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Procedural Principles for Effective Legal Protection in Administrative Proceedings

Zasady proceduralne skutecznej ochrony prawnej w postępowaniu administracyjnym

Abstract

In addition to certain detailed rules of procedures, court proceedings are permeated by principles. They can be clustered into diverse groups, as the legislators of each procedural code attribute different roles to the respective principles. Effective redress, due process and other principles compete with each other, and the legislators must choose which principles should be prioritized in the specific time in order to meet the social, political, and economic set-up of the era. This is true in general for all court procedures, especially for codes of administrative procedure, since these provide control over the executive branch. Thus, the goal of all codes of administrative procedure should be to provide an "unbroken" system of judicial protection. Nevertheless, ways and means have been different in each state when inventing how this is to be achieved.

The present study aims to examine principles guiding procedures prevailing in the administrative proceedings in Hungary and Poland. The analysis of the procedural principles will certainly show what principles are currently pursued in Europe to ensure effective legal protection.

Keywords: *procedural principles, administrative litigation in Poland, administrative litigation in Hungary, effective legal protection in administrative proceedings*

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Streszczenie

Poza pewnymi szczegółowymi wyjątkami postępowanie sądowe rządzi się swoimi zasadami. Można je łączyć w różne grupy, ponieważ ustawodawcy każdego kodeksu proceduralnego przypisują odmienne role poszczególnym zasadom. Dokonuje się oceny, co jest ważniejsze: skuteczne zadośćuczynienie, sprawiedliwy proces czy inne zasady. Ustawodawcy muszą dokonać wyboru, którym zasadom należy nadać priorytet w określonym czasie, aby sprostać społecznym, politycznym i ekonomicznym wyzwaniom danej epoki. Dotyczy to generalnie wszystkich procedur sądowych, zwłaszcza kodeksów postępowania administracyjnego, ponieważ zapewniają one kontrolę nad władzą wykonawczą. Zatem celem wszystkich kodeksów postępowania administracyjnego powinno być zapewnienie „nieprzerwanego" systemu ochrony sądowej. Sposoby i środki, za pomocą których to osiągano, były jednak różne i właściwe dla poszczególnych krajów.

Niniejsze opracowanie ma na celu zbadanie zasad rządzących procedurami panującymi w postępowaniu administracyjnym na Węgrzech i w Polsce. Analiza zasad proceduralnych z pewnością pokaże, jakie zasady są obecnie realizowane w Europie w celu zapewnienia skutecznej ochrony prawnej.

Słowa kluczowe: *zasady proceduralne, spory administracyjne w Polsce, spory administracyjne na Węgrzech, skuteczna ochrona prawna w postępowaniu administracyjnym*

1. Introduction

In all walks of life, every person encounters offices and authorities which establish general and particular rights and obligations. These offices and authorities are pillars of the administrative system while exercising their executive power.

To foster efficacy in administration, there is a general need for municipal administration as well as for the protection of legality within administration. Judicial control over the administration can be regarded as one of the preconditions to comply with this legality. In certain countries, such legality is manifested in the work of either an independent administrative court, or as part of the civil jurisdiction. Due to their nature, administrative authorities generally establish rights and obligations for themselves. No such perfect state exists which, by mere means of internal control, would be able to eliminate bias in every action. Bringing infringements to an end, moreover, eliminating breach of law cannot be left with the interested parties. It shall be ensured by law enforcement via external control, precisely, by an independent judicial organ[1].

As the history of legal development proves, control can be most effective when the revision of the administrative actions is delegated to independent courts. Moreover, the judicial control of the administrative decisions should cover not just certain, but most of the cases, especially those which are the relevant cases for the citizens[2].

It is a measure of constitutionality whether a state allows or not, and if it does, to what extent to submit itself to the control of an independent court as mentioned above. There are three criteria of a constitutional state:

- distribution of the state powers,
- unconditional rule of law, and
- self-restraint of the state derived from the above two criteria[3].

Meeting the third criterion presupposes the existence of the administrative jurisdiction. The existence of the latter is at least as important as that of the constitutional court, while its impact on the citizens' everyday life of is much higher. This cannot be regarded as a simple solution as provided by state administration affecting the structure of the state organization, but much rather a new opinion of the civil society about acts, the law and the authorities. Today there is no greater offense than declaring that an act is unconstitutional and that an administrative decision breaks the law, hence both must be annulled[4].

According to those stated above, administrative jurisdiction is one of the guarantees for civil legal security. However, a state needs to "get mature" in order to avail this and every other legal guaranty.

István Stipta identified three preconditions listed below which should be granted to establish judicial control over public administration:

- administration and jurisdiction should be isolated from each other pursuant to the constitution;

[1] G. Kozma, F. Petrik, *Közigazgatási perek a gyakorlatban*. Budapest 1994, p. 10.
[2] G. Kozma, F. Petrik, *Közigazgatási…*
[3] G. Kozma, F. Petrik, *Közigazgatási…*, p. 9.
[4] G. Kozma, F. Petrik, *Közigazgatási…*

- the customary character of the administrative rules should be eliminated: instead, the range of the state actions should be regulated by acts and their activity should be determined by decrees at the lowest;
- there should be a social expectation to protect civil rights: the opinion which stresses the primacy of the state interest should be pushed into background[5].

These preconditions were met in certain states in different times and in different forms. Thus, it can be assumed that every state has its own administrative jurisdiction specific in its structure and operation.

In addition to certain detailed rules of procedures, court proceedings are permeated by principles. They can be clustered into diverse groups, as the legislators of each procedural code attributed different roles to the respective principles. Effective redress, due process and other principles compete with each other, and the legislators must choose which principles should be prioritized in the specific time in order to meet the social, political, and economic set-up of the era. This is true in general for all court procedures, especially for codes of administrative procedure, since these provide control over the executive branch. Thus, the goal of all codes of administrative procedure should be to provide an "unbroken" system of judicial protection. Nevertheless, ways and means have been different in each state when inventing how to achieve this.

The present study aims to examine principles guiding procedures prevailing in the administrative proceedings in Hungary and Poland. The analysis of the procedural principles will certainly show what principles are currently pursued in Europe to ensure effective legal protection. From this, we can draw conclusions about current trends in administrative proceedings, and this may also provide some guidance in mapping of the future developments.

2. On procedural principles in general

The jurisprudence of court proceedings is not uniform when considering the nature, scheme, or content of the principles. Determining the number of the existing principles or whether that the different names cover the same principle would be a time-consuming task of substantial volume. It is obvious, however, that the principles always revolve around the most important problems of litigation and seek answers to questions that cannot be explained by a single item of legislation or one specific legal institution. As the world changes constantly, so do the principles following these changes, each principle appearing and disappearing from time to time.

At the same time, constant change affects each principle, resulting in somewhat different content at each stage of their existence. In addition to constant change, Miklós Kengyel sees just one constant thing about these principles: the procedural problem that can be grasped or expressed in them, such as the relationship between the court and the parties, the truth, equal opportunities, or the efficiency of dispute resolution, etc.[6]

[5] I. Stipta, *A magyar bírósági rendszer története,* Debrecen 1997, p. 136.
[6] M. Kengyel, *Magyar polgári eljárásjog*, Budapest 2014, p. 70.

Legal literature does not present uniformity as to the exact functioning and character of the principles. There is quite a number of legal scholars who attribute normative character to these principles. They sustain the idea that this normative character should be present both in legislation and in law enforcement. In this opinion the principles provide certain direction for the future regulation of the proceedings in legislation, whereas in law enforcement, in case of doubt, they fill the gap: that of the absence of a legal interpretation or appropriate legal provision. Because of the constant change in the principles, other legal scholars sustain that there is no normative character in these. They only recognize the role of principles in the interpretation of the law[7]. This, rather theoretical, debate is settled by national legislators in most of the cases: by focusing on the normative character mostly. In addition, the various documents of international law and the related case law are of great help in revealing the content of each principle.

On concluding the present study, an attempt is made to create a comparative analysis regarding the content of each principle.

3. Procedural principles of the Hungarian Code of Administrative Procedure

3.1. Historical overview: the administrative jurisdiction in Hungary

The three preconditions for establishing judicial control over administration as mentioned above had to come into being so that the necessity for administrative jurisdiction could be formulated at all in Hungary.

Before 1848, due to the lack of these three preconditions, proper administrative jurisdiction had not existed in Hungary. The changes in 1848 generated relevant conditions for legal defence against administrative actions, yet April Laws of 1848 could not have real impact to this, due to the tragic end of the revolution and war of independence. Thus, the outlines and the principal demand for administrative jurisdiction could only be laid down. After the Austro-Hungarian Compromise of 1867, implementing the acts from 1848 became possible, and the ideas about state organization gained clarity. The contemporary ruling party did not plan the establishment of the administrative jurisdiction at that time. Specifically, they feared that the administrative court would weaken the state will, that it would control the ministerial self-sufficiency, enhancing separation in times when the country was divided either nationally or politically. Neither did the opposition, though defining itself as public law, demanded the establishment of an institute which would limit the power of the government; they rather concentrated on questions they deemed to be more urgent[8]. There was considerable theoretical uncertainty about this question, academic debates clarifying the concept were missing as well.

Following the establishment of the Financial Administrative Court in 1883, the preparatory work for creating general administrative jurisdiction started to progress.

[7] M. Kengyel, *Magyar…*

[8] E.g. the criticism of the compromise, the autonomy of the counties and the principle of election.

As a result, by Act XXVI of 1896, the Hungarian Royal Administrative Court was established, into which the Financial Administrative Court was incorporated and held equal status with the president of the Curia; the judges of this court had to comply with highly professional requirements. The court had a written procedure with only one instance, but with authority of reformation[9]. The competence of the court was laid down in an itemized list. However, this list was modified more than a hundred times. It can be generally assumed that about 80% of administrative decisions could have been reviewed by the Hungarian Royal Administrative Court[10]. In practice, most of the cases were tax and duty related, even cases in connection to the entitlement of representatives to duties and pension[11]. During the 50-year or even longer existence of the Hungarian Royal Administrative Court the intention was strong and there were attempts to broaden the procedure with further instances, or to connect the court with the general court system, yet all without practical accomplishment.

Between 1949 and 1989, administrative jurisdiction as such was non-existent in Hungary, apart from a few, sporadic cases.

After the regime change, in 1989 the legislators created constitutional basis for the exercise of administrative jurisdiction by amending the Constitution. As a result, administrative jurisdiction revived in 1991, when the Hungarian Constitutional Court provided for creating the necessary condition for establishing judicial control over the administrative decisions.

Act XXVI of 1991 was not a single act, but a modification of three acts (Act on Administrative Proceedings, Act on Code of Civil Procedure and Act on Court Organization). Thus, the main rules of the administrative jurisdiction were laid down in the Code of Civil Procedure. Chapter XX of the Code of Civil Procedure was applied to actions for the review of administrative decisions. Administrative actions were brought by the client or by any other party to the proceeding concerning provisions expressly pertaining to them. The claim was submitted against the administrative body that had brought the decision to be reviewed. (327.§ Par. (2)) The court procedure had a lot of own rules (i.e. they were different from the general rules) and to some extent a foreign body in the Code of Civil Procedure. This statement is supported by the fact that these rules were amended several times, and from time to time the idea of creating an independent administrative jurisdiction reappeared.

On the initiative of András Patyi[12], the Hungarian Government deemed that the time had come in 2014 to deal substantially with the hitherto undeservedly neglected area of administrative justice. The Government legislated on the procedural code of public administration by Government resolution 1011/2015. (I.22.), followed by resolution 1352/2015. (VI.2.) on certain tasks connected to the preparation of the act on the procedural code of public administration and the act on general administrative

[9] See more on the procedure: T. Csiba, *A közigazgatási bíráskodás alapvető kérdései* [in:] *Közigazgatási bíráskodás*, M. Imre (ed.), Budapest 2007, pp. 24–25.
[10] D. Kiss, *A közigazgatási perek* [in:] *A polgári perrendtartás magyarázata*, J. Németh (ed.), Budapest 1999, p. 1356.
[11] M. Kengyel, *Magyar…*, p. 424.
[12] A. Patyi, *A magyar közigazgatási bíráskodás elmélete és története. Institutiones administrationis. A magyar közigazgatás és közigazgatási jog általános tanai*, VIII. kötet, Budapest 2019, p. 309.

regulations. It was along the principles laid down in these two resolutions that further acts were prepared: Act T/12233 concerning general administrative regulations and the Act concerning proposals on the restructuring of the court system, and Act T/12234 on administrative procedure. Both the act on administrative regulation and on the procedural code of public administration were sent for debate to the National Assembly and were both passed with a simple majority on 6 December 2016. Eventually, the act concerning the restructuring of the court system was not sent to the Assembly. The reason was that the Ministry of Justice was still conducting political negotiations with the representatives of the parliamentary parties when the above-mentioned two acts were passed.

Pursuant to Art. 6 par. (4) of the Constitution, János Áder, the president of the republic, requested the Constitutional Court to rule on the constitutionality of the act and its being compatible with public law of Art. 7 par. (4) and Art. 12 par. (2) pts. a) and c) of the Act on the procedural code of public administration passed by the National Assembly on 7 December 2016, not promulgated as of that time. The president of the republic furthermore requested the Court to evaluate whether promulgation of the above questioned legislative proposals is constitutional.

The Constitutional Court, through Constitutional Court decision 1/2017. (I.17.) found Art. 7 par. (4) and Art. 12 par. (2) pts. a) and c) of the Act on the procedural code of public administration, passed by the National Assembly on 6 December 2016, to contravene the Constitution, and as such, inappropriate for promulgation. The Constitutional Court made the decision public on 13 January 2017[13].

Based on decision 1/2017. (I. 17.) of the Constitutional Court, the National Assembly eventually modified several provisions in the Act on the procedural code of public administration and passed the law again, which was then promulgated on 1 March 2017 as Act I/2017 on the procedural code of public administration, which became effective, as per initial plans, on 1 January 2018.

Thus, since 1 January 2018, Hungary has a new Code of Civil Procedures (hereinafter: HCCP) and a new Code of Administrative Court Procedure (hereinafter: HCAP). Both have special rules when compared with the previous regulation. These acts are still in their early stages of life, also bearing "childhood diseases". It is the stage of minor or even major modifications by assessing and revising goals and practices.

3.2. Principles in the HCAP

The goal of the HCAP is to provide redress and legal protection against unlawful activities in public administration. HCAP shall apply to administrative lawsuits and other administrative court proceedings for adjudging administrative disputes; nevertheless, it is not applicable in administrative disputes where the law orders apply other court procedural rules.

[13] More about the decision of the Constitutional Court: E.Í. Horváth, *Decision of the Constitutional Court on the Act on Procedural Code of Public Administration (Taken Prior to the Act's Promulgation)* [in:] *Hungarian Yearbook of International Law and European Law 2017*, M. Szabó, P.L. Láncos, R. Varga (eds.), Hague 2018, pp. 551–567.

Somewhat deviating from the main procedural codes, the HCAP does not contain provisions of principle in the strict, traditional sense of the word, nevertheless sets out in one section the duties of the courts (Section 2) and the obligations of the parties (Section 3), thereby setting out the general requirements of the procedure.

3.2.1. Duties of the court

The legislator designates the first task of the courts: providing **effective legal protection** based on common European constitutional traditions and as provided by Article 28 of the Basic Law. The provision of effective legal protection is also mentioned in the Preamble of the HCAP itself as one of its goals.

The provision of legal protection by the court must be exercised against public administration or an administrative activity that requires separation from public administration (organizational, management, leadership) and a right or interest protected by law which needs to be protected. Ensuring effective legal protection as the task of the court must therefore be two-fold: subjective and objective.

The provision of subjective legal protection is related to the principle of disposition, while objective legal protection appears as a breakthrough of the principle of disposition, through which the court will have the opportunity to take *ex officio* proceedings or take certain procedural measures of its own motion. In this two-fold activity, the court must find the delicate balance with which subjective and objective legal protection can still be achieved while effectively ensuring equality of arms. According to Krisztina Rozsnyai, the principle of effective legal protection imposes three requirements on the courts in terms of content, encompassing their entire judicial activity: they are obliged to provide gap-free and timely effective legal protection, keeping in mind the equality of arms[14].

The principle of **fair proceeding** serves to enforce procedural truth and to allow proceedings to be conducted in accordance with the rule of law. Under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Section XXVIII, paragraph (1) of the Hungarian Basic Law states that everyone has the right to have their rights and obligations heard by a court in a fair and public hearing within a reasonable time. Hungarian legislature tried to fulfil these obligations when the requirement of fair process was included among the rules of the HCAP. Gábor Gadó points out that the different codes of procedures themselves ensure fairness of the proceedings by the principle of fair proceedings. As main substantive elements of procedural justice he lists the regulation in accordance with the principle of legal certainty, the independent (impartial) procedure of the judge, the observance of the parties' right to self-determination and the fair and equitable distribution of

[14] K. Rozsnyai, *Tisztességes* ügyintézés – *tisztességes eljárás*. Presentation, was taken at the event "Jubileumi Konferenciák az ELTE ÁJK Alapításának 350. évfordulója alkalmából" on 5 May 2017 on the conference "Új eljárásjogi kódexeink II.: Általános Közigazgatási Rendtartás és Közigazgatási Perrendtartás".

advantages and disadvantages based on reciprocity[15]. In the context of a fair trial, therefore, the main duty of the court is to ensure that its proceedings comply with the principles of the HCAP.

A fair trial serves to enforce procedural truth and to allow proceedings to be conducted in accordance with the rule of law, but is not sufficient itself to ensure that the outcome of the proceedings is correct in all cases. Therefore, the right to appeal is guaranteed in the Basic Law.

The Hungarian Constitutional Court has examined the principle of fair process in several decisions[16], based on which we can state that the principle of fair process is not an absolute principle against which no other right or principle can be considered, but rather a procedural guarantee that exists in relation to its content. It follows that the application of the principle of fair process can be examined on a case-by-case basis; whether the procedure was fair or not can only be determined by considering all the circumstances of the case[17].

Section 2 paragraphs (6)-(7) of HCAP further clarify the principle of fair proceeding. These rules are intended to serve equal opportunities for the parties in litigation.

In accordance with the principle of **concentrated and cost-effective proceeding**, the court (and the parties as well) should strive to ensure that the dispute can be resolved in one hearing if possible. This principle is intended to be facilitated by the rules on the conduct of proceedings. Concentration of litigation serves the purpose of substantive litigation; essentially, it cannot be considered as a principle, but rather a result that can be achieved through the enforcement of the entire set of rules of litigation[18].

The next principle(s) are: **judging within the framework of the petition of claim, and taking account of the applications, statements in accordance with their content**. Referring to the latter, it is to be noted that these are not adjudicated in accordance with their specification in terms of form. The principle of conditionality pertinent to the application is the reverse of the right of disposal on the parties and imposes two requirements on the courts. On the one hand, they can decide only about the issue for which the parties have applied. On the other hand, the court must exhaust the application in its decision, but it is bound by its material and substantive framework. The principle of conditionality pertinent to the application therefore means that the court will act in an administrative dispute only when and to the extent that the proceedings are requested by a party. In administrative lawsuits, therefore, the "masters of the case" are the parties to the lawsuit, so they are entitled to determine the subject of the lawsuit, hence the court's margin of manoeuvre. Two other principles appear in HCAP limiting the principle of conditionality in application: the principle of *ex officio* procedure and the principle of good faith as an obligation of the parties.

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[15] G. Gadó, *Az eljárási igazságosság a polgári perben*, Magyar Jog 2000, Vol. 1, pp. 18–19.

[16] See more about the practice of the Hungarian Constitutional Court: L. Trócsányi (ed.), *A Mi alkotmányunk – Vélemények és elemzések Magyarország Alkotmányáról, Complex*, Budapest 2006, p. 376.

[17] K. Bakos, *A tisztességes eljáráshoz való jog a jogágak határán*, De iurisprudentia et iure publico – Jog- és Politikatudományi Folyóirat 2011, Vol. 2.

[18] I. Varga, T. Éless (eds.), *Szakértői Javaslat az új polgári perrendtartás kodifikációjára*, Budapest 2016, pp. 46–47.

With the principle of classification according to content, the Hungarian legislator followed the procedural practice instated historically, namely individual applications should be assessed according to their content and not according to their title.

By ensuring the possibility of ***ex officio* judicial measures**, the HCAP breaks the principle of being bound by an application and allows the courts to order an investigation or proof of their own motion in the cases specified in the law in administrative disputes. The principle of *ex officio* procedures is therefore not an absolute principle; it can only be enforced in cases specified by the law.

3.2.2. The parties' obligations

The law obliges the parties to **sue in good faith**. This obligation constitutes a procedure in good faith and is not the same as the requirement of good faith or fairness known in substantive law. The duty of good faith is, in fact, the main obligation of the parties, which is fulfilled through the enforcement of the obligations contained therein, such as the obligation to cooperate, the obligation to tell the truth, the obligation to provide the materials of the lawsuit, etc. Due to the principle of good faith, the parties are obliged to refrain from any conduct that results in protracted litigation, unnecessary additional costs, or other difficulties in the proceedings. In the event of a breach of the duty to sue in good faith, the court will determine the legal consequences in the light of the conduct or omission of the party, which can range from a warning through a fine to the loss of litigation.

The obligation to **cooperate** includes the obligation of the parties to support the proceedings, as well as the obligation of the court to intervene. The obligation to cooperate is therefore not a well-defined obligation, but any obligation which is directly or indirectly capable of facilitating the concentrated completion of the proceedings, including in particular the obligation to bring proceedings in good faith for the parties. This is most clearly embodied in the requirement of a fair trial referring to the court, notwithstanding the fact that the HCAP obliges both the court and the parties to make concentrated proceedings specifically. According to the wording of HCAP, however, cooperation shall be understood as standing between the parties and the court and not in the relationship between the parties. The parties must, therefore, cooperate with the court during the administrative proceedings. However, given that the plaintiff turned to the court precisely because he was unable to settle his administrative dispute with the defendant, it should be the task of the court to organize the cooperation. In case the parties are unwilling to cooperate with the court or are absent, other powers, granted to the court by the legislator, may be invoked to assist proceedings to perform in a concentrated manner, while respecting the parties' right of disposal.

As with the new law, the legislator highlights the obligation of the parties to **tell the truth** among the sub-requirements of the obligation to file in good faith. This provision shall apply mutatis mutandis not only to the parties, but also to their representatives throughout the proceedings. The obligation to tell the truth applies to the parties' statements of fact and other statements of fact: either in positive (statement)

or negative (denial) form. However, the obligation to tell the truth is not the same as revealing the reality, as it only requires the parties to state the facts or the statements of facts made by them, but not to bring the facts to court to an extent that otherwise is detrimental to their own interest. The duty to tell the truth also means that the parties may not allege unfavourable facts to the opponent, the untruth of which is known to them, nor may they dispute facts of which they are aware. The obligation to tell the truth applies only to statements of fact, not to other points and opinions made by the parties.

The obligation to provide the materials of the lawsuit shall be borne by the parties, unless otherwise provided by law; providing the materials of the lawsuit involves the disclosure of the facts necessary to adjudicate the dispute and the provision of data and evidence in support of it. The obligation to provide the materials of the lawsuit stems from the principle of conditionality of the application, as it ensures the parties' right to self-determination during the administrative proceedings. However, this right to self-determination is also a responsibility of the parties, as the legislator allows the court to act *ex officio* in exceptional cases only, which "breaks" the exclusivity of the parties' obligation to provide the materials of the lawsuit.

The principle of **concentrated litigation** also applies to the parties. The HCAP states that the parties are obliged to cooperate with the court to ensure a concentrated conclusion of the proceedings. Concentration of litigation is therefore a requirement for both the court and the parties in administrative litigation.

4. Procedural principles guiding the Polish Code of Administrative Court Procedure

4.1. Historical overview: the administrative jurisdiction in Poland[19]

Walking through the 20th century political-economic and social cavalry of the Central and Eastern European states, in Poland, the new Constitution of the Republic of Poland was amended on 2 April 1997. The Constitution entered into force on 17 October 1997. This was the starting point, which actually made it possible to review the previous rules on administrative litigation and put them on a new footing. Regarding administrative procedures, the codification of three laws has taken place in parallel. The completion of the draft law was preceded by many discussions and consultations, as a result of which, on 22 October 2001, the Polish President submitted a draft to the Sejm. The Act on the System of Administrative Courts adopted the Sejm on 25 July 2002. The Act on Proceedings before Administrative Courts (further: PCAP) and the Act on Proceedings before Administrative Courts, Rules (implementing regulations) introducing the Act on Proceedings before Administrative Courts were adopted on 30 August 2002. These acts entered into force on 1 January 2004. Of course, the PCAP has undergone several revisions since its entry into force, its last major modification was in 2019.

[19] See further: J. Turłukowski, *Administrative Justice in Poland*, BRICS Law Journal 2016, Vol. 2, pp. 124–130.

4.2. Principles in the PCAP

In PCAP, similarly to the Hungarian, we do not find a separate chapter that contains the principles. Nevertheless, some provisions at the principal level appear at the beginning of the Act. It may be noted that these provisions in fact mention some of the classical principles of procedural law.

Accordingly, the law contains the principle of equality of arms in Article 6, which states that an administrative court shall, if necessary, provide the parties to a proceeding that are not represented by a lawyer, legal advisor, tax advisor or patent agent with necessary information on procedural steps and the consequences of their omissions. Article 7 of the PCAP sets out the requirement of efficiency, with regard to the time factor because the Act requires that an administrative court should undertake actions aimed at quick settlement of the case and should try to decide it at the first sitting. In Article 10, the principle of publicity appears when the PCAP states that cases shall be heard in public, unless a special provision provides otherwise.

Somewhat beyond the classical principles of procedural law, in Article 8 of the PCAP appears the rule of law, in connection with which the Act allows the participation in the proceedings of the prosecutor, the Ombudsman, the Ombudsman for Children and the Ombudsman for Small and Medium-sized Entrepreneurs. In some respects, the provisions of Articles 12a-b, which provide the alpha and omega for the application of modern information technology, can also be considered as provisions at the level of principle.

In addition to these few provisions at the beginning of the PCAP, there are some basic provisions that are scattered, such as the principle of free evidence.

The PCAP, like the Hungarian, German or even the Austrian CAP, also refers back to the rules of civil procedure in several places and orders their application. What is interesting and unique is that the PCAP not only orders the application of the rules laid down in the Code of Civil Procedure, but also considers the principles laid down therein to be applicable in administrative court proceedings. This means that civil and administrative justice, but at least the rules of procedure in Poland, are undoubtedly based on common foundations, as common principles form a basis which seems to operate independently of the purpose of litigation.

5. Conclusions

It should be emphasized, that the CAPs of Hungary and Poland (but also of the other states) rely heavily on the rules laid down in the code of civil procedures: in case of Poland, this reliance extends specifically to the principles of civil procedure, too. The question arises whether these principles apply in CAPs that do not mention the principles of civil procedure. In the absence of a provision, this question should obviously be answered in the negative. At the same time, we may be uncertain as to the answer to be given, since whether we look at the rules of the HCAP or the PCAP, we can find a significant reference to the rules of civil procedure. On the other hand, each of the

detailed procedural rules must be affected by the procedural principles, which must be taken into account in the application of the rules. Taking this into consideration, we can easily conclude that the principles of civil procedure are present and do work in administrative lawsuits. Thus, they are practically present in each national legal system as principles of procedural law, regardless of the type of procedure.

Summarizing the above, reiterating the general requirements of courts regarding administrative court proceedings, three categories of principles and fundamental rights must be mentioned in this field.

The general principles of justice are enshrined in the constitutions or basic law, maybe also in the acts on the organization and administration of courts. There are also individual rights that can be linked to the principles of justice and are valid in judicial proceedings. The third round consists of the principles which are specific to administrative litigation.

The principles that pervade the whole of justice are the principle of judicial monopoly of the judiciary, the principle of equality before the courts (including the principle of equal rights and a single court), the right to use one's mother tongue, the principle of judicial independence, the principle of orality, the principle of directness, the principle of corporate justice, the principle of publicity, participation of lay persons in justice. Furthermore, whether we look at HCAP or PCAP, or any national regulation, these will be the principles and requirements that we can discover everywhere in a certain manner and to a certain extent.

The following can be described as individual rights related to justice: the right to go to court, the right to a fair trial, the right to representation (including the right to a probation lawyer), the right to legal redress, free proof, and free weighing of evidence. These rights have the same nature as the principles in the first group.

Most of the principles and rights in the first and second group have also been laid down in various international legal instruments and are to be interpreted often by international courts.

The third group includes principles that specifically govern the administrative litigation. In this area, national legislation obviously enjoys a great deal of liberalization, since it is always the political, economic, and social system of a given age that decides which principles and requirements appear precisely in this circle.

Particularly on the side of law enforcement, it is held that the subject of principles is a purely theoretical field which is a playground for professors (theorists) and for the judges at the constitutional courts since they value and consider the detailed rules of procedure to be more important.

Restricted albeit to the Hungarian and Polish systems in this topic, the present study targeted to demonstrate not only that the principles play a very important role in the judiciary, but also in individual litigation, due to the emergence of their normative nature. Therefore, strengthening the normative nature of the principles as a goal for future legislation should be strongly recommended and beneficial, as this will ensure procedural guarantees that will ultimately merge in the right to fair trial.

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