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LEGAL PROTECTION RULES OF NEW ADMINISTRATIVE PROCEDURE

Subjective and objective legal protection tools are crucial elements of a constitutional state, to promote that the principle of rule of law shall be applicable. These legal instruments of subjective and objective legal protection are also prevailing in public administrative procedure system. The protection of clients concerned in their rights or legal interests, furthermore maintaining the constitutional state and the principle of *rule of law* are essential to the compliance of careful consideration and evaluation of constitutional provisions and requirements. General rules of Hungarian administrative procedure law are being renewed, both of Code on Administrative Procedure and Code on Judicial Review of Administrative Acts were accepted recently.[1]

The study focuses on comparison of former and renewed right protection rules during public administrative proceedings, on those challenges that affected individual rights protection and the protection of the public interest, including the instruments both within the public administration organization system, as well as outside.

Subject of analysis does not involve the historical aspect of Hungarian administrative judiciary, furthermore the judicial institution question and the selection criteria of administrative judges.[2] Especially the judicial organization system and the staff were also subjects of lively political debates, analysis of these matters would go beyond this study.

The possibility of *right to a remedy*'s enforcement and the public interests' protection have determinant guarantee role in the operation of a constitutional state. Ensuring the principle of rule of law has significance during the administrative procedures, since the administrative authorities exercise public power functions. The idea of rule of law presupposes that public administration functions are under the law and it is a dominant principle for the administrative organ's systems and procedures.[3]

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[1] Act CL 2016 on General Rules of Administrative Procedure, Act I 2017 on Judicial Review of Administrative Acts. Both of Codes will enter into force on 1 January 2018.

[2] See furthermore *inter alia*: Herbert, Küpper: *Magyarország átalakuló közigazgatási bíráskodása*. MTA Law Working Papers 2014/59. http://jog.tk.mta.hu/uploads/files/mtalwp/2014_59_Kupper.pdf (26.03.2017). Patyi András: *Közigazgatási bíráskodásunk modelljei. Tanulmány a Magyar közigazgatási bíráskodásról*. Budapest, LOGOD BT. 2002.

[3] The meaning of the principle of rule of law could be determined as follows: 'The rule of law is an ambiguous term that can mean different things in different contexts. In one context, the term means rule according to law. No individual can be ordered by the government to pay civil damages or suffer criminal punishment except in

The *right to a fair trial* generally aimed at ensuring rights, involving *inter alia* the rights to equality before the law and the principle of non-discrimination, the principle of *nullum crimen sine lege et nulla poena sine lege*, right to remedy, publicity of hearing.[4]

The *division of power* is a substantial principle in a modern democratic state, therefore the administrative jurisdiction has crucial function in the supervisory system of administrative acts. The administrative jurisdiction is serving both the protection of individual rights and objective legal order. The primary goal of administrative jurisdiction is disputed, i.e. whether the protection of individual rights or the objective public interest have more importance. The analysis concentrates also the examination whether the objective and subjective legal protection prevails during the review process of administrative decisions. In this sense, in simplified terms, objective legal protection means the establishment and recovery of infringement. By contrast, subjective legal protection means arising of personal injury and the exercise of the right to remedy. Given the fact, that the administrative judiciary has outstanding role in the new right protect system, therefore the constitutional provisions on the administrative jurisdiction are of dominant importance. Presentation of the Hungarian regulation, the temporal scope of comparative aspect has an advantage, the former and renewed legal instruments and the administrative litigation should be considered.

Finally, the study tries to give a concise overview and make some findings, how prevails legal protection as result of new procedural rules.

I. International impacts and theoretical approach of objective and subjective legal protection

In this context, attention is drawn to international and European basic values and principles, furthermore legal norms, that have decisive impact on the regulation of administrative procedural law at international level. Fundamental principle of Public Administration's (PA) operation is that PA shall act and operate to ensure the protection of client's rights against the unlawful decision of authorities and to protect the public interest. The legal protection mechanism can be examined from two aspects, on one hand from the aspect of right to remedy, and on other hand the protection of public interest. During the interpretation process of the content of right to remedy the possible basis is the concept system of the *International Covenant on Civil and Political Rights* (UN),[5] the *European Convention on Human Rights*[6] and the requirement system of the *European Union law*. One other aspect

strict accordance with well-established and clearly defined laws and procedures. In a second context, the term means rule under law. No branch of government is above the law, and no public official may act arbitrarily or unilaterally outside the law. In a third context, the term means rule according to a higher law. No written law may be enforced by the government unless it conforms with certain unwritten, universal principles of fairness, morality, and justice that transcend human legal systems.' http://legal-dictionary.thefreedictionary.com/Rule+of+Law%2c+the (28.05.2017.).

4 Sári János: *Alapjogok. Alkotmánytan II*. Osiris Kiadó, Budapest, 2004. 108-115. p.

5 International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49 Part I. Article 2. (3) (a)-(c) http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (27.03.2017.).

6 Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950 Article 6 Right to a fair trial, Article 13 Right to an effective remedy http://www.echr.coe.int/Documents/Convention_ENG.

should be pointed regarding the international requirements, the *Recommendation of the Committee of Ministers to member states on good administration*.[7] It has become the Code of Good Administration, its requirements shall be respected by all the Member States.

These international and European legal principles and values effect on Hungarian Fundamental Law as well, because it serves as constitutional framework for the administrative procedure law also.[8] The individual fundamental right protection, the subjective legal protection is in the core of the beforementioned Conventions. All the same, the Hungarian administrative procedure law is based on subjective protection of rights as well, as described in the next part of the study. Nevertheless, the protection of legal system and institutions is also significant. Unquestionable fact that legal approximation tendencies could be determined in the legislation of procedural law, at least in terms of principles and core values.[9]

It shall be highlighted that the priority of objective and subjective legal protection has changing nature by state to state. In the Anglo-Saxon legal order and in France the subjective right protection, the remedy of individual injuries considered primarily, but in Germany the legality of the public administration interests regarded primarily protected.[10]

A subjective approach of legal protection could be applicable interpreting the right to a legal remedy, which are in close connection. The other side of the right protection is the objective function, because it has an institution-protection purpose, as well. The subject of latter objective legal protection is not the right protection of individuals, but the protection of institutions, the legal order, public interests. The main goal is the supervision – and as result of it – annulment or alteration of unlawful decisions. As stated by *István Bibó*, the one-sided, client approach of administrative legality shall be replaced with more general, more in-depth approach, that the administrative legality considered as an interest of not only the individual, but the community.[11]

The principle of rule of law requires the objective legal protection, as well. The PA is under the law, the legitimacy of PA shall be ensured by judicial review of decisions. This type of objective legal protection requires right to bring action to court for those people, groups, and communities, who suffer any kind of injury. In this case proving the injury of interest is sufficient. Referring the opinion of *László Trócsányi*, the objective legal protection system provides significantly greater protection than a subjective system.[12]

Right to a remedy is including the enforcement option, and the substantive review of the decisions. Regarding the nature of right to a remedy it should be emphasised, that is narrower than the right to bring an action to court. The right to a remedy is an individual fundamental right, which can be applicable against an unlawful decision, it means the substantive review, in a special procedure. The right to remedy is not an absolute right,

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[7] CM/Rec(2007)7 Adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers' Deputies. https://rm.coe.int/16805d5bb1 (25.06.2017.).

[8] Fundamental Law of Hungary (25 April 2011).

[9] See legal approximation process of administrative judiciary in F. Rozsnyai Krisztina: *Közigazgatási bíráskodás Prokrusztész-ágyban*. ELTE Eötvös Kiadó Budapest, 2010. 42-60.p.

[10] *Összehasonlító és európai uniós közigazgatási jog. Közigazgatási jog IV*. (ed. Gerencsér Balázs Sz.) Pázmány Press Budapest, 2015. 83-87. p.

[11] Bibó István: *Válogatott tanulmányok. Első kötet 1935-1944* Budapest, Magvető Könyvkiadó, 1986. 279. p.

[12] Trócsányi László: *Milyen közigazgatási bíráskodást?* Közgazdasági és Jogi Könyvkiadó Budapest, 1992. 110. p.

because it can be exercised only in a way specified by provisions of law. The most important responsibility of the administrative jurisdiction to ensure the protection of fundamental rights for citizen and organizations, it is the form of subjective right protection. PA shall make mandatory decisions concerned their rights and obligations only in that case if the court can supervise the legality of them.[13]

The legal protection rules shall be consistent with the principle of the division of power also, as indicated *András Patyi* in accordance with the administrative jurisdiction. In his view, empowerment of the judiciary with review of the decisions of administrative organizations ensures prevailing of law.[14] However, it should be added, that the right to remedy and the supervision of administrative acts before the courts should prevail conjointly and effect on each other. The Hungarian right protection in the administrative process has rather subjective tendency.[15]

II. Regulation on objective and subjective legal protection of Hungarian Fundamental Law in view of Constitutional Court

Examination of legal nature of objective and subjective legal protection requires the constitutional provisions' examination, as well. Rules on right protection, right to remedy and stability of institutions and public interest shall be in accordance with constitutional provisions. Basic ruling on administrative proceeding and administrative jurisdiction are determined by the Constitution, consistently. It should be pointed out, that the definition of rule of law including subordination of public administration to law, therefore the public administration organizations shall act and decide on matters in the organizational framework defined by law, in a procedural order regulated by law and within the limits of substantive law.[16]

Two main provisions of Hungarian Fundamental Law should be mentioned, in accordance with legal protection system. On one hand, the right to remedy, is included to the Article XXVIII.[17] It provides that everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests.

On the other hand, provisions on administrative judicial system, the Article 25 (2) b), it means that courts shall decide on the lawfulness of administrative decisions.[18] Competence of judiciary for the review of administrative acts flows directly from this provision. In line

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[13] Rozsnyai 2010, 12-13. p.

[14] Patyi András – Köblös Adél: *A közigazgatási bíráskodás alkotmányos alapjai. Constitutional Background of the Judicial Review of Administrative Act*s. Pro Publico Bono – Magyar Közigazgatás, 2016/3, 13. p.

[15] Rozsnyai 2010, 13-14. p.

[16] Constitutional Court Decision 56/1991. (XI.8.) ABH 1991 454. 456. p.

[17] Fundamental Law of Hungary (25 April 2011) Article XXVIII. (1) In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'

[18] Fundamental Law of Hungary (25 April) Article 25. '(2) The courts shall adjudicate:

…

b) the legality of administrative decisions.'

with this statement, the preamble of Code on Judicial Review of Administrative Acts goes on to say, that it serves the implementation of the abovementioned provision. However, this provision does not have fundamental right content, this also follows from placement within the Fundamental Law, because it is regulated in Chapter on the State, on the contrary, the right to remedy is ruled in Chapter on Freedom and Responsibilities.

Cited two provisions are in special relationship during the application. As *András Patyi* stated in accordance with the provisions of former Constitution of Hungary, they are in 'with or without you' connection.[19] His statement was supported by a lot of decision of Constitutional Court, thus concluded, that the content of the judicial review has much wider scope but the right to remedy. The main question is whether judicial review of administrative decision satisfies the right to remedy. However, within this context, the exclusion of judicial review must comply with the requirement of limitation of fundamental rights, there is a separate question to examine the constitutional case of exclusion of right to remedy.

The General Prosecution of Hungary is the guardian of public interest, this organization exercises function in the field of public administration as well. General Prosecution's function according to the assertion of public interest claim of still has remained in administrative procedure. Prospectively this organisation is responsible for protection of public interest, primarily, hence it has a vital role in the field of objective legal protection as well. The prosecutor's intervention serves as a measure of *ex officio* administrative review procedure, it arises if the public prosecutor intervenes in a case covered by administrative procedure Act for the purpose of overcoming an infringement.

The Fundamental Law contains provisions on right to remedy and the legal supervision of administrative decisions, therefore the practice of the Constitutional Court shall be examined both from the interpretation of right to remedy and the legal supervision of the decisions of public administrative authorities by courts aspects.

Several decisions of the Constitutional Court affected the conceptual scope and progress of administrative case that is the material scope of PA procedure.[20]

According to the permanent practice of the Constitutional Court, the right to remedy is a fundamental constitutional individual right of which immanent part is to submit appeals to other organizations or a higher level in the framework of the same organization. Prevailing the effective enforcement of the right to a remedy means, that it is necessary to redress any kind of violation. In accordance with this statement, Constitutional Court pointed out, that the right to bring the case to the court shall not be limited constitutionally.[21]

In addition, the effective remedy shall ensure the possibility of alteration or cancellation of the challenged decision.[22] The right to remedy ensure the redress possibilities in case of decisions of state authorities, but does not cover non-governmental matters, such as employer, owner, or other decisions.[23]

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[19] Patyi András: *Közigazgatás – Alkotmány – Bíráskodás*. Universitas-Győr Nonprofit Kft. Győr, 2011. 121. p. The connection between provisions on right to remedy and judicial review was examined. [Article 50. (2) and 57. (5)]. See also Patyi–Köblös 2016, 24. p.

[20] *Hungarian Public Administration and Administrative Law* (Patyi András – Rixer Ádám eds.) Schenk Verlag GmbH, Passau, 2014. 212. p.

[21] Constitutional Court Decision 46/2003. (X.16.) ABH 2003, 502. p.

[22] Constitutional Court Decision 5/1992. (I.30.) ABH 1992, 27, 31. p.

[23] Constitutional Court Decision 22/1995. (III.31.) ABH 1995, 110. p.

The recourse organ shall be in decision-making situation. The formal and due to the legal regulation desperate remedies are inadequate. The one-level remedy is sufficient, as well. The Constitution entrusts legislation to determine how many degrees of remedies may prevail.

III. Objective and subjective legal measures in administrative procedural rules

Next part of the study focuses on the currently available legal procedural measures and then analyses the new regulation's instruments. Prevailing of legal protection instruments is undoubtedly affecting substantially by the requirement of effective legal remedy. This fundamental right to an effective legal remedy, as a constitutional principle, is determined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (done at Rome, 4 November 1950) Article 13 provides, that '*[e]veryone whose rights and freedoms … are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'* The Convention does not contain any provision on the administrative and judiciary legal protection system of Member States and does not determine the instances of the legal remedy. The only fundamental requirement of the Convention is prevailing of effective legal remedy. Effective legal protection requires the judicial review must cover the formal and procedural aspects of the administrative decision and its merits, and must cover also the findings of the administrative decision and the assessments made by the authority in the discretionary powers.

As a preliminary remark, it should be emphasised that the Code on new regulation of administrative procedure, with regard its structure, is rather simplified, provides a broad scope for the sectoral regulation. The Code has maintained both of basic types former legal remedy system, but not all the tools, on one hand are based on request of client and on the other hand the ex officio procedures. This latter type of legal remedy ensures consistency with the regulation on administrative judicial review. Adoption of Code on Judicial Review of Administrative Acts constitutes a conceptual change in the field of administrative judiciary. The new regulation on Public Administration Procedures and Code on Judicial Review of Administrative Acts will come into force 1 January 2018.

The general outline of remedies and review instruments are presented in the following comparative table.

	Act CXL of 2004	Act CL of 2016
Redress procedures upon request	Appeal procedures Judicial review Reopening procedure Proceedings opened based on a resolution of the CC	Judicial review Appeal procedures
Review procedures ex officio	Amendment or withdrawal of decisions Oversight proceeding Prosecutor's intervention	Amendment or withdrawal of decisions Oversight proceeding Prosecutor's intervention

1. Changing of redress and review procedures of administrative procedural law (Own editing)

At first sight, as compared the possibilities of legal supervision, can be concluded, that the instruments of redress procedure available upon request are reduced, but the *ex officio* administrative review procedures are unaltered. It is noteworthy to point out, that the general rules on administrative procedure are guarantee elements of the administrative legality. From this point of view prevailing, applying and complying administrative procedure provisions shall be of the most significant right protection measures, as *Krisztina F. Rozsnyai* stated, these formulas serves as 'in advance remedy possibilities' in the administrative process, because the legal structures shall operate constitutionally only in that case if procedure provisions are prevailing.[24] The instruments of legal protection have to be consistent with each other and have to be able to ensure protection of fundamental rights and legal interests, and constitutional principles as well, in its entire.

III.1. Remedies and review procedures of the Act CXL of 2004 on the General Rules of Administrative Procedures and Services

The Act of 2004 on General Rules of Administrative Procedures and Services ensured a wide-range of legal remedy instruments. The Act distinguishes the remedies upon request of the client and the other interested parties, furthermore the *ex officio* decision review procedures. These redress procedures are the following: (1) appeal procedures, (2) judicial review, (3) reopening procedure and (4) proceedings opened based on a resolution of Constitutional Court. The *ex officio* procedures are (1) procedures by the authority on its own motion, (2) the oversight proceedings and (3) third form is upon the public prosecutor's intervention, this latter form can lead to amendment or withdrawal of decisions or an oversight proceeding, in the absence of such legal remedy form, to a judicial review initiated by the public prosecutor.

Forms of the upon request procedures, based on protection of subjective right. The appeal procedure[25] is defined by the Act of 2004 as a general remedy. The authority entitled for the review of decision, it can supervise the decision from substantive and procedural aspects, so, it is a full review procedure. The second form, the judicial review[26] is an exceptional opportunity of decision's revision, in the current system. The appeal procedure, the reopening procedure and proceedings opened based on a resolution of Constitutional Court procedures are upon request of client, internal procedures. The purpose of these processes to ensure the closure of the administrative matters, the final decision and to guarantee the remedy in the framework of public administrative bodies, in quicker and more efficient procedures.

The judiciary supervision is an extraordinary remedy, an instrument of external control, based upon the division of power. On the theoretical and constitutional background of judiciary review has been referred before, in the I-II part of the study. The procedure rules of the judiciary review are regulated as an individual chapter in Civil Procedure Code, it posed quite a few problems of its own. Only the most important problems would be highlighted: (1) the dual purpose of litigation, harmonization of subjective and objective legal protection; (2) the principle of equality of arms cannot be enforced in administrative

[24] Rozsnyai 2010, 160. p.

[25] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 98-102., 104-107.

[26] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 109.

litigation; (3) the principle that the parties delimit the subject matter of the proceedings may conflict with the principle of officiality; (4) proceeding of taking evidences and the burden of proof have unique features in civil and administrative litigation.[27]

The reopening procedure[28] is one of the oldest legal remedy instrument, in 1901 was introduced by the Act on simplification of administrative procedure.[29] The purpose of the reopening procedure is the correction of the facts of the case. The Administrative Procedure Act determines strict conditions and deadline for submitting the application. This procedure considered as an extraordinary procedure, because of the (1) person entitled to submit the application; (2) must affect the substance of the matter; (3) can be submitted against only a final decision; (4) where any rights acquired in good faith may be prejudiced, it shall have no bearing on the decision adopted in the reopened proceedings.

Proceedings opened based on a resolution of Constitutional Court[30] is based on the constitutional complaint. It can be applied only against the decision approved by the authority the settlement between the clients according to the substance of matter. The condition for initiating the procedure is that Constitutional Court annuls the legislation or statutory provision the approval of the settlement between the parties was adopted.

In practical terms, the last two upon request procedures, the reopening procedure and proceedings opened based on a resolution of Constitutional Court have not stimulated significant effect in the legal remedy system, do not apply, the number of cases is very limited.

The second part of remedy tools are the *ex officio* review procedures of the public administrative acts. The aim of these ex officio procedures primarily is the protection of public interest. These measures involve the alteration or the withdrawal of decisions by the authority that has adopted the decision in its own motion, and furthermore the oversight proceedings. The oversight proceedings are responsibility of the supervisory authority in contrast with the alteration or withdrawal of decisions. Finally, the function of public prosecutor is worth to mention among these tools, because if the public prosecutor realizes that the public administrative authority committed an infringement of the merits of the case, entitled to turn to the supervisory authority to eliminate the infringement.

The right of alteration or withdrawal of the administrative decision[31] entitled to both the first and second instance authorities, to ensure the legality of decisions is responsibility of the authority, because of the constitutional principle of legality. If the authority has revealed the fact of the infringement, the situation shall be corrected. The correction is of limited duration, this possibility can be exercised within a year from the delivering of the decision.

The supervisory authority performs not only the supervisory but control-command tasks. This control-command function shall be operated constantly to ensure the legality of administrative decisions and decision-making processes. The supervisory organ shall have powers to examine ex officio the proceeding of the competent authority, and its decision.[32]

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[27] Küpper 2014, 19-24. p.

[28] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 112.

[29] Act XX of 1901 on Simplification of the Administrative Procedure.

[30] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 113.

[31] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 114.

[32] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 115.

The oversight proceeding[33] involves two different, clearly distinct procedures. One of them generally guarantees the abolition of omissions, and the other is the real legal remedy tool. In this latter form the supervisory organ may alter the decision, may annul it or in very limited circumstances may annul and order to conduct a new procedure.

Beyond the principle of legal certainty, the legality of administrative decisions another principle should be emphasised: protection of acquired and exercised rights in good faith. This latter right is only based on a legally binding, means final decision. Therefore, the Act explicitly provides those supervisory forms, when the authority may disregard the principle of protection of acquired and exercised rights in good faith.

III.2. Legal protection tools of new procedural regulation

The explicit purpose of the new legislation was the renewal of the remedy system, beyond the modernization, simplification and making more comprehensible to the public the administrative procedure rules. The proposed objectives include to create and develop the system of modern administrative judiciary.

The primary form in remedy system of the administrative procedure has essentially exchanged, the judiciary administrative review, the administrative litigation will therefore be priority.[34] The appeal form,[35] as an internal legal remedy, shall be applied only in that case, when the provisions of administrative procedure allow, or the sectoral rules extend the scope of appeal. This fundamental principle prevails only with exceptions, these exceptions are considered as most of administrative decisions, however the appeal form will be maintained as a primary form, when the administrative decision-maker is the organ of local government (except the body of representatives) or the leader of district office. It should be mentioned, that these organs constitute the local and lower level of public administration, where most of the decisions in individual cases are taken. The possibilities of redress procedure measures upon request will be reduced, basically two forms of remedies upon request of the client prevail in the future, as well. New system abolishes the appeal as an internal remedy instrument, it could lead to reduction the instances of remedies.

The reopening procedure and the proceedings opened based on a resolution of the Constitutional Court shall be cancelled. This latter form is close connection with the constitutional complaint, it is ruled in its entire in the Act on Hungarian Constitutional Court.[36] The legislator did not consider necessary to justify the cancellation of reopening procedure, merely assumed that this legal remedy tool has not lived up to expectations.

The *ex officio* review procedures of the public administrative acts have remained in terms of content unchanged. These legal measures widely cover the aim of protection of legal order and public interests. This finding is not affected by the fact that the administrative litigation has become the primarily tool of recourses.

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[33] Act CXL of 2004 on General Rules of Administrative Procedures and Services. Section 115.

[34] Act CL of 2016 on Public Administration Procedures. Section 113.

[35] Act CL of 2016 on Public Administration Procedures. Section 116-119.

[36] Act CLI of 2011 on Hungarian Constitutional Court. Section 26-31.

III.3. Administrative litigation

The new regulation of independent administrative judiciary has been established with the Act I of 2017. The detailed rules of administrative litigation are in the scope of a new Code on administrative litigation and non-contentious proceedings.

Adoption of Code of Civil Procedure[37] has given a real opportunity for the establishment of administrative judiciary rules. As is also confirmed in the preamble to the Act, recognized the independence of the administrative judiciary and ensured the quick, effective, competent settlement of administrative affaires. The main purpose of New Code is the establishment of effective judicial remedy system.

Highlighting only the innovations of new ruling are as follows, solely about study. (1) One of the most significant changes is the extension of the scope of administrative litigation through a general definition of administrative case. This clause provides a flexible framework for achieving complete legal protection. (2) Important innovation of the Act is the differentiated competences of courts. It is necessary to divide the first instance powers between the administrative courts, pursuance the difficulty, complexity and frequency of cases. (3) Decided to reinstate the primacy of the proceedings in the Chamber of Judges. (4) Instead the annul of the administrative acts the alteration of acts has priority. (5) The legal remedy system has been modified, as it was mentioned above. (6) The Code contains the rules of non-contentious proceedings also.

IV. Consequences

According to the legislative justification the remedy system of new regulation consists of three basic elements: the administrative procedure, the first instance judicial procedure and the second instance judicial procedure.[38] The priority of the judicial remedy better responds to European tendencies and in compliance with the rule of law. The new regulation emphasises the final settlement of administrative cases, therefore the principle of res judicata has relevance. The aim of the new system to ensure impartiality during the remedy system, and leaves no scope for appearance of other interests and unfairness. The judicial procedure generally is open to the public, and the principle of openness and transparency therefore be better achieved. Counter-arguments might also be made against the primacy of judicial review of administrative acts. For example, may be referred the limited accessibility to the legal remedy, the lack of administrative expertise of judges, legal remedy takes longer than the administrative supervisory. The client shall appeal to the court to protect his or her rights primarily, I think that using of legal protection tools could be more complicated. The pros and cons can be continued further. Therefore, the legislator recognised that most administrative acts are taken at local and territorial level and ensured the inner legal remedy tool, the appeal form in these cases. The exception that the client can submit appeals against

[37] Act CXXX of 2016 Code of Civil Procedure (will enter into force on 1 January 2018).

[38] Részletes jelentés az általános közigazgatási rendtartás koncepciójának előkészítéséről. 32.p. http://www.kormany.hu/download/c/c8/50000/20150514%20Jelent%C3%A9s%20az%20%C3%A1ltal%C3%A1nos%20k%C3%B6zigazgat%C3%A1si%20rendtart%C3%A1s%20koncepci%C3%B3j%C3%A1r%C3%B3l.pdf (10/04/2017.).

the decisions of city clerks or notaries and district offices to another public administrative organ, may relieve the consequences of these challenges. Reduction of subjective, upon request remedy forms, namely the reopening procedure, and the instance of legal remedy might be considered problems of the new administrative procedural regulation.

The new remedy system is in silence on the alternative dispute resolution and other preventive procedures, which can serve the avoidance of litigation and the facilitating of agreement. Preparatory work in sectoral legislation must be speeded up to ensure possibilities of alternative solutions.

Key issue will be the preparing for the application of new administrative procedure rules for practitioners. The training courses, varied forms of trainings that promote learning of law enforcement are appreciated. The preparation of judges should be a matter of priority, the decision on legality in public administration acts requires a special view, a specific expertise.

Particular attention shall be paid to sectoral law rules, hence the radical streamline of general rules demand knowledge of detailed sectoral procedural rules.

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