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The Roma and Central Public Administration in Hungary

1. Introduction. The idea of Hungarian public administration as being directed by certain facts of objective reality.

If we should determine what the core characteristic of the ‘good state’ is, we could say that it is the ability to reflect on real social problems. It is a pre-question in the examination of public administration, positive law, the performance of public administration and the effectiveness of law enforcement that at what degree the state and society will provide answers for the urging questions of the coming years and decades. Regarding Hungary, such questions are demography problems, the Roma issue¹ and the possible effects of climate change².

It is indubitable that in Hungary the Roma issue is one of the most urgent and in practice least handled problems. The latter is true also because in public spheres – including the state/public administration sectors of the public – it is still not well-settled which are the legitimate and constructive forms, frameworks and wordings of raising the issue.

From the aspect of our topic it is another important context that the change of paradigms mentioned so often in relation with Roma policy shall not mean simply the numeric strengthening of the institutions of representative democracy today: in order to allow the Roma minority to become an active, initiative part of the legal community in Hungary, it is obvious that the democracy concept of legal-procedural stability must be overstepped, broadening its scope and content with value-based aspects.

The protection of the interests of future generations – thus of the newer generation of Hungarian Roma people with growing significance and, based upon the demographic trend, with growing numbers – would require us to ‘restrict the emergence of the will of the empiric majority by referring to an as yet non-existing population, eventually leading us to a principle which is contrary to the opinion of the current majority – expressed at political elections or through the market game of supply and demand.’³ However, in order to operate them smoothly, the traditional principles of democratic representation and decision-making shall be supplemented, these new institutionalised changes

1 See e.g. Rixer Ádám: A roma érdekek megjelenítése a jogalkotásban. [Incorporation of Roma interests into legislation] Patrocinium, Budapest, 2013.

2 See e.g. <<http://www.inhungary.com/budapest/desert-in-hungary.html>>accessed 5 September 2013.

3 Lányi András: Az ökológia, mint politikai filozófia. [Ecology as political philosophy] (2012) Politikatudományi Szemle 21(1) 118.

are/will be necessary.⁴ The constitutional ground of this concept may be that the new Fundamental Law stands in front of us as an 'upward open' constitution. This upward openness means that during the validity of the new Fundamental Law one of the state's (and its organisations') main tasks is to proceed during the enactment of any normative or individual regulation or during the interpretation of Hungary's Fundamental Law by keeping in mind the interests of future generations.⁵ It will be an eminent task of science – at least partly – to elaborate these *supplementary* principles.

There's a total unity within scientific literature that the strategic public policy-making must concentrate mainly on comprehensive advantages, instead of the sectoral ones; moreover these collective benefits must be sustainable, which means that any particular policy has to offer permanently more utilities than disadvantages.⁶ These are those principles in which there's a wide agreement among authors within the given field.

Otherwise, from a scientific aspect, the connection between Roma organisations and central public administration is a poorly discovered field of research. Not only management sciences, legal science or political science are 'failing' concerning the given issue, but it may be also stated in general that several other sciences do begin to handle this topic surprisingly lately.⁷

2. General features of public policy that determinate the relation of the Roma and public administration in Hungary

A starting point of this subchapter is that new Central-Eastern-European democracies established after 1989 did not build the political system on layered, sophisticated consultation procedures and institutional systems based on wide scale social participation, but – almost exclusively – on the Parliament-centred formation of political structures based on the principle of representation. Many believe that one of the great problems of societies getting out of the control of a dictatorship is that due to the lack of civil society filling in the space between individuals and the state during their socialisation, the members of these societies could never naturally learn to incorporate the identification of problems, formulation of their interests, exchange their thoughts, the harmonisation of different opinions, without which the various problem-handling methods would not have been developed, either. From the public policy side it may be stated that in Hungary the legal and

4 Ibid.

5 See e.g. Article P) of the *Fundamental Law of Hungary*:

‘All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.’

6 See e.g.: Martin Brusis – Katarina Staronová – Radoslaw Zubek: Introduction. The Challenge of Strategic Policy Making. In: Martin Brusis – Katarina Staronová – Radoslaw Zubek (Eds.): *Strategic Policy Making in Central and Eastern Europe*. NISPACee, Bratislava, 2007. 9.

7 See e.g. Prónai Csaba: A kulturális antropológiai cigánykutatások történetének összefoglaló vázlata (1951-1987). In: Kézdi Nagy Géza (ed.): *A magyar kulturális antropológia története*. Nyitott Könyvműhely, Budapest, 2008. 483.

institutional requirements of representative democracy were fulfilled after 1990, but since then no material change has happened towards participative democracy; this means that Hungarian democracy “has frozen into” the level of representative democracy.⁸

A father tendency, a feature which may be hardly separated from the one mentioned earlier is that the all-time state – formed after the transition – imitates, reconstructs and replaces the civil sector through its conscious efforts, by this making it weaker. During the analysis of this, it must not be forgotten that in the economic and sociological literature of the past one or two decades the state, by undertaking the ‘replacement’ and ‘simulation’ of the organisation of market and self-regulating social mechanisms and the political organisation of society, it eventually hampers the connection between political decision-making mechanisms and the actual fragmentation of the interests of society.

It's important because – in an ideal situation – a civil-type organisation creates an institutional channel between the society and the state, mediating and transmitting the needs and interests of the society towards the state, and also forces the state to permanently legitimize itself, strengthening the openness and transparency of its public operation.⁹

Until the middle or the end of the 2000s severe criticism hit the state, saying that ‘the effectiveness of the organisation of the state and within this, of governmental control is low due to the prolificacy of “background organisations” and because of the permanent intention to establish para-state pseudo-civil organisations (public foundations, public bodies, public utility organisations)’.¹⁰ There were extremely many critiques related to the *Foundation for the Hungarian Gypsies* (Magyarországi Cigányokért Közalapítvány) in this context.¹¹

While in the 90's and the beginning of the 2000s the vast majority of the authors has been blaming the negative effects of the 'mesosphere' dominated by the state, saying that this influence makes the civil society weaker, nowadays most of the critiques mention the direct expansion of the state that takes over several public duties from other actors.

Based on the main features of public policy/administrative environment it must be stated about Hungary that

a) public policy has balance problems; the weight and coordination of the relevant players is disproportionate and incalculable due to the extreme politicisation, and political predominance

8 Dr. Jenei György: Adalékok az állami szerepvállalás közpolitika-elméleti háttéréről. [Supplements to the public policy – theoretical background of state participation] In: Hosszú Hortenzia – Gellén Márton (Eds.): Államszerep válság idején [State role in crisis] COMPLEX Kiadó, Budapest, 2010. 95.

9 Jagasics Béla: A nonprofit szféra elmélete. [Theory of the nonprofit sphere] Landorhegy Alapítvány, Zalaegerszeg, 2001. 5.

10 Sárközy Tamás: Kormányzás, civil társadalom, jog. [Governing, civil society, law] Kossuth Kiadó, Budapest, 2004. 5.

11 Government Resolution 1071/2011. (III.23.) on the elimination of the Foundation for the Hungarian Gypsies.

characterises the relationship of the political-administrative system and society, regardless;

b) the traditional features of Hungarian political culture are paternalism, intolerance and the transformation of personal relations into political ones,¹² and last, but not least the presence of corruption phenomena, which may be observed at a degree exceeding the average of the surrounding area.¹³

c) the final phase of public policy is missing; public policy processes begin but they often do not get to the end. There is no evaluation phase and closure.¹⁴ Moreover, legislative impact studies – either preliminary or subsequent (posterior) analyses (law-reviews) – are very rarely added to the detailed legal provisions. However, it is also a fact that by the time anyone could start such a subsequent impact study, the given legal instrument is not in effect any more...¹⁵

It is also important that in Hungary ‘[the] all-time present seems to be outstanding because of the strong delegitimization of the all-time past, making it seem worthless, instead of focusing on its own achievements’.¹⁶ In this field of force even the changes of the government are of the significance of ‘catastrophe history’.¹⁷

Moreover, there are almost no programs that span over political courses: the very first deed of the new Government related to each and every sectoral policy is emphasizing that all efforts of the previous Government ended in failure in the last 4 or 8 years. We – in Hungary – take this fact as if it was normal, but it is not at all.

Related to the presentation of roma interests within governmental decision making processes we must declare in advance that the most important question regarding different strategies and institutional systems is not necessarily the content of them (beyond some democratic requirements), but how the policies, the given regulations and developing – and mainly good – practices could be retained, could be saved. As has been mentioned earlier, the shift of the government has features of a ‘catastrophe’ in Hungary; it is well predictable that the roma-strategy of the current government will be one of the main targets of strong attacks after the next election, trying to delegitimize the previous course (if the governing party or coalition changes). So, because of that the most important question today is how the achieved results could be preserved. The main chance, coming from the two third majority, is to put the substantial provisions in acts passed by a qualified majority, hardening the deregulation of those regulations.

12 Kulcsár Kálmán: Politika és jogszociológia. [Politics and legal sociology] Akadémiai Kiadó, Budapest, 1987. 336.

13 http://www.ey.com/HU/hu/Newsroom/News-releases/global_fraud_survey_2010_pr > accessed 11 July 2013.

14 Pesti Sándor: Közpolitika szöveggyűjtemény. [Public Policy Reader] Rejtjel, Budapest, 2001. 206.

15 Fazekas Marianna: A közigazgatás tudományos vizsgálata egykor és ma. In: Fazekas Marianna (ed.): A közigazgatás tudományos vizsgálata egykor és ma. 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet. [The scientific analysis of public administration in the past and today. The Institute of Hungarian Public Administration was established 80 years ago at the law faculty of Budapest] Gondolat Kiadó, Budapest, 2011. 38.

16 Szigeti Péter: A magyar köztársaság jogrendszerének állapota 1989 – 2006. [State of the legal system of the Hungarian republic 1989–2006] Akadémiai Kiadó, Budapest, 2008. 17.

17 Ibid.

3. Levels and forums of the connection

3.1. Levels of central public administration – in general

Central state administrative organisations are determinative participants of public administration. Their significance is that their competence covers the whole country, the administrative strategic and operative decision-making tasks and competences are focused in their hands, and – partly due to the mentioned features – their activity significantly exceeds the frameworks of public administration, by this significantly influencing the operations of the state and society, as well as governing activities.¹⁸

Decision-making on the structure of state administration – and within this central state administration – as well as about the establishment, transformation, abolition and management of certain organisations belong partly to the Parliament, exercising its constitution-making¹⁹ and legislative powers, and partly to the Government in its executive function (in governing competence).²⁰

It is very important to keep in mind that earlier there was no law characterising central state administrative organisations based on their type or listing them one by one. In this respect Act LVII of 2006 on central state administrative organisations, and on the legal status of the members of Government and the state secretaries (herein after referred to as: Játv. 1) has been extremely significant, as well as Act XLIII of 2010 (herein after referred to as Játv. 2) – replacing the former one under a similar name – which performed this task for the first time in Hungarian legal history. According to Article 1 paragraph (2) of the Játv. 2 the types of central state administration organisations in Hungary are the following:

- a) the Government,
- b) governmental committees,
- c) the ministries,
- d) the autonomous state administration bodies,
- e) the government agencies,²¹

18 Fábrián Adrián: *Közigazgatás-elmélet*. [Theory of public administration] Dialóg Campus, Pécs-Budapest, 2011. 105.

19 In the Fundamental Law of Hungary regulations directly related to central state administrative bodies may be found primarily in Articles 1, 15–23, 34, 45–46, 48–54, and in section 4 of the Closing and Miscellaneous provisions.

20 Patyi András – Varga Zs. András: *Általános közigazgatási jog (az Alaptörvény rendszerében)*. [General administrative law (in the system of the Fundamental Law)] Dialóg Campus, Pécs-Budapest, 2012. 279-280.

21 Unfortunately, the word *kormányhivatal* – as a legal term – has two different meanings in today's substantial law in Hungary: one the one hand it appears as a type of central state administration organisations (translated as government agency) with nationwide competence, and, on the other hand, it is the territorial (county and metropolitan) state administration organisation of the government with general competence (translated as metropolitan and county government offices).

- f) the central offices,
- g) law enforcement agencies and Military National Security Service
- h) the independent (autonomous) regulatory bodies.

It is important that from the itemised listing of the types of central state administrative bodies several (body-type) organisations are missing which may also be part of the activities of central state administration: for example certain types (without the right to make decisions) are mentioned separately in the presently valid JÁtv. 2.²²

*The most efficient categorization covering all types of organisations of central public administration is the **level-based grouping**.*²³ In this approach, the following may be separated well: *a)* the level of administration, where classic, daily performance of authority tasks happens (in practice the majority of central state administrative organisations – except for the Government and government committees – belong here)²⁴; *b)* the first level of coordination, in which the harmony of the activities of administrative bodies acting in specific cases is ensured, as well as the primary registration of external, social needs (among others, government committees belong here, as well as cabinets and other proposing, opinion-making and advisory bodies viewed as bodies of the Government²⁵); *c)* and the second level of coordination, at which its exclusive member, the Government, ensures the ‘coordination of coordination’²⁶, and decides about the most important political and the most specific administrative issues.

This paper highlights exclusively those stages and actors that undertake the presentation and representation of Roma interests (or they should have done it). Accordingly, I'm not going to introduce the forums and participants of general consultative processes within the central administration [e.g. Council of the Ministers of State (államtitkári értekezlet) or Minister responsible for coordination of the operations of the Government (a kormányzati tevékenység összehangolásáért felelős miniszter²⁷)].²⁸

22 See Articles 28–30 of the valid JÁtv.

23 Lőrincz Lajos: A közigazgatás alapintézményei. [Basic institutions of public administration] HVG-ORAC, Budapest, 2005. 100-106.

24 The Office of the Prime Minister is in a very special legal and practical situation and it is closely related to all three aforementioned central levels: Article 36 paragraph (1) of the valid JÁtv.: ‘The Office of the Prime Minister is a working organisation of the prime minister. Unless law regulates otherwise the Office of the Prime Minister shall be managed upon rules relevant for ministries. (...) paragraph (5) The Office of the Prime Minister shall support the work of the prime minister and shall cooperate in defining the general policy of the Government.’

25 Before the Government makes a complicated decision, one of these bodies may examine the particular issue and take a proposal to the Government. See more: János Fazekas: Central Administration. In: András Patyi – Ádám Rixer (Eds.): Hungarian Public Administration and Administrative Law. Schenk Verlag, Passau, 2014. 293-294.

26 Lőrincz 105.

27 See Government Decree 52/2014. (VI. 6.) on the tasks of the Members of the Government.

28 For details see: Fazekas János: A központi közigazgatási szervek. [Organs of central administration] In: Fazekas

3.2. The level of administration

First of all, this level contains the ministries, the most important of which is the „human” top-ministry, named Ministry of Human Capacities (former Ministry of National Resources). Within the superstructure of it, the Deputy Minister of State responsible for social inclusion – belonging to the State Secretariat for Social Affairs and Inclusion – is the representative of the Government who permanently and indirectly tries to reveal the interests of the Roma in Hungary, transmitting them to central public administration and to law-making processes. Questions and tasks related to the Roma (Gypsies) in Hungary evolve – directly or indirectly – also in other ministries, and mainly the coordinative (and partly consultative) bodies manage to interleave the unsettled efforts of different ministries connected with Roma. The plan for having roma rapporteurs within some of the ministries has come up several times, but it has not come to fruition yet, there are still no public employees exclusively responsible for the mentioned field according to their official scope of activities.

Among the organisations – beyond ministries – belonging to the central public administration in Hungary we can find many of those which – according to their names, scope of duties and scope of authorities – do not primarily deal with revealing and presentation of Roma interests, but a huge part of their activities is directly connected or should be connected to that. Such are some central offices [e.g. National Office for Rehabilitation and Social Affairs (Nemzeti Rehabilitációs és Szociális Hivatal) or National Center for Patients's Rights, Beneficiaries' Rights, Children's Rights and Documentation (Országos Betegjogi, Ellátottjogi, Gyermekjogi és Dokumentációs Központ)] and an autonomous state administration body, named Equal Treatment Authority (Egyenlő Bánásmód Hatóság).

There are some further state organisations that do not belong to the executive, but the similarity of their activities and – acting within the scope of their activity – the high number of cases concerning Roma the Commissioner for Fundamental Rights (Alapvető Jogok Biztosa) and his Deputy Commissioner Responsible for the rights of National Minorities must be mentioned. Moreover, Hungary does have an Independent Police Complaints Commission (Rendészeti Panasztanárság), as well.

3.3. The first level of coordination

3.3.1. The main characteristics of consultation in Hungary

One of the most important pre-questions is how far civil society may go in participation in (political) decision making. According to the general (majority) opinion, its presence is reasonable and desired only in the preparation phase of decision making that manifests both informal and institutionalised

forms.²⁹

*Within the analysis of regulations related to legislation, it may be observed that the regulation – both in general and with regard to the Roma issue – is still very much diverse.*³⁰ Before 1 January 2011, there was no comprehensive act which could have attempted to provide unified regulation for the possibilities and procedures of the enforcement of social interests in governmental decision-making mechanisms.³¹ A unified set of regulations about social participation is still missing; even though Act CXXXI of 2010 on social participation in the preparation of laws ‘implies in its title that we are facing a unified regulation, but this is not the case. In addition to this, sets of acts and government decrees contain relevant regulations regarding this issue.’³² However, social participation in governmental decision-making mechanisms should be legally settled, just like the hierarchy of laws (the system of legal sources).

It must also be added that ‘By today a complex system of governmental consultative bodies has been established in all modern public administrative systems’.³³ However, despite their significance and quantity, the social sciences pay relatively little attention to these institutions, having a role in the shaping of governmental decisions, ‘[even though] a new sector has emerged, the operation of which is essential for the quality of governmental activities and is also important for their transparency.’³⁴

It should be noted that there is no good name for this system of organisations in Hungarian law. The expressions ‘background institutions’, ‘auxiliary organisations’, or ‘consultative organisations’, ‘institutions of social dialogue’, as well as ‘proposer-review organisations’ are (may be) imprecise and deceptive, especially because in some cases these – very diverse – organisations possess public power-like competences in addition to the narrowly interpreted consultative rights. It is necessary to scientifically define the various types and set up a **grouping** of these organisations and clarify – in a comparative manner – their role in decision making (in the preparation of laws). And due to the lack of consistent legal regulation it would be important to regulate their participation in the governmental decision-making system (in a more detailed form), with regard to their importance.

Based on the scope of participating organisations Vadál distinguishes between *internal* consultative bodies of governmental operation and *external* consultative bodies of governmental operation. Among the internal ones, she lists those institutions (e.g. government committees, cabinets and inter-ministerial committees), in which only state bodies participate and the representatives of civil society (non-state bodies) are usually not present among the members. Among the external ones she lists those bodies within which, in addition to the representatives of governmental bodies, the institutions of the widest range of civil society are present: such as social organisations, representatives of interest

29 Sebestyén István: Civil dilemmák, civil kételyek a civil szervezetek (köz)életében. [Civil dilemmas, civil doubts in the (public) life of civil organisations] (2004) *Civil Szemle* 1(1) 36.

30 Vadál Ildikó: A kormányzati döntések konzultációs mechanizmusai. [Consultative mechanisms of governmental decisions] Wolters Kluwer, Budapest, 2012. 170.

31 Ibid.

32 Ibid.

33 Vadál 17.

34 Ibid.

(advocacy) groups, professional and expert organisations, representatives of science, professional chambers, etc.³⁵ Within this grouping it is important that through these bodies, the interconnection between governmental activities and the activities of organisations interested in and concerned about decisions may be established. Through these bodies, the presentation of interests, their collision, striving for consensus, and the professional and scientific grounding of *more transparent* decisions may be realised.³⁶

The significance of consultation is also stressed by the European Commission, which published an announcement about consultation, supporting the notion that during consultation each of those concerned should be allowed to properly express their opinion.³⁷ In most member states of the European Union, separate, permanent forums have been established for macro-level consultation which facilitate the continuous relationship between the government and social partners and other representatives of interests – without the burden of immediate agreements – and within this they get the chance to familiarise themselves with each other’s opinion.³⁸ Beyond the narrow focus of issues related to the world of labour, this covers also specific policy issues. In member states, macro level consultations aiming at shaping the economy and social policy globally are usually hosted within the institutional frameworks of prestigious, dominant forums.³⁹ Naturally, governmental-civil discussion should also be part of social discussion. In addition to social partners, the representatives of civil organisations ‘shall also be present in the work of the consultative bodies of macrolevel negotiation of interests’⁴⁰

Nevertheless ‘it may be stated that the prestige of consultation is much lower in Hungary than in other member states’⁴¹ In Hungary the consultative role is often interpreted as of lower value, failure – also in the self-evaluation, self-assessment of the players; as a synonym of *slow marginalisation in substantial* – macro level – *policy-making*. This same fact lies in the background of the fact that in Hungary consultation, negotiation, cooperation is basically agreement-centred, bargain-oriented.⁴² We should also add that today in Hungary ‘consultation is [often] not the indicator or instrument of values, but of relatively quickly changing interests’. A closely related phenomenon (fact) is that while in most of the old member states consultation is substantial (ensured by legal guarantees) and constant, in Hungary – traditionally – a lower level of regulation and ‘ad hoc’ character is dominant⁴³, *a situation intensified by the exceptionally infrequent convening of certain forums*.

35 Vadál 61.

36 Ibid.

37 Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission. Communication for the Commission, COM(2002) 704 final.

38 Ladó Mária – Tóth Ferenc: A konzultáció és intézményei az Európai Unióban, tagállamaiban és Magyarországon. [Consultation and its institutions in the European Union, in its member states and in Hungary] OFA, Budapest, 2002. 192.

39 Ibid.

40 Bódi György, Jung Adrienn and Lakovits Elvira, Civil partnerség [Civil partnership] (KJK-KERSZÖV 2003) 190.

41 Ladó and Tóth 193.

42 Ibid.

43 Ladó – Tóth 194.

According to Article 30 paragraph (1) of the valid act, the Government may establish other – thus in addition to government commissions and cabinets further – proposer, review and advisory bodies. According to paragraph (2) of the mentioned article, the members of bodies described in paragraph (1), as well as the scope of people permanently invited to the meetings of such bodies are appointed by the normative government decision establishing the body. Among – public power-like – rights which go beyond traditional consultative rights (the right to information, the right to negotiate, the right to make recommendations, the right to give an opinion) those shall be mentioned through which decision making power is divided between the public administrative body (typically the Government) and the consultative body.⁴⁴

3.3.2. Consultative bodies whose central task is the presentation of Roma interests

A) *Internal* consultative bodies of governmental operation

1. Inter-ministerial Committee for Social Inclusion and Roma Affairs (Társadalmi Felzárkózási és Cigányügyi Tárcaközi Bizottság)

The Government has set up the Inter-ministerial Committee for Social Inclusion and Roma Affairs for the improvement of the social situation of Roma and other people living in poverty, and also for the coordination of the governmental operations fostering social integration. The main task of it – according to Point 2. of the Government Resolution 1199/2010. (IX. 29.) on the Inter-ministerial Committee for Social Inclusion and Roma Affairs – is the harmonization of the activities connected with social inclusion, and also proposal-making on the related Government planning for the financial sources and for the control of the usage of those sources, and supporting the coordination and evaluation of the execution of tasks related to the social inclusion of Roma and people living in poverty.

2. Roma Affairs Council (Cigányügyi Egyeztető Tanács)

Roma Affairs Council is to be mentioned, too. Practically, it operates as a quasi-cabinet because the members are the prime minister, four ministers and the ministerial commissioner in charge of roma affairs. The given council serves as an opinion- and proposal-making body; it was set up to coordinate and to monitor the execution of the policies of social inclusion and roma affairs.⁴⁵

The Roma Affairs Council owns the right to take objection to the distribution and use of financial sources gained by Roma programs (*kifogásolási jog*).

44 Vadál 61. and 86. In such cases the original possessor of the decision making right, who is responsible for decision making, cannot deliver the decision on its own, because the converting right (co-decision making right) of the mentioned body limits this. Naturally, in such cases the original possessor of the decision-making right cannot fully delegate the right to decision making or its responsibility for the decision (and the liability for its possible consequences), but with the self-regulating ‘delegation’ of certain elements of decision making it may ensure substantial participation and unavoidable control-possibility for the representatives of the targeted groups.

45 Government Resolution 1048/2013. (II. 12.) on Roma Affairs Council.

B) External consultative bodies of governmental operation

1. Roma Coordination Council (ROK-T)

The Roma Coordination Council was established by the Government Resolution 1102/2011. (IV. 15.) and its main goal is to work out measures serving the social inclusion of Roma based on social partnership with several actors of Hungarian society, and also to take part in the fulfillment of these goals and in monitoring the results. The Roma Coordination Council is an advisory, proposal-making and consultative body, which is a forum for channelling information on interests of Roma population into the governmental activities.

Under the g) subparagraph of the 4. point of the Government Resolution mentioned above, the ROK-T consists of 27 members, 6 of which are chosen by a distinct 'invitation to tender procedure'.

It's obvious that the two types of consultative organisations introduced above [under A) and B)] are not 'homogeneous', while the latter one – formally – has to reveal, aggregate and transmit interests towards the decision-makers, the previous ones have to settle those interests in practice, inserting them into drafts of different programs or laws.

3.3.3. Consultative bodies whose central task is not the presentation of Roma interests

According to the legal sources that established various proposal-making, consultative and coordinative organisations, such as Council of Demography and Family Policy (Család- és Népesedéspolitikai Tanács), Council on Drug Affairs (Kábítószerügyi Tanács), National Disability Council (Országos Fogyatékosügyi Tanács), Caritative Council (Karitatív Tanács), Council for Women's and Men's Social Equality (Nők és Férfiak Társadalmi Egyenlősége Tanács), Council on the Affairs of the Elderly (Idősügyi Tanács), Vocational and Adult Education Council (Nemzeti Szakképzési és Felnőttképzési Tanács), National Council for Public Education Policy (Közoktatás-politikai Tanács), National Council for Public Education (Köznevelési Érdekegyeztető Tanács), National Textbook Council (Nemzeti Tankönyv Tanács) or Higher Education Planning Council (Felsőoktatás-tervezési Tanács), it must be stated that – though these bodies are closely connected with various aspects of the Roma issue – the *institutionalised and direct* mechanisms for revealing the interests of the Roma are completely missing from the legal regulation and from the operation of them.

We must underline that forums of macro-level social consultation – at least formally – independent from the Government also exist in Hungary. The best example of the latter is the National Economic and Social Committee [*Nemzeti Gazdasági és Társadalmi Tanács*] established by Act CXIII of 2011 on the *National Economic and Social Committee*, which was created with the aim of discussing comprehensive ideas related to economic and societal development and national strategies existing through governmental cycles, and facilitating the elaboration and realisation of harmonised and

balanced economic growth and the related social models. The Committee was established as a *consultative, proposer and advisory body independent from the Parliament and the Government*, and as *a complex and most diverse consultative forum of social dialogue between organisations representing employers' and employees' interests, economic chambers, civil organisations operating in the field of national policy, national and foreign representatives of science, and churches defined in a separate act.*⁴⁶ It is worth noting that the solution is not unique in Hungarian legal development.⁴⁷ It is important that independence from the Government does not mean that during the activities of the forums, opinions of the Government and civil organisations cannot be directly in conflict or that the Government cannot be substantially 'influenced' in some ways. It's a surprise – compared to the monumental goals – that organisations revealing or representing Roma interests are out of the taxation of the members of the National Economic and Social Committee.

To sum up, according to the organisations mentioned above (within point 3.4.3.), search on the content of the legal instruments establishing them shows that provisions prescribing (ordering) selection and participation of entities directly undertaking representation of Roma interests are almost completely missing or are rather indirect and shallow. Point 2. of Government Resolution 1136/2011. (V. 2.) on measures taken to strengthen social inclusion ordered to review the regulation on interministerial bodies, other consultative and coordinative bodies on behalf of the National Roma Self-government's (Országos Roma Önkormányzat, ORÖ) involvement in decision-making and monitoring operations related to the measures, mentioned. *Unfortunately, those specific rules, legal provisions hasn't been elaborated, yet.*

3.4. The second level of coordination

3.4.1. General questions

In relation to the Government it is necessary to make reference to the situation and significance of the prime minister. In the opinion of György Müller, viewing the Hungarian system from the aspect of the situation of the Prime Minister it may be characterised as a chancellor-type of governing, because the present German system and the Basic Law for the Federal Republic of Germany (Bonn, 1949) served as examples in 1990 and later, too.⁴⁸ However, it should also be added that even though the Fundamental Law was the first to expressly state the dominant role of the Prime Minister within

46 Article 2 paragraph (1) of Act XCIII of 2011 on the National Economic and Social Council.

47 E.g. the former Economic and Social Council – which has always operated in an unstructured way and without substantial rights – was established 24 August 2004.

48 Müller György: Állandóság és változás a magyar kormányzati viszonyokban (1990–2011). [Stability and changes in Hungarian governmental structures (1990–2011)] In: Fazekas Marianna (ed.): A közigazgatás tudományos vizsgálata egykor és ma. 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet. [Scientific review of public administration in the past and today. The Hungarian Institute of the Science of Public Administration was established at the law faculty of Budapest 80 years ago] Gondolat Kiadó, Budapest, 2011. 140.

the government,⁴⁹ the *primus inter pares* role which may be observed in the previous Constitution, which trusted the Prime Minister almost exclusively with leading the body, did not reflect the actual situation, practical solutions in the 20 years preceding 2011,⁵⁰ which means – with some simplification – that the respective provisions of the Fundamental Law only expressed the situation which had existed for a long time.

The majority of the decisions of the Government is not law-making type, related to the preparation and enactment of laws, but defines tasks or makes control over particular sectoral operations. The latter are prepared by ministries which are responsible for the written proposals.⁵¹ Actually, participation of the Government and ministries within the law-making process is a special and twofold phenomenon because preparation of laws extends also to legal instruments of other governmental entities – beyond their own legal sources.

3.4.2. Tools for coordination

1. In June 2007, the Parliament approved a resolution on the Decade of Roma Inclusion Programme Strategic Plan (*Roma Integráció Évtizede Program Stratégiai Terve*), setting a framework for action in a series of fields where Roma experience discrimination and disadvantage in daily life. This resolution complemented a large number of measures that may serve to improve the situation of Roma in fields such as education and employment,⁵² and that have been only partly taken in the last few years. On 30 November 2011 the new Hungarian Government adopted a **National Social Inclusion Strategy – extreme poverty, child poverty, the Roma - 2011-2020** (Nemzeti Társadalmi Felzárkózási Stratégia 2011-2020), which was sent to the European Commission by the Minister of State for Social Inclusion (Ministry of Public Administration and Justice). Hungary was therefore the first Member State to submit such a strategy. In doing so, Hungary has fulfilled the commitment made by all member states when they endorsed the European Framework for National Roma Integration Strategies. For the execution of the Strategy 1430/2011. (XII. 13.) Government Resolution was adopted, ordering certain specific measures. The newest strategy is the Hungarian National Social Inclusion Strategy II. which was adopted in the very end of 2014 by 1603/2014. (XI. 4.) Government Resolution.

49 Article 18 of the Fundamental Law:

(1) The Prime Minister shall determine the Government's general policy.

(2) Ministers shall have autonomous control of the sectors of public administration and the subordinated organs within their competence in line with the Government's general policy, and shall perform the responsibilities determined by the Government or the Prime Minister.

50 Müller 141.

51 Fazekas Marianna – Ficzer Lajos (Eds.): Magyar közigazgatási jog. Általános rész. [Hungarian Administrative Law. General Part] OSIRIS, Budapest, 2006. 153.

52 <http://www.minorityrights.org/5800/hungary/roma.html>>accessed 24. 03. 2015.

2. The execution of the plans and strategies mentioned above – at least partly – depends on the involvement of social partners, on long-distance relationships. A *good* – though as yet mainly theoretical – example is the **Framework Agreement** established between the Government of Hungary and the *National Roma Self-Government* [ORÖ], based on which ‘Within their cooperation the Government and the ORÖ establish a draft government decree, in which they define the certain fields of intervention and the participants of the co-decision agreement and together with the bodies appointed for codecision-making define the co-decision-making mechanism relevant for the given field, by taking into consideration, and keeping in line with, the valid EU and national procedural regulations’. In an exemplificative manner, the Framework Agreement defines those fields in which it wants to give to the ORÖ effective and substantial rights for the enforcement of interests: ‘The Government establishes the co-decision system primarily in the fields of programs aiming at the expansion of employment, increasing standards of education and improving standards of living, as well as of scholarship programs, investment and employment supports.’

It is clear, therefore, that the decision-making and **co-decision-making** rights may primarily contain partial rights related to tenders, funds, or personal issues, sometimes not in a substantial manner, but ‘only’ in form of veto⁵³ or ‘quasi veto’, the latter one covering the elements which, for example, allow for the postponement of decision-making or the suspension of the execution of the delivered decisions.⁵⁴ It’s obvious that substantive implementation of these tools (instruments) really requires political courage of the Government, as organisations obtaining rights become partly ‘independent’ and most powerful actors.

Besides co-decision another notion is to be mentioned: **co-regulation**. Regarding the notion of co-regulation, it shall be mentioned that it is a rather new ‘set of legal institutions’. It is important that the White Paper on European Governance published by the European Commission mentions co-regulation as an example of better and faster regulation.⁵⁵ Co-regulation – regardless of its field – builds on the cooperation of state, market and other players and contains a mix of legal and non-legal elements, focusing on the previous ones only if the latter ones alone cannot achieve the set target: co-regulating systems are usually based on self-regulation, the results of which are continuously supervised, and if necessary corrected by the state.⁵⁶ The main aim of co-regulation is to channel the activities of self-regulating organisations – usually beyond substantive law – into public power procedures. During co-regulation public power – normatively – sets achievable targets and self-regulation fills these with content. Co-regulation makes it possible to transfer the goals set by the legislator to *interest representative organisations* acknowledged at the given field (‘regulated self-regulation’), by this facilitating the channelling of self-regulatory initiatives.⁵⁷ This way of regulation is common mainly regarding different industries and service areas, but it may also be possible to introduce and use its set of tools in other areas. *For example, in Hungary it is*

53 The exclusive right to recommendation and the right to initiative, as well as the right to consent and the decision bound to a certain voting rate may be considered as such.

54 For details see: Rixer 158-160.

55 Csink Lóránt – Mayer Annamária: *Variációk a szabályozásra*. [Alternatives to regulation] Médiatudományi Intézet, Budapest, 2012. 62.

56 Ibid. 63.

57 Ibid 62.

*extremely important to establish cooperation partly (co-regulation) with cultural, educational, social and other service provider organisations, as well as with those cooperating in the identification, presentation and representation of Roma (Gypsy) interests.*⁵⁸ However, the differentiation of the notions of co-regulation and co-decision seems to be unavoidable in this area.

3. Within the given field a **prime ministerial commissioner** in charge of Roma affairs (*cigányügyi kormánybiztos*) was appointed in 2014.⁵⁹ His main task is the evaluation of the results of the implementation of the Framework Agreement signed by the Government and ORÖ in 2011, and also to make preparations and pre-arrangements for the renewal of that agreement, to make proposals for new goals and ways to fulfil the recommended targets concerning *mainly* housing, employment and education.

4. Conclusion

1) The more comprehensive regulation of consultative bodies is reasonable because the broadly interpreted governmental consultation goes beyond consultative bodies operating beside the government or ministries, and includes macro level forums independent from the governments, as well as territorial level mechanisms and specific bodies.

In a rule of law state social participation in legislative procedures is not an optional process depending on the attitude and discretion of the power holder. Moreover, in a democracy, especially in one of the participative type, the institutionalised system of proposing and opinion making shall not only go through quantity changes (*'more forums, better regulation'*), but also quality ones, which means that regarding these, normativity does not only mean the obligation to establish and create these institutions, but also *'making them unavoidable'*, thus ensuring their development through tools protected by law.

A more comprehensive, deeper and well-founded regulation of consultative entities and mechanisms is required. We have to admit that governmental consultation is – in the broadest sense – a phenomenon that covers at the same time forums operating besides the Government or ministries, forums of macro-level social consultation – independent from the Government and also the direct and broad consultation with the People (in Hungary it's called 'national consultation').

Substantive regulation on the participation within consultative processes is fairly reasonable concerning the interests of Roma. Moreover, the regulation of the latter needs a form of a Governmental Decree (which is a fairly high level within the hierarchy of legal norms in Hungary), as it was decided (agreed) by the Framework Agreement established between the Government of Hungary and ORÖ.

58 Rixer 155–159.

59 Flórián Farkas, former head of the National Roma Self-Government (ORÖ). Order of the Prime Minister 4/2014. (XII. 5.) on the appointment of the Prime Ministerial Commissioner.

Creation of a complex system of co-regulation and co-decision implies several additional (subsidiary) social advantages, and this fact also strengthens the need for separate act regulating such questions.

In the last two decades a plenty of coordinative bodies have been set up to harmonize distinct sectoral policies concerning the Roma (e.g. earlier Council of Roma Integration was established by 1129/2006. (XII. 25.) Government Resolution, working as a proposal- and opinion-making body. At the same time an internal consultative body, named Coordination Council for Roma Affairs, was created. Then Inter-ministerial Committee for Roma Affairs was set up in 1999, and Council for Roma affairs in 2002... *Unfortunately, neither these forums,⁶⁰ nor other forums existing in the last few years have managed to become a substantial and stable forum for decision-making or even primary coordination.*

These bodies mainly look like the settings that were built up for the visitors' centre of Korda Studio (Etyek, Hungary): they look pretty, but there's nothing behind the walls...

2) Related to the three (or four, if we take the ministerial commissioner into account) organs dealing with Roma issues within the scope of Hungarian governmental bodies several questions have arisen on the scope of their duties, on their membership and their relations to each other, etc.:

- The relationship among the two Councils (Roma Affairs Council, Roma Coordination Council) and the Committee (Inter-ministerial Committee for Social Inclusion and Roma Affairs) is not stable enough, is hardly deducible according to the Governmental Resolutions, mainly because of the overlapping memberships.
- The structure and the memberships do lack stability: the composition of all of them has changed since their establishment, which is an misadventurous practice, prolonged by the given Government. This practice is a fairly bad one, because concerning these coordinative organisations the stability of the operation mainly comes from substantive cooperation that requires unchanged list of members who really know one another.
- The lack of separate attention given to the Roma in Hungary as a conscious public policy. Though the EU Framework for National Roma Integration Strategies 2011-2020 warns the member states to „focus on Roma in a clear and specific way”, the Hungarian strategy tries to solve the problems of the pauperization, child poverty, etc. and the situation of the Roma: the lack of a clear focus endangers the success of the measures taken. *This statement is verified by the opinion of the European Economic and Social Committee, issued in 2013.* The findings of the study commissioned by the EESC and carried out in 27 Member States are consistent with those carried out by the European Roma Policy Coalition (ERPC) and other civil society organisations, and show that apart from a lack of information and general dissatisfaction, there is also widespread frustration and distrust among spokespersons for the Roma community, civil society organisations and their representatives. It seems that the NRISs have not met the growing expectations of the Roma or their sincere hope that the strategies could really help

60 Majtényi Balázs – Majtényi György: Cigánykérdés Magyarországon 1945-2010. [The Gypsy Issue in Hungary between 1945-2010] Libri, Budapest, 2012. 110.

improve social integration.⁶¹

- Concerning the Roma Coordination Council (ROK-T) one of the most frequent critiques is that it's too large. A body which consists of 27 members must establish sub-committees, to become able to operate efficiently. Without sub-committees it can easily happen that the exclusive task of such a body is reduced to politically legitimating decisions made earlier and outside the body.

3) There are enormously huge further opportunities in the cooperation among non-ministerial organisations within central administration and also between the latter and other non-executive state organisations. From the side of possible Roma clients and other stakeholders, we must express that the 'visibility' of each of these state organisations, which directly or indirectly undertake to protect the rights of the Roma in Hungary, is quite low. As such, the common appearance could substantially strengthen the visibility. We may detect the very same weakness concerning the scientific researches that should be managed by the same actors – together.

There are multiple reasons behind the lack of common actions, one of which is that in Hungary 'any governmental body can be closed up with an other one', so the strengthening of their independence, their own image, their dissimilarity may become a more important angle than the interests of the clients...

4) Transformation of the attitudes of the central administration in Hungary

The picture wouldn't be correct without mentioning the wrong attitudes and the role of the staff of public administration towards the Roma. These negative attitudes are often responsible for the low efficiency of several institutions and mechanisms presenting/representing Roma interests. In public administration, one often thinks that performance measurement, monitoring and evaluations can solve problems like negative attitudes among professionals.⁶² This approach has proven to have serious negative side effects and discipline of social psychology offers alternatives to this approach. This discipline sees human behaviour as the result of the interaction of mental states and immediate social situations, and public administration can learn from theories in social psychology and the application thereof to organisational behaviour in the public sector.⁶³

Social psychology offers an alternative to the neo-institutional approach of reducing information asymmetry, using incentives and reorganisations to improve professionalism in complex organisations⁶⁴ Social psychology tries to restore the values, to change the attitudes for better.⁶⁵ Several researches pointed especially to the importance of the sequential, formal, serial, and

61 Opinion of the European Economic and Social Committee on the 'Societal empowerment and integration of Roma citizens in Europe' (additional opinion) (2013/C 11/05) 1.4.

62 Iwona Sobis – Michiel S. de Vries: Restoring Professionalism: What Can Public Administration Learn from Social Psychology? In: Juraj Nemec – B. Guy Peters (Eds.): State and Administration in a Changing World. NISPACee, Bratislava, 2010. 95.

63 Ibid.

64 Ibid. 97.

65 Ibid. 98.

investiture nature of socialisation i. e. socialisation through structured career progression and institutionalised training programmes, as well as the provision of role models and support from experienced organisational members.⁶⁶ As to the contents of such socialisation, understood in terms of 'mental programming', the number of topics to be included and the relative importance of each of them varies.⁶⁷ Such socialisation results in clarity and congruence about what the (new) employee and the organisation he or she is working for can reasonably expect from one another.⁶⁸

So, the changes depend also on those programs, that do not influence directly the Roma population but qualify the employees (and members of certain bodies, not employed by the state) for an altered stance.

66 Ibid. 105. See also: Rixer 178-182.

67 Sobis – de Vries 105.

68 Ibid. 106.

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