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Kiadja

A Szegedi József Attila Tudományegyetem Állam- és Jogtudományi Kara
(Szged, Lerin krt. 54.)

Kiadványunk rövidítése
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Act I. of 1981 — with a generally used name: Act on the procedure in administration (later on: Administrative Procedural Act or APA or Code) — containing the general rules of public administrative procedure, is considered in unison as a party-centrical Code by the theory of the Hungarian administrative procedure. And not without any foundation. 31 of the 98 articles of the Code, in 38 sections, contain some provisions, *serving* expressly and unequivocally *the good of the party,* either *by mitigating his administrative situation* or — what is even more important — as a result of the procedure, *he enjoys an equitable treatment in the substantial legal relations aimed at.* Within the framework of this monograph, being of restricted extent owing to its dimension, I should like to show the legally settled guarantial assurances, emphasizing among these, as well, the most important ones. Before seeing, however, the details of my proper subject-matter, I consider as necessary to project ahead *some legal-dogmatical theses,* on which the whole sytem of our public administrative procedure is built up. I consider as such one primarily *the concept of administrative procedure* which, at lenght, lays the foundation of the *norms concerning the force of the Hungarian procedural Code* — and within this, particularly those relating to the objective force and, closely connected with the latter one, *the relation between the general code (APA) and the special procedural rules.*

1. As to the *concept of the public administrative procedure.* There has not been formed any uniform conception either in the Hungarian or in the foreign special literature. An agreement may only be detected therein that the *administrative procedure* is the *order of activity of administrative organs* — today already organized by law in modern States. In other questions, however, the opinions already vary very much in respect of which of the extremely several kinds of the forms of functioning (activity) of the administration may be drawn under the concept of procedure in processual sense. From the *widest interpretation of the concept of administrative procedure* — that namely it includes the order of activity of all the functioning forms of administrative organs (making, implementing, directing, applying the rule of law, etc.) till the *strictest interpretation* (administration, passing judgements) the opinions diverge.[1]

[1] In the Hungarian special literature, such a many-level definition of the administrative procedure is given by Prof. Lajos *Szamel.* Cf.: *Berényi—Martonyi—Szamel:* Magyar Államigazgatási Jog (Hungarian Administrative Law). General Part. Tankönyvkiadó, Budapest, 1978, pp. 356—357.

a) The majority of authors agrees in that the extension of the concept of procedure to all the forms of activity of administration is unacceptably wide. At the same time, it should not be narrowed down to a number of special kinds of procedures, either, as the "judging" administration, is (Meaning by judging administration the management of contentious cases emerging between parties of conflicting interests, as well as the sanctioning administration of justice in sanctioning administrative criminal cases (contraventions, petty offences). The intermediate solution is the opinion, accepted by me, as well, that *the concept of the administrative procedure should be based on the official activity of administrative organs in applying law;* in the domain of the administrative functioning when the authority establishes rights of duties to the natural or juristic persons non-subordinated to it, but being contained in the rules of substantive law, in the way that it compares an individual legalfact with the hypothetical legal fact formulated in the rule of law. Seeing this from the side of labour relations: the *administrative procedure* — as every applying of the law (Rechtsanwendung) — *aims at forming relations of the substantive law,* creating such relations, modifying or terminating them, resp. declaring the existence (or non-existence) of relations of the substantive law, *by issuing an individual act of applying the law.* According to this conception, *we should, therefore, exclude from the concept of the procedure of administrative authorities* other forms of administrative activities: the creation of norms,[2] direction, the supervision of non-authoritative character, as well as the internal organical administration and even more the activity directed to the organizational and co-operative social relations, implemented by non-power (non-legal) means.

(b) And if we consider the procedure as the order of issuing some acts, then *we should exclude from the series of administrative acts (from the point of view of our subject-matter)* the normative acts, and from among the individual acts the concrete directives (both of these or the means of direction and leadership), the inner organic acts (these being, otherwise, not administrative but labour-law acts), and finally, the administrative agreements, contracts. There remain the concrete acts of authorities, applying the law and aiming at the formation of individual immediate aim of the administrative procedure.

(c) Taking all these for our basis, the procedure of the administrative authority may be defined as follows: *"The procedure of the administrative authority is a legally regulated order of activity, implemented with the active co-operation of the procedure, which is realized for the sake of forming the relations of substantive laws, in the interest of issuing individual acts of the authority and enforcing these; it appears in its content in the form of particular relations of the law of procedure."*[3]

I do not allege that this defenition, formulated by me, would be perfect

[2] The most general definition — however, not of full value and not periphrastic — given of the concept of administration by the Hungarian socialist theory of administration, is that, according to which the *administration ("state" administration) is the disposing-implementing activity of the organs, qualified by the rule of law as administrative organs.* In this formulation the disposing activity is generally identified with the *activity of making norms.*

[3] István *Szücs:* Az államigazgatási hatósági eljárás főbb elméleti kérdései (Main tehoretical questions of the procedure of administrative departments and authorities). Közgazdasági és Jogi Könyvkiadó, Budapest, 1976, pp. 49—50.

and could not be attacked. The socialist special literature has produced a mass of definitons in the last decades and towadays. A number of these interpret this concept essentially wider, others considerably restricted. At the same time, it is reassuring for me that not a few number of authors define the concepts similarly, with some non-essential differences.[4]

2. The Hungarian procedural code is founded on the principles mentioned above, in respect of its objective effect.

(a) In order to determine the scope of its effect, in its introductory part, *it gives a "definition of positive law" about the concept of the administrative case and the party to the case.* According to this: "Administrative case is such a case in which the administrative organ establishes a right or duty, affecting the party to the case, it certifies data, registrates something or exercises official control." "Aparty to the case is the private percon, juristic person or another organization without juristic personality, the right or rightful interest of which is affected by the case. The rights of the party are due to the organs, as well, the scope of tasks of which are affected by the case."[5] On the basis of the above determination of the administrative case, and the party to the case, by the Act, one of the renowned Hungarian authors has demonstrated four essential elements of the administrative case — as the object of procedure. These are: 1. the individual, concrete character of the case, 2. the existence of the party to the case, 3. the authoritative, official character of the act of the administrative organ, and finally 4. that it should aim at inducing an immediate legal effect. In the absence of the first element, the regulating (normative) provisions of administrative organs become eliminated; in the absence of the second element, the individual provisions of inner (organic, internal) character fall out and, owing to the absence of the third element, those which are not of official character (e.g. the civil-law transaction (act), the simple expression of the opinion, etc.), finally, owing to the absence of the fourth element, the material-technical (administrative technical) acts.[6] It is, therefore, verified by the positive law, as well, that *by the procedure of administrative authorities of the administrative organs during the procedure of administrative organs, the law-applying activity of the administrative organs, in the strict sense of the word, resp. their order of activity in the direction of individual substantive-law relations, is to be meant.*

(b) In order to remove the possible emerging doubts, it is necessary to make some remarks on both definitions of the law (administrative case and party to the case).

In connection with the above definition of administering case, it is justi-

[4] The concept of administrative procedure is similarly determined in the Hungarian literature by Géza *Kilényi:* Az államigazgatási eljárás alapelvei (Principles of administrative procedure). Közgazdasági és Jogi Könyvkiadó, Budapest, 1970, p. 54; Ferenc *Toldi:* Az államigazgatási rendelkezések megsemmisítése és megváltoztatása (Annulment and amendment of administrative rovisions), Közgazdasági és Jogi Könyvkiadó, Budapest, 1965, p. 23; Lajos *Szamel:* Op. cit., p. 357; in the Polish special literature W. *Dawidowicz:* Direction of state enterprizes and the Code of administrative procedure (Polish). In: Pantswo i Prawo. 1968, No. 1, p. 82; *Zimmerman,* M.: Reflections on the jurisdictional procedure and concept of the party in the Code of administrative procedure (Polish). In: Memorial Volume Kamil Stefski, Warsaw—Wroclaw, 1967, p. 455. In the Soviet special literature: Sorokin, V.D : Problems of the theory of the Soviet law of administrative procedure (Russian). Moscow, 1972, pp. 10—14.

[5] APA, Art. 3, sec. 3 and 4.

[6] Ferenc *Toldi:* Op. cit. pp. 88—89.

fied to raise the question: How far may be qualified as application of law the order of granting official certificates and permits, of entering into the official registers (these are named with a summarizing expression to perform *administrative registrative acts),* as well as the so-called official inspection.

(ba) Some of the authors called in doubt the character of the *administrative registrative* acts as acts of applying the law. It is unquestionable that the official certificates and verifications do generally not establish immediately any right or duty. But they have indirect legal effects, and the special literature considers them, therefore, as deeds of act-character. At any rate, their drawing under the objective effect of APA is also justified by that they serve a practical interest and the interest of the party to the case, as well. Namely, that *in the course of managing these cases, the party may suffer the offence of his rights or interests, as well; it is therefore, necessary to ensure for him the possibility of appeal in the general order of the procedure.*[7] The question of making a note into the *authentic official registrations* (registers of births, marriages, land register, etc.) is less problematical: here namely, the rights and duties "result" from the registration immediately, thus, the *direct legal effect* is evident.

(bb) The other is questionable — and is really discussed in our domestic literature, as well — namely, the question of official *controlling by the authority,* as the object of administrative procedure. Without analysing the question in detail, I am only fixing my own standpoint. The organs of administration, when *they supervise, how an earlier individual decision of them, applying law, was fulfilled, implemented, they display an authoritative law-applying activity* — belonging, in respect of the phase of procedure to the phase of implementation. This cast is unambiguous for me. It is more difficult to defend the case where the authority alleges to control the implementation of the rules of law at natural and juristic persons, not subordinated to it.[8] There are authors who justify on different bases the insertion of the rules of the procedure of authorities into the general Code.[9]

(bc) It is justified to make a comment *on the statutory definition of the concept of the party to the case, as well.* What is meant by the sentence that "the rights of the party are due to the organ, the scope of tasks of which is affected by the case?" The answer may be short. There are several administrative objects which are managed, treated by more than one subject (institute, institution another administrative organ and even a social organ). If such an object of administration (which may be a natural person, as well) plays the role of a party to the case, the interested organ — which is

[7] Ferenc *Toldi*—Barnabás *Pákay:* Az államigazgatási eljárás általános szabályai (General rules of administrative procedure). Közgazdasági és Jogi Könyvkiadó, Budapest, 1958, p. 16; as well as Ferenc *Toldi:* Op. cit. p. 32; Tibor *Madarász:* Szakigazgatási szervek tevékenysége (Activity of the specialized agencies of administration), ELTE, Acta Jur. et Pol. Budapest, 1966. Fasc. 7, p. 143.

[8] István *Szücs:* A hatósági ellenőrzés eljárásjogi megítélése (Estimation of the supervision by authorities from the point of view of procedural law). Állam és Igazgatás, 1982. No. 12.

[9] József *Varga:* Az államigazgatási eljárás általános szabályairól szóló törvény korszerűsítése (Making up-to-date the Act on the general rules of administrative procedure). Lecture in the Section of Theory of Administration, Hung. Acad. of Sciences. Állam és Igazgatás, 1976, No. 9, pp. 629—633; István *Zsuffa:* Új intézmények az eljárási kódexben (New institutions in the Code of procedure). Állam és Igazgatás, 1981. No. 7, p. 603.

affected in its scope of tasks according to the subject matter of the case, e.g., which can appeal for an aid against the decision of the authority — is entitled to stand as a party to the case before the functioning authority.

3. Finally, I should speak about the relation between the *APA, containing the general rules of procedure and* the *special procedural rules* — not few in number.

The extremely huge mass of *administrative cases* — and mainly their difference in *content and form* — exclude such an order of procedure which were applicable to any kind of cases and the adequate regulation of this. This problem emerges, of course, in every country where the more uniform regulation of the administrative procedure is planned on some level. The APA is not the single source of the law of the Hungarian administrative procedure, either. Our general procedural Code recognizes three types of special *procedural rules.*

(a) The Code *takes out the* administrative criminal cases in *petty offences entirely from its own objective effect.* The law of contraventions in petty offences, together with its fundamental rules of substantive law, is contained by a separate Act, the so-called *Code of petty offences.* These are the detailed rules to be applied in the cases of petty offenses. In administering such cases, therefore, the prescriptions of APA cannot be applied at all. In our present law of procedure this is the unique procedure taken out. In the former Code, there were more procedures of this kind.

(b) The general procedural law *qualifies itself as a Code of secondary, auxiliary, subsidiary character.* I.e., certain provisions of the APA may only be applied in cases where the rules of law, relating to the given field, do not contain appropriate procedural rules for the single moments of procedure. *If there is a special rule, then it is primary, and the general rule sohould be disregarded.* Such kind of cases are, at present, the cases of national defence, foreign exchange authority, the administration of foreign trade, as well, as of the authority of social insurance. The majority of the special procedural rules, valid for these fields, appear together, mixed with substantive rules, in the sources of law relating to the subject. Their separation and arrangement is a task of the future.

(c) The general procedural Code embraces close to forty provisions where it enables other rules of law, in addition to the general rule, to create *other rules of law, deviating from the general rule,* if the rule of law does not dispose in a different way. But such a deviating rule may only be created in an Act, a decree of legal force or an order in Council. A lower rule of law should not create any rule of law, deviating from the APA. These are the *so-called subsidiary rules of the Code.* For instance, according to the APA, the term for appeal, "if the rule of law does not dispose otherwise" is fifteen days after giving in the appeal. In certain kinds of cases, however, on the basis of other rules of law — we know 8-day or 30-day terms of appeal, as well.

Otherwise, these special rules may be compared with the general ones, in contradiction with these, or detailing, simplifying them, or they may just be disregarded. The special procedural rules obtain in this way a particularly important role in the administration of the registers of births, marriages and deaths, of the public guardianship authority, the registration and expropriation of real estates and social care. The arrangement of these rules of

law, the separation of the adjective rules of law from the subjective ones and their systematization are, for the time being, similarly unsolved tasks.[10]

In the Hungarian law of administration. I deem absolutely necessary to present the fundamental-theoretical theses, detailed before, prior to presenting the prescriptions of guarantees in the service of parties.

II.

The *guaranteeing proscriptions* of Act I of 1981 (APA), codifying the general rules of the official procedure of the Hungarian administrative authorities, *serving the party to the case may be classified into two groups:* the Code has certain prescriptions which are due to the party in all three phases of the procedure; others, however, may only be asserted in single phases of the procedure.[11]

1. In all the three *phases* of the procedure (procedure on the first instance, that of remedy and implementation the most important legal guaranties are formed as follows.[12]

(a) The Hungarian procedural Code — similarly to the Code of civil procedure (Pp.) and the Code of criminal procedure (Be.) — *determines the legal principles of procedure in positive law, in its introductory part.*[13] Among

[10] There are works in progress in our country, in order to arrange the special rules of procedures. The high sectorial and functional authorities and Ministeries are obliged by a governmental decision to take into account and systematize the material of procedural law in their own area and sector and where the different regulation is not justified, it should be terminated, eliminated. These works are directed and co-ordinated by the Institute for Organizing the Administration. About this subject-matter a number of papers were written by Géza *Kilényi.* — As to arranging particular procedural rules, cf. also: István *Szücs:* Az államigazgatási hatósági eljárás főbb elméleti kérdései (Main theoretical questions of the procedure of administrative departments and authorities) — Közgazdasági és Jogi Könyvkiadó, Budapest, 1976, pp. 196—199.

[11] The administrative procedure is divided — both by the literature and the positive law — into three main phases: (a) the *procedure of the first instance, or basic procedure* determines the rules of starting the procedure, of investigating into competence and territorial jurisdiction; of clearing the legal facts and evidentiary rules, as well as the detailed rules of passing a resolution; (b) it places within the frames of *remedial procedures* the rules about the legal remedy, taking place within its own competence (retractation, amendment), those of the appallate remedies (appeal, revisional request, supervisory remedy) and finally (c) the *procedure of implementation* contains the rules of the different ways of implementing. It is evident from these that, in contradistinction to the systems of the administrative procedures in several countries, according to the Hungarian prevailing opinion, *the procedure of distraining (implementing) is the organic part of the whole of the the administrative procedure.*

[12] The garantial assurances to be applied in all the three phases of the procedure are systematized — for practical and logical purposes because the possibility of applying them may emerge or become necessary already in the first phase of their application — by the APA, in the part containing the rules of the procedure of the first instance.

[13] The principles of administrative procedure have been elaborated, at first, by the special literature and were laid down, at first, as settled norms, only by the Code amended in 1981. The first APA had not contained such rules. It is usual to range the principles *in three groups:* the *first group* is made by the

the principles, enumerated in the APA, several ones serve expressly the interests of the party to the case. From among the principles which are characteristic of *the whole of the Hungarian socialist system of law,* the principle of socialist democracy, that of socialist humanism, as well as the principle of equal rights of nations and nationalities but above all the principle of socialist legality should be considered as such ones. *From among the common principles of procedural law, being effective in every procedure of the application of law,* the defence of the party to the case is served by the principles of equality before the law, the right to hearing (audietur et altera pars), the right to being represented and defended, and the right to legal remedies. We consider as principles of the *special administrative procedural law* the principles of striving to officiality, simplicity, and speed. Nevertheless, I do not consider as necessary to deal in this place in detail with the enumerated principles because all of these are expressed in detail in the provisions of the APA, and I will refer to these in their own places.

(b) The *legal institution of representation* in case of private persons has *deuble destination.* Partly to ensure that the parties, having but limited capacity of action or being incapable of action, be duly replaced by their legal representatives and that the parties, being apt to act, but impeded in managing their cases, be duly replaced by an *authorized agent.* On the other hand, any party to the case is to be represented by a *representative* for the sake of a more profound defence of his legal interests or simply or solely for the point of view of expediency. The representative may, of course, be a *lawyer,* too; but the APA makes rather wide the scope of employees with simple authorization, without being qualified lawyers. The Act prescribes written authorizations only in case of employing lawyers, respectively in case of such an authorized person who is allowed to apply a legal declaration in cases of financial character to the debit of the party to the case.

The representative power of the authorized person is, of course, not unlimited:

— it may be *excluded* by a rule of law if in the given case an unconditionally personal procedure is prescribed by the nature of the case;

— it may be *restricted* by a rule of law in certain procedural acts, e.g. the authorized person may not lodge an appeal;

— finally, the extent of the scope of rights may be restricted by the party giving the commission, as well.[14]

(c) The general Code of procedure establishes *absolute and relative causes for exlusion,* for the person in charge, in the interest of the objective unprejudiced estimation of cases. It is an important guarantee of the party that such a *report* of disqualifications or prejudice, affecting the person of the representative, *may be made by the party or his representative himself, too.* Such a motion of exclusion may, at any rate, be submitted not only against

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principles which are characteristic of the *whole* of the Hungarian legal system i.e. being valid in every branch of law) (such ones are, e.g. the principles of socialist democratism, socialist humanism, etc.); there belong to the *second group* of the *common* principles of procedural law, being characteristic of the different branches of law (administrative, criminal, civil procedures (e.g. the right to being represented, right to a remedy, etc.) while the *third group* is given by the principles of the *particular administrative procedure* (e.g., the principle of officiality, that of simplicity etc.). In the Hungarian special literature a classification like this is given by Géza *Kilényi:* Op. cit., p. 70; and István *Szücs:* Op. cit. p. 154.

[14] There are settled further detailed rules by APA, Art. 18.

the "designated" "caretaker" but also against the head of the organ, in case of a corporative organ against the member of the corporation, considered as interested, and even against the organ itself. In case of the existence of an *absolute cause for exclusion,* the affected persons *should be excluded;* in case of a *relative cause for exclusion,* the head of the managing organ decides — within the scope of his right of estimation — about the exclusion.[15]

(d) In order that the *guiltless party in default* or a person who does not fulfil an act of procedure or fulfils it imperfectly or late, but guiltless should pot suffer any inequity or prejudice, he *is due* in our administrative procedure, as well, in any phase of the procedure, to the *right to offer excuse* for committing as omission. And even the decision, rejecting the petition of excuse, may be attacked separately and immediately with applying for legal aid if it was offered as an excuse for the ommission of appealing, and the authority designated the dilatory putting in of the demand as the cause of rejection.[16]

It is to be mentioned here that, similarly to the case before, every decision may be appealed against independently — i.e. not depending upon the meritorious decision and prior to it if it levied a procedural fine (a fine connected with summons, judgement in default, mala fides, implementation), as well as the decision ruling the suspension of proceedings. Such an intercurrent decision may be issued in all the three main phases of the procedure.

(e) We consider as an important guarantee serving the interest of parties, the *right to get an insight into the files.* As in the administrative procedure — following from the particular character of cases — the formal hearing is rare, the interested parties — apart from the information obtained — may only obtain knowledge of the standing of their case mainly by getting an insight into the dossiers. Therefore, the APA prescribes that the *party to the case and his representative may look into the files produced in the course of procedure and make a copy or a memorandum of them.* This right is due, apart from the party to the case and his representative, to the other person (the representative of the organ), as well, who proves that the knowledge of the content of files is necessary for the sake of enforcing his rights or fulfilling his task. It is, however, not allowed to get an insight into the files containing state secret or that of service, as well as, into official reports made of corporate sittings, deliberations and voting on draft resolutions. The leave of the authority is no condition of studying the files. Its refusal is contestable together with the meritorious decision.[17]

(f) The *right to use the mother tongue* serves the principle of equality of rights of nations and nationalities and, at the same time, the principle of equality before the law, as well. For, according to the law, in our public administrative procedure, everybody is due to use his mother tongue in spoken and in written without restraint, and owing to the lack of knowing the Hungarian language nobody can get into an unfavourable situation. In case of using a foreign language — if the manager does not speak this language —

[15] APA, Art. 19.

[16] It is a general rule in the law of administrative procedure that the so-called intermediary or procedural decisions are not to be contested separately but only jointly, with the meritorious decision, concluding the case. But a number of intermediary decisions make an exception of this rule, it is therefore possible to present against them an independent, separate plea of remedy. Such is the exceptional case of the decision rejecting the plea for justification. APA, Art. 40.

[17] APA, Art. 41.

an *interpreter should be employed.* This is particularly important in the course of administrating the cases of foreign citizens and particularly in our countries of a population belonging to a nationality. If a deaf, mute or deaf-mute person takes part in the procedure, similarly an interpreter should be employed.[18]

2. In the first-instance or basic procedure the party to the case is served by the following legal guarantees.

(a) The starting of a public administrative procedure has fundamentally two cases: *the procedure may be started ex officio or at the request of the party to the case.* The procedural legal position of the party fundamentally differs in the two forms of the procedure.

In the procedure to be started at *request* — for lack of a request of such kind — no procedure should be started resp. the party to the decision on first instance becoming res iudicata. In such a case, the procedure should be terminated, i.e. the *principle of disposing* by the party to the case completely prevails. In such a case, the *party should not be summoned.* His personal *hearing* should be rendered possible in both forms of procedure (right to express his opinion). But in a procedure, started on request, the party to the case should only be *invited* to this. His absance should not be inflicted with any procedural sanction. The *request* is not bound to any formality, it *might as well be laid before orally.* In this case, the proceeding employee of the authority makes a report or notice. An important legal institution serving the interest of the party is the so-called *concession in respect of putting in the request.* This means that the private person may put in the request for starting the procedure at first instance not only at the administrative organ, having *powers and competence,* but also before the specialized agencies of the executive committee of the competent council, competent according to the domicile or the place of work of the party to the case. This organ is obliged to further the request immediately to the organ which is bound to conduct the procedure. This concession is not due to juristic persons, organizations. It is a further ease that the party to the case should not be asked for putting in, as a supplement, any *certification of data* that should be contained in the register of the administrative organ, introduced by a rule of law.[19] From this point of view, all specialized agencies of the executive committee are to be considered jointly as a unified administrative organ.[20]

(b) In the *phase of clearing the legal facts and evidence,* the party to the case is also due to several rights. Particularly three of these are worth of being emphasized. One of these is that in a procedure ex officio the *onus probandi* is entirely on the side of the authority; the other is that if it is necessary to prove something with the aid of an expert, then the party himself, too, may make a proposal for the *person of the expert.* And even — what is more — in addition to the expert, designated ex officio, he may produce *a counterexpert,* too. Finally, in the course of documentary evidence, instead of a document which is disproportionately difficult to obtain — if it

[18] APA, Art. 2, sec. 5 and Art. 34.

[19] APA, Art. 13, 14 and 16.

[20] In our council administrative system, the executive committee is a corporative organ of general competence. The special sectoral and functional tasks are managed by the organs of special administration, subordinated to the executive committee. The competences of authorities are divided between these, as well, owing to the horizontal delimination of competences.

is not prescribed in another way by a rule of law — he may take a so-called *personal declaration* which — till the contrary is proved — is a satisfactory substitute for the original one in the whole course of the procedure.[21]

(c) The interest of the party to the case is served and, at the same time, the principle of speed is expressed by the terms laid down in the Code. The most important of these is the *term fixed for settlement, decision.* This is in the procedure in the first instance generally the thirtieth day, reckoned from starting the procedure. In complicated cases the Act, a decree of legal force and an order in council may establish longer terms, as well, than these for settlement. Shorter terms may be established in simpler cases by any rule of law (order of a council, normative decision of an executive committee, as well). Within the term established by the rule of law, for settling the case, the proceeding authority *is obliged to decide.* In the Hungarian literature this is named *procedural coercion.*[22]

Our law of procedure does not pass round the question of silence of the administration (silence de l'administration) either. The lack of measure may have a double effect:

— in a procedure, started upon the party's request — if this is prescribed by a rule of law expressly — the legal consequences, connected with the decision which complied with the request should be applied, even if the administrative organ *has not refused* to carry out the fulfilment of the request within the prescribed term. (Silence is consent);

— in another case, the party may turn — owing to omitting the measures — with his request to the immediate superior of the omitting authority which will instruct the organ in silence, to decide within a short definite time.[23]

3. *The whole of the remedy system is a guarantee system, serving the party to the case.*[24] The presentation is detail of the full system of legal remedies would surpass the frames of this paper. From the point of view of our subject-matter, this would not be justified, either. Here I only emphasize the traits of general and fundamental importance which are particularly significant from the point of view of the party.

(a) The Hurgarian Code of administrative procedure is extremely *differentiated.* At the same time, it built up a *defined remedy system.* Among the different methods of remedy, the *appeal* to a higher instance is to be considered as *ordinary remedy,* all the others are qualified as extraordinary remedies. The outstanding, determinative role of appeal is supported by more than one factor:

— the exhausting of *appeal* is generally the condition of the possibility of free access to other remedies;

— the *formal (adjective) res iudicata* is connected with *appeal:* the decision has formal force if it can no more be re-opened or challenged with appeal;

[21] APA, Art. 28, sec. 2; Art. 32, ecc. 3.
[22] APA, Art. 15.
[23] APA, Art. 42.
[24] The Hungarian special literature distinguishes two kinds of legal guarantees and, thus, of the guarantees of procedural law, as well: *individual guarantees,* as well as *guarantees of institutional character* which are the sum of individual guarantees, serving a unified aim. Such a guarantee of institutional character is considered, e.g. by Lajos *Szamel,* as the system of appellate remedies or that of judicial revision. Lajos *Szamel:* Az államigazgatás törvényességének jogi biztosítékai (Legal guarantees of the legality of administration. Közgazdasági és Jogi Könyvkiadó, Budapest, 1957), as well as István *Szücs:* Op. cit., p. 156.

— appeal is the unique means of remedy with delaying force in respect of implementing the decision;

— in the procedure of appeal, the principe of *"reformation in peius et melius"* may be asserted without any limit;

— from among the ways of remedy, realized in the organized system of administration, the protection of rights acquired and practised bona fide *can alone not be asserted in the course of the remedy with appeal.*

(b) The structural building up of our system of remedies and the characteristics which are particularly characteristic of the single ways of remedies, from the point of view of the party to the case, are formed in the following way.

(ba) *Possibilities of a remedy in own competence* (i.e. at an organ of original competence): correction and completion of a decision, its retraction or modification (amendment). All of these may be made both *ex officio* and upon the *petitio* of the party to the case, and they may be applied for remedying both the *violation of the law and of an interest.*

(bb) Remedies in appellate procedure, i.e. of *devolutive* effect within the the administrative system;

— the *appeal;* only upon the request of the party to the case, applied both in case of violetion of rights or interests.

— the *revisional request* is a means of attacking after exhausting appealing, i.e. attacking the second-instance decision if the case is *res iudicata,* upon the request of the party to the case; it may, thus, be directed against both the violation of a rule of law and, in meritorious competence, against a decision not violating the law but violating a justified interest; this is, however, excluded if, in the same case, judicial review may take place;

— the *supervisory remedy* may be practised by an upper administrative organ of any level but only ex officio and only for eliminating the violation of legal rules. In the Code, a number of limiting conditions are determined.

bc) *External remedies, practised by other state organs:*

— *supervision of administrative decisions, by Courts of Justice;* it is only available upon the request of the party to the case (in a single exceptional case on the proposal of the attorney) and only in order to eliminate the violation of the rules of law.[25] Judicial supervision should only take place if the party has already exhausted the right to appeal in public administrative way or if, in a given case, a rule of law excludes the right to appeal;

— finally, we should mention here the ways of remedy against the *attorney's measures:* the remonstrance (protest) contribution, and warning by the attorney, as well. The attorney is alone entitled to take such measures and only for the sake of eliminating the violation of the rule of law. The rules of these are contained in detail not in the APA but in the Act on Atorneys.

(c) In respect of the remedial procedures, there are to be emphasized two

[25] APA gives of the judicial revision of administrative decisions a so-called definition of principle. According to this, *because of violating the rule of law,* "the party to the case may request the Court of Law — in the scope determined in an order in council — the revision of the decision of the administrative organ if the decision revokes or restricts the right of the party, assured in the Constitution, or another of his fundamental personal, family law or that relating to property. Or if it prescribes such an obligation to the party." APA, Art. 72, sec. 1. And the mentioned enacting order is the order in council No. 63/1981. (XII. 5) Mt. which opened the possibility of judicial revision for approximately thirty kinds of administrative cases. And this scope may be widened further on.

more guarantees of fundamental importance which *expressly serve the interests of the party* to the case.

(ca) The Code declares with a cogent character in several forms of remedies that *the decision should not be annulled or overriden if this violated the rights of parties, acquired and exercised bona fide.* Expressed in a simpler form: it is not possible to "remedy" the decision to the disadvantage of the party to the case, even by right of having violated a rule of law. This principle prevails in case of correction, completion, retraction and amendment in own sphere of activity, as well as in the course of revisional request and of supervisory remedy but it cannot be used in cases of appealing, judicial supervision, and of attorney's remonstrance. (In case of attorney's remonstrance, submitted beyond one year, however, the protection of the rights acquired and exercised bona fide should also be protected).

(cb) The other question is the *suspension of implementation* by the organs of legal remedy. It was already mentioned that appeal is, in respect of implementing the decision, a means of remedy which is on the basis of the Act of delaying force. To this general rule an exception is made by the APA itself, for some entirely exceptional cases (for the sake of preventing a public danger, danger of life, a particularly heavy damage). The delaying force, however, *only* refers to the ordinary legal remedy, the appeal. At the same time, the Code allows for every form of legal remedies beyond appeal revision, supervisory remedy, judicial re-examination, attorney's remonstrance that the instance conducting the procedure of legal remedy, before deciding meritoriously about the request of legal remedy, *may order the suspension* of the implementation of the decision attacked if the quashing or changing of the decision is to be expected. This rule prevails in practice in a wide scope.[26]

4. *The procedure of implementation* (execution) is the *most accidental phase* of the administrative procedure. In several cases — owing to the nature of the case — the compulsory implementation is *conceptually excluded.* In cases concerning rights, various official licences, acquisition of benefits, the party to the case will take the opportunity of exercizing his right, included in the act, as a result of the official decision, in his own interest. If he, possibly, will later not want to exercise his rights, it will not be possible to coerce him to do this. In cases, as well, in which there are decisions, determining some obligations, a procedure of implementation may only take place, as it is proved by the practice, only very rarely, namely if the obliged party *did not perform his duty within the prescribed term.*

The party to the case is protected in the course of the procedure of implementation by a number of *guarantees of the law.* The main guarantees among these are as follows.

(a) For performing the duties, the authority, in its meritorious decision, sets the date of performance (for continuously performing the duties: cyclical terms). The implementation may be prescribed *if the fulfilment has not taken place within the term;* namely, if the obligation is opposite to the State, the implementation is ordered *ex officio* but in the relation of parties of contrasted interests, it is ordered *on the request of the entitled party.* The prescription of implementation take-place in a *formal decision.* Against this decision, there is no remedy. In certain cases, however, which are extremely justified and worth of special equity, taking into consideration the personal conditions of the party, and upon his request or *ex officio* the authority *may prolong*

[26] APA, Art. 77, sec. 5, and Art. 85.

the term of fulfilment or suspend the implementation — generally once and not lorger than for thirty days.

(b) As far as the party, drawn under implementation, in the course of the procedure of implementation perceives any infringement of his law, or a natural or juristic person, whose law or rightful interest is violated by the implementation but who is not drawn into the procedure, as a party to the case, they may submit a particular request of remedy: raising an *objection against the implementation* and the implementing organ is obliged to judge this immediately but at least within eight days. The decision, rejecting the objection against the implementation, may seperately be appealed against.[27]

(c) The rule that there is no independent legal remedy against the intermediate (procedural) decisions, generally prevails in the implementary procedure, as well. Exceptions are to this rule: the decision *rejecting the objection against the implementation,* mentioned in the former point, the decisions, establishing the *equivalent in money,* replacing the frustrated delivery of the thing, as well as the separate costs of distraint, exceeding the original obligation, further on, the decisions, fixing the *penalty of implementation;* against these an independent appeal may take place.[28]

* * *

I did not strive to present the whole system of the Hungarian public administrative procedure. My only purpose was that who is interested in this subject-matter, may obtain a picture about the protection in procedural law of the party to a case (the citizen, the natural and juristic persons and other organs, being subjects of procedural law).

[27] APA, Art. 88.

[28] Art. 83, sec. 2. APA, Art. 84, sec. 3. If the aim of obligation is the handing out of a movable property or thing and that does no more exist, the person entitled may request the implementing organ *to reckon the equivalent in money* and its recovery from the obliged person. The *separate costs of a distraint* should mostly be determined if some exepensive works are performed on the order of the *authority itself intestead of the obliged person,* to the debit and danger of this person. The *fine of execution* is a sanction, in order to compel the fulfilment. It may be repeated more than once, its highest amount being then thousand Forint.