‘Eliminating Conservation’? The Re-Regulation of Hungarian Administrative Procedure in the Act on General Administrative Procedure

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Abstract The chapter analyses the resilience of the general rules of administrative procedural law in Hungary. Traditional doctrinal analysis, historical comparison and the sociology of legislation are applied to show the extent to which legislative transformation reflects the challenges of the socioeconomic environment after 2010. The chapter argues that the objectives declared by the legislator are not reflected properly in the legislative text. In the case of most of the legislative changes, neither the jurisprudential nor the sociological analysis can identify the expected positive impact. Legislative declarations concerning elevated public access or simplifications of the administrative procedure are in sharp contrast with the fact that, due to the reform of administrative procedure, review is inaccessible to the majority of clients. While the reform-related arguments that are officially put forward advertise the advantage of judicial legal protection, access to this and other forms of review is minimal; the advantage is not supported by statistical data.

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1 Aim and Method of the Research

Resilience refers to the ability of an entity to survive in a changing environment.[1] While the application of the concept of resilience in the field of social sciences has been questioned,[2] it is a general concept that seems very popular today and is specifically applicable to the legal system.[3] On the one hand, a legal system must be predictable and relatively stable, but on the other hand, it must adapt to social (economic, cultural, etc.) changes. Otherwise, it will inevitably become inefficient. This is a significant challenge for the legal system.

Administrative law is the most voluminous—and extremely heterogeneous—branch of law and the one which is also the most subject to change among all branches of law. Moreover, in the 10 years under review, almost all areas of the former have undergone a degree of legislative change that in other countries might not have been witnessed in an entire century. Among the so-called sectoral areas, one may mention the complete restructuring and centralisation of the education and health sectors, the radical overhaul of the pension system at the beginning of the decade, etc. However, analysis of these areas would obviously require specific expertise, and, in any case, the generalisability of the results would be questionable. It was therefore obvious that a narrower field should be chosen for analysis: i.e., 'Administrative Law – General'. This can be divided into three broad areas: the law of organisations, the law of operation and procedure, and the law of personnel.[4] The changes in each of these areas are very significant. We can refer, for example, to the changes in the law on central administrative bodies, the different types of bodies, the restructuring of the internal structure of ministries, the creation of government agencies and the dual management of previously autonomous, decentralised bodies in the case of local bodies, or the restructuring of the local government system with a radical reduction in the powers of local government.

This chapter focuses on the changes to the general rules of the administrative procedure. The reason for this is that, among the areas covered as general parts of administrative law, the role of the former is dominant, and it is the only area in the international and comparative law literature covered in almost all volumes dealing with the subject.[5] Several studies and even volumes have been published on the subject in Hungarian that explicitly discuss the need for and feasibility of the planned legislative changes.[6]

Our analysis takes place on two levels. On the one hand, we provide a content-dogmatic analysis of the law in terms of its responsiveness, exploring, on the one

[1] Reid and Botteril (2013), pp. 32–34.

[2] Olsson et al. (2015), p. 2–4.

[3] Reid and Botteril (2013), pp. 33–34.

[4] Lőrincz (2010), pp. 27–35.

[5] Cane (2011), pp. 56–58; Seerden (2012), pp. 24–30; Rose-Ackerman and Lindseth (2010), pp. 5–7.

[6] F. Rozsnyai (2018), pp. 48–50; Kálmán (2023).

hand, to what extent changes in the law fit the internal logic of the legal order and, on the other, to what extent it can be considered an appropriate means of achieving the social objectives predefined by the legislator. Our methodology and reasoning at this level correspond to classical legal thinking, but we have complemented the latter with other methods. We have also briefly considered the impact of legislative changes on the application of the law. Our analysis is based on publicly available statistics on public authorities and administrative litigation. The second layer of analysis focuses on the legislative process. In this area, we have examined the extent to which the preparatory process has successfully sought to identify the societal changes that the legislative change is intended to 'react' to and the extent to which it has been able to develop adequate legislative responses.

2 Social Issues Underlying the Reform of Administrative Procedural Law After 2010

After the political transformation (the landslide victory of the Fidesz–KDNP party coalition in the general election) in 2010, a new, so-called neo-Weberian conception of state and public administration began to prevail that involved the implementation of recentralisation and organisational integration within the subsystems of Hungarian public administration. The procedures, the functioning and the staff of the administration have been affected by the different transformations and amendments.

The starting point was that, until the change of government in 2010, the late but all the more radical application of New Public Management (NPM)[7] caused a severe crisis. The first version of the Zoltán Magyary Programme for the Development of Public Administration (MP 11.0.),[8] presented on 17 June 2011 (which was one of the medium-term and complex programmes related to the European Union's [EU] co-financed operative programmes), were intended to remedy this situation after the change of government in 2010.[9] The implementation of the revised version

[7] The NPM advocated the primacy of market solutions; that the delivery of public administration should preferably follow a market approach. This trend was dominant from the 1980s until 2008. In continental Europe, however, this trend—which has essentially Anglo-Saxon roots—never became dominant. Reforms in this region have been less radically pro-market but have sought to retain Weberian traits and give greater scope to customer focus and efficiency. This trend is referred to as the neo-Weberian approach (p. 3) in the much-cited work of Pollitt and Bouckaert (2004). In Hungary, due to a controversial interpretation, the post-2010 governmental reforms have been categorized this way (G. Fodor and Stumpf 2008, pp. 17–19).

[8] Zoltán Magyary Public Administration Development Programme (MP 11.0.). Ministry of Public Administration and Justice, Budapest, 10 June 2011.

[9] Jakab et al. (2015), pp. 170–171.

adopted in 2012[10] was evaluated by the Organisation for Economic Co-operation and Development (OECD).[11]

One of the central elements of the Magyary Programme was the 'Good State concept and the Good State Index', one of the (+1) areas of intervention of which effective public administration is a component. Accordingly, there were serious attempts to define and develop a set of criteria for 'good public administration' and to regulate it in a normative way, both at the international and national level.[12]

These Magyary programmes, which tried to strike a balance between post-NPM trends and the emerging neo-Weberian trends with an emphasis on national administration, were replaced by a new concept by 2014. The 'Strategy for the Development of Public Administration and Public Services 2014–2020' is a much more concrete and pragmatic document than the Magyary programmes and was confirmed by government decision[13] and allocated financial means[14] for its implementation.

Reform efforts aimed at 'good government' and 'good administration' were brought together by the considerably empowered Commission for State Reform.[15] However, this did not mean the eclipse of the OECD-inspired and strongly post-NPM 'Good-State'-based approach and activities. The latter led to the Good State Reports,[16] demonstrating the usefulness of indicators developed to monitor the results of the reform and inform further decisions.

In the reforms linked to the 'Good State' and 'Good Governance' programmes, elements of the NPM and post-NPM paradigms have been even more prominent since 2015/2016. In contrast to the neo-Weberian approach, which prioritised and emphasised the guarantees of the rule of law, post-NPM approaches, which in particular focus on market competitiveness and reducing the cost of competition in administrative, procedural law, have reduced procedural guarantees as well as the number of redress forums available to clients.[17]

The expectations associated with these programmes, such as the reform of local government and territorial (regional) governance, were not supported by any social needs assessment, so the former were largely speculative and based on applied research material in professional workshops. No significant social or professional debate was commenced to identify real needs.

[10] MP 12.0., 31 August 2012.

[11] OECD (2015) Hungary: Towards a Strategic State Approach. Paris, https://bit.ly/3wIPYdr.

[12] Balázs (2021), pp. 22–23.

[13] Government Decision 1052/2015. (II. 16.) on the tasks related to the Public Administration and Public Service Development Strategy.

[14] Government Decision 1561/2015. (VIII. 12.) on the annual development framework for the year of the Operational Programme for the Development of Public Administration and Public Services.

[15] See Government Decision 1602/2014. (XI. 4.) on the annual development framework of the Public Administration and Public Service Development Operational Programme for 2015; State Reform Portal, https://bit.ly/39KXpaV.

[16] Good State Report 2016, https://bit.ly/3yXArry.

[17] F. Rozsnyai (2020), pp. 12–14; F. Rozsnyai et al. (2021), pp. 312–314.

3 The Regulatory Nodes of Administrative Law

The process of the transformation of Hungarian public administration from 2010 onwards encompassed all areas of public administration, including its organisation, operation, tasks, and staff. The major reform acts by which the transformation of the Hungarian administrative system was carried out were Act CLXXXIX of 2011 on Local Governments of Hungary; Act CXCIX of 2011 on Civil Service Officials; Act CL of 2016 on the Code of General Administrative Procedure (CGAP); Act I of 2017 on the Code of Administrative Court Procedure (CACP); Act CXXV of 2018 on Government Administration; and Act CXXX of 2018 on Administrative Courts (which was passed, but did not come into force).

In addition to the above-mentioned regulations, there has been very significant legal, organisational and financial transformation in virtually all major areas of sectoral administration. However, the available research capacity clearly cannot cover such a wide range of areas. The research will, therefore, focus on the regulation and re-regulation of administrative procedure. In this respect, there have been very significant and even radical changes, both in terms of form (new laws) and content.[18]

Prior to the current legislation in force, the provisions of Act CXL of 2004 on the General Rules of Administrative Procedure and Services (GRAP) were applicable in Hungary.

The GRAP underwent a comprehensive amendment in 2008. One source of international challenges is Recommendation 1615 (2003) of the Parliamentary Assembly of the Council of Europe. On 20 June 2007, the Committee of Ministers adopted its Recommendation CM/rec(2007)7 on Good Governance and its appendix, 'A Code of Good Governance' (Good Governance Code). The research covered in this chapter starts with this set of objectives associated with the concept envisaged by the government. It first examines how the specific legislation has responded to perceived or real causes, taking into account the specificities of administrative law.

4 The Research Hypothesis Framework

Our assumptions can be summarised as follows. Compared to the previous legislation, the CGAP is considerably shorter yet hardly less comprehensible or applicable. For example, new institutions, such as conditional decisions, have been very difficult to interpret, even for those who apply administrative law. The effectiveness of the amendments was also highly questionable. For example, the introduction of the

[18] For example, the Codification Committee, which prepared the concept and drafted the legislation, was also used to prepare the GRAP. A report on their work has been produced: https://bit.ly/3wQA3K7. It is another question to what extent the technical discussions within the committees, the documents of which have still not been made public, are reflected in this report.

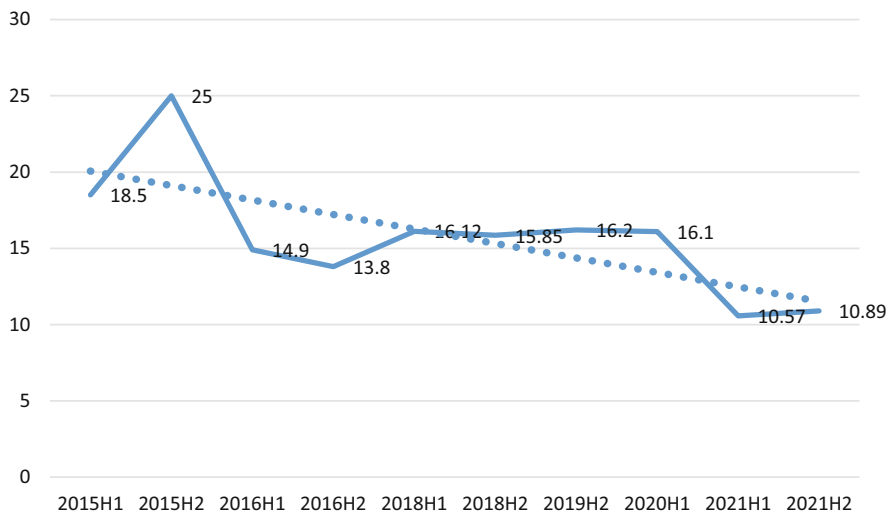

Fig. 1 Average duration of administrative procedures conducted by district offices (days) (from the first half of 2015-2015H1 to the second half of 2021-2021H2) (Authors' editing. Source of data: https://bit.ly/3sUUWRO. The dashed line in the figure is the trend line for the length of the procedure, indicating that, on average, procedures have accelerated as a result of the reforms)

conditional decision did indeed have a short-term accelerating effect, as shown in a previous study,[19] but this effect was subsequently reduced so that, overall, the impact of the legislative change can be considered moderate. In many cases, other procedural reforms more significantly impacted the system (see Fig. 1).

This ultimately led to the 'removal' of this conditional decision from the CGAP in 2020 through an amendment to the latter. Moreover, the legislation has a framework nature, leaving much room for sectoral additions even at the level of implementing decrees. Thus, if the CGAP and its implementing regulations are combined, the scope advantage over the previous legislation GRAP disappears.

Beyond the period examined by our chapter, the COVID-19 pandemic in Hungary in 2020 led to another change: the institution of so-called "controlled notification". This was first introduced in April 2020 as a temporary measure, then generally in the summer of 2020. The establishment of this institution resulted in a significant reduction in the time required for notification: in the second half of 2020, the average time required for filing at the district office was only 11.3 (!) days compared to 16.1 days in the first half of 2020.[20] In our view, an important factor in the significant reduction in the time taken to process cases is that controlled notification has removed from the authorities' remit a number of licensing-related cases requiring in-depth technical examination and involving multiple authorities (so these procedures, which generally take longer to process, no longer increase the average

[19] F. Rozsnyai and Hoffman (2020), pp. 121–124.

[20] Source: OSAP 1229 2020 and 2021 second-semester authority tables, https://bit.ly/3lCxhkV.

time taken to process cases).[21] The reaction to the polycrisis shows the resilience of the Hungarian administrative system: in 2021, the new wave of the COVID-19 pandemic impacted the duration of procedures only to a limited extent. It is clear that, over a longer period, the duration of procedures was not significantly influenced by the termination of the conditional decision.

The general nature of applicability is based on the fact that the CGAP also follows the model of so-called general procedural law, whereby, as a general rule, one act, the CGAP, is applicable to all administrative matters and all stages of a procedure. First, with regard to enforcement proceedings, the CGAP has unfortunately not changed the previous solution of applying Act LIII of 1994 on Judicial Enforcement in Civil Cases in the absence of a different provision, as it has not been able to institutionalise a separate administrative body for enforcement purposes. This is why the multi-level and complex legal regime has evolved wherein the Code on Civil Procedure (Chapter XI of CGAP) does such. This model was partially transformed, and a new provision was introduced: namely, that, as a general rule, enforcement is carried out by the general tax authority unless otherwise provided for by law, government decree, or local government regulation in a municipal (authority) case. However, in this case, Act CLIII of 2017 on the enforcement procedures to be carried out by the tax authority should be applied and not the CGAP.

If all this is appraised together, it becomes difficult to uphold the claim to the defining feature of general procedural codification, i.e. that it covers all stages of the procedure. Its general applicability is further undermined by exempted procedures, the largest group of which (to which the General Tax Code does not apply) are tax and customs procedures.[22] However, the latter may in themselves be more numerous[23] than those covered by the CGAP.

If this is true, then the 'general' nature of the CGAP is called into question. This, in practice, overrides one of the foundational points of the concept.[24]

5 Analysis: The Practice of the Authorities and the Judicial Review of Administrative Decisions

From the objectives and the legislation based on this concept, the intention to maintain a general code seems clear.

[21] Balázs and Hoffman (2020), pp. 48–52.

[22] Act CL of 2017 on the Rules of Taxation and Act CLI of 2017 on the Tax Administration Procedure apply to these.

[23] According to the OSAP official statistics, in the first half of 2018, 21,660,903 individual first-instance decisions were issued by NAV in tax cases alone. Meanwhile, 8,663,808 independent first-instance decisions on the merits were taken at the District Offices and 342,089 at government offices, while the number of first-instance decisions taken by local governments was 2,786,985. See the statistics on public authorities for the first half of 2018 (OSAP 1229), https://bit.ly/3lMywOL.

[24] Hajas (2017), pp. 294–297.

However, if the general rule is not applied to the majority of all public authority cases, the characteristics of the legislation will change. Here, 'preservation by abolition' is reversed: while the legislator's declared intention is to preserve the former's general character, the content of the regulation, in light of the above, essentially abolishes it.

The minimum social challenge for new regulation is that it should be better than the old one. In our case, the new one is indeed shorter and more transparent at first sight, but in contrast to its name, it does not cover the whole range of public authority cases, or even the majority of them, or all stages of the procedure. The question remains: what have the law enforcer and the justice-seeking public gained?

5.1 The Administrative Burden and How to Reduce It

The concept and legislation were not preceded by any credible surveys, empirical experience, or analysis of official statistics that could easily have been used for this purpose, so it was not possible to know which administrative burdens should have been reduced, and nor have such data have been made available since the application of the law.[25]

5.2 The Effectiveness of the Implementation of Administrative Decisions

Some administrative acts of public authorities impose substantive obligations on clients, which, in the absence of voluntary enforcement, the administration must implement through legitimate state coercion. The enforcement procedure and instruments serve this purpose.

A state cannot be a good state if the administration that carries out its actions is incapable of implementing the laws and carrying out the individual decisions it takes. And when society is faced with the fact that the law and lawful decisions taken based on it are not enforced, it is liable to lose confidence in both the state and the law.[26] It is, therefore, very important to enforce the law from the point of view of society as a whole, but also to safeguard the rights and legitimate interests of clients. However, since the state is coercive in this respect, it must be backed up by a system of guarantees that can detect and remedy abuses. The enforcement procedure must, therefore, be both swift and efficient while at the same time providing adequate

[25] Official statistics are also part of the National Statistical Data Collection Programme (Országos Statisztikai Adatgyűjtési Program, abbreviated 'OSAP' in Hungarian), but the system is not suitable for examining these aspects either. https://bit.ly/3Nu6NhG.

[26] Sajó (2008), pp. 692–694.

guarantees in the context of the rule of law. In this respect, the situation in Hungary has not been very good in recent decades.[27] The public administration did not have its own enforcement institutions, while the enforcement mechanism that the courts could use was seriously flawed and needed reform.[28]

It is therefore regrettable and surprising that the most difficult part of the new legislation to interpret is the enforcement procedure, to which, as indicated above, is not the enforcement procedure that should be applied, but the one on judicial enforcement, with appropriate derogations, and the rules on tax enforcement for the enforcement of its execution.

Although implementation is part of the official statistics (National Statistical Data Collection Programme, 'OSAP'),[29] the system is such that obtaining national and historical results is difficult. There is extensive literature on the effectiveness of public administration but no generally accepted methodology.[30] From this point of view, the OECD country reports and thematic papers are the most practical and important sources because the Hungarian government has used them for the reforms that have been underway since 2010.[31] Efficiency is also defined as a principle of administrative procedure, which is interpreted in a specific way by the CGAP. It should also be noted, however, that it would be wrong to draw far-reaching conclusions from the growing number of procedures[32] since it is arguable whether the efficiency of public administration can be determined solely based on the two aspects cited in the legislation. The international analyses make it clear that the administrative burden (the time spent by the customer on administration and, in the case of businesses, the financial costs of this in terms of wages, potentially lost profit, etc.) is at least as significant.

On the other hand, the annual OSAP official statistics are static, as they cannot follow the 'movement' of tasks and powers and the resulting administrative characteristics, such as the evolution of the proportion of each type of procedure (automatic, summary and full). Another problematic issue is the permanent transformation of the competences: after 2020, several important first-instance cases were transferred from the competence of district offices to county government offices, so the data before and after 2020 are hardly comparable.[33]

[27] Gajduschek (2008), pp. 78–91.

[28] See Act XIV of 2017 amending Act LIII of 1994 on Judicial Enforcement in Civil Cases.

[29] For data for 2018, see the official statistics and municipal database, https://bit.ly/39H89Xw.

[30] Bouckaert and Halligan (2007), pp. 72–77; Gajduschek (2014), pp. 101–104.

[31] Molnár and Varga (2017), pp. 6–8.

[32] OECD PUMA (1997) Jogi szabályozás hatásvizsgálata [Legislative Impact Assessment]. OECD–MeH–IM, Budapest.

[33] A further difficulty is the lack of publicly available annual summary data of the official statistics of OSAP, making it virtually impossible to process the data dynamically for different periods using appropriate statistical and scientific methods. In general, however, it should be noted that the declared aim of introducing summary and automatic procedures was precisely to radically reduce the time needed to complete administrative procedures.

5.3 Guarantees of the Enforcement of Client Rights and Remedies against Administrative Decisions

Several elements can be examined in this context. Still, the fact that CGAP (Arts. 111–119) has changed the more than half-a-century-old domestic system of administrative procedure in several respects stands out.

As a result of CGAP, different types of procedures were introduced and the general and ordinary appeal as a subjective means of legal protection within the administration was abolished. The latter can only occur in exceptional cases and within a narrower framework than before, being replaced by administrative court action with the general power of modification granted to the court. This fundamentally new element goes far beyond the rule-of-law requirement of eliminating unlawful administrative decisions and removes the power of the executive branch to decide, being replaced by judicial decision without the necessary administrative expertise.

The limited role of administrative court procedures (primarily administrative lawsuits since the entry into force of the CGAP) is also reflected in the statistics on public authorities and courts. In the first half of 2016, before the procedural reform, 0.21% of cases in district offices were challenged by legal remedy, but only 4.86% of second-instance decisions were subject to judicial review. Thus, the propensity for judicial challenge was not very great in two-instance procedures. This situation had changed only slightly by the first half of 2018, with the entry into force of CACP and CGAP. In 0.20% of the 13,589,251 first-instance district office cases, clients appealed, and 6.99% of the cases were followed by administrative lawsuits.[34]

In the first half of 2016, 0.33% of first-instance decisions of county government offices were appealed, and the courts decided 0.033% of all cases. In the first half of 2018, when appeals against decisions of the county government office were only possible if a specific law allowed it, the number of appeals increased significantly compared to the previous period. However, the proportion of appeals was still small compared to the total number of cases: 1.25% of first-instance decisions were appealed, and 0.72% were brought to court.

As regards the introduction of different types of procedures (automatic, summary, full), there are traces of 'deadline fetishism' based on client rights and the reduction of administrative burdens, which unfortunately also dominated the previous GRAP. Public policy expectations included as a priority that the authorities should deal with cases in the shortest possible time, and aspects of effectiveness, efficiency, professionalism, and legality took a back seat in the text of the legislation itself, even if they were explicitly emphasised in the declaration.[35]

[34] OSAP, https://bit.ly/3MVuEXC.

[35] This is confirmed by the justification on the impact assessment sheet of the proposal for Act CXLIII. of 2015 on public procurement, which states that '[t]he aim of the proposal is to ensure that the public administration acts within a high-quality, modern, efficient, transparent and predictable

In the interests of the public policy objectives indicated above, the new solution introduced by the CGAP makes significant compromises in this respect, 'juggling' with time limits in a system that is difficult to understand but undoubtedly logically interdependent, setting the latter at 24 h for automatic decisions, 8 days for summary proceedings and 60 days for full proceedings.[36] (If averaged, the result is eerily similar to the 20-day working day general time limit radically introduced by the GRAP, which later failed in practice.)

It is interesting to see the model calculation carried out to justify the generalisation of the summary procedure in the current legislation, which states that 'The possibility of successfully introducing the summary procedure is reinforced by the fact that, according to the available statistical data, in the current administrative procedural system, 30% of cases are dealt with in 3 days, 27% in 4–10 days, [and] 26% in 11–30 days. By fine-tuning the different time limits to be laid down in the General Administrative Regulation, it should be possible to open up the possibility of a fast-track procedure for a significant proportion of the cases that can currently be dealt with in 11–30 days.'[37]

However, a note to this statement also states that '[t]he Ministry of Justice's statistical data collection looked at first and second instance decisions taken by central public administrations in 2013. The Public Procurement Authority, the National Media and Infocommunications Authority, the Hungarian Energy and Public Utilities Regulatory Office, the National Authority for Data Protection and Freedom of Information and most of the central public administrations managed by ministers have complied with our data request, and we have data on 5,594,600 cases in 629 types of first instance cases.[38] Most of the questions are the same as those in the National Statistical Data Collection Programme, with the only additional question being on the length of time taken to process cases. The data did not cover cases handled by district offices, metropolitan and county government offices and municipalities.'

The data on which the decision-makers seem to rely are therefore not representative and are based on a sample that is not suitable for mathematical-statistical analysis, whereas OSAP data is public and general (being derived from a system that

framework of public procedural law in the administration of cases, in accordance with the Fundamental Law, guaranteeing the rights and legitimate interests of the customers, ensuring the speedy conclusion of procedures and timeliness. The fundamental requirement of the rule of law is that the rules of the legal system as such must be unconditionally respected, i.e. it is also a constitutional requirement that the procedural rules must be respected by the public authorities. By adopting a new approach to the law, the legislator draws on the experience of the 10 years of the Act's CXL of 2004 operation and also contributes to the creation of a genuine administrative adjudication system, which will also create a procedural law that will bring about real and positive changes for the client.' Source: https://bit.ly/3LO9usX.

[36] Art. 50(2) of the CGAP.

[37] Detailed report on the preparation of the concept for a general administrative regulation, https://bit.ly/3wT4EFC.

[38] This is equivalent to around 13 million decisions taken in regional government offices within 6 months.

covers all cases, the so-called 'whole population'). In fact, the data that are used appear to be rather inadequate and highly statistically skewed. On the one hand, they explicitly include a large number of atypical bodies operating only at the national level. On the other hand, the distorting effect of second-instance proceedings is also evident since, in this case, the potentially lengthy evidentiary procedure (hearing witnesses, on-the-spot inspections, and even trials, etc.) is unnecessary (although the extent of the distortion cannot be estimated without knowing the proportion of second-instance proceedings). The most significant bias, however, is the omission of data from the public law enforcement bodies with the highest case volumes (county and district government offices, municipal offices), which, according to OSAP data, are those where the bulk of first-instance proceedings take place, compared to which the Ministry of Justice of Hungary data collection process mentioned above covered what could be considered atypical, or at least specialised, proceedings. It should be added that the areas thus excluded are those where the ordinary citizen most often appears in the position of the client, i.e. this is precisely the area where a general procedural law can play the greatest role in informing the citizen, i.e. in providing practical assistance in understanding the procedure, in navigating the process and, not least, in clarifying the guarantees of the rule of law.

The statistical data on which such decisions are based seem rather inadequate for the very purpose of justifying the CGAP. In the absence of aggregated data, and also based on the arguments presented above concerning efficiency, it is not really possible to show clearly today how the number of administrative cases and the time taken to deal with them evolved before and after the entry into force of the GRAP, as the publication lists only provide data by sector.[39] This 'lack of processing' of official statistics (or, if they do exist in the Ministry of Public Administration, their secrecy) may call into question the soundness or effectiveness of the administrative procedure and even of its organisational and operational reform.

The abolition of the appeal as a general and ordinary remedy within the administration was therefore justified by the concept of the general administrative rules for several reasons. First, from the point of view of the organisation of the state, the new 'mega-organisations' created by the so-called 'internal and external' integration within the administration lack forums independent of the organisations which made the first-instance decisions. The second is that the risk of corruption that is inherent in administrative appeals is unknown and completely ignores the experience of administrative systems that have long used the appeal system. Nor does the situation correspond to the reality that judicial review is the new global trend, but instead, it can be justified as an argument for creating a special administrative court that runs in parallel with the latter concept. And it is certainly not an improvement on

[39] Until 2009, the ministry responsible for this was the Ministry of Interior or its successor bodies, which regularly published aggregated data on their websites. However, as the latter differed from that used in the OSAP system, it could not be considered official—but at least it provided information on the main trends.

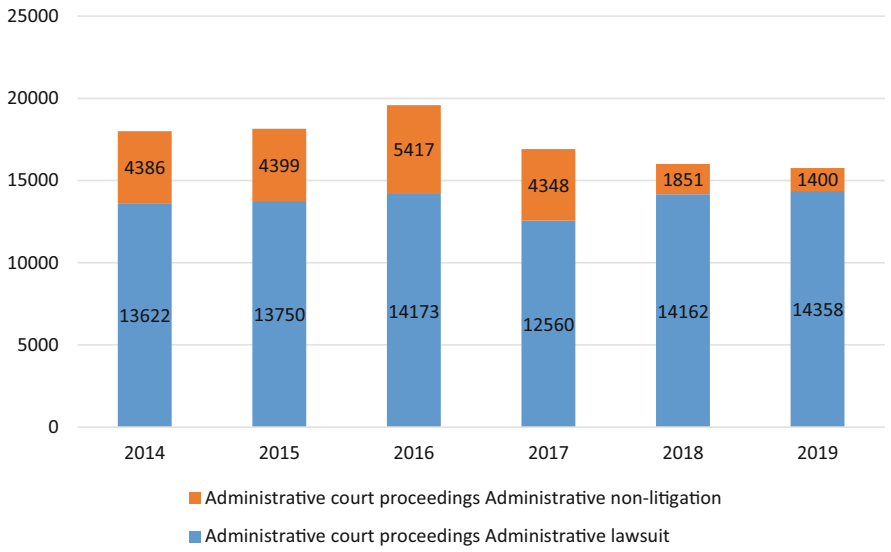

Fig. 2 Administrative court proceedings (number of cases brought before first-instance courts in administrative matters), 2014–2019 (Source: Court statistics, https://bit.ly/3MCgvhX)

the general and informal nature of appeals regarding client rights. The rigidity of the judicial procedure, its time delays, litigation constraints, costs, etc., tend to discourage clients from asserting their rights. This is also referred to in the concept as a challenge to be addressed. Appeals are significantly different from administrative court procedures. The entry into force of the CACP did not lead to a significant increase in the number of administrative court procedures, nor an overall decrease in their number (although there was a slight increase in the number of litigation proceedings, this was primarily because with the entry into force of the CACP most of the former non-litigation proceedings were classified as simplified litigation proceedings) (Fig. 2).[40]

The general reformatory power of the courts, which is supposed to balance timeliness, may be interpreted as a grave mistake because, on the one hand, it is not for the court to decide on behalf of the executive branch, and, on the other, the court does not understand public administration as a specialised (sectoral) form of administration. Even in systems where the judicial review of administrative decisions is organised within the executive branch, reforming administrative decisions could not be interpreted as a general remedy. And even with the introduction of a general power of reform (modification), the use of this possibility by the judiciary has been limited, as can be seen from the data based on the court statistics for the first half of 2019.

[40] F. Rozsnyai (2019), pp. 17–18.

Those decisions that modified the administrative authority's decision accounted only for 5.18% of all decisions (orders and judgments that close cases), i.e. their weight was not significant. Although the introduction of the **CACP** model has significantly increased the number of commutation decisions, given that the proportion of commutation decisions in cases which were typically still brought under the rules of the former Chapter XX of Act III of 1952 on the Code of Civil Procedure and closed in the first half of 2018 was only 1.70%, the new model, although significant, has not led to a breakthrough so that even within this framework we cannot speak of 'judicial governance'.

It was precisely for these reasons that the legislator abolished the general power of amendment in the spring of 2020 and returned to using cassation power as the primary power. Changes can now only be made under the provisions of a specific law and on a 'sanctioning' basis (if the authority has not taken into account the instructions of the court decision ordering the cassation).[41]

The problem is, of course, more complex than this, but it is only pointed out here that the priority of the administrative court with the power of modification does not support the rights of the client; the client's interest would instead be served by the existence of a special administrative court if one had been established. The priority given to administrative proceedings also indicates another trend: the legislator wanted to give preference to the judicial protection of the rights of the parties to the case, as indicated above, by means of administrative protection. This has been accompanied not only by a reduction in the number of appeals but also by a preference for administrative litigation. This shift towards administrative court procedures is also reflected in court statistics, as the number of court cases increased significantly in 2020 when appeal as a general remedy was terminated. Interestingly, after the significant increase in court procedures in 2020, the number of administrative court procedures decreased significantly.

Following the controlled notification, another major reorganisation of powers took place after 2017, essentially within 3 years. In 2017, the number of former district office decisions increased—in view of the general possibility of appeal provided by the CGAP—as a number of competences previously held by the county-level bodies of the county (metropolitan) government offices were transferred to the district offices of the county seat, but the first half of 2020 saw a countervailing movement. Since, as a general rule, appeal against decisions of district offices has been abolished, functions that are typically assigned to the district offices of the county capitals have again been carried out by the county (metropolitan) government offices since March 2020 onwards. The above-mentioned changes in competence are also reflected in the statistics on public authorities (Fig. 3).

At the same time, so-called horizontal procedural laws—such as Act CXXV of 2017 on Sanctions for Administrative Violations[42] and the articles on controlled notification of Act LVIII of 2020 on Transitional Rules Related to the Termination of

[41] F. Rozsnyai (2020), pp. 13–14.

[42] Nagy (2018), pp. 254–256.

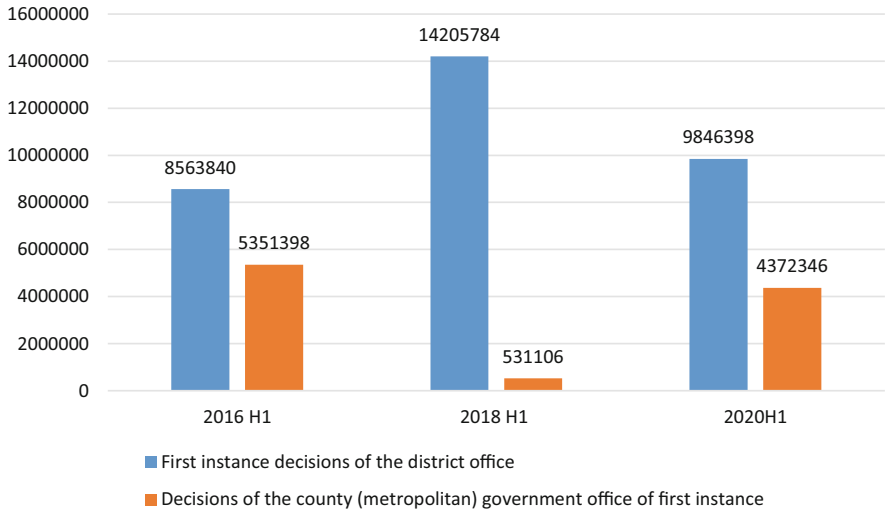

Fig. 3 Changes in powers and their impact on the number of administrative cases (H1 2016, H1 2018 and H1 2020) (Authors’ editing, data source: https://bit.ly/3GnPY5N)

State of Danger and Epidemiological Preparedness—were established, partly undermining the primacy of the CGAP and thus the rights of the client as set out therein. This is particularly the case for controlled notifications: with this new procedure, in the majority of cases, the opposing clients do not appear in the administrative procedure and can therefore not seek redress for any possible disadvantages they may suffer through administrative proceedings but must turn to civil (court) proceedings, which are generally more cumbersome.[43]

6 Conclusion

From the point of view of the responsiveness of the Hungarian legal system, the changes in the procedural law of public authorities within the period under review show a mixed picture. Prior to the current legal regulation, the provisions of the GRAP had to be applied in Hungary, and they changed very rapidly. The common denominator of the changes is the maintenance of the general character of the procedural code in relation to the specific or even exceptional procedural regulatory needs that regularly arise.

Another of these evergreen goals is increasing the service character of the procedure by expanding client rights and reducing administrative burdens. From the point of view of the responsiveness of the Hungarian legal system, we have

[43] Fazekas (2020), p. 194.

therefore focused on one topic, the regulation of administrative procedure, which is extremely extensive in terms of size, level, content and method of regulation but heterogeneous in terms of administrative law.

In sum, our analysis found the element of the legal system that we examined has a specific form of resilience, knowing that resilience is a specific challenge for the law in general. On the one hand, law must change in response to environmental changes and social needs. At the same time, there are a number of theoretical and practical factors which cannot be specified here that make it essential for law to be relatively stable and predictable.[44] This stability is certainly not apparent with regard to the domestic regulation of the administrative procedure. Our analysis describes the very large number and scope of changes in legislation and legal institutions, including a total overhaul of remedies and enforcement and radical changes to the basic procedure. Therefore, the law in this area has certainly changed over the last decade.

But to what extent and how can these changes be explained as reactions to the social environment? Based on our analysis, the answer seems to be little or perhaps not at all. We have come to this conclusion based on a detailed content analysis of the legislation and the legislative changes. The changes at the level of the relevant legal institutions analysed in detail above seem to confirm this conclusion.

First, the declared ambition of the procedure to provide a code-like regulation, apart from purely technical legal aspects, can also be justified by social needs. In such a case, the ordinary citizen can find information in one place on the rules to be followed in the various types of cases. However, our analysis shows that the trend is the opposite. The current legislation does not cover a significant part of public authority cases; the sections that were previously dealt with on a uniform basis (first instance procedure, remedies, and enforcement of the decisions) have been regulated separately, partly outside the scope of administrative law, etc.

Second, the redress procedure, based essentially on principled legal arguments, makes the judicial route the main means of redress, instead of the former relatively simple and thus accessible and quick appeal procedure, thus preferring a slower and more costly procedure with often more uncertain professional outcomes. The administrative and judicial statistics show that the emphasis on judicial remedies has also reduced the use of legal remedies: the number of appeals has not increased or even radically decreased with single-degree decisions, but the number of litigation and non-litigation procedures before administrative courts has not increased either. In addition, the horizontal procedural laws, in particular the rules on controlled notification introduced in 2020, have further reduced the enforceability of (opposing) client rights: the opposing client can enforce their rights not through the cheaper, more accessible administrative procedure, but via the more expensive, more difficult civil litigation (property law, typically neighbouring rights).

The transformation of the legal remedy system has also brought about an important change: although at the time of the adoption of the CACP, the formal generalisation of judicial (administrative) remedies at first only indicated that judicial

[44] Fuller (1964), pp. 32–34.

control over the public administration was expected to be strengthened, and even the strengthening of the judicial reformatory review power also posed the threat of a kind of 'judicial government', this was not the case with the CACP, at least on the one hand. On the other hand, the practice of the CACP did not justify this: although the rate of reversal of decisions increased, even then, there was no question of 'judicial government'. The amendments to the CGAP and the CACP in 2019/2020 created a specific situation: by radically reducing the possibility of appeal, they, in principle, strengthened judicial influence, but by removing the general power of reversal, they also excluded the possibility of 'judicial government'. These moves in the opposite direction have reduced the administrative options available to clients seeking redress and have clearly shifted the system towards private legal protection, a trend which was further reinforced by the changes at the end of the period under review, in particular, the institution of controlled notification referred to above.

Of course, our analysis also presents many other examples, but it is not only the analysis of the changes in the content of the legislation which suggests that the changes are not motivated by social circumstances nor any change in these circumstances. Instead, in many cases, they are motivated, for example, by the lack of staff at authorities and the latter's workload, i.e., in many cases, the Hungarian legislation on administrative procedure plays the hand that it is dealt. The process itself seems to confirm this. Changes to the general rules on administrative procedure have been relatively thorough compared to the case with many other laws. Expert working groups and codification committees have been set up, concepts have been discussed, etc. At the same time, the process does not reflect social trends[45] or even take into account the information that can be gathered from the practice of public authorities. The most important statistical data, which are supposed to be available, were not available to the legislative preparatory team. No professionally acceptable independent research has been carried out to identify the social or even administrative aspects relevant to the legislation. This may suggest there was no need to adapt the legislation to real and demonstrable social needs. It was certainly not possible to do so in the absence of such information.

In this case, the element of resilience retained is the formal maintenance of the general regulatory model with regard to administrative procedure. In contrast, the element of resilience adapted is the transformation of the content of procedural law into a different model that is tailored to the government's intention of supporting a changed or specific social, political and economic need in line with a different public policy priority. Indeed, the general administrative procedural model has *de facto* ceased to apply to all administrative matters, while the general scope of the CGAP has been formally preserved.

This conclusion is not a value judgment concerning whether the new legislation is good but merely a statement that its perception as a general model is at least questionable and a specific example of legal flexibility or adaptability in the sense discussed above.

[45] Hajas (2017), pp. 298–300.

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