Judit Siket, PhD
Senior lecturer
Department of Public Administrative Law
University of Szeged, Faculty of Law and Political Sciences
Siket.Judit@juris.u-szeged.hu

LEGAL ASPECTS OF LOCAL PUBLIC SERVICES: PROCEDURES LEADING TO THE CONCLUSION OF PUBLIC SERVICE CONTRACTS

I. Introduction

Local self-governments are not only organizations of local authority, but have the right and obligation to provide local public services. Local self-governments are responsible for developing public tasks required by law. The scope of public tasks performed by local self-governments changes from time to time and also shows a diverse picture State by State. In the meantime there is a diverse picture of the tools, serving performance of public responsibilities. Public contracts have been given a higher priority especially in welfare societies, with the strengthening of the New Public Management and the widespread application of business methods. Procedural issues of public contracts are not only relevant to the realization of decentralized public service provision, beyond globalization and Europeanization effects could also be detected. It is necessary to premise, that these latter effects are the subject of further research, the paper only refers to globalization and Europeanization tendencies.

The study is first an attempt to identify those requirements imposed by law, prevailing in procedure leading to the conclusion of local public service contracts. Regarding this subject, the public law elements of contracts and the special administrative procedural provisions leading to the conclusion of these types of contracts should be considered also. It is noteworthy, that in these types of contracts more restricting elements could be identified relating to the principle freedom of contract and public law components are prevailing as well. Since always an administrative body is one of the contracting parties, the substantive law matters, but the contract award procedures also have particular attention. Administrative bodies manage public funds, their legal status is also special, and therefore procedural matters are at the centre of investigation, as well. Therefore, issues of public service contracts within the framework of the paper are approached from the view of administrative procedural rule but not primarily from substantive legal provisions. Because of these aforementioned specialties, the study focuses only those contract award procedures, which serve providing local public services. The limit principle of freedom of contract would also be interesting, related to public law elements. Consequently, evaluation of public contracts primarily focuses on administrative procedural but not substantive legal provisions.

Provisions regulating public service contracts on one hand deserve special attention due to evolving European legislation of ReNEUAL Model Rules on EU Administrative

Procedure (Model Rules)[1] and on the other hand the changes in domestic law, the adoption of new *Code on Administrative Procedure* and *Code on Judicial Review of Administrative Acts* in 2016 and 2017 is also worth mentioning.[2] Therefore, latter part of the study is devoted to new regulation of this type of contractual litigation.

The paper is thus also an attempt for discussion both the issues and traceable tendencies of local public services and public contractual law relations; thus the aim is to demonstrate that public service contracts are mainly public contracts; elements of this type of contract defined dominantly by the public law and rules of civil law have minor importance.

II. Context between historical and dogmatic elements of local service supply and public contracts

Where historical elements of the evolutionary process of public service contracts are studied, two important features should be highlighted. Public service contracts were initially concluded at local level in the 19th century, especially in Anglo-Saxon legal system, but also in France. British public organization had a rapid and significant change in the 19th century, the city's administrative system was primarily intended to respond for technical development and the population' moving to larger cities. The subject-matters of the public contracts covered public service provision. Taking into account the peculiarities of English legal system development, detailed elements of public contracts' dogmatism were developed admittedly in French legal system and even more in case law.[3] Furthermore, it can also be concluded that there are several organizational and operational system of public service delivery, like the Anglo-Saxon, French, and German model.

Historical development process of public service contracts were accompanied by the following considered issues at that time, whether (1) the State is a legal entity on its own, (2) the competence of the State shall be limited, (3) may be enforced. Development of French, Anglo-Saxon and German social and legal system provided various responses to the questions raised, basically defined the improvement of public administrative law. Whereas the interest of Romanist lawyers and scholars traditionally was based on substantial law, the Anglo-Saxon-based lawyer's focused for centuries on procedure and procedural law, and it had slowly turned to the rules of substantive law.[4] Considering results of public administrative comparative law researches it should also be noted, that these differences could be interpreted nowadays only historically, the real picture is combination and amalgamation of diverse elements.[5] The strong attachment to the central government, to

[1] The ReNEUAL Model Rules 2014 are designed as a draft proposal for binding legislation identifying – on the basis of comparative research – best practices in different specific policies of the EU, in order to reinforce general principles of EU law. http://reneual.eu/index.php/projects-and-publications/reneual-1-0 (10.09.2017.)

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

[3] Harmathy Attila: *Szerződés, közigazgatás, gazdaságirányítás*. Akadémiai Kiadó, Budapest, 1983. 17., 20., 27.

[4] David, René: *A jelenkor nagy jogrendszerei. Összehasonlító jog*. Közigazgatási és Jogi Könyvkiadó, Budapest, 1977. 289–291.

[5] Szamel Katalin – Balázs István – Gajduschek György – Koi Gyula (szerk.): *Az Európai Unió tagállamainak közigazgatása*. Complex Kiadó, Budapest, 2011. 32.

the authority of the State may cause a relative disadvantage for States with continental legal system contrary to the Anglo-Saxon legal system, because of the ability to respond to changes especially in the commercial law issues.[6]

A public service contract might be the public law form of public service provision or management and implementation of public responsibilities. Public services have major importance from the view of public spending; therefore attention is focused from time to time to efficiency, equality and availability of public services. The definition and implementation of services of general economic interest (instead of general public service) is common in the European Union legislation, it will be addressed in Chapter IV.

Governments provided public services, especially those public services, attached to infrastructure. In order to provide high-quality public services, governments operate different bodies and processes. Those public services have different structural and also market features, like supply of water and sewage services, waste management, public transports require different approaches. The OECD countries use different regulatory tools in these service provision fields, but the main focuses are the same: (1) controlling market entry, (2) controlling prices, and (3) controlling service quality.[7]

The procedural issues of public service provision contracts are essential; however, the substantive provisions also have relevance along with specialities of local service supply as aimed by the public service contract.

Public service delivery serves meeting the common needs of society. These responsibilities require common organizational activities.[8] By another approach "[*T*]*he most important public services are manifested in Fundamental Laws of certain States as fundamental rights. Service are classified public service by the State law, by application of certain procedural rules, these public services are supplied, financed or regulated by the State*."[9]

III. Globalization – long is on rhetoric and short is on facts?

Due to the general spread of globalization in economic life, contractual relationships have been given a higher priority. Sweeping and rapid changes in social and economic life are hardly followed by the national law, because the domestic legislation is not capable to cover all of dimension of swift transformations.[10]

It is also have to be highlighted, that contracts are not legal sources in the classic sense, but have important role in the modernising process of law. As a result of the

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[6] Shapiro, Martin: *Globalization of Law*. Indiana Journal of Global Legal Studies, Vol. 1. No. 1. 1993. 38–42. https://www.repository.law.indiana.edu/ijgls/vol1/iss1/3/ (29.09.2017.) *Shapiro* on one hand examined the globalization process of commercial and contract law, in this context set against different law systems and affected the 'proliferation process' of lawyers, and the globalization of public law.

[7] The Regulation of Public Services in OECD Countries: Issues for Discussion. Nov. 2007. http://www.oecd.org/gov/regulatory-policy/41878847.pdf (10.09.2017.) 4.

[8] Horváth M. Tamás: *Közmenedzsment*. Dialóg Campus Kiadó, Budapest-Pécs 2005. 281.

[9] Hoffman István: *Önkormányzati közszolgáltatások szervezése és igazgatása.* ELTE Eötvös Kiadó, Budapest, 2009. 41.

[10] Galgano, Francesco: *Globalizáció a jog tükrében. A gazdaság jogi elemzése*. HVG-ORAC Lap-és Könyvkiadó, Budapest, 2006. 92–104.

globalization process, the framework of the traditional national legislation could become overwhelmed because of the international aspects of the economic life. Globalization may have a weakening impact for sovereignty, but the scope of implementation of so-called 'globalised law' is the territory of a national state. Beyond the territorial aspect the globalization could be applied only certain range of legal relationships.[11] The formal general authorisations of national legislators shall not be contested, the content changes are traceable. The requirements of competitiveness shall be accomplished by national legal legislator proactively. These progresses affect not only private law, but also public law therefore respect public service contracts, as well.

In interpreting *globalization concept* it could be established, that significant literature on economic aspects of globalization defined it as an (1) internationalization, (2) liberalization, (3) universalization, (4) Westernization or modernization and (5) deterritorialization process. This type of the approach of globalization is referred by *Wade Jacoby* and *Sophie Meunier*. However they referred to another approach, according to it globalization 'while long on rhetoric, is often short on facts.'[12]

Globalization is a controversial issue among scholars and researchers, in particular when the effects of the Europeanization are also being investigated. In the case of Europe, the causes and effects of globalization are difficult to isolate from Europeanization, from a deeper regional integration as well. The Europe's relationship with globalization is even more complex. In the early days of European integration the European institutions were inward-looking, reactive to outside pressures. In several countries, the phenomenon of globalization was received as a threatening. In the beginning of 2000 years another rhetorical mainstream has been raised, the so-called '*managed globalization*'. Managed globalization could mean that the EU expanding policy scope, exercising regulatory influence, empowering international institutions, enlarging the territorial sphere of EU influence, and redistributing the costs of globalization, but some authors dispute this point of view.[13] Furthermore attention should also be drawn to the importance of the neo-Weberian state organization model, according to certain approaching it may be interpreted as a political, a state-centred response by the elites of continental European countries to the pressures of global capitalism. The neo-Weberian state model could be considered as a *territorially localized* model against the New Public Management model, as a *territorially delocalized* model.[14]

If the phenomenon of globalization is examined in the field of administrative law, the definition of *global administrative law* could be concluded as "*mechanisms, principles, practices and supporting social understandings that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring they meet adequate standards of transparency, participation, reasoned decision, and legality, and by providing*

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[11] Serák István: *Polgári jog és civiljogi jogalkotás a globalizáció korában és a jogrendszerek versenyében.* Iustum Aquum Salutare, Vol. XII. No. 2. 2016. 92–93.

[12] Jacoby, Wade – Meunier, Sophie: *Europe and Globalization*. In: Egan, Michelle – Nugent, Neill – Paterson, E. William (eds.): Research Agendas in EU Studies. Stalking the Elephant. Palgrave, Basingstoke, 2010. 355–356., 366.

[13] Jacoby, Wade – Meunier, Sophie: *Europe and the Management of Globalization*. Journal of European Public Policy, Vol. 17. No. 3. 2010. 299., 302.

[14] Bauer, Michael W. – Trondal, Jarle (eds.): *The Palgrave Handbook of the European Administrative System.* Palgrave Macmillan, Basingstoke, 2015. 113.

effective review of the rules and decisions they make."[15] The rule of law theory in this global context comprises principles and values, like the accountability, transparency and access to information, participation, the right of access to an independent court, due process rights.[16]

In sum, the sweeping economic changes could result the contractual relations, including the service contracts as well. Principles and values shall prevail in the contract concluding procedures and in the implementation and in monitoring of service performance processes.

IV. Europeanization of service providing and contracts concluding procedure

As has been indicated above, in the outline of the specificities of globalization, not only globalization but Europeanization effects also prevail. In the vast majority of conclusion public service contracts, rules of public procurement procedure shall be applied. In this chapter the purpose of examination is the question of how to fit both the public procurement procedure and the rules of administrative procedure in one picture.

Regarding Europeanization effects, public law elements of public service contracts and the special administrative procedural provisions – leading to the conclusion of these types of contracts – should be considered. On one hand European public procurement rules are worth to refer. On the other hand, public contracts regulating supply of public services deserve special attention due to evolving European legislation of Model Rules. These Model Rules on contracts are to be understood as a contribution to the debate on EU contracts, the administrative procedure which are leading to their conclusion and their execution. First of all, public procurement rules are referred, and then the Model Rules are discussed.

Public procurement, in generally, refers to the process by which public authorities, such as government departments or local authorities purchase work, goods or services from companies. The *EU Public Procurement Directive*[17] establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests. This Directive determines inter alia the definition of public contracts,[18] and especially the public service contract.[19] Beyond this *Public Procurement Directive* the specific related Directives shall be applied, as well.[20]

Public procurements have significance, hence every year; over 250.000 public authorities in the EU spend around 14% of GDP on the purchase of services, works and supplies. In many sectors such as energy, transport, waste management, social protection and the provision of health or education services, public authorities are the principal buyers. From 18 April, 2016, new rules have changed the way EU countries and public authorities which

[15] Kinsgsbury, Benedict – Krisch, Nico – Stewart Richard B.: *The Emergence of Global Administrative Law.* Law and Contemporary Problems. Vol. 68. No. 15. 2005. 17.

[16] Harlow, Carol: *Global Administrative Law: The Quest for Principles and Values.* The European Journal of International Law, Vol. 17. No. 1. 2006.189.

[17] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing. 2004/18/EC OJ L 94, 28.3.2014.

[18] Public Procurement Directive Article 2. par. (5).

[19] Public Procurement Directive Article 2. par. (9).

[20] Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. OJ L 76 23.3.92.

spend a large part of the €1.9 trillion paid for public procurement every year in Europe. This date was the transposition deadline for three directives on public procurement and concessions adopted two years ago. In other words, it was the date by which EU countries must have put in place national legislation conforming to the directives. The new rules will make public procurement easier and cheaper to bid public contracts, they will ensure the best value for money for public purchases and will respect the EU's principles of transparency and competition. To encourage progress towards particular public policy objectives, the new rules also allow for environmental and social considerations, as well as innovation aspects to be taken into account when awarding public contracts. But the success of the new legislation also depends on its effective enforcement in EU countries and the readiness of the 250.000 public buyers in the EU to make procurement processes more efficient and business-friendly for the benefit of citizens.

From the view of subject matter, the new Model Rules[21] is remarkable. The general scope of application of Model Rules to all contracts and legally binding agreements concluded between an EU authority and a private entity, between an EU authority and a Member State authority, if the Member State authority acts as a service provider on the market and concludes the contract with an EU authority as a private person would. An EU contract is governed by either EU law or by the law of a Member State or by the law of a Third State is distinguished by the Model Rules. The contracts will have a special significance in domestic case law, which are governed by the law of Member State.

The contracts and agreements concluded at the framework of public administrations show a very diverse picture at European Union level. This landscape becomes even more complex when the national levels are taken into account. Member States of the EU apply very different national concepts to public contracts, regardless of whether these contracts are governed by national public or national private law, or by a mixture comprising public and private law elements, as it is stated in report, drawn up by the *Model Rules Preparatory Committee*.[22] How can be determined the scope of Book IV in that case where there is no consensus on the substance of '*public contract law*' itself, at all.[23] General scope of application of Model Rules is to all contracts and legally binding agreements concluded between an EU Authority and a private entity, between an EU Authority and a Member State authority, if the Member State authority acts as a service provider on the market and concludes the contract with an EU Authority as a private person would. An EU contract is governed by either EU law or by the law of a Member State or by the law of a Third State, is distinguished by the Model Rules.[24] For the purpose of correct interpretation of Model Rules it should be highlighted, that only contracts regarding administrative activity concluded between EU authorities and private entities or with Member State administrations fall within the scope of Book IV. Therefore those public contracts concluded by Member State authorities with other parties than EU authorities are not covered by Book IV. These

[21] See in details: Kovács László – Várhomoki-Molnár Márta – Szilvásy György Péter – Koi Gyula – Iván Dániel: *IV. Könyv. A közigazgatási szerződések*. Pro Publico Bono – Magyar Közigazgatás, No. 2. 2017. 134–179.

[22] ReNEUAL Model Rules on EU Administrative Procedure Book IV – Contracts. 2014. Version for online publication. 147. http://www.reneual.eu/images/Home/BookIV-Contracts_online_version_individualized_final__2014-09-03.pdf (31.08.2017.)

[23] Model Rules 147.

[24] Model Rules IV-1. Scope of application. 155.

contracts might have a special significance in domestic case law also governed by the law of Member State. This Chapter of Model Rules principally recalls the French system of public contracts hence the power of contracting derived from the first level legal act or from the second level legal act, the CJEU jurisprudence. In the latter case the effect of French model is traceable outstanding.[25] European Union bodies can only exercise tasks and competences where they are duly endowed with powers, delegated from Member States. All their activities based on provisions of the founding Treaties or acts of European secondary law. The implementation process of European public policies by general application of Model Rules through administrative action may result certain indirect effects on national public contracts law.

After the discussion of public procurement rules and Model Rules attention has to be drawn on provisions related to public service delivery. The Amsterdam Treaty of 1997 determined the application of a liberalization policy in the field of public service delivery. After this period the government and political factors have risen to the forefront, affected to the public service policy. The two most important measures prevailing typically could be highlighted as follows: allowing State grants, the possibility of exemption from public procurement rules. These features would be referred in relation to Hungarian public service regulations, as well. Reference should also be made on services of general economic interest. The general rules on these services are regulated in the *Treaty on the Functioning of the European Union*.[26]

Examining the globalization and Europeanization processes there could be concluded that both globalization effects and acts of the European Union have an unavoidable impact on national legislation, case-law and administrative practice.

V. A short dogmatic background of public contracts: different classifications – common points

Designation of contracts included public law elements and aimed implementation of public, state or local self-government tasks may be various, therefore the public contract, public law contract, administrative contract or administrative law contract equally are used, in Hungary as well because of the absence of a single legal normative regulation. The diversity of denominations also indicates that the contents of these types of contracts are not clearly clarified. Systematization of contracts could be established on the basis of different considerations, detailed description of them is not the subject of the paper.[27]

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[25] Hofmann, Herwig C.H. – Schneider, Jens-Peter: *Administrative Law Reform in the EU: the ReNEUAL Project*. https://law.yale.edu/system/files/area/conference/compadmin/compadmin16_hofmann_schneider_reneual.pdf (31.10.2017.) 24.

[26] Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. [TFEU] Article 106.

[27] Highlighting examples of classification: Harmathy, 1983 13–64., 75–101.; Horváth, 2005 123–133.; Horváth M. Tamás: *A közigazgatási szerződések szabályozási koncepciója*. Magyar Közigazgatás, Vol. LV. No. 3. 2005. 142.; F. Rozsnyai Krisztina: *Közigazgatási bíráskodás Prokrusztész-ágyban*. ELTE Eötvös Kiadó, Budapest, 2010. 84–122.; Molnár Miklós – Tabler , Margaret M. : *Gondolatok a közigazgatási szerződésekről*. Magyar Közigazgatás, Vol. L. No. 10. 2000. 597–610., Olajos István: *A közjogi szerződés mint a támogatásokkal kapcsolatos jogalkalmazás egy útja*. Sectio Juridica et Politica, Miskolc, Vol. XXIX. No. 2. 2011. 503–506.;

However, in setting this type of classification, the following characteristic *particularities* of the legal relationship should be taken into consideration. (1) Parties of the contract; (2) the object of the contract; (3) the content of the contract; (4) contract awarding procedure; (5) the implementation of contract; (6) relationship between the parties during the performance of the contract; (7) termination of contract; (8) litigation on public service contract.

In sum, assessing listed factors can be concluded, that one of the Parties of the contract is always an administrative body, a State or local self-government organization. The object and content of the contract is performance of public tasks, generally defined as public service by a legally binding act, or may also be directed towards the implementation of constitutional fundamental right. Certain type of tendering is also present in the contract award procedure, usually under the public procurement law regulation. Specific legal rules shall be applied during the performance of the contract; one of the Contracting Parties may also exercise its power of public authority. Termination of contracts, in particular termination with immediate effect is subject to specific provisions. Litigation relating to public service contracts generally falls within the jurisdiction of the administrative courts.

VI. Tendencies in local public service providing in Hungary

VI.1. Scope of local public services

Local self-governments in Hungary are primarily responsible for providing public services to their population. Due to the political transition, local self-governments had general competence with a wide range of public service provision responsibilities. However it come to be realized that at an early stage financial conditions required for the local self-government to fulfil their responsibilities set out by law, were not always sufficient. The tools available to local self-governments have been steadily narrowing.

In the period following the change of government in 2010, tasks belonging to local government responsibilities were formerly transferred to the state's tasks, which could lead to the abolition of the local government's administration and local public affairs. Local public services have increasingly become state responsibility and this process does not seem to be over yet. It can also be seen that the public service of public tasks did not entail the necessity of rationalization, the requirement of economies of scale, and the higher level of public service quality, which were primarily the reasons for the transformation.

Public services – as were referred above – are mandatory tasks of the local governments, but the statutory legislation may regulate requirement of majority state or local government property in corporations providing certain public services, by way of examples, healthy drinking water service, water drainage or waste disposal, as well. There is another important change: local government does not have empowerment to define the pricing of the public community services.

Settlements had the choice of fulfilling their mandatory tasks: they could set up their own local government institutions or enter into contracts with business entities, civil bodies,

Olajos István: *A közjogi szerződések jelentősége az agrár-és környezetjogban. A támogatási szerződések eljárásjogi helye és szerződési létszakai*. Pázmány Péter Katolikus Egyetem. 14. http://d18wh0wf8v71m4.cloudfront.net/docs/wp/2012/2012-26-Olajos.pdf (10.11.2017.)

and municipalities could freely associate with the task of performing their tasks more efficiently and cost-effectively. The contracts with business entities or civil bodies are in the scope of our topic, contracting on performance of public tasks.

VI.2. Procedures of contract conclusion

Concluding public contracts on local public services provision is common in the field of communal services. The area of waste management is worth for mention, where to conclude a public service contract is obligatory for local self-government, as usual between the owner and the provider of service. There is an obligation as well for participators involved in district heating service, but in this case the public service contract is established between the service provider and the consumer. These latter contracts do not fall in the examination of this study.

It is often the case, that local self-government as an owner and the public service provider stipulate contractually legal relationships between themselves. In these public contracts they can determine reasonably the objective requirements of public services, evaluation criteria, indicators or metrics and the order of the data supplying. These contracts and the performance of the mandatory tasks were investigated by State Audit Office in recent years.

Through the example of the *waste collection and management supply* could be described the procedure of contracting in the implementation of local public service tasks. Local self-government is obliged to carry out a tender procedure under the public procurement law in order to award a local public waste management service contract.[28] Related rules are in compliance with the Acquis and serve the execution and implementation of the European Union legislation. The *Act on Waste* contains the main rules of contract award procedure in details, these provisions could be considered as public law elements, are obligatory, required by law. These conditions have been set out as follows:

Municipal governments shall obtain to carry out the waste management public function at the local level by means of a public service contract signed with a public service operator. The municipal government shall conduct a public procurement procedure for awarding the contract for carrying out the waste management public function at the local level, in accordance with the provision of *Procurement Act*.[29] The *Act on waste* provides, that the contract shall be concluded in writing.[30] Only one public service contract shall be concluded. The municipal government may enter into a public service contract for waste management only with an economic operator that has a classification permit.[31]

The *Act on Waste* provides the mandatory element of public service contract, as follows: the identification data of the public service operator, or its members; a description of the public service; the particulars of public service areas; the duration of the public service contract.[32] Relating to the latter, the maximum duration of public service contracts for

[28] Act CLXXXV of 2012 on Waste, directly linked Decree of Government 317/2013.

[29] Act CLXXCV of 2012 Section 33 par. (1)-(2). Act CXLIII of 2015 on Public Procurement.

[30] Act CLXXXV of 2012 Section 34 par. (1).

[31] Act CLXXXV of 2012 Section 34. par. (2)-(3).

[32] Act CLXXXV of 2012 Section 34. par. (5).

waste management is ten years.[33] Public waste management services may be suspended or restricted exclusively in cases provided for by an act of Parliament or government decree, and may be suspended at the property user's request in cases defined by municipal decree. The Act provides the publicity of the contract as well.

The council of representatives of the municipal government empowered to establish a municipal decree on waste management.[34] Municipal governments may form associations in fulfilling their waste management responsibilities.[35] Prior to making decisions relating to waste management, municipal governments may hold public hearings so as to learn the opinion of the general public.[36] Municipal governments may hold public hearings before making a decision in connection with the separate collection of municipal waste. In addition to the grounds for termination contained in the *Civil Code*, the municipal government may terminate the public service contract for waste management under this Act.[37]

The following summary table presents three special public service contracts, especially the public law elements of them.

Public service	Special rules	Procedure	Implementation	Termination	Other specialities
Waste management	Act CLXXXV of 2012 on Waste; Decree of Government 317/2013	tender procedure under the public procurement law	one public service contract shall be concluded	municipal government may terminate the public service contract for waste management under this Act	in writing; maximum 10 years duration of contract
District heating	Act XVIII of 2005 on district heating	there is no requirement for the selection of licensees	there is no provision for contract between municipal government and licensees	–	local government decree contains provisions
Public water supply	Act CCIX of 2011 on supply of public water	public water supply legal relationship is based on asset management contract or concession contract or hire-operation contract; tender procedure	the content of contract is under the national asset management act, or concession act, or public procurement act	special conditions in the case of termination	duration of contract min. 15, max 35 years; contract shall be in writing

1. Figure Public law elements of local public service contracts. (Author)

[33] Act CLXXXV of 2012 Section 34. par. (7).

[34] Act CLXXXV of 2012 Section 35. par. (1).

[35] Act CLXXXV of 2012 Section 36. par. (1).

[36] Act CLXXXV of 2012 Section 36. par. (2).

[37] Act CLXXXV of 2012 Section 37. par. (1)–(2).

VII. Litigation issues related to public contracts

Issues related to legal controversy, it should be noted that the *Code on General Rules of Administrative Procedure* shall not be applied on the awarding procedure of public contracts. The administrative action (case) is falling within the scope of the Code; it means where the authority brings a decision to define a client's right or obligation, to settle a client's dispute, to establish a client's infringement, to verify a fact, status or data, or to keep records, and where it moves to enforce such decisions.[38] From the analysis of the definition it can be concluded that the procedural issues of public contracts are falling outside the scope of the Code. The only normative regulation on public contracts is contained in the *Code Judicial Review of Administrative Acts*.[39] This provision is quiet brief, includes only that is considered to be a public contract, which is qualified by a law or government decree. According to the provision of the Code, the subject-matter of an administrative legal dispute is the lawfulness of the administrative action. The administrative contractual relations, the public contracts are considered administrative legal dispute.[40] However, it also should be added that the only type of public contract is now the so-called administrative agreement[41] In accordance with provision concerning administrative agreement, the authority should be allowed or ordered by law to enter into an administrative agreement with the client, instead of passing a resolution, with a view to settlement in cases within its competence that is best suitable for the public and for the client alike. Administrative agreements are agreements concluded by the authority.

It must be pointed out that, under this definition, contracts concluded public administrative bodies under the *Public Procurement Act* are of the highest number of contracts, are falling outside the scope of the Code. Classification of public procurement contracts is controversial. Known is a position that this type of contracts belongs to the private law contract but a public law contract. The public procurement contract is a special private law contract type, this speciality resulted from the selection procedure, and these selection rules belong to the public law provisions.[42]

In the view of certain authors, the absence of administrative jurisdiction impeded the becoming autonomous legal institution and dogmatic development of public contracts.[43]

VIII. Concluding remarks

The public contract has an importance in the field of economic governance; hence it is a tool for the State or for the local self-government to influence directly the operation of service

[38] Act CL of 2016 Section 7. par. 2.

[39] Act I of 2017 Section 4. par. 7.2.

[40] Act I of 2017 Section 4. par. 13.

[41] Act CL of 2019 Section 92–93.

[42] Juhász Ágnes: *A közbeszerzési szerződés főbb jellemzői és a vonatkozó szabályozás új irányai*. 12. http://www.uni-miskolc.hu/~wwwdeak/Collegium%20Doctorum%20Publikaciok/Juh%E1sz%20%C1gnes.pdf (12.09.2017.)

[43] Fazekas Mariann: *Hatósági ügy – közigazgatási jogvita* (*Az Ákr. és a Kp. tárgyi hatályának néhány kérdése*). Jogtudományi Közlöny, Vol. LXXII. No. 10. 2017. 455.

provider, to ensure high level service providing for citizens. The study has attempted to outline globalization and Europeanization effects having impact on administrative contracts.

Nowadays in Hungary the State plays an increasingly important role in the performance of public tasks. However this tendency does not result, that supply of the highest level of public services would not be in focus. Contracts on supply public services still deserve attention, because the regulation of the examined local public service contracts and the contract award procedures could not be regarded as standard, regulating the highest level quality services for the population.

The adoption of new *Code on Judicial Review of Administrative Acts* provides an opportunity to consider these types of contracts as public administrative contracts in the future, to extend the scope of the administrative court's jurisdiction, in order to establish the single, high quality judgement.

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