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Administrative Law in the Time of a Permanently Transforming Regulatory Environment *

Prawo administracyjne w czasach stale zmieniającego się środowiska regulacyjnego

ABSTRACT

The Hungarian administrative law has been significantly impacted by the COVID-19 pandemic. Several rules – which were introduced during the state of danger based on the epidemic situation – have been incorporated into the Hungarian legal system. The administrative procedural law has been influenced by the epidemic transformation. However, the rules on e-administration have not been reformed significantly (due to the digitalisation reforms of the last years), but the rules on administrative licenses and permissions have been amended. The priority of the general Code on Administrative Procedure has been weakened: a new, simplified procedure and regime have been introduced. The results of these reforms became obvious in 2021: the number of administrative cases has been de-

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creased. Even the decision-making of the central government bodies has been transformed partially, a trend of "militarisation" can be observed, as well. The local self-governance has been impacted by the reforms. The transformation has had two opposite trends. On the one hand, the Hungarian administrative system became more centralised during the last year: municipal revenues and task performance have been partly centralised. The Hungarian municipal system has been concentrated, as well. On the other hand, the municipalities could be interpreted as a "trash can" of the Hungarian public administration: they received new, mainly unpopular competences on the restrictions related to the pandemic. This approach transformed in the last months, and even several unpopular decisions were recentralised. Although, these changes have been related to the current epidemic situation, but it seems, that the "legislative background" of the pandemic offered an opportunity to the central government to pass significant and reforms.

Keywords: administrative law; self-governance; administrative licenses and permission; COVID-19 pandemic; epidemic; state of danger; Hungary

INTRODUCTION AND METHODS

In 2020 and 2021, we have explored the issues of resilience and legal innovation through a dynamically changing regulatory regime in several papers.[1] The present paper is also part of this series, in which we analyse the impact of the COVID-19 pandemic on Hungarian administrative law, in the light of the current transformation in legislation, jurisprudence and jurisprudence. We are also examining the Hungarian and international trends of administrative reforms during the second year of the COVID-19 pandemic. Last but not least, we also seek to answer the question on the resilience of the Hungarian public administration during the permanently transforming regulatory environment not only in Hungary but even in Europe,[2] as well.

The aim of the research is therefore to analyse the actions of public administration in emergency situations, including crisis management. The research methodology is based on jurisprudential analysis, to compare the doctrinal foundations and empirical experience of the field. The regulation of the second state of danger (from November 2020) and its significant transformation (i.e., the issues of the special legal order, which can be considered as limited) were analysed separately. Our starting point is that a coherent framework is provided by the conditions and requirements of the principle of rule of law. Another focus of the analysis is the

[1] For example, see I. Hoffman, I. Balázs, *Administrative Law in the Time of Corona(virus): Resiliency of the Hungarian Administrative Law?*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), pp. 103–119.

[2] The challenges of the COVID were similar in other European countries. See J.H. Amberg, M. Skórzewska-Amberg, *Pandemia COVID-19 – szwedzkie uregulowania prawne*, "Krytyka Prawa" 2021, vol. 13(3), p. 146.

examination of the long-term effects of the COVID-19 related legislation on the Hungarian administrative system. Because this paper can be interpreted as the "second part" of our analysis, the legal transformation based on the former scholar debates and criticism is also examined.

THE EPIDEMIC AND THE SPECIAL LEGAL ORDER (EMERGENCY). AN OVERVIEW OF THE LEGAL REGULATION IN HUNGARY

The primary research field of the epidemiological situation can be the issues related to the introduction and regulation of the special legal order in Hungary. However, these mainly concern the field of constitutional law, this paper only deals shortly with these questions. We do not wish to take a position on that fundamental question, which is also disputed by some authors,[3] whether the introduction of the state of danger was lawful or not. Our analysis, in the light of what has been written by us in the last year, is focused on the trends of evolution of the regulation.

If we look at the Hungarian constitutional regulation, it should be emphasised that the Fundamental Law of Hungary (25 April 2011) (hereinafter: the Fundamental Law) has closed taxation on the reasons which justify the state of danger. Article 53 (1) of the Fundamental Law states that the state of danger (*veszélyhelyzet*) can be declared in "the event of a natural disaster or industrial accident endangering life and property".[4] Thus, the epidemic situation has not been among a justifiable reason of the declaration of special legal order. The detailed regulation on the establishment and introduction of the state of danger as a special legal order (emergency) is regulated by the Act CXXVIII of 2011 on Disaster Management (hereinafter: the DMA). The rules of the Fundamental Law are interpreted broadly by Article 44 of the DMA. The regulation states, "human epidemic disease causing mass illness and

[3] Z. Szente and I. Vörös stated that the introduction of the state of danger could not be justified by the constitutional regulations because epidemic is not mentioned as a cause of justification by the Fundamental Law of Hungary. See Z. Szente, *A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái*, "Állam- és Jogtudomány" 2020, vol. 61(3), pp. 115–139; I. Vörös, *A felhatalmazási törvénytől az egészségügyi válsághelyzetig és tovább*, [in:] *Jogi diagnózisok. A COVID-19-világjárvány hatásai a jogrendszerre*, eds. F. Gárdos-Orosz, V.O. Lőrincz, Budapest 2020, pp. 17–44. Other authors have different point of view. They argue that the pandemic situation can be interpreted as a "natural disaster", which is mentioned by the Fundamental Law, therefore, the introduction of the state of danger was lawful. For example, see A. Horváth, *A 2020-as Covid-veszélyhelyzet alkotmányjogi szemmel*, [in:] *A különleges jogrend és nemzeti szabályozási modelljei*, eds. Z. Nagy, A. Horváth, Budapest 2021, pp. 152–153.

[4] This regulatory model is similar to the Polish approach. See M. Czuryk, *Activities of the Local Government During a State of Natural Disaster*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), p. 112.

animal epidemic" is a justifiable reason of the declaration of the state of danger.[5] In the case of a special legal order (state of danger), in accordance with the Fundamental Law, most of the measures defined by Chapters 21–24 of the DMA could be introduced by the Government, which may issue decrees with content contrary to the acts of Parliament for a transitional period of 15 days. In addition to the emergency government decree regulations, a limited number of ministers, such as the minister responsible for education and vocational training or the minister responsible for national property, may also take decisions that constitute individual acts.

It is shown by the above regulation that the Hungarian public administration – like other European administrations – was unexpectedly affected by the COVID-19 pandemic at the level of constitutional regulation. At the beginning of the pandemic – when Hungary has not been affected by it – the institution of "health crisis" (defined by the Act CLIV of 1997 on Health Care, hereinafter: the HCA) was used (by which the provision of the health care services can be transformed).[6] The Hungarian system – which has been typically modelled for the treatment of industrial and elemental disasters[7] – did not contain detailed provisions for an emergency related to the management of a pandemic.

Within the above-mentioned framework, the state of danger – due to the COVID-19 pandemic – was declared by Government Decree No. 40/2020 (III. 11). Based on the constitutional regulation and the provisions of the DMA, the Government had the opportunity to suspend the application of acts of Parliament in its (emergency) decrees, to deviate from certain statutory provisions, and to take other (otherwise statutory, parliamentary) extraordinary measures. Based on Article 53 (3) of the Fundamental Law, these decrees shall remain in force for 15 days as a general rule, unless the scope of these (emergency) decrees is extended by the Parliament. Because the epidemic risk and its management could take more than 15 days, the Parliament – passing a bill submitted by the Government – decided to extend the scope of the emergency decrees by a general authorisation, which was the Act XII of 2020. However, the law did not enter into force within 15 days of the adoption of the first emergency government decrees, to maintain the measures, the

[5] According to other views, this regulation of the DMA "goes beyond the provisions of the Fundamental Law, i.e., it is contrary to the text of the Fundamental Law. The provisions of the Fundamental Law could not be overwritten by an Act of Parliament". According to this view, it is not an expanding interpretation, but a covert, statutory amendment to the constitution that can be considered unconstitutional. See Z. Szente, *op. cit.*, pp. 119–120.

[6] See M.D. Asbóth, M. Fazekas, J. Koncz, *Egészségügyi igazgatás és jog*, Budapest 2020, p. 39.

[7] In Hungary, after the Democratic Transition, a state of danger has been declared several times, although typically not the whole territory of the country was covered by this emergency. Thus, e.g., the government declared a state of emergency during the flood on the Danube in 2002 (Government Decree No. 176/2002, VIII. 15) and after the red mud (industrial) disaster in Devecser (Government Decree No. 245/2010, X. 6).

national chief medical officer resorted to a special solution. These restrictions and rules were maintained as a general decision of the national chief medical officer based on the epidemic emergency. The above-mentioned solution was born out of necessity, and the challenges of the casuistic constitutional regulation on special legal order is shown by it, because – as it was analysed in detail by the authors of this paper in another article[8] – the Chief Medical Officer was not entitled to issue such a normative decision.

The shortcomings of the regulation of the constitutional regulation were also recognised by the legislation. The legal basis for imposing specific restrictions was created by the Act LVIII of 2020 on transitional rules related to the termination of the emergency and on epidemiological emergency (hereinafter: the Transitional Act), by which a new institution, the epidemiological emergency, was introduced by the amendment of the HCA. The regulation on health crisis has been reshaped significantly by that act. Different restrictions – based on the epidemiological emergency, which is defined by the act as a special type of health crisis – can be introduced by the Government. These restrictive measures can be the special rules on the operation and opening hours of shops, travel, transport and freight restrictions, restriction on sale and consumption, special regulation on the public education (public education, vocational training and higher education – e.g., the introduction of digital learning). During epidemiological emergencies, the Hungarian Armed Forces can be involved in management of health care institutions and the provision of health care services can be transformed during that special situation. However, the Fundamental Law does not contain regulation on this epidemiological emergency, it is regulated only by the HCA, but it can be interpreted as a new type of emergency. This solution fits into the trend in the Hungarian legislation, that several quasi-emergencies have been institutionalised by the Acts of Parliaments, because a similar, quasi-emergency situation is regulated by the DMA during natural and industrial disasters, which are not as serious, that the declaration of the state of danger could be justified.[9]

The first state of danger – which was declared 11 March 2020 – was terminated by Government Decree No. 282/2000 (VI. 17). The Act XII of 2020 – which extended the scope of the emergency government decrees – was repealed by the Act LVII of 2020 on the termination of the state of danger.

The application of the special rules created for the period of the emergency was extended by the Transitional Act, typically until 31 August 2020. Based on the new provisions on epidemiological emergency, this state was declared by Government

[8] See I. Hoffman, I. Balázs, *op. cit.*, pp. 107–108.

[9] See P. Kádár, I. Hoffman, *A különleges jogrend és a válságkezelés közigazgatási jogi kihívásai: a „kvázi különleges jogrendek" helye és szerepe a magyar közigazgatásban*, "Közjogi Szemle" 2021, vol. 14(3), pp. 6–8.

Decree No. 283/2020 (VI. 17) for half a year. Several restrictive regulations were based on that special situation, e.g. rules on obligatory wearing face masks, and some restrictions on foreign travelling (especially travel bans outside the EU). These rules were the basis for even stricter restrictions. This regulatory model followed the trend of the V4 Countries. During the COVID-19 pandemic in Poland and in the Czech Republic special, sub-constitutional quasi-emergency regulations were introduced, especially in the acts on health care which permitted to restrict several fundamental rights without introducing a (constitutional) state of emergency.[10]

The regulation on epidemiological emergency was a transitional regime between the two waves of COVID-19 in Hungary. During late autumn a second, and a serious wave of infections and illnesses evolved in Hungary. Because of the serious epidemiological situation, the state of danger was declared on 3 November 2011 (the state of danger entered into force on 4 November). A new act, the Act CIX of 2020 has been passed. The scope of the emergency government decrees has been extended by this act. But opposite to the regime of the Act XII of 2020, the extension has not been indefinite. The Act has declared a 90-day deadline for the authorisation (and for the scope of itself). Thus, the major criticism[11] on the former regulation has been corrected by the Parliament. The Government of Hungary has not received indefinite authorisation for passing emergency decrees. Even the constitutional regulations have been amended at the end of the year 2020. The Fundamental Law was amended by the 9th Amendment by which the legal regulation on state of emergencies has been transformed. However, the new rules will enter into force in 2023, the detailed constitutional regulation which has been based on the closed taxation of the justifiable reasons and the extraordinary government measures remained, but the expiry of the extraordinary measures became more flexible. The expiry of the extraordinary measures is not defined by the constitutional rules but by an Act of Parliament which can be passed by qualified (two-thirds) majority.

The state of danger has been extended two times. First of all, it was extended until 31 December 2021 by Government Decree No. 27/2021 (I. 29), in the light of the Act I of 2021 on the protection against the coronavirus pandemic. The state of danger has been extended by another government decree and by the Act CXXX of 2021 until 30 June 2022. However, the second emergency, which has now lasted for more than a year, cannot be considered as a single period, but can be divided into several phases. This situation can be observed by permanently transforming

[10] See L. Potěšil, K. Rozsnyai, J. Olszanowski, M. Horvat, *Simplification of Administrative Procedure on the Example of the Czech Republic, Poland, Slovakia, and Hungary (V4 Countries)*, "Administrative Sciences" 2021, vol. 11(1), pp. 12–14.

[11] See T. Drinóczi, A. Bień-Kacała, *COVID-19 in Hungary and Poland: extraordinary situation and illiberal constitutionalism*, "The Theory and Practice of Legislation" 2020, vol. 8(1–2), p. 184; F. Gárdos-Orosz, *COVID-19 and the Responsiveness of the Hungarian Constitutional System*, [in:] *COVID-19 and Constitutional Law*, ed. J.M. Serna de la Garza, Ciudad de México 2020, pp. 159–161.

general special-order regulations. The Government Decree No. 484/2020 (XI. 11) is the framework decree on the measures and restrictions related to the COVID-19 related state of danger. This decree has been amended 37 times and the regulation of this decree was changed in a total of 157 points – during a 14-month period. These general rules are hard to follow, especially for the addressees of the rules. In several cases, the various government communication channels and official practice have played a decisive role in the definition and interpretation of the regulations, due to their difficult transparency. The role of the interpretation of the administrative bodies is strengthened by the relatively small number of judicial review procedures.

In the first phase – which lasted from November 2020 (close to the peak of the second wave of the pandemics), until late spring 2021 (when the third wave ended) – strict restrictions based on the previous regulations were introduced. However, the nature of the restrictions was different (compared to the rules of the first state of danger): curfew restrictions were limited to evening and night-time hours, but mask wearing provisions became stricter overall, and the switch to digital education in public education was introduced much later, during the period of the third wave when the health care system was seriously threatened by the mass infections. This period of severe restrictions was followed by the period after the third wave, which coincided with the period of mass vaccination: in this period, the relaxation of restrictions was linked to the issue of coronavirus immunity. From the summer of 2021, the above-mentioned discounts linked to immunity and proof of immunity were replaced by a general lifting of restrictions, followed by further restrictions in the fourth wave of the coronavirus wave, in the autumn of 2021. A detailed analysis of the above issues, as well as a detailed analysis of the constitutionality of the reliefs linked to immunity, would go beyond the scope of this paper.

It should be noted that the travelling restrictions have remained, and they have been enforced by a new act, the Act CIV of 2020. In the first phase of the second state of danger these restrictions were more severe. New sanctions have been introduced by this regulation, which have not been enough clear. It was not specified by the act whether these sanctions are objective one[12] or they are based on the imputability of the citizens, and therefore, the nature of these sanctions are partly obvious. The next interesting issue in the context of administrative law is the late spring and summer termination of restrictions. As we have mentioned above, this was done in two main stages: first, in view of the mass vaccination, the termination and relaxation of restrictions were linked to the immunisation against coronavirus, which was certified by a specific public document, the so-called "immunity certificate" (*védettségi igazolvány*). The situation of the certificate of immunity was specific since it was a public document pursuant to Section 23/A of Government

[12] On objective administrative sanctions in Hungarian administrative law, see M. Nagy, *Interdiszciplináris mozaikok a közigazgatási jogi felelösség dogmatikájához*, Budapest 2010, pp. 39–74.

Decree No. 484/2020 (XI. 11). It was necessary to regulate this provision because Section 3 (7) of Government Decree No. 60/2021 (II. 12) on the certificate stipulated that the immunity certificate could be delivered by ordinary mail to the letterbox. Although the certificate, which serves to certify the client's specific details and his rights in relation to his immunity from coronavirus infection, is clearly an official certificate in the light of Section 96 of the General Law on the Protection of Persons against the Risk of Coronavirus, it is an official decision in the light of Section 94 (2) of the Act CL of 2016 on the Code of General Administrative Procedure (hereinafter: the CGAP), therefore it is a public document. However, the above-mentioned regulation – by which the delivery to a letterbox was allowed – raised the question whether the certificate is still an authentic instrument. This question was particularly important because many people did not receive the mailing, which, due to the nature of the above-mentioned simple letterbox delivery, could not be traced by the postal enquiry system. In these cases, those without an e-government access (the so-called "client gateway") had to go to government offices to reapply, causing no small amount of inconvenience and disruption, while they were also unable to exercise their rights based on the immunity certificate. However, the regulation was problematic, but it was lawful, because in the time of a state of danger the emergency decrees could contain regulations which do not follow the rules of the acts of Parliament. In the case of the EU COVID Green Pass, the Hungarian regulation was based on the European rules, therefore the e-government solutions were preferred. However, if a client requires an official EU COVID Green Pass, it is sent by the ordinary, registered mail services (Section 6 of Government Decree No. 366/2021, VI. 30).

However, in the summer of 2021, a broader set of restrictions imposed due to the coronavirus pandemic were terminated. Among the above-mentioned relaxations, two rules should be emphasised by which important doctrinal issues were raised. On the one hand, Section 1 of Government Decree No. 307/2021 (VI. 5) stipulated that, unlike Article 46 (4) of the DMA from 15 June 2021, despite the existing emergency, the mayor, the mayor-general, the president of the county assembly shall not exercise the powers of the body of representatives and the assembly, but this exercise of powers shall revert to the councils, the so-called "representative bodies". Similarly, Section 1 of the Government Decree No. 438/2021 (VII. 21) provided for the possibility of holding a national referendum – which elections were banned by Article 51/A of the DMA. A dogmatic question concerning the above-mentioned decrees is whether the regulations of a government decree which is authorised by the Fundamental Law and by the DMA can amend the rules of the DMA.

ADMINISTRATIVE PROCEDURAL LAW AND THE COVID-19 PANDEMIC

One of the major features of the special legal order (state of emergency, etc.) is that certain fundamental rights can be restricted more widely.[13] Related to that constitutional principle, fundamental (administrative) procedural rights can be restricted during the state of danger in Hungary.[14] These procedural constraints may be particularly acute in an epidemiological situation, because on procedural regulation should be impacted by the reduction of human contacts. This necessarily entails the requirement to amend the rules of administrative procedures.[15] Challenges of modern epidemics include their economic effects. In a globalized world, the travel and trade restrictions can necessarily be linked to a decline in economic production, which should be – at least, partly – treated or compensated by administrative measures.

If we look at the impact of epidemiological measures on the Hungarian administrative procedures, it can be emphasised however, the issues related to the reduction of the number of contacts have appeared in procedural law, the changes related to economic administration have had more significant role. Administrative proceedings are typically file-based proceedings in which the presence of clients is not as important as in court proceedings (litigation) based on the constitutional principle of public hearing. Therefore, in the administrative procedures – unlike to the court procedures – it has not been issued general and uniform special regulation for the state of danger, an "emergency administrative procedural code" has not been published. The administrative procedures have been based on the regulation of the CGAP, just several additional sectoral regulations have been published by emergency government decrees. The introduction of a specific, pandemic-related procedural regulation was also avoided because the CGAP follows an abstract regulatory model. Therefore, the sectoral regulation has a relatively wide margin for the introduction of specific regulation. Therefore, the pandemic-related specialties have been regulated by sectoral procedural norms.

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[13] H. Barnett, *Constitutional and Administrative Law*, London–Sydney 2002, pp. 821–822.

[14] Article 54 (1) of the Fundamental Law of Hungary: "Under a special legal order, the exercise of fundamental rights – with the exception of the fundamental rights provided for in Articles II and III, and Article XXVIII (2) to (6) – may be suspended or may be restricted beyond the extent specified in Article I (3)". A similar regulation has been institutionalised by the 9th Amendment of the Fundamental Law (amended para. 2 Article 52 of the Fundamental Law).

[15] The public order regulations have similar challenges. See J. Kostrubiec, *The Role of Public Order Regulations as Acts of Local Law in the Performance of Tasks in the Field of Public Security by Local Self-government in Poland*, "Lex localis – Journal of Local Self-Government" 2021, vol. 19(1), p. 124.

In the field of social and health administration, the Government has implemented wide-ranging reforms of the care system, also in response to the challenges posed by the coronavirus pandemic. Some of these fit in with the Government's intention to prioritise a strict subordination model of the armed forces. Thus, the powers of the National Directorate General of Hospitals, which is responsible for the maintenance of the public health care system, have been extended and a strict hierarchy is strongly enforced. However, a detailed analysis of these changes, which have radically transformed the Hungarian public health care system, is well beyond the scope of this article and could be the subject of a separate paper. In addition to the restructuring of the organisational and service framework of the health administration, the procedural regulations of the sector have not been amended radically, the CGAP has been widely applied. The most significant difference has been the regulation relating to the immunity certificate. As we have mentioned – in contrast to the general regulations of the CGAP – documents which were otherwise clearly considered to be official certificates, were delivered as simple mails to the letterboxes, and not as official documents, which can be tracked by the postal system. The aim of this change was to speed up the receipt of the certificates and to reduce administrative costs. It resulted in varying degrees of uncertainty. This approach has been partially changed. The EU COVID Green Pass – based on Directive (EU) 2021/953 – are issued mainly by the e-government system[16] (by the e-Health system, the so-called Electronic Health Service Space – *Elektronikus Egészségügyi Szolgáltatási Tér*, ESSZT). For those people, who haven't access to the ESSZT, the COVID Green Pass can be issued by the Budapest Metropolitan Government Office, as an official document, which is sent as a registered mail – following the general regulations of the CGAP.

However, the regulation on social and employment procedure has not been amended, a new legal institution has been established during the first wave of the pandemic. It is the so-called "controlled notification". This reform was justified by the reduction of bureaucracy, the simplification of the procedures and thus to reduce obstacles to economic activities. The traditional administrative permissions have been widespread erased because the majority of the administrative licensing cases are now under the scope of the new rules. A new, separate regulatory regime has been established. The CGAP is just a subsidiary regulation in the "controlled notification" cases, thus the primacy of the CGAP has been weakened by these new rules.[17] Not only the bureaucracy is increased by the institutionalization of administrative permission means, but the protection of the rights of opposing clients are provided by these procedures, as well. However, the legal protection of

[16] The e-government systems of the public services have several cybersecurity issues. See M. Karpiuk, *The Local Government's Position in the Polish Cybersecurity System*, "Lex localis – Journal of Local Self-Government" 2021, vol. 19(3), pp. 610–611.

[17] See L. Potěšil, K. Rozsnyai, J. Olszanowski, M. Horvat, *op. cit.*, p. 15.

these clients is provided only moderately by the newly institutionalised controlled notification. It is stated by the Transitional Act – which contains the permanent rules on controlled notification – that the protection of public interest is primarily in this procedure. The rights and interests of other persons or clients adversely affected can be protected by the authority, if appear only to the extent that, during the proceedings, the authority may prohibit the activity of the applicant client if "the notification constitutes an abusive exercise of a right". Thus, the rights of the opposing clients can hardly be enforced by the administrative procedure, they are encouraged to submit much more expensive and cumbersome civil lawsuits (mainly property and tort lawsuits). However, this is not only a risk for the opposing client: the private law system replacing administrative-legal protection also poses risks for the person who intends to carry out the activity. The claims of the opposing parties do not arise before the investment starts, but only afterwards, during the economic activity. In private lawsuits, an *ex tunc* decision by the court may result the cessation of the activity or its restructuring at considerable cost. By contrast, the *a priori*, *ex nunc* nature of administrative procedures reduces the risk of these events, since the claims and entitlements of the opposing parties become clear before the investment starts. Primarily the burden on the administration and not on the clients, since it has made things more difficult for both the applicant and the opposing on clients are reduced by these "cutting red tape" reforms.[18] On the other hand, it is highlighted by the literature, that in addition to the limited enforceability of opposing client rights and the difficulty of protecting the legal interests of opposing clients, there are stronger corruption risks in this type of cases. Because, in the case of silence, the infringements of the authorities (based on corruption) are less conspicuous than in a formal decision of a permission (licensing) case.[19]

The reduction of the number of administrative cases was immediately reflected by the data of official statistics. The number of cases of district offices – which bodies can be considered as the general first instance authorities in the Hungarian public administration – in the second half of the year 2020 was only 81.85% of the number of cases of the first half of the year 2020. It is a significant reduction. However, the number of cases of the second half of the year is mainly lower than in the first half of the year. The reason of its decrease is that there are decisions, which are valid for one year and they are decided in the first half year. As a comparison,

[18] For a more detailed analysis of the procedural aspects of this issue, see K.F. Rozsnyai, I. Hoffman, *New Hungarian Institutions against Administrative Silence: Friends or Foes of the Parties*, "Studia Iuridica Lublinensia" 2020, vol. 29(1), pp. 124–126; K.F. Rozsnyai, I. Hoffman, A. Bencsik, *Általános eljárási szabályok: üres kagylóhéjak?*, "Jogtudományi Közlöny" 2021, vol. 76(7–8), pp. 312–315.

[19] V. Alaimo, P. Fajnzylber, J.L. Guasch, J.H. López, A.M. Oviedo, *Behind the Investment Climate: Back to Basics – Determinants of Corruption*, [in:] *Does the Investment Climate Matter? Microeconomic Foundations of Growth in Latin America*, eds. J.L. Fajnzylber, J.H. López, Washington–Basingstoke–New York 2009, pp. 141–142.

it should be highlighted that the number of cases of the second half of the year 2019 was 97.80% of the number of cases of the first half of the year. Therefore, it is even more striking that in the first half of the year 2021, the number of district office decisions was not higher but much lower than in the second half of the year 2020: it was 77.14% of the first half of the year 2020 and 94.24% of the second half of the year 2020 (see Figures 1 and 2).

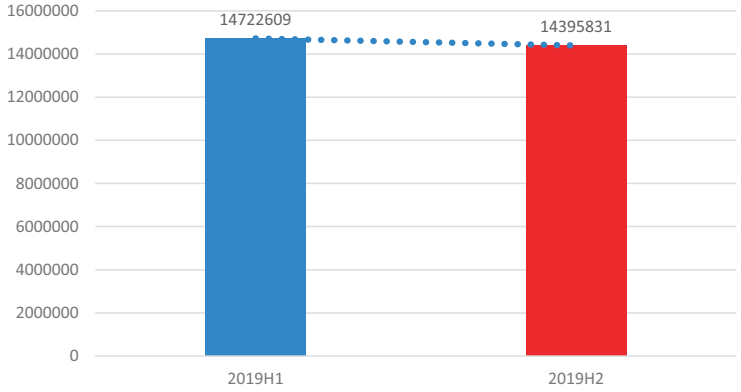

Figure 1. Number of administrative cases of the district offices in 2019 (with linear trendline)

Source: OSAP 1229 hatósági statisztika, https://2015-2019.kormany.hu/hu/dok?source=7&type=308#!DocumentBrowse (access: 21.11.2021).

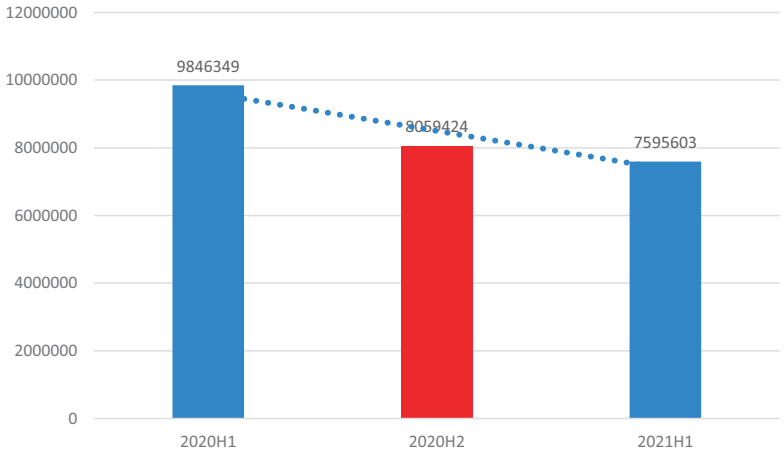

Figure 2. Number of administrative cases of the district offices in 2020 and in the first half of 2021 (with linear trendline)

Source: OSAP 1229 hatósági statisztika, https://2015-2019.kormany.hu/hu/dok?source=7&type=308#!DocumentBrowse (access: 21.11.2021).

It should be emphasised, that special procedural rules have been established for administrative court procedures – which can be interpreted as a part of the administrative procedural law in a broad sense[20] – in contrast to the administrative procedures of the authorities. The main aim of the pandemic emergency regulation of the administrative court procedure has been the reduction of the personal contacts.

TRANSFORMATION OF THE CENTRAL GOVERNMENT STRUCTURE: THE MILITARISATION OF THE ADMINISTRATION?

Like administrative procedural law, legal regulation on the organisation of public administration has also been significantly affected by the COVID-19 pandemic. Primarily, decision-making of the central government is strongly influenced by the challenges of the pandemic situation. In the following, we briefly focused on the administrative doctrinal elements of this issue, focusing on some of the issues that arise in the legal regulation and which seem to extend beyond the pandemic period.

Already at the time of the appearance of the coronavirus epidemic, but before the virus appeared in Hungary, the Operational Task Force for the Control of the Coronavirus Epidemic (hereinafter: the Operational Task Force) was established by the Government Decision No. 1012/2020 (I. 31). The main aim of the Operational Task Force has been to carry out the tasks of combating the epidemic and of preparing and coordinating decisions in connection with it. The establishment of this structure raised several issues. If we look at the regulation of Act CXXV of 2018 on Government Administration (hereinafter: the GA Act), this organisation ultimately fits into the general framework. Section 10 (1) of the GA Act stipulates that the Government may, in accordance with its freedom of organisation under Article 15 (2) of the Fundamental Law, "establish other bodies to make proposals, give opinions or provide advice".[21] If we look at Government Decision No. 1012/2021 (I. 31), it can be emphasised that this body did not have explicit decision-making powers. However, the name of the body and its structure is different from traditional forms of civil administration. "Operational task forces" are mainly established to operate and direct armed forces.[22] The shift towards armed forces and law enforcement administration was also reflected by the leadership issues, as well. Although the coordination of the tasks of epidemic control was the task of

[20] See K.F. Rozsnyai, *The Procedural Autonomy of Hungarian Administrative Justice as a Precondition of Effective Judicial Protection*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), pp. 492–493.

[21] See J. Fazekas, *Central administration*, [in:] *Hungarian Public Administration and Administrative Law*, eds. A. Patyi, Á. Rixer, Passau 2014, pp. 293–294.

[22] See M. Czeglédi, *Gondolatok a vezetés-irányítás jelenéről, jövőjéről*, "Honvédségi Szemle" 2018, vol. 146(33), pp. 76–78.

the so-called "operational staff", it has not been presided by the Minister of Health and Human Resources, the Minister responsible for health pursuant to Section 92 (1) and Section 95 of Government Decree No. 94/2018 (V. 22), but the president of this body is the Minister of the Interior, who is also responsible for the direction of law enforcement agencies. Similarly, law enforcement agencies and their leaders have been also extensively involved in the operation of the staff.

By the termination of the first emergency, the Operational Task Force was also restructured: although the Government Decision No. 1012/2020 (I. 31) was repealed, it was re-established by the Government Decree No. 286/2020 (VI. 17) – referring to the Epidemiological Emergency Regulation of the HCA. The approach of the administration of the armed forces is reflected not only by the establishment of the Operational Task Force. The approach of the decision-making of the armed forces has been more widely spread in the Hungarian central public administration system after 2020. In 2020 and 2021, two other operational task forces, the Economic Defence Operational Task Force (Government Decree No. 297/2020, VI. 24) and the Operational Task Force Responsible for the Restart of the Economy (Government Decree No. 324/2021, VI. 9) were established. The establishment of the above-mentioned operational task forces can be difficult to fit into the system of the GA Act. The GA Act does not require the form of the government decree to establish such bodies, the form of the government decision is enough for it. In view of this, the use of the form of a government decree does not seem appropriate in these cases.

Another element of the "militarisation" of the Hungarian central government structure is the institution of hospital commanders. The Government Decree No. 287/2020 (VI. 17) institutionalised the post of hospital commander to control the use of health supplies purchased from budgetary resources. The hospital commanders can be interpreted as managers. They were typically law enforcement (mainly police) officers and they were directed by the Ministry of Interior, as the minister responsible for law enforcement. Although the Minister responsible for health had to be informed on the appointment and the activities of hospital commanders, the control of health stocks, by which medical activities are significantly influenced, was essentially in the hands of a law enforcement actor. These examples illustrate the trend: the prolonged extraordinary legal order has also left its mark on the central administration, by strengthening the administrative model of armed forces, i.e. by a kind of administrative "militarisation".

LOCAL SELF-GOVERNANCE IN THE TIME OF CORONA(VIRUS)

The issue of self-government is an important issue in administrative legal research related to the coronavirus epidemic. The epidemiological situation and the socio-economic crisis, which has been partly caused by the epidemic restrictions,

are a situation that is clearly pointing in the direction of strengthening centralisation trends. In crisis situations, centralisation steps and these administrative reforms have traditionally taken precedence over decentralisation.[23] The Hungarian municipal system and regulation has been significantly influenced by the COVID-19 pandemic. Therefore, the municipal administration and organisation issues have been transformed based on the emergency (state of danger) situation. Secondly, the municipal tasks have been changed during the time of pandemic. Thirdly, alternative, local solutions of the communities have been evolved during the time of the pandemic. We would like to analyse these amendments and transformations.

A special regime of the municipal decision making has been introduced by the emergency regulations in the Hungarian public law. Because of the extraordinary situation which requires quick answers and decisions, the council-based municipal decision making is suspended by the DMA. It is stated by Article 46 (4) of the DMA, that the competences of the representative body (*képviselő-testület*) of the municipality is performed by the mayor when the state of danger is declared by the Government of Hungary. There are several exceptions, thus the major decisions on the local public service structure cannot be amended and restructured by the mayors. Therefore, the mayors have the local law-making competences, as well. The mayors can pass local decrees, which remain in force after the end of the state of danger. The mayors can pass and amend the local budget and they can partly transform the organisation of the municipal administration, as well. The mayors can decide the individual cases. The scope of the competences (of the mayors) – set out in the previous sentences – is not fully clear but based on the legal interpretation of the supervising authorities (the county government offices and the Prime Minister's Office), the competences of the committees of the representative bodies shall be performed by the mayors, as well. The above also indicates that the not very detailed legal provisions left many questions open and ultimately left it to the discretion of the mayors to make use of the specific situation created by the special legal regime. The different mayors reacted differently to this situation during the first emergency in spring 2020, and essentially followed the same pattern from autumn 2020 onwards.

However, this pattern has been transformed after 15 June 2021, despite the existing state of danger. As we have mentioned, Article 1 of Government Decree No. 307/2021 (VI. 5) stipulates that, from 15 June 2021, despite the existing state of danger, the mayors and the presidents of the county assemblies shall no longer exercise the powers of the representative bodies and the county and capital assemblies. The exercise of these powers shall revert to the elected bodies. We have mentioned earlier that the conformity of this regulation with the Fundamental Law is highly disputed. The regulation of Government Decree No. 307/2021 (VI. 5) raises another issue. Article 1 of the Government Decree only restored the exercise

[23] See J. Kostrubiec, *op. cit.*, pp. 112–113.

of the powers of the representative bodies and the meetings of the committees have been allowed by it, while at the same time Article 3 (4) of the Government Decree No. 15/2021 (I. 22) has not been amended. This regulation states that the powers of the committees shall be exercised by the mayor, and it has not been amended, it has been still in force. Thus, under the existing legislation, the committees are entitled to have meetings and sessions, but the power of the committees is exercised by the mayors. But these rules are not applied by the municipalities, ultimately, a "law-breaking" practice (customary law?) has emerged, as the documents available show that in most municipalities, committees make decisions after 15 June 2021. Because these decisions of the committees have not been legally supervised by the County and Capital Government Offices, it seems that the current regulation can be interpreted as a codification mistake which has not been fixed yet.

The second issue is the centralisation of the municipal tasks and revenues. This topic we have already analysed in the article of 2021.[24] As we have mentioned, local taxation was partly centralised, because the vehicle tax – the revenues from this tax were formerly shared between local and central government – became a state tax, the revenues has been not shared by the municipalities since 2021. The most significant centralisation of the taxation was the (emergency) Government Decree No. 639/2020 (XII. 22) by which the local business tax rate has been maximalised at 1% (instead of the former 2%) for the small and medium enterprises which have less than yearly 4 billion HUF (approx. 10.8 M EUR) balance sheet total. It has been a significant intervention into the local autonomy, and especially into the autonomy of the larger municipalities, because the local business tax is one of the most important revenues of them.[25] This amendment has had very serious impact on the municipal finances. Because of the economic crises related to the COVID-19 pandemic, the municipal revenues – and even the business tax revenues – decreased significantly (the municipal revenues of the year 2020 were 90.06% of the local tax revenues of the year 2019), but the share of the business tax increased (see Table 1).[26] Similarly, the municipal financial independence has been decreased

[24] See I. Hoffman, I. Balázs, *op. cit.*, pp. 105–107.

[25] See P. Bordás, *Egyenlők és egyenlőbbek: A helyi iparűzési adóból származó bevételek települési szintű eloszlásának dilemmái különösen a COVID-19 járvány idején*, "Comitatus: Önkormányzati szemle" 2021, vol. 31(238), pp. 455–453; J. Siket, *Centralization and Reduced Financial Resources: A Worrying Picture for Hungarian Municipalities*, "Central European Public Administration Review" 2021, vol. 19(1), pp. 267–268.

[26] This tax reduction, as a state aid for small and medium enterprises has been approved by the European Commission based on the Temporary Framework for the coronavirus-related state aids. See EU Commission Press, *State aid: Commission approves €478 million Hungarian scheme to support small and medium-sized enterprises affected by coronavirus outbreak*, 1.2.2021, https://www.pubaffairsbruxelles.eu/state-aid-commission-approves-e478-million-hungarian-scheme-to-support-small-and-medium-sized-enterprises-affected-by-coronavirus-outbreak-eu-commission-press (access: 10.2.2022).

by the Government Decree No. 603/2020 (XII. 18), because the introduction of new municipal charges and increasing the existing ones have been prohibited by this regulation. Therefore, the decrease of the municipal business tax rate limited the financial independence of the municipalities, the local government system has become more dependent on state aid.

Table 1. Business tax revenues in Hungary

Year	2016	2017	2018	2019	2020
All revenues at regional and local level (in million HUF)	2,240,787	2,437,439	2,508,116	2,774,200	2,715,879
All tax revenues at regional and local level (in million HUF)	805,446	845,975	923,664	1,006,066	906,076
Business tax revenue (in billion HUF)	584,380	638.731	711,276	788,308	729,000
Business tax revenue as % of all local revenues	26.08	26.20	28.36	28.42	26.84
Business tax revenue as % of tax revenues at local level	72.55	72.50	77.01	78.36	80.46

Source: Hungarian Central Statistical Office (www.ksh.hu).

Similarly, the municipal system has been concentrated. The regulation on special investment area, which was introduced in 2020, have remained in force.[27] In 2020 only one area was established by the Government and in 2021 only one more was founded in Mosonmagyaróvár (Western Hungary) by the Government Decree No. 44/2021 (5 February).

However, the centralisation trend has been dominant during the legislation of the last year, different tendencies can be observed, as well.[28] As we have mentioned, the municipalities can be the "trash cans" of the public administration. This "trash can" role can be observed in Hungary, as well. During the first wave of the pandemic, the municipalities were empowered to pass decrees on the opening hours and shopping time for elderly people for the local markets, and they were empowered to pass strict regulations on local curfew. These measures were restrictive; therefore, they can be interpreted as unpopular decisions. Similarly, after the second wave of the pandemic, it has been stated that there is a mandatory face masks on the streets and other public spaces if the municipality has more than 10,000 inhabitants. The detailed regulation on these measures shall be passed by the municipality. Therefore, the unpopular measures on public space mask wearing became municipal tasks, as well. The regulation on mandatory face mask wearing has been amended several times, and the approach of it has been changed. During the third wave wearing face masks on public spaces and streets became mandatory. However, these rules changed, and in the summer mandatory face mask wearing was terminated, but

[27] See the analysis of the special investment areas in I. Hoffman, I. Balázs, *op. cit.*, pp. 104–106.

[28] See J. Fazekas, *op. cit.*, p. 292.

during the fourth wave, the face mask wearing became mandatory in public indoor areas and in public transport vehicles. Because these issues are regulated by a government decree, it cannot be regulated by local decisions. Therefore, the "trash can" approach has partially changed and even these unpopular decisions have been recentralised during the last months.

CONCLUSIONS

It is clear now that the COVID-19 pandemic leaves lasting traces on the Hungarian legal (and administrative) system. Several important regulations will remain after the COVID-19 pandemic, such as the health emergency (which has been institutionalised by a sectoral act of Parliament and not by the constitutional rules or bay an act which should be passed by qualified two-thirds – the majority of the Parliament), the special statutory rules weakening the primacy of the CGAP (especially the controlled notification), and the provisions for special investment (economic) zones. Like in 2020, the "legislative background noise" due to the threat of an epidemic seems to have served as a kind of backdrop for certain changes and transformations that would otherwise receive more (public and political) attention. Another important issue was the transformation of the central government structure, the patterns and logic of the military administration have been applied by the transformation, therefore a "militarisation" process can be observed in Hungary, as well.

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ABSTRAKT

Węgierskie prawo administracyjne uległo istotnemu wpływowi pandemii COVID-19. Do węgierskiego systemu prawnego wprowadzono szereg przepisów uchwalonych w stanie zagrożenia związanym z sytuacją pandemiczną. Efektem epidemii były zmiany w prawie postępowania administracyjnego. O ile przepisy dotyczące e-administracji nie zostały zmienione w sposób istotny (ze względu na niedawne reformy w kierunku cyfryzacji), o tyle przepisy dotyczące licencji i pozwoleń administracyjnych poddano nowelizacji. Osłabiono prymat Kodeksu postępowania administracyjnego zawierającego przepisy ogólne oraz wprowadzono nową uproszczoną procedurę i tryb. Skutki tych reform ujawniły się w 2021 r. spadkiem liczby spraw administracyjnych. Procesy decyzyjne w organach rządowych częściowo uległy przekształceniu i można tam zaobserwować tendencję do „militaryzacji". Reformom podlegał także samorząd terytorialny. Transformacja objęła dwa przeciwstawne trendy. Z jednej strony węgierski ustrój administracyjny uległ większej centralizacji – dochody i realizacja zadań gmin zostały częściowo scentralizowane. Koncentracji uległ również węgierski system samorządu gminnego. Z drugiej strony gminy można określić mianem „śmietnika" administracji publicznej na Węgrzech – otrzymały nowe, przeważnie niepopularne kompetencje w zakresie ograniczeń pandemicznych. W ostatnich miesiącach takie podejście zmieniono i nawet kilka typów niepopularnych decyzji wróciło na poziom centralny. Choć zmiany te związane są z bieżącą sytuacją epidemiczną, wydaje się, że pandemiczne „tło legislacyjne" stało się dla rządu okazją do przeprowadzenia istotnych reform.

Słowa kluczowe: prawo administracyjne; samorząd; licencje i pozwolenia administracyjne; pandemia COVID-19; epidemia; stan zagrożenia; Węgry