Acta Univ. Sapientiae, Legal Studies, **8**, 1 (2019) 5–21

DOI: 10.47745/AUSLEG.2019.8.1.01

New Administrative Proceedings – More Effective Consumer Protection[1]

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Abstract. The following study presents new developments in the field of administrative proceedings in Hungary. It outlines the implementation of new regulations destined to simplify and accelerate the administrative procedure, inter alia, by the use of automated decision making and summary procedures, the institution of a new method for calculating administrative time limits, and a differentiated procedure in the case of proceedings initiated at the motion of administrative authorities. The paper also analyses the changes in legal remedies available to clients appealing against decisions rendered during an administrative procedure. The author concludes that the overall direction of change is positive; however, during the implementation of the new rules, temporary difficulties may occur.

Keywords: administrative procedure, procedural reform, Hungary, administrative time limits, remedies in the administrative procedure, administrative enforcement procedures

1. Introduction, Background

Of the recent changes affecting public administration, one of the most influential and controversial modifications involved the introduction of new procedural rules as part of a legislative package. In terms of the proceedings of administrative bodies, the former Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereafter referred to as *General Proceedings Act*) was replaced by Act CL of 2016 on General Public Administration Procedures (hereafter referred to as *Administrative Procedure Act*). However, Act I of 2017 on the Code of Administrative Court Procedures (hereafter referred to as *Court Procedures Act*) along with changes in court organization related to administrative actions were

1 The paper was written within the framework of programmes managed by the Ministry of Justice, aimed at the improvement of the quality of legal education.

also part of the package. In relation to the formulation of the new administrative procedural rules, 180 laws, 420 government and 470 ministerial decrees have been reviewed at least partly due to which the general rationale accompanying the bill highlighted that the ratification of the Administrative Procedure Act may also be interpreted as a deregulatory process.[2] This procedural reform also affected the proceedings of the customer protection authorities in several respects.

In consideration of the fact that the Administrative Procedure Act introduced numerous innovations compared to the General Proceedings Act effective before 2017, it is worth providing an overview of those new legal institutions that may be truly relevant in terms of the customer protection procedures and which enable us to evaluate the reforms themselves. The Administrative Procedure Act has brought about noticeable changes for the general public as well in terms of the administrative procedural law as a whole; the most sensitive and most widely discussed aspect of this involved the restructuring of the system for legal remedy. Even though there were several more novel features introduced by the law, it was this segment that received the most attention from the press, mostly without being aware of the detailed arrangements. The rationale accompanying the bill and the scholarly publications, however, mostly highlighted the principles of simplification, the acceleration of the administrative proceedings, and the cooperation between the different authorities in connection with the new code, which is closely associated with changes in the rules of implementation and the relevant approach. This paper also examines these meeting points, scrutinizing changes from the perspective of consumer protection.

2. Simplification

Based on papers presented at conferences discussing the Administrative Procedure Act,[3] the key point of changes involved simplification as the General Proceedings Act was detested mostly because the large quantity of regulations included in it at the outset already continued to increase until it became ineffective as a result of which a meticulous procedural law crystallized, which was rather complex and included numerous detailed arrangements. As opposed to this – and as also presented by Barnabás Hajas in his excellent overview that used specific numerical data to support his statements –,[4] the extent of the Administrative Procedure Act

2 The Government of Hungary: Bill no. T/12233 on the General Rules of Administrative Proceedings, Budapest, 2016. 53. http://www.parlament.hu/irom40/12233/12233.pdf (access date: 30 November 2018).

3 See, for example, the conference organized by the Department of Administrative Law of the Faculty of Law at Pázmány Péter Catholic University, titled 'Administrative Jurisdiction at the Crossroads' (10 October 2016, Budapest).

4 Hajas 2018.

as a norm makes up only about one-fourth that of the General Proceedings Act, which may be seen as a significant reduction and a major simplification in itself.

At the same time, there were numerous other forms of rationalization beyond the quantitative changes. This includes, among others, the scope of the Administrative Procedure Act: even though it also qualifies as a primary procedural law similarly to the General Proceedings Act, the absence of privileged proceedings already results in a rather emphatic and qualitative change. While the General Proceedings Act recognized and acknowledged several privileged proceedings besides removed proceedings, the Administrative Procedure Act provides no opportunity for such an application. Thus, although the scope of removed proceedings has changed and has been expanded (for example, tax and customs administration procedures were added as new ones),[5] now it is only possible for other laws to include additional rules to the Administrative Procedure Act (in line with the regulations of the Act).[6] The latter was also permitted by the General Proceedings Act (practically applying a three-level solution besides removed and privileged procedures), but in the case of privileged procedures it was the general proceedings nature of it that was pushed into the background or terminated. In view of the fact that the number of these privileged procedures increased continuously, the primacy of the entire General Proceedings Act was questioned with time as the 15 points of the Act listed only 60 types of proceedings within this group by the end of 2017.[7] Based on Section 13, para. (2), point (d) of the General Proceedings Act, this included the requirements for the marketing and supply of goods and services as well as relating to the monitoring of commercial practices with respect to the marketing and supply of goods and services and to market surveillance and market control procedures, including the proceedings related to the prescription of medicinal products, medical aids and medical technologies subsidized by the social security system, which was added to the group of privileged procedures due to the amendment by Act CXI of 2008. As opposed to this solution, the Administrative Procedure Act also expressly states that the stipulations of law on administrative proceedings not mentioned among removed procedures[8] may deviate from the stipulations of the law [the Administrative Procedure Act] only if it is allowed by law.

The lack of privileged procedures, akin to the termination of the legal institution itself, was not seen with enthusiasm in publications on public administration, and some even saw an opportunity for their gradual return practically questioning the

5 In connection with the tax administration procedures, the general rationale accompanying the bill itself also noted that these are considered to be removed procedures in the model European countries too. Bill no T/12233.

6 Administrative Procedure Act, Section 8, para. (3).

7 Hajas 2016. 33–46.

8 Administrative Procedure Act, Section 8, para. (2).

long-term sustainability of the regulation;[9] until the writing of this publication and during the one-year period passed since the Administrative Procedure Act has been in effect, there have been no steps taken in this direction.

3. The Principle of Acceleration

3.1 Automated Decision Making, Summary Proceeding, and Full Hearing

The introduction of regulations aimed at the acceleration of procedures was already started at the time of the General Proceedings Act; thus, conditional decisions appeared in 2016,[10] followed by summary proceedings in 2017, for which rules were taken over by the legislator from the concept of the Administrative Procedure Act, significantly expanding their scope. The set of rules in the Administrative Procedure Act contribute to the rapid fulfilment of procedure as a fundamental principle of administrative proceedings. One of these involves the differentiation of three types of procedures: automated decision making, summary proceedings, and full hearings; the expansion of e-administration contributed to the introduction of the first one, while Act CCXXI on the General Rules for Electronic Administration and Trust Services is also relevant in this respect. This procedure may be used when the decision does not require deliberation, there is no opposing party, all data are available for the decision, and the application of automated decision making is expressly allowed for by law or government decree. Summary proceedings have by now become widespread if the requirements are met, i.e. complete application and its enclosures, the relevant facts of the case are ascertained based on the data at the authority's disposal, and there is no opposing party in the case. In a summary proceeding, the decision must be drafted in eight days; however, if any of the specified requirements are absent, the application should be adjudicated in a full hearing, in which case a conditional decision may be made. In this respect, it is considered a guarantee that in case the decision adopted in an automated decision-making process and in a summary proceeding may not be appealed, then within five days following the delivery of the decision, the client may request the authority to re-assess the application in a full hearing, thus enabling the remediation of possible problems in this procedure.[11]

Barnabás Hajas, involved in the preparation of the code, also calls attention to the fact that the regulations of the Administrative Procedure Act truly guarantee the observation of the administrative deadline and its becoming general as,

9 See Csáki-Hatalovics 2018. 130.

10 Based on Act CLXXXVI of 2015 on Amendments Related to the Reduction of Administrative Bureaucracy.

11 Administrative Procedure Act, Section 42.

even without any special conditions, a summary procedure shall be used, while in case its prerequisites are absent, there is an opportunity for a full hearing by making a conditional decision. Compared to the General Proceedings Act, the Administrative Procedure Act specifies the scope of application for the conditional decision also by considering that the inaction of an administrative body may in certain cases harm public interest as well, which was an adverse consequence of the use of conditional decisions.[12]

3.2. 'Net' Instead of 'Gross' Administrative Time Limit

One of the most important changes in the Administrative Procedure Act related to the administrative time limit is the introduction of the 60-day deadline for full hearings in a general and 'gross'[13] manner, during which time period the case must be closed indeed. This is a fundamental change both for the clients and the administrative bodies. Several scholarly publications have highlighted the situation that even though the General Proceedings Act included regulations concerning administrative time limits and the consequences of the failure to meet them, due to the other regulations of the Act, there was very little chance for closing a proceeding requiring average administrative work within a reasonable deadline. It was also a special feature that the exact starting date of the administrative time limit and the act perceived to conclude it were added later to the regulations by the legislator. Although it was not only the General Proceedings Act that specified the administrative time limit numerically, as the preceding Act IV of 1957 on Administrative Proceedings had already done so, not even the text in force at the promulgation of the General Proceedings Act included when the time limit would expire for the authority. The unsettled legal situation was not corrected by judicial practice either; thus, at the beginning, a methodological recommendation of the General Proceedings Act Committee of Experts specified the manner of calculating the administrative time limit, which resolution, similarly to other such recommendations, was non-binding. The rule that the delivery of the decision shall also be provided within the administrative time limit was included in the General Proceedings Act for the first time as of 1 October 2009.[14] It is easy to see that prior to this, in the absence of any regulation, stipulations sanctioning cases when the deadline was exceeded could not be enforced as any date may be printed on the decisions, and due to an anomaly related to posting (e.g. in the case of a smaller authority, the sick leave of the administrator), in certain cases, the client could wait for several weeks more for the actual closing of the proceedings. Even with this element of guarantee, it

12 Hajas 2016. 21.
13 Bill no T/12233. 54.
14 See Act CXI of 2008, Section 23.

could not be known or estimated in advance when the proceeding of first instance would be closed as several aspects were not included in the administrative time limit, including the reconciliation of conflicts over competence and jurisdiction, appointment of a case officer or competent authority, duration of legal aid procedure, remedying deficiencies, the time between the call for providing any new information that may have emerged in the process of ascertaining the relevant facts and its completion, the duration of specialist authority proceedings, the duration of the suspension of the proceedings, the time needed for the translation of the application, the decision or any other documents, the time needed for the preparation of the expert opinion, or the time between the actions taken for the delivery of the decision obliging the applicant to advance the procedural costs and completion. As the need for remedying deficiencies occurred in a significant part of the cases, and in other cases experts or the use of a specialist authority were often needed because of legislation, in a large part of cases, the actual administrative time limit increased to a multiple of the time period specified in the General Proceedings Act, and as such the legal stipulation functioned only as a 'net' administrative time limit. In certain transitional situations, authorities generated disputes over competence so that with the additional time gained this way[15] they could overcome the lack of administrators encountered due to various organizational changes. This occurred occasionally and temporarily, in many cases exactly because of the transfer of competences to district offices.

As opposed to this, the time limit specified by the Administrative Procedure Act operates on a 'gross' basis; thus, based on Section 50, para. (5) of the Act, the administrative time limit shall not include the duration of suspension, stay of proceedings, and (where a conditional decision may not be adopted) the duration of default or delay of the client. Considering the fact, however, that during the years the requirements for the suspension of the proceedings have become stricter, while for the stay of proceedings the consent of the client is needed, it can be established that in the absence of the express involvement of the client the proceedings have to be concluded within the objective 60 days, which also satisfies the principle of concluding proceedings in a reasonable time as stated in Article XXIV of the Fundamental Law. At the same time, Barnabás Hajas also calls attention to the fact that in line with the regulations specified in Article P) of the Fundamental Law, natural resources, in particular, arable land, forests, and the reserves of water, biodiversity, in particular, indigenous plant and animal species, as well as cultural assets shall form the common heritage of the nation, and it shall be the obligation of the state and everyone to protect, maintain them, and preserve them for future generations. In some cases, the starting date of the administrative time limit may differ from those set out in

15 This extra time could typically last for up to several months in the absence of the settlement of the conflict of competence.

the general rules. Section 50, para. (3) of the Administrative Procedure Act also allows for a deviation from the general rules and regulations as a period longer than the administrative time limit of sixty days may be established by an act, and a shorter period may be established by legal regulation.

Such a longer time limit is established in connection with consumer protection by Act LXXXVIII of 2012 on the Market Surveillance of Products; based on Section 17, para. (4) of this Act, the administrative time limit in the market surveillance procedure of the market surveillance authority is 70 days instead of the usual 60, and the administrative time limit does not include the duration of the hearing. The administrative time limit for the public service procedures of the consumer protection authority is also stipulated by law separately, which is currently in line with the general regulations (60 days), but it is also specified separately.[16]

Based on the above, it can be stated that with the general gross time limit calculation prescribed by the Administrative Procedure Act administration has really become faster, which also had a special consequence in the transitional phase: when possible, the authorities tried to start the proceedings opened of their own motion under the rules of the General Proceedings Act, which included more favourable stipulations for them.

3.3. Regulatory Inspections, Own-Motion Proceedings

The scope of regulatory inspections is relevant also in the case of consumer protection proceedings, which is stipulated in a separate chapter by the Administrative Procedure Act (similarly to the General Proceedings Act). The legislator has also preserved a special feature of this legal institution, i.e. that it fits into the general proceedings in a special way. Thus, it may even precede it (for example, if the authority wishes to inspect the compliance with legal stipulations) or be part of the procedure itself in a given case, for example, if they wish to inspect the execution of an obligation set out by a specific regulatory decision. At the same time, due to the unique structure of the Administrative Procedure Act, which differentiates procedures opened by application and those of their own motion, it stipulates the use of the rules of own-motion proceedings to regulatory inspections, stating that the administrative time limit is not compulsory in this respect, although its use is not excluded either, as noted by Barnabás Hajas.[17] Thanks to the regulations mentioned above, the rules relevant for the actual conduct of the regulatory inspections were seemingly shortened and simplified. In reality, however, due to the rules referring to the own-motion proceedings, these could decrease in number as in the background these regulations have to be applied. It is a substantial change, however, that while the General Proceedings Act prescribed

16 Act CLV of 1997, Section 46, para. (5).
17 Hajas 2016. 25.

the recording of minutes, in the Administrative Procedure Act, we cannot find such a stipulation related to the conclusion of the regulatory inspection, except for those cases when the authority finds an infringement. To remedy this absence, the Administrative Procedure Act includes a stipulation according to which in case of the 'success' of the regulatory inspection conducted upon the client's request, i.e. if the authority does not find any infringement, it issues an official instrument to that effect, while in the own-motion regulatory inspections the authority shall issue an official instrument on its findings at the client's request. Besides this, however, Barnabás Hajas – who participated in the development of the procedure – highlighted that the proper documentation of the proceeding is also the responsibility of the authority, which is of critical importance, especially when starting an administrative proceeding.[18] This is particularly true in the case of consumer protection inspections, where the opportunities for mystery shopping and sampling are prescribed by the act on consumer protection.

The inclusion of administrative proceedings under a separate chapter was an important structural change from the perspective of consumer protection procedures as well, along with the specification of the rules of regulatory inspections, the latter of which also included the addition of the regulation according to which the legislator provides 8 days for the proceedings in the case of non-specified time limits, which is relevant especially in terms of starting own-motion procedures after and due to regulatory inspections.

Thus, as opposed to the General Proceedings Act, the Administrative Procedure Act made a clearer distinction between proceedings initiated by application and at the authority's own-motion, the latter of which is discussed in a separate chapter (Chapter VIII of the Administrative Procedure Act), which only includes the deviations from the procedures initiated based on application. In connection with the administrative time limit – which is becoming more objective anyway –, we can find additional constraints here as there is no place for stays in own-motion proceedings, and it is only the duration of the suspension of the proceeding that does not count into the administrative time limit. As for exceeding the administrative time limit, the legislator added the sanction that in the case of own-motion proceedings if the authority has exceeded twice the duration of the administrative time limit, apart from establishing the infringement and from issuing an order for bringing the infringement to an end or for ensuring that legality is restored, no other sanctions may be imposed. In that case, new proceedings may not be opened against the same client under the same considerations of fact and law.[19]

Although in the case of consumer protection the majority of the procedures are started based on application, we still cannot regard these as proceedings as initiated upon request but only as procedures opened indirectly by request to

18 Ibid.

19 Administrative Procedure Act Section 103, paras (2)–(4).

which the rules of the own-motion proceedings shall be applied. Even though the constraints affecting the administrative time limit certainly guarantee the principle of the conclusion of proceedings within a reasonable time, and they also facilitate the enforcement of fundamental rights, it is also obvious that for the authorities it used to be a challenge initially to fully comply with the new regulations and in such cases to acquire the necessary evidence and then conclude the case within the time limit prescribed. Although the own-motion proceedings are opened against specific clients, in general, they serve the purposes of protecting the public interest, and this is especially true for cases like the consumer protection proceedings. The lack of legal consequences due to exceeding the time limit runs contrary to the idea of protecting the wide range of consumers. Therefore, in this respect, the changing attitude certainly represents challenges for the authorities. It is especially important for district offices to harmonize this with the scope of cases specified in Section 47/C, para. (5) of Act CLV of 1997 on Consumer Protection (hereafter referred to as Consumer Protection Act), in which the authorities are obligated to use fines; thus, in case the infringement affects a wide range of consumers or if legal stipulations aimed at the protection of people under eighteen years of age were infringed.

4. Cooperation and Juxtaposition

Due to the varied nature of authorities involved in consumer protection[20] as well as the operation of the central market surveillance information system and the purposes of improving efficiency, it is of special importance how procedural law guarantees cooperation between the different authorities. The principle of single-contact administration had already been introduced by the General Proceedings Act as part of the implementation of Directive 2006/123/EC of the European Parliament and the Council on services in the internal market; however, the Administrative Procedure Act made the system of rules applicable to specialist authorities even more specific and simple, while related procedures and preliminary procedures were added as new elements.[21] Of these, the facilitations regarding related procedures are relevant for consumer protection in themselves as in certain specific case types (e.g. the registration of vehicles imported from abroad) the client has to initiate several procedures built on one another, and in these types of cases they can already receive more information based on which the client may request the direct transfer of documents to the

20 On the former system of general and special authorities, see: Joó–Szikora 2010. 363–388, while in terms of the current situation see: Árva 2018. 295–312.

21 Hajas 2016. 21–22.

other authorities.[22] At the same time, both the regional[23] and central[24] reforms in public administration exert an effect that further enforces cooperation as in the integrated administrative organizations besides the general model of cooperation (as the specialist authority procedures) other, alternative solutions may also be used, 'which result in simpler and faster procedures',[25] while also considering the specific, real-life situations.

The Administrative Procedure Act preserved the institution already introduced by the General Proceedings Act, which enables the authority to conclude the case not with a resolution but the conclusion of an administrative agreement between the authority and the client, adding that in such a case the agreement shall include a solution beneficial both for the client and the public interest. Although the conclusion of the administrative agreement may also be prescribed by law in certain cases – what is more, certain types of cases may conclude with an administrative agreement and not a resolution (e.g. establishing technical inspection stations based on the formerly effective regulations) –,[26] the administrative agreements are concluded voluntarily in the majority of cases. The classical area of this legal institution besides construction is consumer protection, whereby the principle of juxtaposition was facilitated from the nineties already instead of the traditional authority feature.[27] This has been preserved by the Consumer Protection Act to this day,[28] with its means of enforcement and framework provided by procedural regulations themselves. The Administrative Procedure Act has made it clear that the administrative agreement is also an agreement concluded by the public administration authority. Yet it has also preserved the asymmetry between the rights of the parties. In case of a breach of such agreements by the client the contract qualifies as directly enforceable;[29] based on it the execution may be started, a situation which has to be accepted by the client. In case of possible infringements by the authority however, the client has to turn to an administrative court for a decision or enforcement. The latter may be done within maximum 30 days after becoming aware of a breach of contract. However, prior to turning to the court, the client also needs to call the attention of the authority to perform.

22 Administrative Procedure Act, Section 45.
23 See also Barta 2013. 145–153, 164–176.
24 For more details, see: Árva 2018. 302–306.
25 Bill no T/12233. 53.
26 Government Decree no 302/2009 (XII.22.) on the detailed procedural regulations for authorizing inspection stations and the content of administrative agreements to be concluded with the inspection station made the establishment of the station possible only with an administrative agreement; however, the currently effective Government Decree no 181/2017 (VII.5.) has abandoned this practice.
27 Bencsik 2013. 348–349.
28 Consumer Protection Act, Section 47, para. (6).
29 Based on the terminology used in the General Proceedings Act, however, the Administrative Procedure Act stipulates this with identical content.

As opposed to the supremacy nature of law enforcement by the authorities, it is also relevant in terms of consumer protection procedures that among the stipulations concerning the client there are separate guarantees for minors and persons with disabilities, based on which the Administrative Procedure Act would also like to ensure the protection of rights specified in Article XV of the Fundamental Law.

5. Legal Remedies

The conclusion of the proceeding of first instance may be followed by appeals procedures, the transformation of which was or seemed to be conspicuous for the general public as well. At the same time, the rationale for the law also stated that it is only in 0.5% of the several million administrative cases initiated annually that an appeal is submitted. However, in a significant portion of these cases (almost in a fifth of them), judicial review was also initiated,[30] which means that cases affected by legal remedy would most likely make it to the courts anyway, while in one third of the case types appeals were excluded already based on the General Proceedings Act. In terms of the legal remedy system as a whole, the rationale also pointed out that making judicial review the main appeal tool also facilitates the uniformity of jurisprudence, and due to judicial independence, it also contributes to the reduction of the risk of corruption.[31]

In terms of the appeals system, recently, procedural laws continue to differentiate between almost the same two large groups: the first one includes the possibilities that may be requested by the client, while the second one those initiated by the authorities. The latter was considered to be a decision review system by the General Proceedings Act. As opposed to this, the Administrative Procedure Act returned to the denomination of own-motion appeals. In connection with the first group, truly radical transformations took place in the sense that administrative actions have become the general rule, and the opportunity for an appeal against the resolution was narrowed down to two cases: if it was brought by the head of a district office or a body of a municipal government other than the council of representatives or by the local branch of a law enforcement agency. Considering the division of powers between the district offices and the clerk, however, this change does not actually have such a great effect as one would think at first glance. Prior to the creation of the district system, the clerk was considered to represent the general administrative authority at the lowest level, which body was obligated to act in approximately 500 types of official cases. After the creation of district offices, these cases have gradually been transferred

30 Bill no T/12233. 54.
31 Bill no T/12233. 54.

to the district offices. This is a currently ongoing process. The organization of the system of consumer protection was most recently transformed by Government Decree no 387/2016 (XII.2.) on the designation of the consumer protection authority; according to this Decree, in administrative cases related to consumer protection, the district (Budapest district) office of the Budapest and county government offices – while in certain specific cases the district office (Budapest district) of the Budapest and county government offices according to county seat – as well as the minister responsible for consumer protection shall act.[32] The main responsibilities and powers of the minister extend primarily to tasks of a management and legislative nature as well as the conclusion of cooperation agreements. A significant part of specific administrative activities of first instance are completed by the district (in certain cases the county seat district) offices and only in a smaller part by the Government Office of Pest County; thus, in the bulk of administrative cases, appeals are available as a legal remedy. In consideration of the fact that the cases falling within the competence of the Government Office of Pest County are primarily of the second instance to start with,[33] against whose decisions the Administrative Procedure Act does not provide additional appeal options either, and its other first instance competences cannot be matched with the definition of the administrative action, it can be stated that the opportunity for appeals is provided in consumer protection cases. Thus, the Government Office of Pest County performs the tasks related to the publication of the court decision according to the Consumer Protection Act in the case of the judicial review of the administrative decision and contributes to the validity of the administrative agreement to be concluded by the district office acting within a consumer protection competence and the district office according to the county seat.[34] Besides this, the organization of trainings, public interest claims have to be reported to this body, and it manages the account at the Hungarian Treasury, where the consumer protection fines are credited, and it provides price control in connection with natural gas delivered by pipeline, public waste disposal services, waste water disposal, and overhead reduction by utilities companies.

Although the number of legal remedies available upon request has decreased since the effective date of the Administrative Procedure Act from four to two, the deletion of the resumption proceeding can hardly be felt in practice, while the rules of the procedures of the Constitutional Court have become obsolete, as noted by Barnabás Hajas.[35] In this respect, it is important in terms of the consumer protection procedures that consumer protection also has relevance to fundamental rights, as, contrary to the previous constitution, Article M, Section

32 387/2016. (XII. 2.) Government Decree, Section 1, para. (1).
33 387/2016. (XII. 2.) Government Decree, Section 1, para. (4).
34 387/2016. (XII. 2.) Government Decree, Section 4, paras (2)–(3).
35 Hajas 2016. 23.

(2) of the current Fundamental Law stipulates that Hungary shall ensure the conditions of fair economic competition, act against any abuse of a dominant position, and shall protect the rights of consumers.[36] The wording undoubtedly reflects the model typical of countries on the continent, in which the states protect and provide consumer rights primarily by ensuring the aspects of competition.[37] At the same time, raising it to the level of fundamental rights has had not only institutional but also procedural consequences due to which in these cases it is also possible to issue a constitutional complaint based on the court decision.

Thus, as a result of the above changes, appeals procedures and administrative actions remained in the new code as redress procedures available upon request by the client. The latter of the two has become more general; however, based on those mentioned above, actually in consumer protection cases the appeals procedures may still be used. In terms of the detailed arrangements, it represents a change that the appeal shall be reasoned, and in the appeal only those new facts may be introduced of which the client was unaware during the proceedings in the first instance or was unable to rely on such facts for reasons beyond their control. Thus, the Administrative Procedure Act ended the opportunity available for many years that enabled appeals due to all kinds of, often 'made-up', reasons; i.e., the client had the option to 'save' certain evidence for the appeal procedure itself and not reveal it unless the procedure in the first instance turned out to have an unfavourable result. This way, appeals have not only become secondary tools but are also bound to explanation. At the same time, the authority still has the option to modify or repeal the decision infringing the law based on the appeal or in the absence of an adverse party, and if it agrees with those included in the appeal it may also revoke its non-infringing decision or may modify it in line with those included in the appeal.[38] In the absence of all these opportunities, the decision in the second instance (in case of infringement of the law) is examined, but in connection with its decision it is not bound to those included in the appeal. Thus, in a given case, a decision imposing a consumer protection fine may even be aggravated (if new infringements are identified). A stipulation specifically aimed at the acceleration of the procedure is the one that specifies that if the information for bringing a decision is insufficient, or if otherwise deemed

36 At the same time, all this was interpreted by the Constitutional Court in its resolution no 8/2014 (III. 20.) in a way that 'from the second sentence of Section (2) of Article M), such an obligation emerges for the state which applies (in consideration of the constitutional values included in the Fundamental Law) to the establishment and maintenance of an institutional system protecting the rights of consumers and acting against any abuse of a dominant position, moreover to the adoption of laws ensuring the rights of consumers'. This, however, does not mean that the constitutional complaints built on this would be accepted without solid reasoning. See, for example, Constitutional Court Resolution no 3305/2018 (X. 1.) and in connection with financial consumer protection: Veres 2013. 179–183.

37 Bencsik 2013. 340.

38 Administrative Procedure Act, Section 119, paras (1)–(2).

necessary, the authority of second instance shall ascertain the relevant facts of the case and shall adopt a decision. This makes possible to avoid a situation whereby the authority of second instance only annuls the decision obliging the authority of first instance to start a new proceeding, which contributes to the actual and meaningful conclusion of the cases.[39]

The stipulation according to which there is no opportunity for appeals in the case of automated decision making and summary procedures seems to be less important in terms of consumer protection as in such cases (as already noted) a decision in full hearing may be requested within 5 days.

In connection with the administrative actions, which have become the primary means of legal remedy due to the Administrative Procedure Act, the Act includes only the most important issues as regulated in detail by Act I of 2017 on the Code of Administrative Court Procedures, while the organizational changes affecting administrative courts are stipulated by Act CXXX of 2018. It should be noted in this regard that the reform package at the end of 2016 consisted of three parts; thus, it also had stipulations affecting the court system, which, however, were annulled by Resolution No 1/2017 (I. 17.) of the Constitutional Court in a preliminary constitutional review procedure due to the infringement of the rules related to cardinality. The act on administrative courts promulgated on 21 December 2018, however, was ratified by the Parliament with a qualified majority, and thus it expressly includes the cardinality clause. It does not fall within the scope of this paper to introduce the new law in detail; yet, it should be noted that it establishes the administrative tribunals and the Higher Administrative Court.

Although administrative actions fall outside the competence of administrative bodies, the acceleration of the proceedings as an objective has prevailed in these procedures as well. This way, the formerly general cassation powers of the courts came to an end and were replaced by reformatory powers as a general rule, due to which the restarting of the cases at the administrative bodies may be avoided along with a possible new legal remedy procedure and in a worse case a repeated annulment and obligation to start a new procedure, as a result of which the actual conclusion of a case could be delayed by years because of the net regulation of the administrative time limit discussed above.

39 Administrative Procedure Act, Section 119, para. (6).

6. Enforcement

The final possible phase of administrative procedures is represented by the enforcement proceeding, the prerequisite of which is to have a final decision and the lack of voluntary performance.[40] The Administrative Procedure Act left behind the use of *res judicata* as a technical term in administrative proceedings, which was difficult to interpret anyway for the clients.[41] In consideration of the differences between the material and formal legal force and the terminology used in the model German-Austrian jurisprudence, the Administrative Procedure Act introduced the concept of the decision becoming definitive, which plastically expresses that the final decision may not be changed by the administrative authority except for the cases set out by law. The decision becomes definitive with the delivery of the decision, which becomes enforceable if the obligor fails to comply with the obligations.

Unless otherwise provided for by an act or government decree, or a municipal decree in administrative actions of local authorities, enforcement procedures shall be carried out by the state tax authority.[42] In such a case, the rules of the Administrative Procedure Act do not even have to be used[43] as tax administrative procedures belong to the group of removed procedures, and the enforcement proceedings of the tax administration are specified by Act CL of 2017 on the Rules of Taxation. In consideration of the fact that the consumer protection regulations fall within the general scope, the collection of consumer protection fines takes place now in line with the rules relevant to public debts found in tax administrative proceedings.

However, as the Administrative Procedure Act also makes the formulation of additional rules possible as described above, it is a significant change affecting enforcement that the resolution of the first instance of the consumer protection authority may be declared enforceable immediately if a legal consequence has to be established against the client breaching the administrative agreement or due to environmental reasons or for the protection of the physical, intellectual, emotional, or moral development of minors or in the case of any commercial or communication Internet website with unlawful content. In these cases, the consumer protection authority actually publishes its resolution irrespective of legal remedy.[44]

40 Administrative Procedure Act, Section 132.
41 Rationale added to Section 82 of the Administrative Procedure Act, Bill no T/12233. 90.
42 Administrative Procedure Act, Section 134, para. (1).
43 Administrative Procedure Act, Section 131, para. (2).
44 Consumer Protection Act, Section 51, para. (1).

7. Conclusions

The Administrative Procedure Act has achieved real simplification and acceleration in many respects. The implementation of the main objective, however, is somewhat overshadowed by Act CXXV of 2017 on administrative offences effective as of 1 January 2017, which prevails as a general code of sanctions. With the code taking effect, the formation of temporary rules became necessary, as included in Act CLXXIX of 2017 on the Temporary Rules for Sanctioning Administrative Offenses and Amending Certain Laws in Connection with the Reform of Administrative Procedural Law and Repealing Certain Stipulations of Law. Section 10 of this Act inserted a referring rule into the Act on Consumer Protection, which authorizes the Government to stipulate the additional procedural rules to be used by the consumer protection authority (acting as an administrative authority) in decrees; such a decree, however, has not been enacted until this publication. At the same time, the objectives to stop the fragmentation of the Administrative Procedure Act and ensure its permanence are understandable; however, the large number of referring rules act counter to the work of legal practitioners. The simplification of procedural law is only one, albeit significant part of law enforcement, as the administrative authorities otherwise have to use the rather diverse substantive rules, which is especially true in such a new legal field as consumer protection.[45]

The gross concept of the administrative time limit also clearly helps the rapid conclusion of proceedings. However, rapid procedures only partly make the operation of public administration effective, while in other cases it might work against the detection of violations of law as the authorities have to conclude the case within 60 days by all means. This is especially true for typical own-motion proceedings in the case of consumer protection, whereby, on the one hand, the procedural rule has to be enforced, according to which if the authority has exceeded twice the duration of the administrative time limit, apart from establishing the infringement and from issuing an order for bringing the infringement to an end or for ensuring that legality is restored, no other sanctions may be imposed, and new proceedings may not be opened against the same client under the same considerations of fact and law, while Section 47/C, para. (5) of the Consumer Protection Act specifies those cases in which the authority is obligated to apply fines.

Thus, overall, the changes certainly point in a positive direction. However, for the authorities applying the law, an adequate time has to be provided not only for the management of procedural changes but also for that of organizational alterations, and during this transitional period even the efficiency of enforcement may be undermined temporarily.

45 It was also highlighted by László Trócsányi that in new legal areas like consumer protection 'new legislation is pouring out' [author's translation]. Available at: http://www.jogiforum.hu/hirek/37755 (access date: 1 December 2018).

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