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The Hungarian Legislation on Administrative Procedure

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I. Introduction

Before the dissolution of the Habsburg Empire, Hungary was involved in the development of standards of administrative conduct by the Administrative Court. Hungarian courts have, ever since 1919, exercised control to prevent the abuse of discretionary power. However, in the first part of this chapter's time frame, Hungary did not adopt any general legislation on administrative procedure, while it did so in 1957. The discussion of the domestic legal framework within this chapter will be structured in the following manner. The first section will address the introductory issues considered by the questionnaire, while the second will explain that, though there was no 'reception' of the Austrian administrative procedure legislation, it was known within Hungarian legal culture. There will then be a discussion concerning the similarities and differences of Hungarian administrative procedure legislation with the Austrian one. The fourth section deals with the specific cases included in the questionnaire.

II. Background: History and Constitutional Provisions

As observed initially, while no general legislation on administrative procedure was adopted during the first part of the research's relevant time frame, Hungary (then known as the Hungarian People's Republic) had enacted Act IV of 1957 on General Rules of Administrative Procedure (abbreviated in Hungary as *Et.*). The former law only partially regulated administrative procedure.

A. The Institutional and Political Context of the Administrative Procedure Act

After the First World War—with the disintegration of the Austrian-Hungarian monarchy—a lengthy debate on the feasibility of an Administrative Procedure Act

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(APA) took place in Hungary (see Section III.A below). Up to the end of the period known as the 'Kingdom without a King' in 1946 and the Communist takeover in 1948, the mainstream position of administrative lawyers (both academic and practitioners) was that despite the Austrian APA of 1925 and the concordance of Austrian and Hungarian administrative behaviour (the K. u. K—Kaiserlich und Königlich, Imperial and Royal—the practice of good administration), adoption of a general APA in Hungary was impossible. During the first years of the Bolshevik-type State administration based on direct and total subordination and hierarchical control, the focus was on institutional reform (introducing Soviet-type local administration to replace the ancient local self-government system, new police, and secret police institutions), centralised administrative planning and management of the economy (nationalisation without compensation, a unified employment system). Quick ad hoc legislative (primarily by decree) and single-case actions were taken. This period was not characterised by legality and predictability: quite the contrary. It was not the time to consider the feasibility of an APA.

After the bloody suppression of the anti-Soviet revolution of 1956, the Communist hegemony felt reasonably secure in its ability to standardise administrative procedures. The goal was, of course, more efficient control rather than substantive legality, still less constitutionality. These were the circumstances in which the APA came into being, but its forerunners included not only Communist leaders but also those who had been reflecting on the APA during the previous decades.[1]

B. The Legal Regime of Public Administration

Since 1920—indeed, since reconciliation with the Habsburg-Lothringen dynasty in 1867—officially after the adoption of Act XXXIII of 1876 on local administration—there has been just one administrative regime in Hungary (between 1849 and 1867, the Austrian regime was in force, and until 1848 there had been autonomous administrative regions, like the Szekler or the Saxon administration in Transylvania).

C. General and Sector-Specific Procedural Norms

The first general APA (*Et.* of 1957) declared that minimal divergence from the general rules was allowed, but, in practice, more and more sector-specific procedural rules appeared in other norms. This was the reason for the official reform of this APA by an amendment, Act I of 1981 (abbreviated in Hungary as *Áe.*). The goal

[1] See A Zs Varga, 'Die Entwicklung des Rechts der öffentlichen Verwaltung' ['The Development of Public Administration Law'] in G Máthé (ed), *Die Entwicklung der Verfassung und des Rechts in Ungarn* ['The Development of the Constitution and Law in Hungary'] (Dialóg Campus 2017) 817–64.

was not achieved over the coming years, and after the political transition (the restoration of constitutionality) of 1990, it was accelerated as dozens of sector-specific rules were adopted. The third APA, Act CXL of 2004 (abbreviated in Hungary as *Ket.*) was controversial in this sense. It was again declared that this is a general APA, but it created a sophisticated system of divergencies (ie excluded sectors regulated entirely by other APAs; partially excluded sectors; privileged sectors not excluded but where wider divergencies were accepted; general regulations that left room for unconditional divergencies). In the end, it had to be admitted that Hungary had an APA that purported to be general, but there were hardly any administrative sectors without divergent or additional regulation.[2]

This led to the fourth and current APA, Act CL of 2016, on general administrative regulations (abbreviated in Hungary as *Ákr.*). The most important innovation in the current APA is that Parliament has learned from the experience of more than half a century and gave up the dream of a truly general and complete regulation of administrative procedures. The current APA is only quasi-general and does not cover all aspects of administrative procedure. It is quasi-general insofar as there are administrative sectors regulated by specific laws (regarding misdemeanours, elections, referenda, taxation, customs, refugees, immigration, citizenship, economic competition, and monetary policy). These sectors had also been regulated separately in the previous APAs. The innovation in the *Ákr.* is that only these exceptions are mentioned in the law, and there are no other formal delegations of sector-specific rules. The APA does not bring about complete regulation of administrative procedure. It contains only regulations compulsory for all sectors (with the exceptions mentioned above) and in any single-case procedure: general principles, parties' rights, evidence, forms of decisions, remedies, and enforcement. All other aspects of the procedure can be regulated by sector-specific rules in accordance with the principles and rules of the APA (*Ákr.*).

D. Constitutional Principles on Administrative Procedure

The Fundamental Law of Hungary rules that the right to the protection of personal data and access to data of public interest is monitored by an independent authority established by a cardinal law (art VI, s 4); everyone has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities; authorities are legally required to give reasons for their decisions; everyone has the right to compensation for damage unlawfully caused by the authorities in the performance of their duties (art XXIV, sections 1 and 2); everyone has the right, alone or with others, to address a written request, complaint or suggestion to any public

[2] See A Zs Varga, 'Tűnődések a Ket. hatályának dogmatikai alapjairól' ['Reflections on the Dogmatic Foundations of Ket'] (2014) 6 Magyar Jog 321–28.

authority (art XV); everyone is entitled to a fair and public hearing by an independent and impartial court for the definition of his/her rights and obligations and any criminal charge against him/her (art XXVIII, s 1); everyone has the right to appeal against a judicial, administrative or other administrative decision that infringes his/her right or legitimate interest (art XXVIII, s 7).

E. Other Fundamental Rules

Before the first APA (*Et.*, 1957) was adopted, laws to partially regulate administrative procedures were in force. The most important was Act XXX of 1929 on the organisation of public administration. This law regulated the election and organisation of local administration, local legislation, the competencies and powers of administrative bodies, remedies against single-case decisions, as well as employment and disciplinary procedures against administrative personnel. Another important law was Act XXVI of 1896 on the Hungarian Royal Administrative Court (in force until 1949), whose case law guaranteed the legality and constitutionality of public administration (the Administrative Court could even take steps to slow down the effects of anti-Semite laws and the later Bolshevik laws).

III. The Relationship between the Austrian and Hungarian Legal Systems

A. Legislation

The said Act XXX of 1929 on the 'arrangement' of public administration was adopted only some years after the Austrian APA. The explanatory note of the Hungarian Act did not mention the Austrian development, but this was due to traditional considerations. During the almost 400 years of coexistence with Austria, the Hungarian doctrine was that Hungary did not give up its independence: the Habsburg dynasty ruled Hungary as Hungarian kings (elected or at least accepted by Hungarians) and not as emperors of the Holy Roman Empire (or later as emperors of the Austrian Empire). This doctrine of *separate country in personal union* was manifested in the existence of the Hungarian Parliament, which was the only source of law in Hungary. Any decree by the king/emperor came into force in Hungary only if accepted/adopted by Parliament. Following this tradition, Hungarian laws refrained from referring to Austrian laws even if these had a particular influence on those of Hungary. Another reason is that the first-instance administrative bodies in Hungary (with general competence) were the elected local councils (in counties and towns). This is one of the unbroken

traditions of Hungarian constitutionality. In contrast, Austrian public administration was centralised.

The situation was very different in the academic world. The mainstream opinion was formulated by Győző Concha, who stated in 1905 that a really general APA was not feasible, as public administrative procedures could be regulated only by sector-specific laws.[3] At the same time, there were strong opinions in favour of a general APA: Andor Sigmond (1904), Ede Márffy (1926), Zoltán Magyary (1930).[4] Some of the latter had formulated even private drafts for a general Hungarian APA under the influence of the Austrian APA: József Valló (1937 and 1942), Jenő Szitás (1939), but these drafts had not been presented to Parliament. However, the academic debate was reflected in Act XXX of 1929 and later in the first APA of 1957 (*Et.*).[5]

B. Jurisprudential and Explicit Academic References

Hungarian laws and courts traditionally did not refer to Austrian laws (see Section III.A above). Some general principles such as *secundum legem, extra legem* and *contra legem*, and others (*forum rei sitae, legitimatio ad personam et causam, res iudicata*), were well known and used in Hungarian case law even before 1925. An important monograph set out these principles in 1902.[6] There were also citations of the Austrian APA in academic works such as treaties, monographs, and articles in law journals. Such academic sources are referred to in this chapter.

IV. Similarity and Diversity in Administrative Procedure

The distinction drawn above between the Austrian and the Hungarian legislation did not imply that the fundamental principles of administrative procedure diverged. For our purposes here, the following aspects will be considered:

1. completeness of the preliminary investigation and fact finding;
2. right to a hearing;
3. requirement to give reasons; and
4. the organisation of remedies (broadly, administrative and jurisdictional).

[3] G Concha, *Politika II. Közigazgatástan* ['Politics II. Public Administration'] (Grill 1905) 105.

[4] A Patyi, 'A közigazgatás "rendezése" és a kodifikáció iránti igény ['"Arrangement" of Public Administration and the Need for Legislation'] in A Patyi and A Zs Varga (eds), *A közigazgatási eljárásjog alapjai és alapelvei* ['Fundaments and Basic Principles of Administrative Procedures'] (Dialóg Campus 2019) 77.

[5] ibid 78–79; Varga (n 1) 855.

[6] F Vasváry, *A magyar közigazgatás központi alapszervei* ['Central Institutions of Hungarian Public Administration'] (Politzer 1902) 111–44.

The current APA (*Ákr.*) regulates—and all the former APAs regulated—these institutions.

The APA (*Ákr.*) regulates the duty of administrative bodies to ascertain the facts of a case, the principle of free proof, and the forms of evidence (arts 62–73).[7] The regulation is as detailed as usual for court proceedings. The two main differences are: (1) even if art 62, s 4 declares the principle of free proof ('The authority is free to choose the method of proof and will assess the available evidence according to its own convictions'), the next section imposes a specific limitation: 'In certain cases, a law or government decree may, for overriding reasons of public interest, make use of a document as a means of proof mandatory'; in the case of administrative procedures, recourse to official documents and technical or scientific experts in important testimonies is rare; (2) contrary to court proceedings in administrative procedures, the burden of proof and the duty to establish the facts is not on the parties but on the administrative body, which, *ex officio*, has to gather all the relevant facts, and a formal procedure of proof is ordered only if the results of the preliminary investigation are insufficient.

Any party to an administrative procedure has the right to be heard and to make statements at any stage of the procedure (art 5, s 1), to be assisted by the administrative body in his/her rights and duties (art 5, s 2), to be assisted by an advocate (arts 13–14), and to have free access to the files of the case except formally classified (secret) documents (art 33).

To be given reasons is a constitutional right guaranteed by the Fundamental Law of Hungary (art XXIV, s 1) and repeated by the APA (art 81, s 1). However, in some cases this can be ignored: if there are no opposing parties in the case and the administrative body complies with the request; in the case of formal certificates; if all the parties accept the decision (art 81, s 2).

The general remedy regulated in the APA (art 114) detailed in the 2017 Act I on administrative court procedures is the quashing lawsuit against an administrative decision issued by the Administrative Chamber of the competent (County or Metropolitan) tribunal. This is a novelty of the current APA (*Ákr.*). The former APAs regulated (internal) administrative appeal as a general remedy. Hence an examination of evidence in 2015–16 led to the result that 70% of administrative cases end without appeal, but in 90% of appealed cases, the second-instance decisions are quashed before the courts. Consequently, administrative appeals were shown not to be effective. According to the APA (art 116), (internal) administrative appeal is not general but may be granted by sector-specific laws (as is the case of tax and social insurance cases). Some other forms of remedy are also regulated by the APA—*ex officio* amendment or withdrawal of the decision by the issuing

[7] For an English translation of the APA (*Ákr.*), see: <https://uj.jogtar.hu/#doc/db/62/id/A1600150.TV/ts/20200701/> accessed 15 January 2022.

body or its supervisory body (arts 120–121) or on request from the public prosecutor (art 122)—or by specific law (reopening the case in some economic sectors).

V. Hypothetical Cases

It can be helpful, in order to understand how administrative procedure legislation worked in the real world, as well as whether 'substantial' influence of the Austrian legislation can be identified, to look more closely at the following hypothetical cases: authorisations and licences (Section A); the disciplinary procedure for a civil servant (Section B); the expropriation procedure (Section C); administrative planning (Section D). When reading the materials that follows one should, however, be aware that there could be variations in the intensity of judicial review that could be applied in differing sectors.

A. Authorisations and Licences

According to arts 48–49 of Act XCVIII of 2006 on the general rules for the safe and economical supply of medicinal products and medical devices and the distribution of medicinal products, there is no personal right to open a new pharmacy. A new pharmacy can be opened and operated if the metropolitan or the territorially competent county government office (as designated State health administration body):

- decides to announce a *public tender* to open a new pharmacy,
- the winner of the public tender obtains an *establishment permit*; and
- after establishment, the winner of the public tender obtains an *operating licence*.

If a public tender is announced, the deadline for application is at least 30 days, and the decision is taken after an additional 30 days. The winner of the public tender obtains an *establishment permit ex officio*. Conditions for the *operating licence* laid down by the same body are a previously obtained establishment permit, employing a pharmacist, third-party liability insurance, and a pharmacy room equipped in accordance with legal requirements.

All three procedures (public tender, establishment, operation) are regulated by the APA (*Ákr.*) with some special rules under the said Act XCVIII of 2006 (deadlines, etc.). As the applicant, Mr Schultz, has the right to be heard and to make statements at any stage of the procedures (art 5, s 1), to be assisted by the administrative body regarding his/her rights and duties (art 5, s 2), to be assisted by a lawyer (arts 13–14), and to have free access to the files (art 33). If Mr Schultz's application for an *establishment permit* or an *operating licence* is denied, he may ask the territorially

competent Administrative Chamber of the County or Metropolitan Tribunal to quash the administrative decision (art 114 of APA). If the request for quashing is rejected or denied, Mr Schultz may ask the Kúria (the Supreme Court of Hungary) to review the first-instance court judgment under art 115 of Act I of 2017 on administrative court procedure). The Kúria may annul or change the first-instance court judgment. If the Kúria rejects or denies the application for supervision, and Mr Schultz feels that his constitutional rights have been infringed, he may submit a (full) constitutional complaint to the Constitutional Court. The Constitutional Court may annul (but not change) the Kúria judgment. If it does so, the Kúria must pass a new verdict following the decision of the Constitutional Court.

B. Disciplinary Procedure for a Civil Servant

Dismissal of a civil servant is regulated by Act CXCIX of 2011 on public service and Government Decree 31/2012 (III. 7). The APA is not applied. The procedure for dismissal is regulated by labour law rather than administrative law. The head of the office will appoint a disciplinary committee to investigate the case. Caius should be informed about the suspicion of committing a disciplinary offence; he has the right to be heard, offer evidence, make a statement, and be assisted by a lawyer. The procedure should be concluded within 60 days. Caius may challenge the decision on dismissal before the territorially competent Administrative Chamber of the County or Metropolitan Tribunal to have the administrative decision quashed (art 5, s 4 of Act I of 2017 on administrative court procedures). If his lawsuit is rejected or denied, Caius may ask the Kúria to supervise the first-instance court judgment (art 115). The Kúria may annul or change the first-instance court judgment. If the Kúria rejects or denies the application for review, and Caius feels that his constitutional rights have been infringed, he may submit a (full) constitutional complaint to the Constitutional Court. The Constitutional Court may annul (but not change) the judgment of the Kúria. If it does so, the Kúria must hand down a new verdict following the decision of the Constitutional Court.

There is an alternative: the dismissed civil servant may file a complaint with the Civil Service Arbitration Committee, which conducts probative proceedings and holds a hearing, with 60 days for a reasoned decision.

C. Expropriation Procedure

Expropriation has a constitutional background (limitation) in Hungary. According to Article XIII, s 2 of the Fundamental Law, expropriation may only be permitted in exceptional cases: when it is in the public interest, and only in the cases and manner stipulated by an act, under terms of total, unconditional, and immediate

compensation. Detailed regulation on expropriation is set out in Act CXXIII of 2007. The procedure is regulated by the APA (*Ákr.*) with some other rules under Act CXXIII of 2007. The list of exceptional cases is regulated by this Act (eg defence, city planning, transport, mining, protection of the environment). Application for expropriation may be submitted to the territorially competent Metropolitan or County Governmental Office by the State, local authorities, or another private or public person who performs at least one activity from the list of the exceptional. The applicant, the owners and other persons whose civil law rights are registered in the official estate register are parties of—and should be notified about—the administrative procedure. Mrs Sempronia enjoys all the rights regarding procedure granted by the APA: she has the right to be heard and to make statements at any stage of the procedure (art 5, s 1), to be assisted by the administrative body regarding her rights and duties (art 5, s 2), to be assisted by a lawyer (arts 13–14), and to have free access to the files (art 33). All the interested parties, Mrs Sempronia among them, may challenge the final decision at the territorially competent Administrative Chamber of the County or Metropolitan Tribunal to quash the administrative decision (art 5, s 4 of Act I of 2017 on administrative court procedures). If her lawsuit is rejected or denied, Mrs Sempronia may ask the Kúria to review the first-instance court judgment (art 115). The Kúria may annul or change the first-instance court judgment. If the Kúria rejects or denies the application for review, and Mrs Sempronia feels that her constitutional rights have been infringed, she may submit a (full) constitutional complaint to the Constitutional Court. The Constitutional Court may annul (but not change) the judgment of the Kúria. If it does, the Kúria must hand down a new verdict following the decision of the Constitutional Court.

D. Administrative Planning

The founding of new schools is regulated under Act CXC of 2011 on national public education. The relevant procedural law is the APA (*Ákr.*). A school may be established and operated by the State, the self-governing body of a national minority, a church, or other private person or body. A new school is established by entry on the register of educational institutions. The administrative body in charge is the territorially competent Metropolitan or County Governmental Office. In some exceptional cases (eg if a university seeks to establish a school for training students), the Education Office, a special body under the supervision of the Ministry of Human Resources. Registration is an administrative procedure following APA (*Ákr.*) regulation. If a private person or body applies to set up a new school, an expert report on the necessity of the new school issued by the Ministry of Human Resources should be attached, and, after registration, the territorially competent Metropolitan or County Governmental Office decides whether to issue an *operating licence*. The operating licence is issued at the request of the registered holder following the 'normal'

APA procedures. Denial of registration or an operating licence may be challenged by the applicant (self-government of a national minority, a church or other private person or body) with the territorially competent Administrative Chamber of the County or Metropolitan Tribunal to have the administrative decision quashed (art 5, s 4 of Act I of 2017 on administrative court procedures). If the lawsuit is rejected or denied, the applicant may ask the Kúria to review the first-instance court judgment (art 115). The Kúria may annul or change the first-instance court judgment. If it rejects or denies the application for review, and the applicant feels that its constitutional rights have been infringed, it may submit a (full) constitutional complaint to the Constitutional Court. The Constitutional Court may annul (but not change) the judgment of the Kúria. If it does, the Kúria must hand down a new verdict following the decision of the Constitutional Court.

VI. A Common Administrative Culture

As observed earlier, before 1920, Hungary was a *separate country in personal union* with Austria. After the First World War, several Hungarian scholars and judges in their native places belonging to other countries (Romania, Czechoslovakia, Yugoslavia) contributed to the spread of Hungarian rather than Austrian administrative law influence (when possible). Nevertheless, the majority of Hungarian scholars and judges from the affected territories moved to Hungary (two entire university faculties). The only difference was the case of Romania, but only concerning private, not administrative, law: the private law in force in Transylvania (part of Romania after 1920) was and remained the General Civil Code of Austria (*Allgemeines bürgerliches Gesetzbuch*) and not the customary Hungarian private law. The only public law element was the land register (based on shared principles and with the same structure in Austria and Hungary). This existed for an extended period after 1920 only in Transylvania.