growing interest among the member states in making provision in domestic law for measures to ensure open government and public access to official information. It should be noted that Article 19 of the Universal Declaration on Human Rights and Article 19 of the International Covenant on Civil and Political Rights appear to grant a wider right of access to official information than the European Convention on Human Rights as these provisions also contain a right to seek information.⁷¹

- Access to information may be subject only to such limitations as are necessary in a democratic society for the protection of legitimate public interests and privacy and other legitimate private interests. Where access to information is refused, the administrative authorities must give a statement of reasons and the refusal must be subject to judicial or other independent review.⁷² Fortsakis considers this right closely bound to the right to be heard. According to the later, the administration has a duty to provide users with any information in the possession of the administrative departments that concerns them, while offering them the opportunity to state their views.⁷³ There are two other principles which must be added to the former one: the principle of the need to regulate the formation, composition and operation of corporate bodies and the principle of the need to apply to administration action rules of administrative procedure.⁷⁴

⁷¹ Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents (Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies)

⁷² Handbook, p. 14.

⁷³ FORTSAKIS, p. 209.

⁷⁴ FORTSAKIS, p. 210.

- Access to information was originally regarded as ancillary to the right to be heard, for in its absence the latter cannot be effectively exercised. Nowadays, however, it is considered as a separate entitlement of its own.⁷⁵ Within the European Union, the principle was developed in competition cases stating that ‘it is not for the Commission alone to decide which documents are useful to the defence’.⁷⁶ According to the rule of equality of arms, both parties must be given the same knowledge of the contents of the file. The right has now been enshrined on the highest level.⁷⁷

Regarding the EU, it can be said that the general right to access to information has grown to a basic procedural principle connected to the democratic principle of equality of arms in the administrative procedure. According to the case law, this principle serves to bring about open government and accountability ensuring that a person would be granted a right of access to his file even if no formal proceedings were taking place.⁷⁸

Appeals against administrative decisions

Private persons shall be entitled to seek, directly or by way of exception, a judicial review of an administrative decision which directly affects their rights and interests. Administrative appeals, prior to a judicial review, shall, in principle, be possible. They may, in certain cases, be compulsory. They may concern an appeal on merits or an appeal on the legality of an administrative decision. Private persons shall not suffer any prejudice from public authorities for appealing against an administrative decision.

As the Latin maxim says: ‘Where there is a right there is a remedy.’⁷⁹ The possibility of judicial review and so the accountability of the administration is traditionally considered as the very first and most important step against executive arbitrariness; therefore it is a basic element of good administration as well. The principle guarantees that public administration has to be forced to comply with the procedural rules; otherwise the decision will be nullified. Regarding this rule, in a wider sense courts ensure good administration indirectly with the separation of powers in view. Judicial control prevents administration to act rashly and uncarefully by guaranteeing that constitutional and legal principles imposing duties act positively are complied with.⁸⁰

The Council of Europe has already grounded this requirement in its first legal document in the field of constitutional administrative law. Private persons shall be

⁷⁵ MILLET, Lord: The right to good administration in European Law. *Public Law*, Summer 2002. Sweet & Maxwell Ltd., 2002. p. 314.

⁷⁶ See Cases T-30, 31 & 32/91. *Solvay v. European Commission* [1995] E.C.R. II-1825.

⁷⁷ See EC Treaty 255.

⁷⁸ See KANSKA, p. 319.

⁷⁹ ‘*Ubi jus ibi remedium.*’ Citing: MILLET, p. 309.

⁸⁰ See SOLÉ, p. 1520.

entitled to seek, directly or by way of exception, a judicial review of an administrative decision which directly affects their rights and interests. Administrative appeals, prior to a judicial review, shall, in principle, be possible. They may, in certain cases, be compulsory. They may concern an appeal on merits or an appeal on the legality of an administrative decision. Private persons shall not suffer any prejudice from public authorities for appealing against an administrative decision. To ensure the effective protection of the rights of the person concerned any administrative act which adversely affects his rights, liberties or interests should be accompanied by information on the remedies which are available against it. The indication of remedies should of course include all the information required for applying for the remedy, particularly the designation of the body competent to deal with the remedy, and the time-limit.⁸¹

Right to be heard

If a public authority intends to take an individual decision that will directly and adversely affect the rights of private persons, and provided that an opportunity to express their views has not been given, such persons shall, unless this is manifestly unnecessary, have an opportunity to express their views within a reasonable time and in the manner provided for by national law, and if necessary with the assistance of a person of their choice.

The right to be heard is considered as a very basic principle of administrative law; all the authors in this field recognize its importance. According to Fortsakis, this gives the right to persons to be invited by the administration to express their views and to be actually heard by the administration – and it should be underlined that – prior to the adaptation of any individual decision that might adversely affect them.⁸² The right to be heard is a fundamental procedural principle which has a dual basis. First, it is central to the concept of natural justice from the view of the individual; on the other hand, it promotes the efficiency of the decision-making process, because the person may serve with useful information for the authority as well.⁸³

The principle was not accidentally put to the very front of the first EC document aiming good administration; its importance is also outstanding in jurisprudence. The principle *audi alteram partem* derived from Roman law, has embedded itself in the administrative procedures of all European countries.⁸⁴ It was the Court of Justice who

⁸¹ Resolution (77) 31 on protection of the individual in relation to the acts of administrative authorities (Adopted by the Committee of Ministers on 28 September 1977 at the 275th meeting of the Ministers' Deputies)

⁸² FORTSAKIS, p. 209.

⁸³ MILLETT, p. 314.

⁸⁴ See KANSKA, p. 315.

played an important role in the spreading of the principle across Europe; it consistently stood up for it.⁸⁵ The temporal character was refined so that the public authority has to hear the person concerned before the decision is taken, however it is implicitly results from its factual enforcement. The jurisprudence considers the principle to such an important rule which also includes other, appraised principles such as right to have access to files, the duty to give reasons, the reasonable duration of the process, etc.⁸⁶

The Handbook says that this principle guarantees the right for persons concerned to submit facts, arguments or evidences to the authorities. The right has a two-fold rationale: it is part of the private person's right to fair trial in cases where an administrative authority takes the initiative of an administrative procedure which may affect the private person's rights, interests or liberties, on the other hand, it should allow the administrative authority to take the best act possible, i. e. the act which is based on an accurate and equilibrated assessment of facts and arguments. Although persons concerned have the right to submit all kinds of facts, arguments or evidence, the administrative authorities will, of course, often consider some of the material as irrelevant and not base their administrative acts thereon.⁸⁷

The right to be heard cannot miss from the Hungarian Administrative Procedural Code either; the Code contains the rule as follows: 'The client has the right in a proceeding to make a statement, or to refuse to make a statement.'⁸⁸ The Code rules the right by ascertaining of the relevant facts of the case, the statement of the client hereby becomes evidence. Regulating this institute as a right has dual consequences: on one hand, the client has a right to make a statement, he cannot be deprived from this right; on the other hand, if the procedure was not started ex officio, the client cannot be obliged to declare and cannot be sanctioned for this miss. Nevertheless, if the client exercises this right, he has to be truthful; on the contrary he can be fined by the authority.⁸⁹

Reasonable time limit

Public authorities shall act and perform their duties within a reasonable time.

Slow administration is bad administration', so the fast handling of cases is a basic criteria of good administration.⁹⁰ The principle bears with high importance in cases where a permission or contribution must be provided by the public administration before lawfully practicing an activity. In that case it is essential for the applicant to get this permission as soon as possible. If there would have been no time limit for the authority for reaching its

⁸⁵ See Case 17/74, *Transocean Marine Paint Association* [1974] E.C.R. 1063.

⁸⁶ SCHWARZE, Jürgen: Enlargement, the European Constitution and Administrative Law. *International and Comparative Law Quarterly*, Vol. 53. Part 4. 2004. p. 973.

⁸⁷ *Handbook*, p. 18.

⁸⁸ See Art. 51. Par. 1. of Kct.

⁸⁹ PATYI, pp. 281-282.

⁹⁰ See KANSKA, p. 313

decision, the applicant would be in an uncertain situation for an indeterminate time which would put a considerable burden on him and would realize a form of arbitrariness.

It depends on many factors to decide what constitutes reasonable time in a certain case regarding the complexity of the case, the urgency of reaching the decision, the number of the persons concerned, etc. On European level the case law connecting to the European Convention on Human Rights shows the method to determine reasonable time, in administrative cases inter alia. The use of this principle is supported by the 'principle of silence' which means if the administrative authority fails to reach its decision within a reasonable time, another empowered authority may supervise this situation.

Prompt expedition of any procedure for the determination of private persons' rights and obligations is an intrinsic element of justice. The promptitude requirement in respect of procedures, which is also to be found in Article 6, Paragraph 1 of the European Convention on Human Rights, is imposed further by the objective of certainty of the law. In fact, before an act terminating an administrative procedure is taken, the procedure remains pending and hence the legal situation undefined; only this administrative act opens the possibility of taking action against the procedure or the final administrative act. That is why if a procedure requires the taking of a formal administrative act at the end of it, the administrative authority involved must complete the different stages of the procedure and take the act within a reasonable time. This principle applies no matter whether the procedure was initiated by the administrative authority by itself or by a private person. A failure to act (silence or inaction) must, under national law, either be considered, after a specified period of time, as equivalent to an act (positive or negative decision) or be subject to possible control by an administrative or judicial authority competent for that purpose (control for omission).⁹¹

There are generally no precise time-limits on administrative action within the EU law, the duty of the administration to act within reasonable time was recognised by the courts.⁹² The Court of Justice stressed out in many decisions that the infringement of a time-limit has to be regarded to such a severe procedural mistake that it entails the annulment of the decision.⁹³

The Hungarian Constitutional Court developed the requirement of reasonable time primarily regarding administration of justice. The interpretation of the requirement of fair trial in a broad sense includes the requirement of judging upon the case within a reasonable period of time, and it can justify the introduction of simplified forms of procedure, and in a certain scope of cases even out-of-hearing administration can be

⁹¹ *Handbook*, p. 20.

⁹² See Case 120/73, *Lorenz v. Germany and Rheinland-Pfalz*, [1973] ECR 1471; Case T-81/95 *Interhotel v. Commission* [1997] ECR II-01265; Case 223/85 *RSV v. Commission* [1987] ECR 4617. Citing: KANSKA, p. 313.

⁹³ See Case 187/97, *Saarland et al. v. Ministry of Industry* [1988] E.C.R. p. 5037. Citing: SCHWARZE, Jürgen: *Developing principles of European administrative law. Public Law*, Summer 1993. Sweet & Maxwell Ltd., 1993. p. 232.

accepted. Still, the requirement of time-limits is only one of the elements of fair trial, and its enforcement shall not be exaggerated to the extreme: it shall not gain priority over other aspects of fair trial, and it shall never violate another fundamental right. The 'time gained' by restricting the right to defence is no value significant enough to justify the limitation of constitutional rights and requirements. Such a consideration would be a merely practical attitude unworthy in respect of the constitutional operation of the judiciary system, contradicting the court's obligation to examine the cases thoroughly, to weigh the evidence with circumspection, to explore all the aggravating and mitigating circumstances, and to adopt a just decision in line with the law.⁹⁴

Regarding public administration, the Constitutional Court deduced the principle from legal certainty which is an essential element of the rule of law. It bears with high importance that the conduct of the official, including the time limits of his procedure shall be calculable for the individual. Public administration has an obligation to exercise its power which means that the officer has to reach his decision within the deadline prescribed by law; public administration shall not have any discretion in this field. The time limits of the procedure also serve as guarantee for the public or individual interest, therefore the principle of legal certainty and rule of law would be infringed if the legislator has not provided effective remedies for the client in case of breaching the deadlines of the procedure.⁹⁵

The Hungarian Procedural Code uses the expressions of 'administrative time limit' and 'time-limit determined by law' instead of reasonable time. 'Clients are entitled to receive fair treatment and have the right for a decision to be adopted in their official affairs within the time limits prescribed by law, as well as the right for use of their native language during the course of proceedings.'⁹⁶ It should be stressed out that the administrative time limit (i.e. the time limit for reaching the final decision) is never absolute, because it always depends on the circumstances of the certain case (when does it start, when does it end, what kind of procedural steps have to be executed within it which fall out of the scope of administrative time limit, etc.). The Hungarian Code of Administrative Procedure rules a general time limit of thirty days as administrative time limit against the former thirty days deadline. 'Resolutions, rulings for the termination of the proceedings, and the rulings of appellate authorities for the annulment of decisions of the first instance and for reopening the case shall be adopted within thirty days from the date specified above and measures shall be taken to have the decision published within the same time limit. A shorter time limit may be established by any form of legislation, whereas a longer one may be established only by an act or government decree.'⁹⁷ It is important to mention the latest modification of the Code which states 'where this Act fails to prescribe the time limit for the execution of any procedural step, the authority shall take measures without delay, but

⁹⁴ See Decision 20/2005. (V. 26.)

⁹⁵ See Decision 72/1995. (XII. 15.)

⁹⁶ See Art. 4. Par. 1. of Kct.

⁹⁷ PÁLYI, pp. 150-156.

within eight days, for having the procedural step in question carried out'.⁹⁸ According to this rule the authority cannot postpone the act even if there is no specific time limit prescribed.

Duty of reasoning

Appropriate reasons shall be given for any individual decision taken, stating the legal and factual grounds on which the decision was taken, at least in cases where they affect individual rights.

The administrative act must be notified to all persons concerned. In most legal systems, an administrative act which has not been regularly notified is not invalid but, as long as the person concerned has not been regularly notified of it, it can not produce its legal effects for that person. Reasons must be stated in writing for all acts which may adversely affect the rights or interests of private persons. The act itself should either state the reason upon which it is based or clearly indicate where those reasons can be found. The statement of reasons must be adequate, clear and sufficient. It will normally indicate the main facts, arguments and evidence as well as the legal basis on which the administrative authority based the administrative act.⁹⁹ Statement of reasons – also called as justification of decisions – is such a basic principle that according to many authors, it does not call for any particular comments, as it is already widely accepted in virtually every European legal system.¹⁰⁰

The principle acts as a basic rule in the European Union as well, it is among those few which are grounded in a treaty of the Community.¹⁰¹ Today, in many Member States there no longer exist any notable contradictions between national law on the one hand and the principles of administrative law established by the ECJ on the other. However, this development is not so much based on influences of Community law but rather on the increasing significance of the European Convention on Human Rights and on the common roots of many legal provisions German and French administrative law. The convergence of national administrative law principles become especially apparent with regard to the question of whether and to what extent reasons should be given for administrative decisions. In many Member States the legislature has introduced an obligation to give reasons for decisions of individual cases only in the last decade while in Germany, for example, this obligation is explicitly laid down in the German law of administrative procedure. In France, this requirement has traditionally been regarded as a threat to an effective execution of the law by the authorities, but nowadays changes are

⁹⁸ See Art. 33. Par. 1. of Ket.

⁹⁹ *Handbook*, p. 20-21.

¹⁰⁰ See FORTSAKIS, p. 210.

¹⁰¹ See FCC 190 and 191. Referring to it: HARLOW, Carol: Global administrative law: the quest for principles and values. *The European Journal of International Law*, Vol. 17, No. 1, 2006, p. 5.

perceptible. In England it remains to be seen whether a general obligation to give reasons will gain acceptance in the English legal order. However, hints in the courts' judgments to this respect make clear that a considerable potential exists for such a development. This development has possibly been accelerated by the ECJ which in the Heylens judgment insisted upon the requirement of giving reasons, as a precondition for an ordered administration, for the purpose of the protection of the four freedoms of the common market and the guarantee of adequate legal protection.¹⁰²

The duty to give reasons is not only a formal requirement, but also a safeguard to ensure that public administration decides carefully. Therefore, the authority must state the essential grounds on fact and law, as well as the criteria taken into account when reaching a decision.¹⁰³ It is the competence of the public authority to decide, how detailed shall the reasoning be and how the notification shall happen. The authority determinates the extent of the reasoning according to the decision concerned, regarding to the aim of the duty which is the evaluation of the decision for the person.¹⁰⁴

The Hungarian Constitutional Court defined the duty to give reasons from the view of the justice instead of administration, regarding it as an outstanding element of judicial independence. "The basic criterion of judicial activity is that the decision goes together with the obligation of reasoning."¹⁰⁵

The Hungarian Administrative Procedural Code contains the formal and material requirements of the resolution in a uniform frame. The resolutions shall contain the name of the competent authority, the case number and the name of the officer in charge; the name and home address or registered office of the obligor or obligee, and the identification data the client has supplied in the application; description of the subject matter of the case. In the operative part the authority's decision, and information on the form of remedy available, the place and the deadline for filing, and information on the remedy procedure, the name of the special authority involved and the operative part of its assessment, the decision ordering payment of the duties and fees charged for the proceedings to the client, etc. In the disposition the relevant facts of the case and the underlying evidence, the evidence presented by the client and found inadmissible, and the reason for this finding, for resolutions adopted under the principle of weighing and deliberation, the criteria and facts employed, the explanation for the special authority's assessment, the statutes upon which the authority has adopted the resolution. In the last part it contains the venue and the time where and when the decision was adopted, the name and title of the competent officer, and the name and title of the issuer, if other

¹⁰² SCHWARZE, Jürgen: The convergence of the administrative laws of the EU Member States. *European Public Law*, Vol. 4. Issue 2. Kluwer Law International Ltd. 1998. pp. 197-198.

¹⁰³ SOLIÉ, p. 1521.

¹⁰⁴ For the obligation of reasoning also see *Recommendation No. R (87) 16 of the Committee of Ministers to member states on administrative procedures affecting a large number of persons* (Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies)

¹⁰⁵ Decision 54/2001. (XI. 29.)

than the competent officer and the signature of the issuer of the resolution and the stamp of the authority.¹⁰⁶

Execution of administrative decisions

Public authorities shall be responsible for the execution of administrative decisions falling within their competence. An appropriate system of administrative or criminal penalties shall, in principle, be established to ensure that private persons comply with the decisions of the public authorities. Public authorities shall allow private persons a reasonable time to perform the obligations imposed on them, except in urgent cases where they shall duly state the reasons for this. Enforced execution by public authorities shall be expressly prescribed by law. Private persons subject to the execution of a decision are informed of the procedure and of the reasons for it. Enforced execution measures shall be proportionate.

It is necessary to maintain the trust of private persons in the administrative and judicial system and that, for this reason, both decisions by administrative authorities entailing obligations for private persons and judicial decisions in the field of administrative law recognizing rights for private persons should be executed. The action of the administrative authorities presumes that their decisions are efficiently implemented by private persons and the efficiency of justice requires that judicial decisions in the field of administrative law be executed, in particular when they are addressed to administrative authorities; moreover the execution of administrative decisions should have regard to the rights and interests of private persons. On the ground of the abovementioned, the Council of Europe made a recommendation on the execution of administrative and judicial decisions in the field of administrative law in which it was declared that member states should provide an appropriate legal framework to ensure that private persons comply with administrative decisions that have been brought to their knowledge in accordance with the law, notwithstanding the protection by judicial authorities of their rights and interests. The use of enforcement by administrative authorities should be subject to the following guarantees: enforcement is to be expressly provided for by law; private persons against whom the decision is to be enforced are to be given the possibility to comply with the administrative decision within reasonable time except in urgent duly justified cases; the use of and the justification for enforcement are to be brought to the attention of the private persons against whom the decision is to be enforced; the

¹⁰⁶ See Art. 72. Par. 1. of Ket. and PÄTYL, pp. 341-355.

enforcement measures used including any accompanying monetary sanctions are to respect the principle of proportionality.¹⁰⁷

Administrative execution is the enforcement of an obligation prescribed by an administrative act in case of the lack of voluntary fulfilment of the obligation.¹⁰⁸ Therefore execution is connected to the field of law enforcement which is primarily pecuniary and shall only exceptionally affect the person of the individual.¹⁰⁹

Compensation

Public authorities shall provide a remedy to private persons who suffer damages through unlawful administrative decisions or negligence on the part of the administration or its officials. Before bringing actions for compensation against public authorities in the courts, private persons may first be required to submit their case to the authorities concerned. Court orders against public authorities to provide compensation for damages suffered shall be executed within a reasonable time. It shall be possible, where appropriate, for public authorities or private persons adversely affected to issue legal proceedings against public officials in their personal capacity.

Compensation is considered as a part of judicial protection by many authors, however it notably has separate characteristic. Compensation has also been arise in a former recommendation, on the following way: Reparation should be ensured for damage caused by an act due to a failure of a public authority to conduct itself in a way which can reasonably be expected from it in law in relation to the injured person. Such a failure is presumed in case of transgression of an established legal rule.¹¹⁰ This provision defines the factors which must be present for public liability to arise. The standards of conduct which public authorities might reasonably be expected in law to observe depend on their tasks and the means at their disposal. Public authorities must consequently be in a position to perform a series of tasks and provide a number of services to the community, the definition, scope and nature of these activities being established by legal rules. When a public authority fails to comply with a duty required by the legal rules and damage to citizens ensues, it should be possible for the latter to obtain reparation from

¹⁰⁷ Recommendation Rec (2003) 16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law (Adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

¹⁰⁸ PATYI, p. 577.

¹⁰⁹ About administrative enforcement see PATYI, pp. 577-621.

¹¹⁰ Recommendation No. R (84) 15 of the Committee of Ministers to member states relating to public liability (Adopted by the Committee of Ministers on 18 September 1984 at the 375th meeting of the Ministers' Deputies)

the public authority in question, regardless of any personal liability of the agents or officials who caused the damage.

‘Administrative authorities shall be subject to civil liability for damages caused to the client by any unlawful proceedings.’¹¹¹ This Hungarian administrative rule is in conformity with the ancient requirement of the rule of law stating that the state has to be liable for the damages caused for the citizens; referring to its power the government cannot avoid responsibility, the general rules of private law has to be applied to this field. Therefore, the compensation for the damages caused by the administration is regulated in the Hungarian Civil Code as follows: ‘Liability for damages caused by the public administration shall be determined when the damage cannot be obviated with ordinary remedies or the aggrieved party has already taken these remedies.’¹¹² Only damages with administrative nature, i.e. in connection with the administrative activities exercised with governmental power or administrative malpractices shall be considered to administrative damages.¹¹³

Participation

Unless action needs to be taken urgently, public authorities shall provide private persons with the opportunity through appropriate means to participate in the preparation and implementation of administrative decisions which affect their rights or interests.

The principle was detailed in a former recommendation of the Council of Europe.¹¹⁴ That recommendation declared that the persons concerned must be informed of the main features of the proposed action. Such information should enable them to determine whether and in what way they are or may be affected by the project. Depending on the scale of the project and the number of persons potentially affected, the information methods used, either individually or in combination, could include the following: circular letter, notice in the town hall, notice at the future site of the project, public announcement in the local or regional press, exhibition with plans and scale models, etc.

The Hungarian Administrative Procedural Code provides the opportunity of participation for the clients who constitute a quite wide range of person. According to the general notion ‘client shall mean any natural or legal person and any association lacking the legal status of a legal person whose rights or lawful interests are affected by a

¹¹¹ See Art. 4. Par. 2. and 3. of Ket.

¹¹² See Act 4 of 1959 on the Hungarian Civil Code Art. 349. Par. 1.

¹¹³ See Decision PK 44. of the Supreme Court of Hungary.

¹¹⁴ See Recommendation No. R (87) 16 of the Committee of Ministers to member states on administrative procedures affecting a large number of persons (Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers’ Deputies)

case, who is subjected to regulatory inspection, or who is the subject of any data contained in official records and registers.¹¹⁵ The right of participation is connected to the procedural position of being affected; there must be a causal link between the procedure of the authority and the right or lawful interest of the person concerned. The general notion is detailed later by the Code: 'An act or government decree may define the persons who can be treated as clients - in connection with certain specific types of cases - without prejudice to Subsection (1). Without prejudice to what is contained in Subsection (1), all owners of real estate properties located in the impact area specified in the relevant legislation, as well as any person whose right related to such properties has been registered in the real estate register shall also be treated as clients. The rights of clients are also conferred upon the bodies of vested competence, other than those participating in the case in the capacity of an authority or special authority. In specific cases interest representation organizations may be vested with the rights of clients, as well as non-governmental organizations whose registered activities are oriented for the protection of some basic rights or the enforcement of some public interest.'¹¹⁶

Conclusions

Modern states assign to public administration various duties and powers in order to meet its increased obligations. The scope of the administrative functions is basically determined by three factors: the objectives, priorities and values of modern democracies and their legal framework; the technical, human and economic resources which administrative authorities have at their disposal; and the trust which is placed in the efficiency of the administrative apparatus.¹¹⁷ The range of administrative activities goes from the classic minimum functions of defense, levy of taxes, education, etc. to newer ones like social security, health care, protection of environment, etc. It must be stressed out that in some countries there is now a grooving tendency to hand over certain public functions to be carried out by private entities instead of public bodies.

The variety of tasks assumed by public administration for the benefit of the community as a whole often affects traditionally protected competing private rights. A fair balance must be struck between them and the public interest. This is the role of administrative law which, thus, appears not only as the instrument which organizes the public administration but also the law that regulates the exercise of the administrative powers and provides for the control of its use. Clear rules and principles of that latter branch of administrative law strengthen the certainty of law in this area and reduce the possibility of arbitrariness, without curtailing the necessary legal margin of discretion

¹¹⁵ See Art. 15. Par. 1. of Ket.

¹¹⁶ See Art. 15. Par. 2-5. of Ket.

¹¹⁷ *Handbook*, p. 5.

which must be left to administrative authorities for the sake of fair and efficient management of public affairs.¹¹⁸

¹¹⁸ Ibidem

THE CRIMINAL POLITICAL QUESTIONS OF THE FIGHT AGAINST TERRORISM

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Introduction

From the view of the fight against terrorism the events of 11 September 2001 constitute a sharp caesura both in international and in national level. Indeed before this event the international community concentrated rather on the sui generis crimes committed within the scope of terrorism and the efficiency of intervention against these actions.

While the Hungarian Criminal Code – with regard to the former § 261 – did not actually regulate facts of act of terrorism in the classical sense. Moreover, the crime rarely appeared in Hungarian criminal statistics. The change of attitude was caused by the above-mentioned tragic events, since after that the forming of a complex front started which was built from the fundamental fact - both in international and in national level - that the essential preconditions of a successful intervention is the harmonization of different disciplines.

The more and more researchers on terrorism published their research results in the field of up till then unexploited theme in significant number in the national special literature and also in the level of international community. Furthermore, in the European Union a claim was formulated with a view to forming legal and operative-administrative means of a comprehensive antiterrorism strategy. In Hungary researches had mainly the direction of security policy, military policy, criminology, forensic science or sociology, and until now only a few people have dealt with the opportunity of criminal law dogmatic approximation, and as a matter of fact one can not find a comprehensive, monographic analysis of criminal policy characteristic of fight against terrorism in our country.

According to the above-mentioned reasons the main aim of the work was creating such a comprehensive work, in which the parameters relevant from the view of the criminal law front of the fight against terrorism will be demonstrated and analysed. In this respect we tried to concentrate on prevailing opinions published in international studies “being ahead of us in this topic” and on results drafted on the level of the European integration, so our work aims at contributing to the national improvement of criminal law intervention against terrorism.

Therefore during the preparation of the work we were making an effort to the most complex approximation possible within the field of substantive criminal law, starting from conceptual basics through the critic of effective regulation to the creating of proposals de lege ferenda. Our defined aim – that is prevalent through the whole structure of the work –

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was dealing with all of the sub-fields which are in close connection with the criminal law basis of the international and national fight against terrorism. Our researches naturally referred to other areas of science such as criminology or sociology because of the interdisciplinary nature; however, these are referred only in such part, which does not divert the work from its main topic. Furthermore, our researches also include the world of international criminal law, whose status has a more and more powerful effect also on national dogmatic development with the implementation of international results.

Unfortunately, there is no doubt about the currency of the topic, since the change of international and European criminal policy after the murderous attempts of 2001 has taken effect permanently until now, continuously improving the effectiveness of horizontal cooperation between states and the operation of the agreement system. Eloquent testimonies of this development are the aspirations to rethink the range of international crimes in international criminal law, which constitute an important pillar of this work. Otherwise the structure of this work was determined by the nature of the theme and also by the above-mentioned fundamental aims. Therefore we tried to give such direction at the choice of the order of analysis, which is suitable for foundation of a well arranged unit.

Summary of the dissertation

The work divides into three parts, which distinguishes on the basis of the direction of research. The first part deals with standard work on terrorism, in which our aim was to give those ranges under which the later proper criminal law analysis will take place. The first structural unit of the work is also an introduction, in which we touch upon terrorism, the definitive elements of the act of terrorism and the terrorism as the criminological nature of crime. To lay down the conceptual bases, the work starts with the difficulties of creating definition, which is followed by specifying the direction of proper definition creation.

In view of the national scientific special literature we would like to emphasize that it is not possible to create an exact definition, therefore we should summarize results of several aspects in order to define exactly our “enemy”. Guided by this knowledge we dealt with the interpretation of responses from the world of political science, law science and criminology. As our general aim is a complex research and the summary of the connected scientific results, under the establishment of principle we deal with the criminological relations of terrorism, also taking into consideration that it is indispensable for the opening of an effective criminal law front and working up successful criminal policy to deal with understanding the terrorists and reasons of using this extreme form of force. Within the criminological aspect we touch upon the relation of terrorism and globalization at the same time trying to explore the corner points relevant from the point of view of the fight against terrorism. After that we attempt - with a reformative intent - to outline a new possible criminal policy strategy, whilst we deal with the different levels thereof separately in a more detailed manner. As both foreign and national special literature pay significant attention to the respect of human rights under the range of global and national intervention against terrorism, in the closing of the first part we pointed out these limits in a separate sub-chapter too.

Nevertheless, we remark that the work is made from criminal law motivation, thus in this structural unit we deal with human rights and their nature only to the necessary extent, furthermore we try to present examples from the Strasbourg case law, too. 6 In the second part – after the above-mentioned – we deal with the international aspects of criminal law intervention against terrorism, opening space for dogmatic analysis in the frame of the work.

The level of international interpretation is extracted actually in three smaller parts. We examined the outlining criminal policy in the international fight against terrorism and its main pillars, furthermore connected with it the opportunities and practical models of the raising of criminal authority against international delinquency to international level. These sub-chapters put the central element of the second part in a frame, which deals with cross-border terrorism as an international crime. We emphasize the significance of this issue in the work not only because many international special literature deal with it increasingly, but in our view, mainly because the enlarging of the range of international crimes in a narrower sense could be an important pledge of the effectiveness of the fight against international terrorism in the future. In this chapter we distinguish the act of terrorism committed in war or in peacetime, pointing out also the indifferent nature of terrorism in the classical sense to a certain degree. In addition, we try to demonstrate the directions appearing in the international community about handling cross-border terrorism – because of the characteristic breach of peace and security – not only as a simple transnational crime adjustable by bilateral agreements between nations but rather as a much more dangerous crime that induces all states based on the rule of law to a unified and comprehensive intervention.

The international aspect is followed by the European viewpoint under which our examination divides also into two parts dealing with on the one hand the European criminal policy and on the other hand the dogmatic interpretation of cross-border terrorism. In the latter field – through the overview of treaties – we try to arrange the act of terrorism in the definition of quasi European crime. Closing the second part we try to make perceptible the complex nature of terrorism as a crime, thus we sum up briefly those important crimes, which the terrorism in modern sense seems to combine more and more organically with, emphasizing the most important legal documents within the framework of the institution of the European integration, too. The third part of the work deals with the national regulation, narrowing the extent of examination to the framework of Hungarian legislation. In this structural unit we deal with the facts of the act of terrorism specifically, examining the 7 issues relevant from the aspect of dogmatic analysis. This part divides only into two chapters, in which on the one hand we concentrate on the history of the factors which constitute the act of terrorism, on the other hand on the critics of the effective regulation, together with creating a draft *de lege ferenda*. With reference to legal history, we try to run such period limits, which shows well the development of national criminal policy in the field of the fight against terrorism in Hungary. In this domain – following the general practice established by works published in the field of legal history – our examination starts from the time of the Csemegi Code, and we carry out this scrutiny until the passing of the current regulation. For the sake of demonstrating the course of development we refer to legal texts in this chapter, but only to the extent necessary. As closure, we take the valid regulation

under close critical-analysis and we try to shed a light on the shortcomings of the legal facts only on the basis of criminal law dogmatic considerations. After that we close our work with a proposal for legal norm, creating the closed logical unit of the work and setting our targeted complex criminal law examination in a frame.

Our proposal for an appropriate legal norm is the following:

„Sec. 261 (1) Any person who commits a violent crime against one of the persons referred to in Subsection (11) or commits a crime that endangers the public or

involves the use of a firearm in order to

a) coerce a government agency, another state or an international body into doing, not doing or countenancing something;

b) intimidate the general public;

c) conspire to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between ten to fifteen years, or life imprisonment.

(2) Any person who seizes considerable assets or property for the purpose defined in Paragraph a) and makes demands to government agencies or

non-governmental organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according

to the Subsection (1).

(3) Any person who threatens to commit the crimes specified in Subsection (1) and (2) is guilty of a felony punishable by imprisonment between two to eight years.

(4) The punishment of any person who:

a) abandons commission of the criminal act defined under Subsections (1) and (2) before any grace consequences are able to materialize;

b) confesses his or her conduct to the authorities;

c) confesses his or her conduct referred to in Subsection (3) to the authorities and cooperates with the authorities to prevent or mitigate the consequences

may be reduced without limitation.

(5) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under Subsections between (1) to (3) or any

person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for the use in such activities or by providing or raising funds to

finance the activities is guilty of felony punishable by imprisonment between two to eight years.

(6) Any person who is engaged in the conduct referred to in Subsection (5) for the purpose of committing crimes referred to Subsection between (1) to (3) in a terrorist group or supports the terrorist group in any other form is guilty of felony punishable by imprisonment between five to ten years.

(7) Any person who leads a terrorist group for the purpose of committing crimes referred to Subsection between (1) to (3) is guilty of felony punishable by imprisonment between five to fifteen years.

(8) The perpetrator of a criminal act defined in Subsection (5) and (6) shall not be punishable if he or she confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act.

(9) The punishment of the person who committed a crime defined under Subsection (7) may be reduced without limitation if he or she stops leading the terrorist group and confesses the members of the group and its operation to the authorities before they become aware of it.

(10) Any person who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment for up to three years.

(11) For the purpose of this Section:

a) violent crime against a person and crime of public endangerment that involves the use of firearms' shall mean: homicide /Subsections (1) and (2) of Section 166/, battery /Subsections (1)-(5) of Section 170/, willful malpractice /Subsection (3) of Section 171/, violation of a personal freedom (Section 175), kidnapping (Section 175/A), crimes against transportation safety /Subsections (1) and (2) of Section 184/, endangering railway, air or water traffic /Subsections (1) and (2) of Section 185/, violence against a person aiding a public official (Section 231), violence against a person under international protection (Section 232), public endangerment /Subsections (1)-(3) of Section 259/, interference with public works /Subsections (1)-(4) of Section 260/, seizure of any aircraft, any means of railway, water or road transport or any means of freight transport (Section 262), criminal misuse of explosives or explosive devices (Section 263), criminal misuse of firearms or ammunition /Subsections (1)-(3) of Section 263/A/, criminal misuse of military items and services and dual-use items and technology /Subsections (1)-(3) of Section 263/B/, criminal misuse of radioactive materials /Subsections (1)-(3) of Section 264/, criminal misuse of weapons prohibited by international convention /Subsection (1)-(3) of Section 264/C/, crimes against computer systems and computer data (Section 300/C), robbery (Section 321), and vandalism (Section 324);

b) terrorist group: shall mean a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit the crimes defined in Subsections (1)-(3);

c) threat: such a written or an oral statement addressed by the perpetrator to the state agencies or to an international organization or their representative or to the general public which show the intend to conduct the unprepared form of the crimes defined in Subsection (1) and (2) and which are capable of instilling serious fear in the recipients".

Conclusions

We do not think by any means that our work would contain a complete elaboration on terrorism. In our view, it is not possible in a single monograph because when one would like

to deal with terrorism, he should necessarily touch upon more sciences, and it is not possible to create the amalgam thereof in a single volume. In medium and long term, the fight against terrorism can be taken up effectively only if the results of the scientists working in the certain relevant sciences are applied combined in practice. Significant progress can be demonstrated both in the international and in the national special literature, furthermore in legal manifestos, whose further and continuous development is indispensable for the future of democratic nations. The author of the work believes that he managed to summarize the factors relevant from the view of legal science and to contribute to the creating of an effective criminal law front serving as a basis of comparison regarding the fight against terrorism in long term.

THE SUPERVISION OF THE LEGALITY OF LOCAL GOVERNMENTS

GYURITA, Rita

Introduction

The doctoral dissertation covers the supervision of the legality of local governments. The relevance of the subject of the research is based on the fact that more than 7 years have lapsed since the entry into force of the Fundamental Law of Hungary (hereinafter referred to as Fundamental Law of Hungary) and the provisions of Act CLXXXIX of 2011 on the local governments of Hungary (hereinafter referred to as the LGA)¹ on the supervision of the legality of local governments. In my opinion, this period is enough to compare the previous control form enforced above the local governments within the public administrative organization, i.e. legality review with the current supervision of legality and its practice.

Legality control was the form of review of legality of the local governments within the public administrative organization from 1990 to 2011. The legality review as well as its instruments and lack of instruments observed in the public administrative organization received a certain amount of criticism on both theoretical and practical levels. The control implemented within the previous public administrative organization system had a less severe influence than today's control, as the public administrative organ (capital and county government office or its legal predecessor organ) exercising the power of legality review had less instruments, and did not have instruments allowing any direct intervention.

Supervision of legality ensures stronger control with several instruments offering direct interventions in the public administrative organization system. Firstly, it includes the subjects and instruments of the previous legality review, secondly, its sets of subjects and instruments have been increased or modified, thirdly, the legality supervising organ (capital and county government office) has already a right to directly intervene (replacement of acts) and fining beyond initiating a procedure. It should be emphasised that the competence of the organ outside the public administrative organization system, applying the instrument of supervision of legality, i.e. of the court has been also expanded, partly the previous review of acts has been expanded (to cover also local government decrees), and partly compulsory order in the case of breaches and order of replacement of acts also appear.

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¹ The Fundamental Law of Hungary (hereinafter referred to as Fundamental Law) Article 32 (4)-(5), 34 (4), Act CLXXXIX of 2011 on the Local Governments in Hungary (hereinafter referred to as LGA) Section pp. 132-142.



The Hungarian system of supervision of legality is characterised by the elements of cooperating-helping supervision, and the use of the instruments ensures the protection of the local government functions and the performance of the duties by the local governments.² The instruments allow subsequent interventions in the case of infringement of laws.

The research focuses on the analysis, systematisation and evaluation of the supervision instruments ensuring the purpose of the supervision of the legality of local governments, i.e. the public interest, the objective legal protection and their comparison to the instruments of legality review.

Purposes of the doctoral thesis

The following research purposes have been specified by me. The examination, analysis, systematisation and evaluation of the strength of the influence and the possibility and limitations of interventions and of the use of instruments during the supervision of legality intended to protect the public interest and to ensure objective legal protection, and drawing conclusions. In addition, supervision of the legality of local governments and comparison of the instruments of the previous legality review.

The examination, analysis and evaluation of the maintenance of balance between the local governments' autonomy and legality as well as the objective legal protection, and of measures and interventions to be made in proportion to the infringement to the necessary extent, and drawing conclusions.

Formulation of possibilities and *de lege ferenda* recommendations ensuring future improvement of the supervision of legality as a legal instrument on the basis of analyses, evaluations and conclusions made with various methods.

The research is not intended to examine the changes in connection with the status and functions of the local governments and the re-regulation of the system of local governments. The research is limited to the supervision of the legality of local governments, including the instruments used by other state organs (courts etc.) at the initiative or on the basis of recommendations made by the legality supervision organ (capital and county government office).

Two assumptions are examined by me in the doctoral thesis:

The system of instruments of the supervision of the legality of local governments and interventions and influence ensured by the instruments guarantee the protection of public interest and the objective legal protection.

To certify the hypothesis, first the types of supervision, then the subjects and the system of instruments of the supervision of legality are examined, analysed, systematised and evaluated by me in the dissertation. The supervision of legality and the use of the supervision

² HOFFMANN István (2014): Az önkormányzati rendeletek bírósági felülvizsgálata - a Kúria Önkormányzati Tanácsa gyakorlata tükrében. Magyar jog. 2014. No. 6. pp. 341-343.

instruments are intended to ensure and guarantee the protection of public interest and the objective legal protection.

The system of instruments of the supervision of the legality of local governments ensures a balance between the local governments' autonomy and legality, the objective legal protection on the one hand, and the interventions to be made in proportion to the infringement to the necessary extent.

To certify the hypothesis, the terms and limitations as well as the legal effect of the use of the instruments of supervision of legality are examined, analysed, systematised and evaluated by me in the dissertation. The legality control enforced inside and outside the public administrative organization, and consequently the interventions and the influence have strengthened (e.g. replacement of acts), and this is why I examine the balance between the local governments' autonomy and the legality, the objective legal protection.

The Applied Research Methods and the Structure of the Dissertation

Typical research methods used during the research and drawing of the doctoral dissertation are the historical and descriptive analysis as well as the comparative method. The doctoral dissertation contains also dogmatic deductive and practical analyses. As regards the structure and content of the doctoral dissertation, it is divided into seven chapters:

- theoretical introduction (Chapters I to III),
- detailed explanation of the legality review (1990-2011) and supervision of legality (2012-) of the local governments,
- analysis,
- systematisation,
- evaluation and comparison of the literature, the legal regulation and the legal practice (Chapter IV),
- international outlook on the European legality supervision and legality control models,
- formulation of scientific results related to the subject of the research and de lege ferenda recommendations.

The theoretical introduction and groundwork of the doctoral dissertation (Chapters I to III) discuss supervision as a type of public administration activities and as a legal relationship, and analyse and compare the individual types of supervision, considering that the supervision of legality is a type of public administration supervision. This is followed by a brief historical outlook on state legality control over the local governments. During the research, for the purpose of the theoretical groundwork, I analyse the national literature on supervision from the beginning of the 19th century to the 21st century, in view also of space limitations. Without aiming to give an exhaustive list, the history and development of the theoretical approach of supervision and supervision of legality are outlined on the basis of the prominent works of legal academics dealing with supervision (e.g. Lajos Szamel, Tibor

Madarász, Jenő Kaltenbach, Imre Verebélyi).³ Supervision and supervision of legality are analysed typically with historical and descriptive methods on several levels: (a) the supervising entity, (b) the supervised organs, (c) the subjects of supervision, and (d) its system of instruments.

The second part of the doctoral dissertation (Chapters IV and V) is the central part of the dissertation, which contains the detailed discussion of the review and supervision of the legality of local governments as well as the detailed analysis of the legality supervising organs (capital and county government offices), the supervised local governments (municipal and territorial local governments), the subjects of supervision and the supervision instruments. (Chapter IV) A separate chapter is assigned to the analysis and systematisation of those organs (Constitutional Court, court, National Assembly), including the instruments used by them, which perform (external) legality control over the local governments outside the public administration organisation system at the initiative or on the basis of the recommendation of the legality supervising organ (capital and county government offices). (Chapter V). In the second part of the dissertation, the diverse system of instruments of the legality control performed for the protection of public interest and objective legal protection, and thereby the strength of the influence and interventions are introduced and evaluated.

In addition to the national literature, the statutory law regulation of the legality review and supervision of legality of the local governments is also discussed (Act XX of 1949 on the Constitution of the Republic of Hungary, Fundamental Law, Act LXV of 1990 on the Local Governments, LGA). From 1990 up to the present day. This part is characterised by both the historical, descriptive method and the comparative method, as the legality review and the supervision of legality are also compared on several levels from the aspects of (a) legal regulation, (b) reviewing or supervising entity, (c) the reviewed or supervised local governments, (d) the subjects of review or supervision, and (e) their instruments. The practice of the use of the legality supervision instruments, i.e. the legal practice is also analysed and evaluated. The legality supervision instruments have been divided between the government office (public administrative organ) and other state organs, and therefore the practice of the Curia's Council of Local Governments, several significant decisions of the Constitutional Court, the accounts of the chairman of the Curia as well as the annual accounts of the Government Office of Győr-Moson-Sopron County on the supervision of legality are studied and analysed.

³ SZAMEL Lajos: *Az államigazgatás vezetésének jogi alapproblémái*. Budapest, Közgazdasági és Jogi Könyvkiadó. 1963. pp. 154-198., SZAMEL Lajos: *Az államigazgatási szervek irányítása és vezetése*. In: SZAMEL Lajos szerk.: *Magyar államigazgatási jog Általános rész*. Budapest, Tankönyvkiadó. 1973. pp. 423-459., MADARÁSZ Tibor: *A magyar államigazgatási jog alapjai*. Budapest, Nemzeti Tankönyvkiadó. 1989., KALTENBACH Jenő: *A felügyelet intézménye az államigazgatásban*. Jogtudományi Közlöny, 1988. március hó. pp. 125-137., KALTENBACH Jenő: *Az önkormányzati felügyelet*. Szeged. 1991., KALTENBACH Jenő: *Irányítás, felügyelet és ellenőrzés a közigazgatásban*. In: FAZEKAS Marianna - FICZERE Lajos szerk.: *Magyar közigazgatási jog Általános Rész*. Budapest, Osiris Kiadó. 2005. pp. 243-260., VEREBÉLYI Imre: *A tanácsi önkormányzat*. Budapest, Közgazdasági és Jogi Könyvkiadó. 1987.

The third part of the dissertation (Chapter VI) contains an international outlook. Partly, I introduce the typical European legality supervision and legality review models (Anglo-Saxon, French, German-Austrian) from both organisational and instrumental aspects. In this chapter, the legality supervision systems of the V4 countries (the Czech Republic, Poland, Hungary and Slovakia) are also compared, laying an emphasis on the common, typical and different marks.

Finally, in the fourth part of the dissertation (Chapter VII), the scientific results related to the subject of the research and the *de lege ferenda* recommendations are discussed, which could improve the protection of the function of the legality supervision, the public interest and the objective legal protection.

Summary of the Scientific Results of the Dissertation and their Applicability

The statutory law specified the form of legality review of the local governments within the public administrative organization from 1990 to 2011 as legality control. The legality control as well as its instruments and lack of instruments received a certain amount of criticism on both theoretical and practical levels.⁴

When the local governments were re-regulated, the legislator specified the form of legality control of the local governments as supervision of legality, and this form of control replaced the previous form of legality review control from 1 January 2012 according to the statutory law terminology. The legality control of the local governments is specified by both the statutory law and the literature as supervision of legality from 2012. Earlier the legality control of the local governments is specified by only the literature as supervision of legality.⁵

The General Grounds of LGA refer to supervision as a form of control among the general purposes of the re-regulation in the following way: "The general purpose is to set up a modern, cost-efficient and task-oriented system of local governments, which ensures democratic and efficient operation, while it specifies a more stringent framework (of supervisory nature) for the local governments' autonomy in a way which enforces and protects the collective rights of voters for self-government, and it simultaneously reforms the rules of conflict of interest."⁶

The rules laid down in the Fundamental Law and LGA for the supervision of legality entered into force on 1 January 2012. Legality is supervised by the same territorial organ of state administration (capital and county government offices) having a general competence, that previously performed the legality review, however, the subjects and the instruments

⁴ DANKA Ferenc: *Törvényességi ellenőrzés - Hogyan tovább?* In: *Magyar Közigazgatás*, 2003. LIII. évfolyam. 9. szám. pp. 564-570., GELENCSEI József: *A közigazgatási hivatalok törvényességi ellenőrzési tevékenysége*. In: *Magyar Közigazgatás*, 2006. LVI. évfolyam, 2. szám. pp. 99-102., HOFFAMNNÉ dr. Németh Ildikó - HOFFMAN István: *Gondolatok a helyi önkormányzatok tevékenységének ellenőrzéséről és felügyeletéről - nemzetközi és történeti kitekintéssel, a gyakorlati végrehajtás módszereivel Somogy megyében*. In: *Magyar Közigazgatás*, 2005. február. pp. 89-103.

⁵ FAZEKAS Marianna: *A köztestületek szabályozásának egyes kérdései*. Budapest, Rejtjel Kiadó. 2008. p. 88.

⁶ <https://uj.jogtar.hu/#doc/db/1/id/A1100189.TV/ts/20190710/lr/chain729> (date of download: 05. 08. 2019.)

have been changed or supplemented. Supervision of legality is a stronger control, it includes the subjects and instruments of the previous legality review on the one hand, and further subjects and instruments were added on the other hand, as a result of which the possibility of intervention has improved as compared to the legality review.

The Legality Supervision

The public administration tasks are diverse, and therefore the public administration activity is a differentiated one. Supervision is one type of public administration activities. Administrative supervision is also a differentiated activity, and several types are distinguished:

- 1) hierarchical supervision,
- 2) supervision of legality,
- 3) official supervision.⁷

The supervision of legality is an activity displayed within the public administrative organization, in exceptional cases outside the public administrative organization. The latter activity has reduced, but might occur (e.g. the clerk exercises supervision of legality over the multi-apartment buildings). The supervision of legality is a public authority activity displayed outside the hierarchy. The supervision of legality is regulated by the Fundamental Law (in the case of local governments) and typically by acts.

The supervision of legality is performed by public administrative organs (central and territorial organs of state administration, clerk). The supervised organs are autonomous entities, legal persons, typically local governments. Within the public administrative organization, the supervised organs may be classified into the following groups:

- local governments,
- national minority self-governments,
- statutory professional bodies,
- regional development councils.

The supervision of the legality of local governments is regulated basically by the Fundamental Law and by the LGA.

The supervision of legality is performed by the government office exercising the right of supervision of legality (territorial organ of state administration, organ of government administration).⁸

The supervised organs are local governments: (a) municipal and (b) territorial local governments as well as (c) capital local governments.⁹

⁷ FAZEKAS Marianna: *Irányítás, felügyelet, ellenőrzés a közigazgatási rendszerben*. In: FAZEKAS Marianna ed.: *Közigazgatási jog Általános rész I.* Budapest, ELTE Eötvös 2014. Kiadó. p.134.

⁸ Fundamental Law Article 34 (4).

⁹ LGA Section 3 (1)-(3).

The purpose of the supervision of legality by the government office is to ensure objective legal protection, protection of the legal order, the legality of the operation of the representative body of the local government, its committee, partial local government, mayor, lord mayor, chairman, association and clerk of the general assembly (hereinafter referred to as the party concerned).¹⁰

The LGA exhaustively specifies the scope and subject of the supervision of legality, and within the government office's power of supervision of legality, it examines for the party concerned:

- the legality of its operation and decision-making procedure;
- legality of its decisions;
- performance of its legislation obligation as well as its decision-making and duty performance obligations based on the laws.¹¹

In connection with the subjects of the supervision of legality, the LGA specifies also exceptions, and the procedure of supervision of legality does not cover such decisions made by the party concerned, based on which a labour dispute or a public service-related dispute (designation, dismissal, disciplinary penalties etc.), a judicial or public administration official procedure specified in the laws is in place (special decisions made within the authority's competence etc.), or which were made by the representative body of a local government in the exercise of its discretionary powers, except for the examination of the legality of the decision-making procedure.¹²

The Fundamental Law and the LGA. regulate and share the supervision instruments between the government office appointed to exercise the right of supervision of legality and other state organs (Constitutional Court, court, National Assembly), and the latter are non-public administration or state administration organs, typically they have instruments allowing direct interventions (review of decisions, dissolution).

The following main types of supervision instruments (hereinafter referred to as instruments) provided in the Fundamental Law and the LGA for the government office as a legality supervisory organ are distinguished:

- a) legality notice,
- b) initiation of a procedure
 - (ba) initiation of the convocation of the representative body of a local government or of the association council,
 - (bb) initiation of the review of a local government decree at the Curia,
 - (bc) initiation of the review of a local government resolution at the administrative and labour court,

¹⁰ LGA Section 132 (2).

¹¹ LGA Section 132 (3).

¹² LGA Section 132 (4)-(5).

(bd) initiation of the establishment of failure of complying with the legislation obligation at the Curia,

(be) initiation of the establishment of failure to make decisions and perform duties at the administrative and labour court,

(bf) initiation of the review of supports granted from the central budget at the Hungarian State Treasury or the supporter,

(bg) initiation of the examination of the economic management of the local government at the SAO,

(bh) initiation of a procedure against the mayor or against the clerk at the mayor, (bi) initiation of legal proceedings for the dismissal of the mayor repeatedly infringing the law,

c) recommendation

(ca) recommendation to the minister liable for the supervision of the legality of local governments (hereinafter referred to as the minister) to ask the Government to propose to the Constitutional Court to review compliance of a local government decree with the Fundamental Law,

(cb) recommendation to the minister to ask the Government to propose the dissolution of the representative body of a local government operating in breach of the Fundamental Law,

d) convocation of the representative body of a local government or of the association council,

e) replacement of acts,

f) imposition of legality supervision fines.¹³

As regards the nature of the instruments, there are supporting, correctional (notice, annulment of acts etc.) and replacement (replacement of acts) and sanctioning instruments, however, the supporting and correctional instruments are predominant.¹⁴

The majority of the government office, as a legality supervisory organ, still do not ensure direct interventions (notice, initiation of a procedure, recommendation). András Patyi explains in connection with the instruments provided for the government office: "Only a minor part of the supervision instruments of the government agent is really supervisory, they allow mostly only control."¹⁵

As regards the use of instruments, some sort of sequencing and graduation are enforced, and in principle the legality notice is the first and mandatorily used instrument, and if the legality notice fails, a repeated notice or another instrument is applicable, and more than one instruments can be simultaneously used.

The legality notice is a supporting (correctional), reparative instrument. As regards its subject, the legality notice is a written warning related to the infringement and the self-

¹³ LGA Section 132 (1), Fundamental Law Article 32 (4)-(5).

¹⁴ KALTENBACH: *ibid.* pp. 169-174.

¹⁵ PATYI András: *A közigazgatási működés jogi alapjai*. Budapest, Dialóg Campus Kiadó. 2017. p. 90.

correction, and as regards its content, it is not an instrument of direct intervention. The notice does not cause the annulment or modification of the challenged decision, the replacement of failure, and it has no suspensory effect on the implementation of the decision or measures involved in the legality notice.

The initiation and recommendation are not synonymous. If a procedure is initiated, the government office directly proposes the competent organ (court, SAO etc.) to initiate and conduct the procedure, and to make a decision or to take other measures (direct intervention) in order to restore the lawful operation and to objectively protect the law. The minister's consent or approval is not necessary for the government office to exercise its right of initiation.

Contrary to the initiation, in the case of a recommendation the government office may not directly initiate a procedure at the competent organ, but makes a recommendation to the minister to initiate the procedure. The minister does not automatically submit a motion on the basis of the recommendation, first he/she examines the recommendation, and then proposes the initiation by the Government (for the dissolution of the representative body of a local government and the review of the compliance of the local government decree with the Fundamental Law), if the terms are met.

The replacement of acts is a substitution instrument, and the will enforcement and the right of decision-making are transferred from the supervised party to the government office. The replacement of acts (replacement of decisions) ensures a direct intervention in the local government's decision-making autonomy. The replacement of acts may take place only after a failed legality notice sent by the government office, two-stage legal proceedings and the issue of a court warrant.

The establishment of legality supervision fines is a sanctioning, repressive legality supervision instrument. The government office imposes a sanction (fine) as a legal consequence of the infringement. The legality supervision fine is a fine based on objective liability.¹⁶

Summary of the Exercise of the Legality Supervision

Statistics number OSAP 1622 available in an electronic way served as a source for the analysis of the frequency of legality supervision instruments used by the legality supervision organ (government office).¹⁷ The statistics summarise the legality supervision instruments applied by the legality supervising organ (government office) by instrument type on county (capital) and national levels every six months. The legality notice is the legality supervision instrument most frequently used by the legality supervising organ (government office), which is obviously explained by the fact that the legality supervising organ (government

¹⁶ NAGY Marianna - HOFFMAN István szerk.: *A Magyarország helyi önkormányzatairól szóló törvény magyarázata*. Budapest, HVG-ORAC Lap- és Könyvkiadó Kft. 2012. p. 495.

¹⁷ <https://www.kormany.hu/hu/dok?page=3&source=7&type=308#!DocumentBrowse> (date of download: 05.08.2019)

office) must use first the legality notice within the legality supervision instruments. It can be also stated that a high percentage of the legality notices is efficient. In my opinion, the legality notice is an efficient and successful supporting (correctional) instrument, which does not mean a direct intervention in the operation and decision-making of the local government, and only calls the attention of the party concerned to the self-correction.

In connection with the use of the additional legality supervision instruments, it can be stated that the initiation of the review of a local government act (local government decision), i.e. the initiation of the control of the compliance of the local government decree with the laws at the Curia (abstract norm control) as well as the initiation of the review of the local government resolution at the administrative and labour court belong to the most frequently used legality supervision instruments. In addition, the most frequently used instruments include initiations intended to eliminate an infringement or to oblige the failing party to meet its obligation, i.e. motions submitted to the administrative and labour court for the establishment of the failure of the local government to make resolutions or to perform its duties. Finally, the legality supervision fine is also a frequently used sanctioning instrument.

The less frequently used instruments include (a) initiation of the conduction of a control of the economic management of the local government at the State Audit Office, (b) initiation of the review of supports granted from the central budget at the Hungarian State Treasury or the supporter, (c) initiation of a disciplinary procedure against the mayor or the clerk, (d) initiation of litigation against the mayor repeatedly infringing the law, (d) initiation of the convocation of the meeting of the representative body of a local government or of the association council, and (f) convocation of a meeting, and (g) replacement of acts. These instruments are generally used rarely, but there are years when they are not used at all.

Finally, it should be noted that recommendation has not been used as an instrument. The legality supervising organ (government office) did not give any recommendation to the minister in charge of the supervision of liability between 2015 and 2018 in connection with the review of the compliance of a local government decree with the Fundamental Law by the Constitutional Court or with the initiation of the dissolution of the representative body of a local government infringing the Fundamental Law. In my opinion, the statistics confirm that the new instruments related to the legality supervision were necessary, the legality supervising organ (government office) and the court apply them to ensure the lawful operation of legal governments. The more frequently used instruments – within the new instruments of supervision – include obliging the local government to eliminate its failure through a court and the supervision fine. Replacement of acts, as an exceptional instrument, is rarely used, however, I find it reasonable, as the regulation itself has already a dissuasive effect.

Certification of the Hypotheses

It is found that the current system of instruments of the supervision of legality includes much more instruments, and thereby more differentiated possibilities to intervene, as

compared to the previous legality review (state supervision of legality). On the basis of the study of the practice of the government offices and judges, the current system of instruments of the supervision of legality is able to ensure the objective legal protection, the instruments are suitable to achieve the purposes of the supervision of legality and to ensure the lawful operation of local governments and performance of their duties.¹⁸

On the basis of the study of the practice of the government offices and judges, the current system of instruments of the supervision of legality is able to ensure interventions to be made in proportion to the infringements to the necessary extent, while the local governments are allowed to make self-corrections.¹⁹

The current system of instruments of supervision is diverse, a differentiated set of instruments ranging from notices to dissolution ensures graduation, and as a thumb rule, the legality notice is the instrument to be applied first, which allows the concerned party (supervision) to make self-corrections.

Obviously, instead of any intervention by the supervising organ, the elimination of the infringement via self-correction is the primary purpose. While professional assistance and other helpful and supporting instruments (consultation, recommendation etc.) may be used to prevent future infringements. The current system of instruments is able to guarantee interventions to be made in proportion to the infringements to the necessary extent for the correction or elimination of the infringements and for the objective legal protection. Replacement of acts and dissolution are instruments applicable only in exceptional cases, with the assistance of several state organs.

Based on the experiences of the recent 7 years, – in view of the judicial practice and the instruments used by the legality supervising organ – recommendations may be made, which could potentially improve the efficiency of the function of the supervision of legality and the objective legal protection. These recommendations are detailed in the following subsection.

Applicability of the Scientific Results of the Dissertation, Recommendations de lege ferenda

Recommendation on the Subjects of Supervision of Legality

In connection with subjects removed from those of the supervision of legality, 2 sub-exceptions were previously contained in the Ötv., then in the LGA. Firstly, the legality supervision procedure of the legality supervising organ (government office) covered also decisions made on the removed subjects during the examination of the legality of the organisation, its operation and decision-making (sub-exception1). Secondly, the legality

¹⁸ <https://www.kuria-birosag.hu/hu/a-kuria-elnokenek-beszamoloi> (date of download: 01. 12. 2009.), Report of Government Office of Győr-Moson-Sopron County.

¹⁹ <https://www.kuria-birosag.hu/hu/a-kuria-elnokenek-beszamoloi> (date of download: 01.12. 2019.), Report of Government Office of Győr-Moson-Sopron County.

supervision procedure covered also decisions, based on which any labour dispute or any dispute arising out of a public service legal relationship was in place, if the decision contained any infringement to the benefit of an employee (sub-exception).²⁰ Now, the LGA does not regulate the above two sub-exceptions any more. This means that the legality supervising organ (government office) may not examine the decisions made by the concerned party as an employer, based on which a labour dispute or a dispute arising out of a public service legal relationship is in place, even if the decision contains an infringement to the benefit of an employee.

It is a problem, as local governments might make decisions, which contain infringements to the benefit of employees. It is assumed that the employee will not apply to the court in such cases. While the legality supervising organ (government office) may not proceed within its legality supervising powers in theory, in order to prevent any infringement of the objective legal protection.

In connection with the currently effective regulation (there is no sub-exception), the Curia took a position as to whether the decision made on the mayor's remuneration may be reviewed within the legality supervision powers. Contrary to the decision made by the court of 1st instance, the Curia stated that the legality supervision powers cover also decisions made by the local government on the mayor's remuneration on the basis of the effective regulation.²¹

In my opinion, the decision of the Curia points out also that the previous sub-exception should be regulated. In fact, the decision made on the mayor's remuneration meets the terms of the decision removed from the subjects of the supervision of legality, as it is a decision, based on which a labour dispute or a dispute arising out of the public service legal relationship would be in place. Consequently, this decision may not be a subject of the supervision of legality in theory, as it is a removed subject, and no sub-exception is specified by the LGA I agree with the position of the court holding that any decision containing an infringement to the benefit of an employee injures the objective legal protection, if the legality supervising organ may not apply a legality supervision instrument. Based on the above, consideration should be given to the question as to whether the LGA regulates again the sub-exception – beyond the exceptions – based on which any decision containing an infringement to the benefit of an employee is covered by the legality supervision powers, in order to ensure the objective legal protection on the one hand, and to ensure uniform application, practice and legal certainty on the other hand.

Potential Expansion of the Instruments of the Legality Supervising Organ

Instruments specified in the Fundamental Law and the LGA for the legality supervising organ ensure the implementation of the legality supervision function, as it has a relatively wide range of instruments to ensure the elimination of infringements and to ensure the lawful operation of the local governments and the performance of its tasks. Consideration

²⁰ LGA 132 (5).

²¹ EBH 2017. K.24., Kfv.IV.37.166/2016. sz. határozat.

should be given to addressing the re-regulation of instruments of suspension of the execution of the acts of local governments (resolutions and decrees) or at least of the resolutions of local governments.

During the period of the legality review, suspension of the decisions of the local governments as relatively limited. Suspension of the resolutions of the local governments belonged to the competence of the court, and suspension of a local government decree was not possible. As a result of the regulation of the supervision of legality, suspension of the resolutions of the local governments remained in the competence of the court, while prohibition of the temporary application of local government decrees belongs to the competence of the Curia.²² The legality notice has no suspensory effect on the implementation of the decisions of the local governments, and after the failure of a legality notice, submission of an application for a judicial review has no suspensory effect on the implementation of the acts of local governments either. Adding up the periods provided for the procedure of the legality supervising organ, the review of the notice by the party concerned as well as the initiation of legal proceedings during the legality supervision procedure, it is found that a prolonged period (up to several months) lapses between resolution-making, announcement of the resolution and its suspension or prohibition of its application, which means that infringing acts of the local governments are being implemented during this period. In addition, the administrative burdens of the supervising organ are increased by the fact that the suspension must be also proposed and reasoned together with the application for review.

Consideration should be given to the acceleration of decisions made on suspensions and to the simplification of procedures, and the suspension of the implementation of the acts of local governments should be assigned to the competence of the legality supervising organ (government office) in order to prevent the enforcement and implementation of potentially infringing acts of the local governments. Assignment of the suspension of the implementation of the acts of the local governments to the legality supervising organ is not incompatible or unprecedented, as this legal instrument is already known in the Hungarian law, since the suspension of the implementation of the decisions of the regional development council belongs to the competence of the legality supervising organ, and the regulations of the European states on the local governments often assign this instrument to the competence of the legality supervising organ (Poland, the Czech Republic etc.).

Recommendation on the Division of the Legality Supervision Instruments between the State Organs

Review of the Local Government Decrees

In connection with the review of local government decrees, the competence is shared between the Curia and the Constitutional Court. Establishment of the compliance of the

²² LGA Section 139 (2).

local government decree only with the Fundamental Law (constitutional review) belongs to the competence of the Constitutional Court, and establishment of the compliance with other laws (legality review) belongs to the competence of the Curia.²³ Mixed proposals also belong to the competence of the Curia. The competence of the Constitutional Court has been significantly reduced as compared to the previous regulation in connection with the local government decrees. Consideration should be given to the liquidation of the divided competence related to the review of the local government decrees and to the assignment of the norm control competence related to local government decrees to the Curia.

When the Act I of 2017 on the Code of Administrative Court Procedure (hereinafter referred to as ACP) was prepared, it was raised again that in the case of administrative normative acts the norm control is performed by the court, while the Constitutional Court examines the constitutionality of the operation of the legislative power, and the administrative court reviews the legality of the operation of the executive power.²⁴

Procedure Related to the Review of Normative Resolutions as well as to the Establishment of Failure of Normative Resolution-Making Obligation Based on the Law

Two groups of the normative acts of local governments are (a) the normative resolution and (b) the decree. The procedure related to the conflict of the decree with other laws and to the establishment of the failure of legislative obligation based on the law belongs to the competence of the Curia. The procedure related to the review of the infringing normative resolution of the local government and to the establishment of the failure of the normative resolution-making obligation based on the law belongs to the administrative and labour court. The legislator regulates in the ACP, that the procedural rules related to procedure of the review of the normative resolutions of the local government as well as of the establishment of the failure of the normative resolution-making obligation based on the law, to the review of the local government decrees as well as to the failure of legislative obligation are applicable, however, the administrative and labour court is the proceeding court instead of the Curia. In my opinion, the competence should have been divided not according to the two forms of the local government decisions (decree and resolution), and the division of the competence in relation to the normative acts of the local governments (local government decrees, local government normative resolutions) is not reasonable. The procedure related to the review of the infringing normative resolutions of the local government as well as to the establishment of the failure of the normative resolution-making obligation based on the law should be also assigned to the competence of the Curia for uniform practice.

²³ Act CLI of 2011 on the Constitutional Court (hereinafter referred to as CCA) Section 37 (1), Act CLXI of 2011 on the Organization and Administration of Courts Section 24 (1) f).

²⁴ BALOGH Zsolt: *Procedures to review the conflict of a local government decree with other laws and procedures due to the local governments failure to fulfil its duty to legislate*. In: Gergely BARABÁS- Krisztina F. ROZSNYAI - András György KOVÁCS (eds.): *Commentary of the Administrative Court Procedure*, Budapest: Wolters Kluwer Hungary, 2018. p. 740.

Dissolution of the Representative Body of a Local Government Infringing the Fundamental Law

Dissolution of the representative body of a local government infringing the Fundamental Law belongs to the competence of the National Assembly.²⁵ Its dissolution is an ultimate sanctioning instruments of *ultima ratio* nature. In my opinion, acting in special cases and making decisions by judging them, and consequently using organisational sanctions are incompatible with the powers of the National Assembly. Consideration should be given to the assignment of the instrument of dissolution to the competence of the court, namely the Curia.

Other Procedural Issues

Initiation of a Procedure at the Constitutional Court

A relatively complex system of rules has been developed for the initiation of a procedure at the Constitutional Court. The legality supervising organ may recommend to the minister in charge of the supervision of the legality of local governments to initiate a proposal at the Government as to which the Constitutional Court would review compliance of the local government decree with the Fundamental Law.²⁶

After the legality supervising organ, the “decision” of two other organs is necessary for the local government decree to be submitted to the Constitutional Court. For the purpose of simplification of the proposal, the acceleration of the procedure, and the destruction of the local government decrees infringing the Fundamental Law as soon as possible, consideration should be given to the possibility that the legality supervising organ directly initiates the examination of the compliance of the local government decree only with the Fundamental Law (constitutional review). Furthermore the other proposal III./2.3.1. section. (See also Section 2.3.1. of Chapter III.)

Labour Litigation Related to the Termination of the Mayor's Position

If the mayor's position is terminated, labour litigation is initiated.²⁷ According to the rules of the Act CXCV of 2011 on Civil Service Officials Section, the legal relationship of the mayor is a specific public service legal relationship.²⁸ It is a specific employment relationship with the mayor (public service legal relationship), and many of its characteristics differ from an employment relationship. The ACP states that any legal dispute related to a public service legal relationship is a public administration legal dispute, and thereby it is subject of public administration litigation. Based on the above, it is not reasonable for a court to judge a dispute related to the termination of the public service legal relationship of a mayor within labour litigation, and already with the entry of the ACP into force, modification of the regulation should have been reasonable, which I think is still reasonable, namely any

²⁵ Fundamental Law Article 1 (2) g).

²⁶ LGA Section 132 (1) c).

²⁷ LGA Section 142 (1), 132 (1) h), 70.

²⁸ Act CXCV of 2011 on Civil Service Officials Section 225/A (1).

litigation related to the termination of the legal relationship of a mayor should be judged according to the rules of administrative litigations.

Initiation of a Review of the Economy of the Local Government and the Obligation to Proceed

The instruments of the legality supervising organ include the initiation of a review of the economy of the local government at the State Audit Office. However, it is a problem, that the State Audit Office is not obliged to proceed on the basis of the initiation, and therefore part of the infringements of economic nature are not liquidated. Consideration should be given to the regulation of the substantive review of the initiations of the legality supervising organs and to the obligation to initiate an examination if at least certain terms exist (in the case of a risk of severe infringement etc.). The State Audit Office would not start a review in the case of all initiations, but would first examine the initiation, and would start a procedure only if the terms specified in the law exist.

CONNECTION POINTS BETWEEN SEGREGATION AND BECOMING A CRIMINAL PERPETRATOR

THE ANALYSIS OF THE SITUATION OF THE GYPSY MINORITY IN HUNGARY

BODNÁR, Zsolt*

Introduction

The dissertation focuses on segregation, specifically the results of segregation linked to becoming a criminal, especially related to the situation of gypsies in Hungary.

Several factors motivated selecting this topic. One of these is that the Author believes that one of the most important duties of law is to detect conflicts and resolving these on macro and micro level as well. Choosing this subject was also influenced by the decision of the court of law in Gyula for the case P. 20.045/2013/47., furthermore the composition of its justification and disposition. During the procedure it has been proven that from time to time, significant social tensions arise between gypsies and non-gypsies.

The research tries to expose the myths around gypsies, pointing out to the real social, environmental, macro and micro processes affecting minorities. According to the author their historical roots, financial situation and social position lead in many cases to multidimensional and intense segregation. The consequences of segregation, the social and negative environmental effects and myths, stereotypes and bias connected to these is a society full of tension.

From the standpoint of the Author it would be important to analyze such basic and trivial problems related to gypsies - like who should be considered being a gypsy, which processes have an effect on becoming a criminal and what steps could help preventing or lowering the number of crimes, furthermore how the social tensions and conflicts could possibly be resolved.

The methodology of research

The author performed his research using the below methodologies: history of law methodology, sociological methodology, criminal statistics methodology, deduction methodology. The research on the connection between segregation and becoming a criminal – with the focus on the gypsies in Hungary – resulted in the analysis of the below hypotheses. Segregation can highly influence the law abiding/anti law behavior of the individuals. Bias and stereotypes may increase the segregation of the Hungarian gypsies with a changing intensity.

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Related to the gypsies the segregation, bias, stereotypes, analysis of the circumstances coming from their special history is mandatory to reveal the social conflicts. Eliminating the educational segregation can further relax addition segregation, thus may foster the social unity. During the research, the question got into focus – who can be considered a gypsy? From the standpoint of the Author, there is no methodology which determines if an individual is considered a gypsy or not, and based on this there is no way to determine the number of gypsy communities within a specific society. It is important to highlight, however that whenever there is a research with a focus on gypsies, it must be unambiguously specified, who the researcher considers a gypsy. János Ladányi and Iván Szelényi reveal in their study named *The “social construction” of the gypsy ethnic minority in Bulgaria, Hungary and Romania in the era of market transition* the methodologies and the advantages and disadvantages of each method, how and based on what can the identity of the individuals determined.¹

The authors describe three major and several minor systems for ethnical categorization:

- Expert categorization (categorization of specialists working with the “gypsy question”), self-identification (ethnic self-identification – people considering themselves gypsies);
- Questioning commissioner categorization (categorization of Questioning commissioners administering commercial or scientific questionnaires);
- Principle of “one drop blood” (meaning everyone is gypsy, who has any lineage relatives who was presumably a gypsy);
- People living in mixed marriage (meaning gypsies who live in a mixed marriage are not considered gypsies anymore), or the categorization based on “gypsy workstyle”.

According to the Author there are two main directions based on the study. One is based on the choice of outside people, the judgment of the environment; according to this the categorization of specialists, questioning commissioners or people living in the near or wider environment of gypsies is relevant based on external marks, “gypsy lifestyle” or other attributes. In the terrain of the other direction the focus is on the categorization based on the self-identification of gypsies, meaning gypsies can confess about their ethnic. According to the categorization chosen by the Author, in favor of the complete mapping of the selected research area – which analyses social procedures, attitudes – both directions are mandatory. The Author had rather respect for the categorization based on the society for the analysis of the connection points of segregation and becoming a criminal, as the judgment of the majority is considered competent in these processes.

¹ LADÁNYI, János – SZELÉNYI, Iván: *A roma etnicitás “társadalmi konstrukciója” Bulgáriában, Magyarországon és Romániában a piaci átmenet korszakában* [The “social construction” of the gypsy ethnic minority in Bulgaria, Hungary and Romania in the era of market transition], in *Szociológiai Szemle*, 2001/4., pp. 85-95.

In the area of categorizations, we have to mention that the Author performed a measurement using open questions in order to process the topic more authentic, collecting data from the affected people. The questionnaire was filled by two groups; in both cases the anonymity of the responders has been ensured. The Author made available a draft interview which consists of 10 questions to the public first, shared on university mailing lists, social websites, public portals. Thus, it could be answered online, or in a traditional way. The other group consisted of the inmates of the Győr-Moson-Sopron County Correctional Institute, who filled the survey voluntarily. As the number of responses was low, the research cannot be considered representative, rather orienting. According to this, the Author compared the received responses to scientifically accepted opinions. The responses received in law-enforcement have been analyzed in the dissertation separately.

The structure of dissertation

The topics covered by the dissertation are described below. During the marking of the conceptual framework the description of the criminological directions connected to segregation and crime, furthermore the mapping of segregation – as a sociological phenomenon happened. This is followed by the short history of the Hungarian gypsies, and the integration experiments of gypsies in the XX. and XXI. centuries. The next bigger thematical section concentrates on the change of the picture about the gypsies reflected in the law, from 1928 until today. Then we analyze the picture about gypsies in the media, followed by the review of the most important social data, related to Hungary and the European Union. It is followed by the description of the imperiled segregated layers endangered to sink into crime, the review of the connection between poorness and crime, the analysis of the representation of gypsies related to criminal action and law enforcement, and the myth of “gypsy crime”. The dissertation is closed implicitly by the conclusion and collecting some recommendations.

It is important to mark that the Author has only analyzed the situation of Hungarian gypsies due to the extent of the dissertation, aside from the analysis of foreign countries. In the focus of the research stands not the segregation, as a widespread sociological phenomenon, but especially the situation of the Hungarian gypsies, and the segregation connected to them and becoming a criminal. Obviously, the theoretical foundation of the segregation happened during the research, but the research could not be extended to cover widespread segregation processes.

Summary of the scientific results of the research

Based on the hypotheses and research aspects described in the first section of the dissertation the Author wants to summarize the final results of the research below. While researching the segregation and its mechanisms related to gypsies, the Author has made the below conclusions. The majority of gypsy people is affected by minor or major segregation, and in their case multiple arts of segregation accumulates – or as phrased by Agnes Solt, segregation

processes have different intensity on the affected persons in different life periods. According to Solt the sensitivity against each risk factors is changing by the age. Before the age of 6, the most important source of endangerment is caused by neuropsychic specialties, bad parent habits and structured socio-economical disadvantages. Between the age of 6 and 12 family and environmental factors, between 12 and 18 school and contemporary factors are dominant.²

The gypsies in a disadvantageous situation researched by the Author may be affected by continuously changing harmful factors until the age of 18. According to the research of the Author the hypothesis has also been proven that the majority of gypsies are mostly affected by the segregation in the areas of education, habitation, human resources and economy, as the most important social subsystems and connection points. Another hypothesis has also been proven, which tells about the creation of other segregation forms by the segregation in the education. In order to eliminate the segregation, first the educational segregation needs to be dissolved, thus the inheritance of the complex segregation can be withheld. The Author thinks that the segregation is the basis of social tensions, which in turn among others further strengthens the segregation processes. During the analysis of prejudices and stereotypes it was not surprising, how big is the bias against gypsies, thus creating or strengthening different social tensions. Besides phrasing the hypotheses and the necessary theoretical foundations, the Author has researched the different criminological directions of becoming a criminal. During the research, the Author wanted to make consequences related to gypsies reflected based on the analytical results of the different criminological directions.

In the next thematical unit the Author analyzed the origin, history and combination of the gypsies as the basis of the further dimensions of the research. Based on the analysis it turned out that the origin of the gypsies is unclear, their history is full of adversity and followed by violence and hopelessness. It is important to highlight however, that in connection to gypsies we cannot talk about a homogenous group; gypsies are split into multiple groups, and there is also an intensive blending with other ethnical groups. The appearance of gypsies in Hungary was neither parallel to individuals belonging to a single gypsy group; in opposite it happened in multiple waves, and the different gypsy group approached our country from different directions. The empiric researches lead by István Kemény in 1971 pointed out to that the group for gypsies made up of 32 .000 people creates the lowest level of society, making a foundation of the tension created by the anatomy theories. Just like István Vavró described the questions of the analysis of the theoretical and methodical questions of the “gypsy crime”: related to gypsies it is not easy to find a statistical consensus, who can be considered as a gypsy. It has been proven furthermore, that from the statistic standpoint the gypsy crime situation cannot be analyzed in an exact way.

During the analysis of the integration attempts in the XX-XXI. century it turned out that against the attempts a serious social, economic, residential and educational gap and

² SOLT, Ágnes: *Peremen billegő fiatalok. Veszélyeztető és kriminalizáló tényezők gyermek- és ifjúkorban* [Youngs swaying on the edge]. PhD dissertation. Budapest, 2012, p. 233.

tension can be observed related to gypsies. While analyzing the picture about gypsies in the law the Author observed positive changes in the gypsy picture in the law during a century. According to the Author, law creation could also effectively support the resolution of the gypsy question. During the research around the gypsy picture displayed in the media it has been unraveled that the media might have enormous impact on social processes and that balanced forecasting is indispensable.

Reviewing the basic data from Hungary István Tauber stated in his researches that crime committed by gypsies can be traced back onto the following reasons: the low position of gypsies in the structure of the society, and their lifestyle connected to this. This position is however the result of their special historical development. Tauber localized the slow social restructuring, vertical mobility, migration and the special culture, "subculture" connected to this as a factor leading to crime. Besides of these he doubts the validity of "gypsy crime" as a category as well. Katalin Gönczöl's research published in her book the *Guilty poor* is a lecture of real life implementation of the study-theories, as the researcher observed, how the younger generation picks up deviances, negative impacts from the older generation, thus predestining their future. Szilveszter Póczik pointed out while researching the attitude of poorness that 40-60 percent of the poor has gypsy roots and ascertained that among the poor criminal subcultures are necessarily established, where committing crimes is a way to become rich or at least to survive. István H. Szilágyi and Sándor Loss observed in their study „*Gypsy trial*” the real life appearance of the labeling-theories, as the trials, where gypsies are affected, there is a ritual to be detected. The trial thus does not provide any surprises, not even alternatives to the participants. Gypsies are recognizing that they already have lost the trial when they were born as gypsies.

Theoretical researches are supported and extended by empiric observations based on interviews. The questions tried to map the connection between gypsies and crime. It cannot be considered a representative research in a statistical sense, but it turned out clearly from the answers, what is the representation of different criminological directions. All of the theories discussed at the beginning of the dissertation appears in the answers namely. The Author observed the following during his research. There is a multi-time connected network of circles related to Hungarian gypsy people. These evil circles are the ones below. Due to the mechanism of the segregation circle, in case a person or social group becomes segregated, the affected group will even more get further away from economical, employment and social life, thus segregation will be even stronger. Bias or stereotypes are also considered another evil circle, which represents processes similar to the previous one, furthermore the two circles will link to each other, thus strengthen each other.

Finally, there is an evil circle connected to the theory that gypsies commit crime more frequently; this can be linked to the term "gypsy crime". This term itself locks into a circle the information and opinions about gypsies around negative impacts. This term is able to summary the biological foundation of gypsies committing crime, the accuracy of bias and stereotypes. During the research it become clear to the Author, that gypsies are also responsible for their negative situation. For example, we could mention the "self-reasoning" practice of Ágnes Solt related to gypsies. With this, the Author did not find "gypsy crime" as a term legally founded or acceptable. According to the Author using the term

“incrimination” is really harmful, as if we accept gypsies are criminals due to their biological heritage, then based on this logic there is no solution to prevent or avoid such crimes.

In the Author’s opinion it would lead to the worst consequences if we would accept the criminal behavior inherited in genes, and the existing problems and conflicts were not confronted. We should handle discussions about the situation of the gypsies and processes affecting gypsies and the majority of the society with priority, and also the search for the necessary resolutions. We have to recognize as well that we need to act actively against the realization of the aforementioned processes and phenomenon and we need to find the opportunities and the people and institutes from the two groups who can actively act against the evil circles.

The Author thinks that the representors of the major and the gypsy societies are both responsible for – and also have the opportunity to move forward – the integration of the gypsies. According to the Author based on the investigation of the potential of the state and the major society there are multiple available options to work against the segregation and the differences in the society via creating complex strategies and effective integration programs. As an example, we mention the possibilities hidden in crime prevention, where we can highlight that even gypsies can and should go many steps forward on the individual or organized level. From the standpoint of the Author gypsies could do the first steps for the integration via denying bias and stereotypes, demonstrating their culture and economic and social situation, and showing their dedication for the noble case.

It is very important to highlight for this topic the conclusions of the PhD dissertation *Criminal politics and crime prevention in late modernity* written by Andrea Borbíró. The Author especially agrees with the conclusion made by Borbíró regarding crime prevention. Borbíró investigated the usefulness of crime prevention related to criminal politics, and finally found that crime prevention has the right tools, which can produce visible and measurable results decreasing crime and improving public safety. Borbíró considered more fruitful those intervention forms inside and outside of criminal law enforcement, which are focusing on raising the motivation of the target group and creating their interest in the prevention program, than the strategies based on deterrence and repression. According to Borbíró the informal control is more powerful in most cases than formal control, as the intervention forms containing parts of collaboration, communication, participation and integration – under other terms – can get serious results in decreasing or preventing crime. Borbíró highlights at the same time that it does not mean we would not need punitive tools, deterrence or neutralization in the toolbox of criminal politics, since in some cases of principals of principal candidates there are no other working strategies.³

During his research the Author has made the same conclusion as Borbíró, stating that in the case of gypsies stricken by segregation, bias and stereotypes, the effective form of crime

³ BORBÍRÓ, Andrea: *Kriminálpolitika és bűnmegelőzés a késő-modernitásban. [Criminal politics and crime prevention in late modernity.]* Theses of the PhD dissertation, Eötvös Loránd University Department of law and political science, Budapest 2011.

https://www.ajk.elte.hu/file/AJKDI_BorbiroAndrea_tcz.pdf (The date of download: 03. 10. 2019.)

prevention would be the intervention strategy based on collaboration, communication and integration.

The first step which can and need to be done is the relegation of the unscientific, and at the same time harmful term of “gypsy crime” from all areas. In case there is the need for a term during further researches which delimits and describes the people being analyzed and the problems to be solved, furthermore reflects reality, it could be a definition focusing specifically on the problems. The suggestion by the Author would be: „Principals committing crime through social or environmental negative effects”, aka the „CSE-principals”. This is by far a more suitable term than the previous one. Like we stressed, committing crime cannot be reasoned by biological causes. This term places the topic in question on the foundation of negative effects caused by the society and the environment. Certainly, this term comprehends as well that negative social and environmental effects stricken mostly gypsies, but not all gypsy person is involved. This new term also shows that it is not only the gypsies who are involved in crime.

In case the “CSE-principals” term acclimatizes in the communication, a process can start where the roots and reasons of committing crime, negative social and environmental effects and the opportunities for changing these can be researched without extreme emotional manifestations. Thus the indicated problem is not only considered a “gypsy question”, but becomes a task to be resolved socially, which is not pressured by bias and discrimination, but works towards a target, which is to the entire society’s interest.

It is the duty of the major society to measure, review and research the opportunities in the most objective way, which can contribute to the integration of the gypsies. As we already pointed out, the major society has the possibility to eliminate the segregation, bias, stereotypes and economical differences using complex strategical plans and general provisions. It is crucial to put the situation of the gypsies via the interpretation of specialists continuously forward. The Author believes that the consequences made during the research need also be kept in view, which means that gypsies are not a homogenous group, and they cannot be punished because of their biological heritage or even by their historical legacy.

Gypsies also need to do the following essential steps and acts: it is necessary for the gypsies, group of gypsies and their institutionalized organizations to accept that their approach is inevitable to move the successful integration forward, thus eliminate the evil circles. It is essential to highlight that by exposing their culture, observing the written and unwritten rules of cohabitation and eliminating particular dependencies and demotivation they can effectively converge toward a more successful integration into social stages.

Obviously it is not easy to break out of social-environmental relations which exist since centuries, but according to the Author by making the first steps a positive process could start, which creates the additional positive proceeds. For this we believe it is essential that gypsies both as individuals and as a group should work via positive examples toward the creation of a uniform society which is profitable their own and the major society. Abraham Maslow’s theory, the Maslow-pyramid, or in other words Maslow’s hierarchy of needs can be used as a guidance to gypsies and to the major society as well. To the gypsies this pyramid may have a dual role: primarily it summarizes and describes the needs in a hierarchical order

from the existential need to the needs of a quality life, additionally it also shows as a motivational stair, after reaching a level, what level can be the target and reward. To the major society this model can lend assistance when, which need of gypsies need to be fulfilled.⁴ During the research, the Author discovered a direct or indirect connection between segregation, the educational system, bias/stereotype, differential association and crime. It has been discussed several times heavily the tight connection between education and segregation, as the form of segregation causing the most severe problems is the educational segregation. By eliminating this the other segregation processes can be stopped, thus the entire social status of gypsies can be moved forward. However the Author also thinks it is not enough to grant only even access to the education, as the elimination of social disadvantages inherited over centuries can only be moved forward effectively via positive differentiation and active intervention. According to our standpoint the positive definitions can be transferred via education, which can heavily influence the attitudes and behavioral forms related to crime.

According to the Authors implication those young people who do not get the proper values in their micro environment, this hiatus can be compensated over education, and the proper values can be created. This means becoming a criminal or abiding the law has a tight connection with these processes. It needs to be taken into consideration that these youngsters will become adults in the future, and in case the proper impulses can be transmitted continuously in order to help law abidance, then the behavior of the upcoming generations will act upon this as well. Besides education the elimination of bias, stereotypes, proper communication between minor and major social groups and the seek for factors preventing cohabitation and finding a solution applicable together and separately can be emphatically important.

Applicability of scientific research

The purpose of the research was primarily to investigate the connections between segregation and becoming a criminal, furthermore the status of the gypsies and the opportunities standing in front of them based on the available literature and to find a solution for the problems identified in the system. With these taken into account the author did not prioritize the real-life applicability of the theses, but rather the scientific theoretical systematization - however the recommendations phrased here may be the basis for further law creation. The dissertation with all these together can contribute to the better and more complete understanding of the debates related to gypsies at present time, and the further analysis of the problem area by the identification of the challenges experienced nowadays. According to the expectations of the Author the results of this research may initiate debates, respectively the observations of the research may be built into the scientific thinking.

⁴ MASLOW, Abraham: *A lét pszichológiája felé.* [Toward a psychology of being.] Ursus Libris, Budapest, 2003.

