DOI: 10.17573/cepar.2024.2.10 *1.01 Original scientific article*

Public and/or Private? Remedies Against the Different Decisions on Social Care Services in Hungary

István Hoffman
Eötvös Loránd University (Budapest), Faculty of Law, Hungary
Centre for Social Sciences, Institute for Legal Studies, Hungary
Maria Curie-Skłodowska University in Lublin, Faculty of Law and Public Administration, Poland
hoffman.istvan@ajk.elte.hu
http://orcid.org /0000-0002-6394-1516

Received: 29. 9. 2024
Revised: 24. 10. 2024
Accepted: 29. 10. 2024
Published: 27. 11. 2024

ABSTRACT:

Purpose: The paper examines the multi-layered remedy system in social care services in Hungary. It first analyses remedies related to the obligation of public service provision, especially remedies against normative tools for public service provision (such as decrees on fees and service standards) and the omission of duties by public bodies obliged to perform these services. A secondary focus is on remedies against the decisions and omissions by service provider institutions.

Design and Approach: Hungarian legislation interprets social care services as legal relationships governed by private law with partial public law regulation. The public remedy against the decisions of the service providers is complaints, which are governed by sector-specific (public) regulations. The research examines the remedy system using legal study methods based on dogmatic analysis and involves an examination of judicial practice, namely Hungarian courts decisions on major public law remedies.

Findings: Based on dogmatic and empirical analysis, the study reveals that Hungarian judicial practice has interpreted public law remedies, specifically complaints, in various ways. Following an amendment of legal regulation, the civil law-based interpretation now prevails. Although this practice has been consolidated, tensions can be observed, especially in the case of omissions.

Practical implications: The paper suggests a legislative solution to mitigate these tensions, recommending that decisions establishing social care services be formalised as public decisions.

Originality: The paper is based on a dogmatic analysis of the social care remedy system and, as a new element, contains an in-depth analysis of the Hungarian judicial practice on this issue.

Keywords: *administrative law, Hungary, litigation, private law, public law, remedies, social care services*

JEL: K41

1 Introduction

The emergence of the welfare state coincided with the development of the modern state, and today all developed states consider themselves welfare states (Krémer, 2009). Social administration plays an important role in all welfare state models. The role of personal social benefits in welfare systems has increased in response to the challenges of recent decades, particularly in ageing societies. In many respects, these benefits are linked to care services previously provided on a private law basis, which have grown out of church care, charity and private contract-based care. With the emergence of welfare states, the organisation of services by the state (both public and municipal) has become more important, and the public organisation of these services has therefore also strengthened the public law nature of these benefits. However, the private law roots remained strong, creating a specific situation in relation to the review of decisions taken in the field of personal social care. In the case of other public services of personal nature, a mixed legal situation has developed in this area, where private law and public law elements are present simultaneously (Maurer and Waldhoff, 2020). Thus, the remedies against the decision of the care institution have a specific nature as well: they are on the crossroad of the private and public procedures. The Hungarian legislation and judicial practice are analysed by this paper. Hungary has a continental, civil law legal system and a long tradition of public services which are organised by the institutions of the public administration (Nagy, 2019). Therefore, the case of Hungary shows the challenges of this Janus-faced phenomenon in a continental (civil law) legal system. Even the challenges of the Democratic Transition and the state-based public service provisions can be observed by the examination of this system. The approach of the Hungarian legislation and legal practice on public service provision remedies has been similar to the Eastern Central European countries (Szikra, 2014). Therefore, the analysis of this system could show the major elements of the public service provision systems of the broader region, the Eastern Central European Countries.

2 Methods

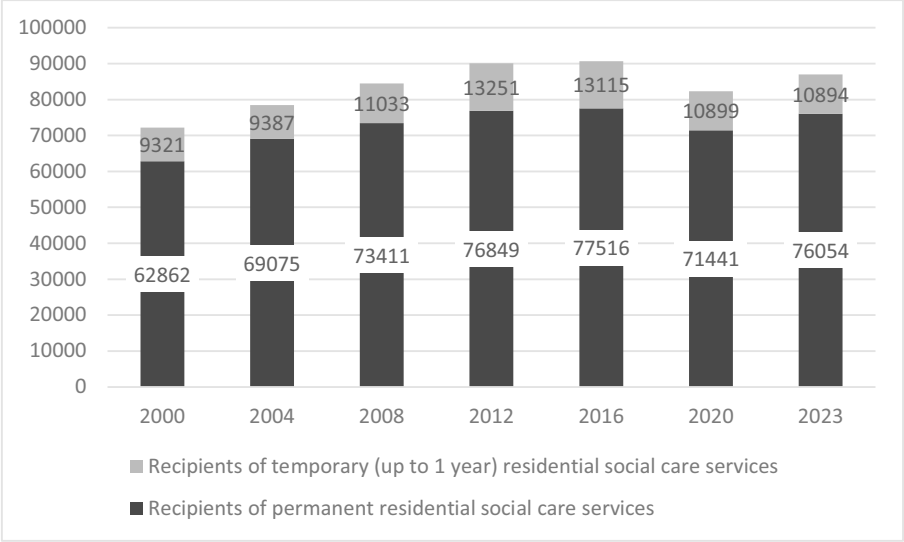
In the course of the analysis, I applied jurisprudential methods, which mainly meant the analysis of the dogmatic framework of the regulation, thus I focused on the traditional regulatory analysis and I wanted to place the Hungarian provisions in a taxonomic way. In this context, I analysed the specific

system of remedies for personal services and classified the types of remedies from a dogmatic point of view. However, there as it can be seen later there are different forms of formal and informal control mechanisms (Hungler and Pozsár-Szentmiklósy, 2023), my analysis will focus on those remedies, which can be reviewed by the courts.

In addition to the above dogmatic analysis, I have also paid particular attention to the analysis of case law. In the research, a total of 81 decisions were gathered from the publicly available database of the Hungarian court system. Judgments were accessed from "Bírósági Határozatok Gyűjteménye" (Collection of Court Decisions, hereinafter CCD) based on two search criteria: 1. Judgment contains reference to either the current or the previous Act III of 1993 on Social Administration and Social Care (hereinafter: Social Care Act, SCA) AND 2. Judgment contains at least one mentioning of the term "panasz" (complaint). Judgments not fitting these criteria were included if they were issued in a lawsuit where the higher- or lower-instance decision did fit the criteria. It should be mentioned that the majority of the cases are available at CCD. According to Act CLXI of 2011 on the organization and administration of the courts, CCD contains all judgments of the Curia, the Supreme Court of Hungary, the final judgments of the five Courts of Appeals, the final judgment of the county courts in cases on the judicial review of administrative decisions, and the first- and second-instance cases on which the Curia and the Court of Appeal cases are based. As the cases on privacy and the judicial review of administrative bodies belong to the competences of the county courts, majority of these cases are accessible at CCD. Cases concerning elections or referenda were excluded by default. The methodology of this research draws on lessons learned from the research design of a previous research about guardianship cases in Hungary (Kiss et al., 2021).

My hypothesis was, that the number of the analysed cases could be a larger and a detailed statistical analysis based on the large number of samples could be conducted. The background of the hypothesis was the large number of the recipients of these care services (see Figure 1).

Figure 1: Recipients of long-term and temporary (up to 1 year-long) residential social care in Hungary from 2000 to 2023



Source of the data: KSH 2024

According to the literature, however the willingness to start a court procedure in social care cases are lower than in other cases (Horowitz, 1977), mainly economic public services, but the large number of the recipients (according to the data of KSH 2024, around 0,91% of the whole Hungarian population received residential social care services) could justify a larger number of court proceedings. According to the official statistical data of the National Judicial Office, the number of the number of litigation cases received by the courts was 1 175 862 in 2023 (OBH, 2023). As I have mentioned, the complaint has been the major remedy in social care service cases. Based on these data and background, I expected a larger number of court decisions.

First of all, it should be mentioned, that the main hypothesis and the possibility of the application of the quantitative statistical analysis of the court decision was not approved by my empirical research. However, it was mentioned by the literature, that the legal protection of the vulnerable groups in Hungary is quite limited, and these groups do not start litigations frequently (Kiss and Tóth, 2021: 56-59), but the number of the relevant court cases were shockingly low. Only 15 1st instance and 2nd instance and review decisions fitted into the above-mentioned parameters of the analysis, because the majority of the analysed decision were related to insurance cases based on car incidents, were the keyword of *'panasz'* in Hungarian language were related to the symptoms of the injury of the person and the above-mentioned SCA was mentioned because of the social care for these persons with altered skills or persons with disabilities. Thus, the relevant number of the decisions were 15 which were related to 8 cases. Thus, the quantitative statistical methods could not be applied because the low number of the elements (n). Therefore,

a qualitative analysis of the individual cases has been applied, which was based on the nature of the legal classification of the care services and the nature of the remedies related to the above-mentioned classification (private law or public law-based remedies). Similarly, an important element of the analysis is the examination was the transformation of the practice based on the amendment of the legal regulation on the care services in 2018, by which the private law nature of the care contracts was emphasised.

3 Results

3.1 Theoretical Background and Analysis Based on the Legal Dogmatics

Hungarian jurisprudence, influenced by German dogmatics, classifies social services of a personal nature as so-called public acts (Fazekas and Asbóth, 2024). With regard to the concept of 'public institutional acts', the theory emphasises that they contain both private and public law elements. However, the role of public administration in the organisation of services and the private-law roots of services raise important questions of delimitation in several countries. As I have indicated, social care services also have a public law element because of the state's role and the link to fundamental rights. Within this framework, delimitation issues also arise in several European countries. Although all the main solutions are ultimately *mixed,* a distinction can be made between public and private law solutions. The German model, where administrative litigation on social benefits falls within the competence of the social courts as special administrative courts, and is therefore ultimately adjudicated in an administrative court, can be classified as public law (Kokemoor, 2020). The other major model is the Anglo-Saxon system, where the above service contracts are considered as private law contracts, even in the case of public (municipal) service provision, and are therefore primarily adjudicated by the courts under the general rules of civil procedure (and not under Part 54 of the CPR on review of administrative decisions) (except for mandatory services ordered by public authorities by decision) (Braye and Preston-Shoot, 2017).

It has already been seen above that, in those legal relationships which are determined, in whole or in part, by administrative law, public law also establishes mechanisms for the protection of rights.

3.1.1. Public Law Remedies

The first group of public remedies in the field of social legal protection is the remedies available *within the service provider*. In principle, the service recipient can most easily and directly seek redress from the service provider.

The complaint. If the service user suffers a minor grievance, it is typical that the head of the public institution (less often the body within the institution) can be approached to investigate the complaint and remedy the grievance. In

order to protect the rights of the recipient of the services, he or she has the right to complain under Act CLXV of 2013 on Complaints and Notifications of Public Interest (hereinafter: the old Complaints Act) and, from 24 July 2023, Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules for Reporting Abuse (hereinafter: the new Complaints Act). According to Section 1(2) of the old and the new Complaints Act, a complaint is a request for the redress of an individual's rights or interests, which is not subject to any other procedure, in particular judicial or administrative. The complaint may also contain a proposal. Since the institutional relationship is not an administrative procedural relationship, the person concerned may use this instrument in the event of harm to his or her rights or interests. The complaint must be submitted to the body competent to deal with the subject matter of the complaint under Section 1(4) of the old Complaints Act and, from 24 July 2023, under Section 2(1) of the new Complaints Act, which, as a rule, will decide on the complaint within 30 days under Section 2(1) of the old Complaints Act and, from 24 July 2023, under Section 3(1) of the new Complaints Act, which may be extended. However, pursuant to the second sentence of the second paragraph of Article 3(2) of the new Complaints Act, the extended period of examination may not exceed six months. The result of the investigation is announced in accordance with Section 2(4) of the old Complaints Act and, from 24 July 2023, the new Complaints Act. Under Section 5(2) of the new Complaints Procedure Act, the complainant will be notified in writing. In order to ensure more effective protection of the rights of beneficiaries, the SCA has introduced provisions with a higher level of guarantees than the new Complaints Act. On the one hand, Section 94/E of the SCA establishes a *two-tier* complaints procedure, under which a complaint about a violation of rights or interests must be submitted to the head of the institution, who will also adjudicate on it. If the head of the institution has failed to take action within the time limit laid down in the SCA or if the complainant does not agree with the action taken, he or she may appeal to the maintainer within eight days of receipt of written notification of the action taken. The term "legal remedy" is used in the SCA for this complaint, but this only refers to the fact that the maintainer reviews the head of the institution's action within the framework of the Complaints Act. The complaint is not an administrative decision and therefore there is no direct judicial remedy – as it is emphasised by the court decision published at the journal of Court Decisions (Bírósági Határozatok – BH) No. BH2010. 106. – but, as will be shown later in the analysis of the case law, indirect judicial review is widely available.

In order to ensure more efficient and faster legal protection, the Act has set a *faster procedural deadline for the* examination of the complaint compared to the general rule in the old and the new Complaints Act. The head of the institution is obliged to consider the complaint within 15 days and to notify the complainant in writing. As the Act does not provide for exceptions, the rules of the old and new Complaints Act on the extension of the procedure and the waiver of the requirement of written procedure do not apply in this context (Gál, 2017).

The public interest report. In addition to complaints, the aforementioned old and new Complaints Acts also regulate public interest reporting, which can be made by anyone, regardless of whether or not they are personally affected by the acts or omissions complained of. These reports draw attention to a circumstance whose remedy or elimination is in the interest of the community or society as a whole. Like a complaint, a public interest report may also contain a proposal.

The new Complaints Act – similarly to its predecessor – stipulates that the head of the service provider (or possibly a body of the institution) must investigate the complaint or the public interest report. If, according to the complainant (whistleblower), the investigation of the complaint has not led to a result, he or she may also turn to the maintenance provider under the provisions of the Act on the Protection of Public Health and the SCA.

In conclusion, it can be said that it may be an appropriate tool for resolving minor infringements and misunderstandings, although in the absence of more thorough legal guarantees, much depends on the attitude of the investigator. However, in the field of social personal benefits, the institution of the complaint also appears in many cases of breaches giving rise to termination, as will be shown later. A complaint is typically lodged against a decision by the head of the institution, usually against a decision finding an infringement giving rise to dismissal, and thus, as I will indicate later, the complaint has a specific pre-suit remedial role (Rozsnyai, 2022).

The ex officio procedure of the maintainer of the care institution. If the maintainer of the care institution becomes aware of an infringement, it may initiate proceedings to investigate the infringement. Given that the maintainer, as the body which directs and controls the activities of the provider, exercises decisive influence over the governed, this may serve to remedy the infringement. This may be true for individual infringements, but it may also be possible to report the infringing practice and request an investigation of the report. In the case of detected violations or other breaches of the rules, the administrative bodies may take a variety of measures. Depending on the legal status of the maintainer, the decisions taken by the maintainer may constitute a public or private one, as will be seen later in the analysis of the case-law, in so far as they have a direct impact on the care relationship (Fazekas and Asbóth, 2024).

In the case of social services, there is a distinction between the organisational and legal instruments of the management of the social services and the sectoral-professional management. Sectoral-professional management is sector-neutral, with the same set of instruments, i.e. regardless of whether social services are provided by public or private providers, and is therefore carried out by separately designated bodies of the public administration (mainly county and metropolitan government offices, the ministry responsible for social affairs at central level, currently the Ministry of the Interior, and its specific agency, the Margit Schlachta National Institute for Social Policy). The typical type of this professional influence is legislation and enforcement by public authorities (Szikra and Öktem, 2023).

Initiating an appeal against decisions of public authorities. This is possible if the public body exceptionally takes an official, i.e. a legal or binding, decision for an individual client who is independent of it. In such cases, the appeal can be made to the professional administration body, which is usually the metropolitan or county government office (district office), but may also be another public administration body, in accordance with the rules of the public authority procedure. This procedure can be considered efficient, since precise procedural rules determine which body is to act and what it can do about the application. However, it should also be noted that, since the public body exceptionally exercises only official powers, appeals against such decisions may not be appropriate for dealing with a general and wide range of claims. This solution is more limited in the social sector, mainly in the area of personal services of a child welfare and child protection nature, where in many cases a decision of the guardianship authority orders the mandatory use of the service (Herczog, 2015).

Proceedings instituted ex officio. As with the maintenance body, the professional management body may become aware of infringements in the course of its activities, or on the basis of a report from another public authority or following a complaint from a citizen. Such enquiries are considered official information, i.e. the reported, notified infringement, whether actual or suspected, is brought to the attention of the professional administrator in a verifiable manner.

The professional management body (or body involved in professional management) does not have maintenance powers in the sector but acts as a public authority against the offending service provider. Once the provider has started operating, *the licensing authority* - in the social field, the county and metropolitan government offices – has *continuous official supervision of* the provider (Hoffman et al., 2016, pp. 457–462). This includes the periodic review of operating licences, but if the authority becomes aware of a failure to comply with the conditions of the licence or other infringements affecting the service, it may carry out an inspection before the due review. As a result of such an inspection, it may impose a social administrative fine under the SCA, impose an obligation to restore the lawful status or even withdraw the licence. However, the notifier (whether directly concerned or not) has no influence on the course of the procedure, i.e. he cannot force the authority to act (since this procedure is ex officio even if it is based on a citizen's notification).

These powers of public authorities are not directly aimed at remedying an individual breach of rights.

Specialised institutions for legal protection. In some cases, the legislator creates sectoral bodies and legal institutions specifically designed to promote the lawful operation of a human service. In the social sector, this is the case of the *clients' representatives,* whose role is to help recipients (clients) of social services, child welfare and child protection services to assert their rights. Clients' representatives do not have the power to take action in their own right but can act as mediators and initiate proceedings (Fazekas and Asbóth, 2024).

Administrative lawsuits. In a limited scope, administrative lawsuits can also be brought to protect the rights of subjects in relation to public services (Kovač, 2017). On the one hand, where decisions relating to public services are of a public authority nature – for example, an official decision must be taken to authorise an individual work schedule as defined in the Public Education Act – the decisions may ultimately be challenged in administrative lawsuits. The possibility to enforce public liability for the provision of public services, as it was mentioned above, has been also provided for in the 2018 (Rozsnyai, 2019). Since 1 January 2017, the Act I of 2017 on the Code of Administrative Court Procedure (hereinafter: CACP) has also provided for the possibility of bringing an action for failure to act in the event of failure to fulfil the above obligation, the role of which may be further enhanced, as will be explained in more detail in the section on case law (Hoffman and Rozsnyai, 2024).

3.1.2. Private Law Remedies

Considering that the Statute interprets social benefits of a personal nature as a specific private contract between the institution and the recipient, the role of private remedies is very important in this area.

Lawsuits on breach of contract and tort actions: If the defective quality of the provision of the human service or the lack thereof causes pecuniary damage, compensation may be claimed in accordance with the rules of private law. In purely private law relationships, this can be a legal consequence of a breach of contract and falls within the scope of contractual liability. In view of the private law nature of contracts, an action for damages may also be brought in the event of breach of contract or wrongful termination (denunciation). As there is no obligation to conclude a contract in the field of social services, there is no possibility for the court to reverse a decision refusing to establish an institutional relationship by creating the contract itself (Rozsnyai, 2019).

Lawsuits on privacy rights. If the provision of the service or the failure to provide it causes damage that cannot be expressed in monetary terms (in the old Civil Code "non-material damage"), the court may be asked to award *damages for the* infringement of the right to privacy. However, the harmful conduct committed in the course of providing the service may also amount to an infringement of personality rights. The injured party can then also claim under the rules on liability for non-contractual damages (Dombrovszky, 2024).

There is no closed circle of personality rights, but the Civil Code highlights, for example, the violation of the right to life, physical integrity and health; personal freedom, privacy; the right to privacy and protection of personal data, and discrimination against a person. It is not uncommon for these rights to be violated in the provision of human services. Damages for damages and compensation for violation of privacy rights are also paid by the service provider. This is also possible in the field of social services, where the inadequacy of the service results in such an infringement. However, as can be seen from the analysis of the case-law, Hungarian case-law does not ultimately allow this

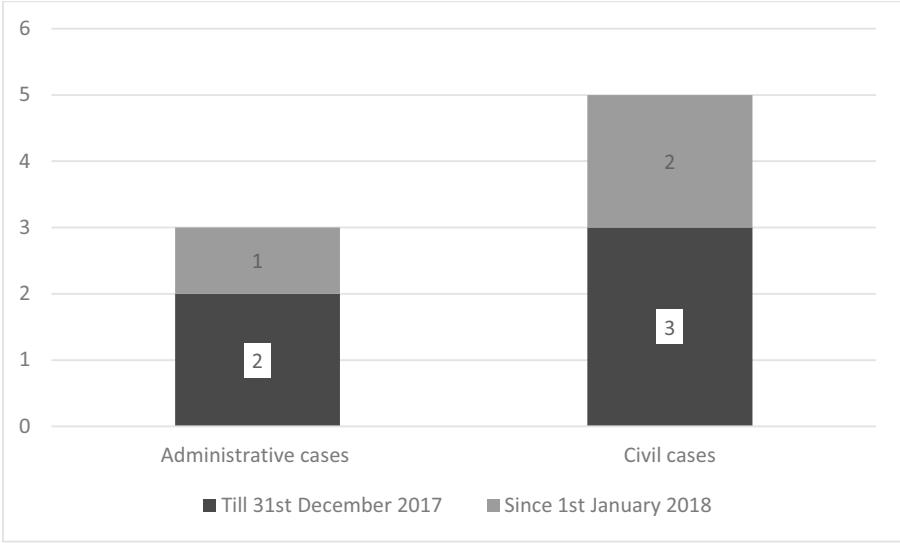
remedy *to* be used *to compensate for the lack of* service (Hoffman and Rozsnyai, 2024).

3.2 Empirical Research: Analysis of the Judicial Practice

As I have mentioned in the methodological part, I analysed the relevant legal practice, especially on the judicial review cases which are related to the complaint as a major public remedy of the social care services. First of all, it should be emphasised that the complaints as special remedies cannot be directly reviewed by the courts. It is clear – based on the general regulations of the Complaints Act and on the special regulation of the SCA – that the complaints could not be considered as an application for an administrative procedure, the administrative bodies do not take decisions which could be the object of an administrative dispute based on the Section 4 of the CACP (Rozsnyai, 2020). Therefore, these cases are based on the *indirect review of these complaint cases*. Therefore, as I have mentioned earlier, only 8 cases and 15 decisions could be distinguished as relevant cases from 81 decisions.

My first question was based on the classification of the cases. As I have mentioned, it is clear, especially after the amendment of the SCA based on the entry into force of the CACP on 1st January 2018, that the cases on social care relationships should be interpreted as civil cases, because the care agreement between the recipient (client) and the care institutions should be considered as a special civil contract based on the approach of the mandate contract (Ecsédi, 2016: 492-493). This approach could be seen by the judicial practice. since 2018 just one case has been decided by the administrative branch (see Figure 2).

Figure 2: Administrative and civil cases related to complaints on social care services

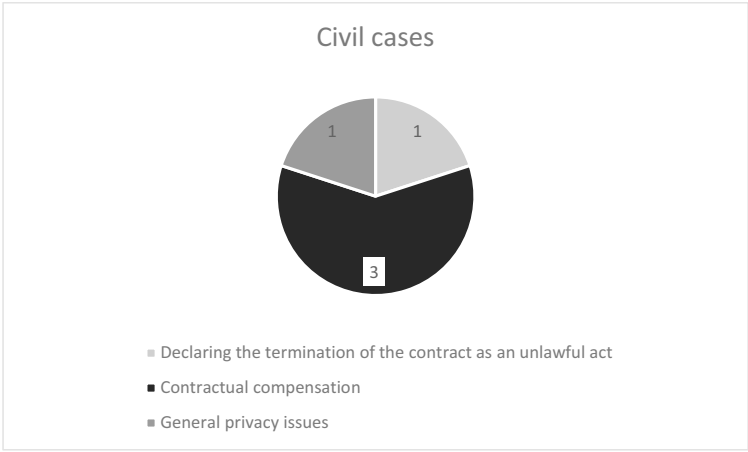


Source of the data: Based on the data provided by CCD 2024, edited by the author

It should be noted, that the only administrative case after 2018 is a non-contentious decision concerning the designation of the court following a dispute over jurisdiction in which the Curia decided that the case on the termination of a care agreement between the recipient of service and the care institution maintained by a town municipality should be decided by a civil court as a civil case (Curia of Hungary, Decision No. Kkk.IV.39.259/2022/3.).

The civil cases related to the indirect review of complaint were differently interpreted: the majority of them have been contractual compensation cases, based on the infringement of the general or individual rules of the care relations (see Figure 3)

Figure 3: Civil cases in social care relations



Source of the data: Based on the data provided by CCD 2024, edited by the author

If we look at the administrative cases, it is clear, that there was an uncertainty on the interpretation of the care agreement before 2018. Before 2018 there were two competing interpretations. The first one was differentiated between the agreements of institutions maintained by public bodies and private bodies. The court classified a case as an administrative court procedure, if the maintainer of the institution was a public body, an authority. In these cases, the 2nd tier complaint decision was interpreted by the courts as an administrative act, therefore, they reviewed these decisions as administrative decisions following the regulation of the Chapter XX of the Act III of 1952 on the Civil Procedure Rules on judicial review of administrative acts (Judgement of the Supreme Court of Hungary No. Kfv.VI.39.927/2010/5. and Judgement of the Curia of Hungary No. Kfv.III.37.456/2014/6.). Thus, this approach considered the maintainer's decision on complaint issues as an administrative act. The second approach was partially parallel till 2018. The termination of the care agreement was interpreted by the courts as a mandate contract; therefore, the unlawful termination of the agreement can be reviewed as a contractual compensation case (Judgement of the Debrecen Court of Appeal

No. Pf.I.20.550/2012/7. and Judgement of the Budapest Court of Appeal No. 7.Pf.21.020/2012/2.). A special, halfway-approach was applied by the Judgement of the Budapest Court of Appeal No. 5.Pf.20.165/2012/9. The court decided on the review of the complaint against the suspension of the care agreement in an administrative damage (tort) case (Fuglinszky, 2015). Since 2018 these parallel interpretations disappeared, the care agreements are interpreted solely as contract governed by the private law. However, the judicial practice has several administrative elements. First of all, the SCA has special regulations on the judicial review of these agreements, which are close to the regulation of the administrative court procedure (for example the limited, 30-day period for bringing an action). Secondly, the judicial practice allows the indirect review of the complaints, even the 2nd instance complaint decisions of the maintainer of the institutions, because these decisions are interpreted as declarations related to the contract. In the judgement of the Budapest Court of Appeal No. 6.Pf.20.606/2023/5. the court interpreted the breach of the institutional policy of the care institution[1] as a breach of the contractual regulation, therefore, the unlawful termination of the contract was stated by the court, and this termination was annulled. Similarly, it was stated by the court, that however the complaints against the acts of the director (head) of the care institutions are reviewed by the maintainer of the given care institution, but the care agreement is a contract between the recipient of the services (clients) and the given institutions, therefore, the maintainer could not be interpreted as defendants of the civil litigation (Judgement of Debrecen Court of Appeal No. Pf.I.20.550/2012/7., Judgement of the Budapest Court of Appeal No. 7.Pf.21.020/2012/2. and Judgement of the Budapest Court of Appeal No. 6.Pf.20.606/2023/5.). As these issues were decided by the civil court in a judgment, the approach outlined is that the court treated the position of the maintainer in the action as a question of standing.

Another important issue on the system of remedies is the *protection of the clients against the omission of the service provision*. In the field of public education, there were successful litigation in civil (privacy) cases against school discrimination and lack of the adequate educational services (Dombrovszky and Hoffman, 2023: 8-10). After the successful private actions another action was submitted to the courts. The action was based on the limited capacities of the Hungarian disability care system. The majority of the Hungarian social care institutions responsible for the care of persons with disabilities are located in the countryside. Nearby the capital city, Budapest the number of the care institutions are limited, and these institutions are mainly large ones, which do not offer a personalised service. Therefore, six parents caring for children with severe disabilities submitted an action based on the right to privacy to oblige the Ministry of the Interior (as the ministry responsible for social affairs) and the Directorate-General for Social Affairs and Child Protection – as

1 The institutional policy of the care institution stated that before the termination it is mandatory to have the recommendation of the institutional representative body of the care recipients. This recommendation was not asked in the case and the court stated, that the lack of the recommendation is an essential infringement of the institutional policy which is a general regulation of the care agreement, therefore, the termination of the care agreement was annulled. See Judgement of the Budapest Court of Appeal No. 6.Pf.20.606/2023/5.

the administrative bodies responsible for the provision of residential social care – to provide subsidised housing for persons with disabilities as a residential social care service near Budapest. Their action was represented by one of the watchdog NGOs, the Civil Liberties Association. The 1st instance court, the Budapest Capital Court dismissed the action, because the Budapest Court of Appeal as a 2nd instance court squashed the first judgement. The 1st instance court and the 2nd instance court upheld the action, and damages was stated. The justification of the 2nd instance court was based on the right to privacy. It was stated by the court, that there are long waiting lists, and the services are mainly available far from Budapest. Therefore, the lack of subsidised housing, as a personalised care for people with disabilities can impact negatively the family and social connections of the persons with disabilities. Therefore, the infringement of right to privacy can be stated (Budapest Court of Appeal Judgement No. 8.Pf.20.047/2022/5.). This judgement was overturned by the Curia, as the Supreme Court of Hungary. The justification of the judgement says that "[t]he needs to ensure access to a service of social assistance cannot be a basis for the protection of right to privacy. *A court in civil proceedings, acting under private law, has no power, in the absence of a statutory authorisation, to order the defendants to take measures in the field of public law.* The failure of the defendants, acting as executive organs of the State in the performance of their public law duties, as alleged by the plaintiffs, does not give rise to a relationship of privacy." (Paragraph [88] of the justification of the judgement of the Curia of Hungary No. Pfv.IV.21.186/2022/10.) Therefore, the Curia changed its approach. However, there were tensions between duties based on public law and the jurisdiction based on private law, but formerly, these tensions were ignored by the courts (Hoffman and Rozsnyai, 2024). This new direction – the judgement of the Curia was passed on 5th April 2023 – shows, that the private law solutions could not been applied for such omission cases. Because there is a limited *stare decisis* principle institutionalised by the Fundamental Law of Hungary, this judgement should be applied in similar cases, as well (Virág and Völcsey, 2020).

4 Discussion

However, the Hungarian remedy system against the decisions on social care services has partially public law elements, it is strongly based on the private law model. Because these services are related to the fundamental rights of persons, even to the right to life and the right to security, therefore, the public elements cannot be avoided during the legislation. Based on this mixed nature of these services, there is a strong dispute whether these acts should be classified as administrative acts and administrative contracts and agreements. This approach is based on the above-mentioned public nature of these relationships (Webley and Samuels, 2012). There are different theoretical approaches which underlines the civil nature of the agreements between the final recipient of the services and the actual service provider (Nagy, 2022). As it could be seen, the sectoral legislation and the judicial practice followed this approach and they incorporated the review of the administrative regulation

into the review procedure of the contracts and the acts based on the contractual agreements. Therefore, this civil approach cannot be considered as a 'pure' one, as it could be seen in other countries, it could be considered as a mixed one (Kovač, 2021).

This private law-based approach has a major deficiency in the field of effective legal protection. It could not offer protection against the denial of the service provision and thus it offers limited protection against the omissions of the service provision. As I have mentioned earlier, in the Hungarian private law the court may conclude a contract if the legislation (an Act of Parliament) imposes an obligation to conclude a contract. If such an obligation has not been institutionalised, the court could just state the infringement during the review of the denial for service provision for the person, but it has not the right to conclude it. The judicial review could be just hardly interpreted as an effective legal protection in this field. Thus, to provide an effective legal protection it should be considered to amend the legislation and to declare that the care agreement should be based on an administrative decision, which could be reviewed by the courts, and if the denial is unlawful, the administrative court could have the power to amend it and thus to conclude the care relation – without harming the private law contract and the dogmatics of the private law solutions.

Similarly, if the service is not provided generally, the private law-based approach could not offer an effective solution. As it could be shown earlier, the Curia of Hungary stated that the tort cases are not effective for forcing the public administration to fulfil their duties defined by the public law. But it should be mentioned that the Chapter 22 of the CACP declares, that a successful action against failure to act can result the substitution of the administrative decision and the court can oblige the administrative body to fulfil its duties. Therefore, it could offer a valid solution to omission in public service provisions. Because the major standards of public services are defined by the Act of Parliaments and the implementing (Government or Ministerial) Decrees of them, the content of the public duties are well defined. Thus, if these statutory obligations are not fulfilled by the administrative bodies, they can be effectively sued even by the citizens. However, it is a real possibility, there isn't any judicial practice on it. As we have mentioned earlier, the litigation based on private law has been dominantly. But the transformation of the approach of the Curia, and by these new public law rules, it could be a "beginning of a beautiful friendship": a beginning of a new judicial practice.

5 Conclusion

The remedies against the decisions of the social care institutions on care relations could be interpreted as a good example for the tendencies of the legal protection against the actions of the public provision system. It can be seen, that originally a mixed, but public law-based system evolved, which was based on the legal status of the maintainer of the care institutions (Rozsnyai, 2021). This mixed approach has been transformed during the last decade, and

a private law-based solution has been developed: the care contracts are interpreted as a mandate contract-based legal relationship. This 'privatisation' of the remedy system is fitting into the tendencies of the last decades in Europe, where the public law remedies have been transforming and private law-based solutions are preferred by the legislation (Dragos, 2022). However, the legislation offers different ways, like the new omission procedures established by the CACP, legal practice on remedies on social care contracts in Hungary show that the public law-based remedy system is 'under siege'.

References

Braye, S. and Preston-Shoot, M. (2017). Social work and the law. In R. Adams, L. Dominelli and M. Payne, eds., Social Work. 3rd edition. London: Macmillan Education, pp. 90–102. http://dx.doi.org/10.1007/978-1-137-08215-2_8

CCD (2024) Bírósági Határozatok Gyűjteménye At <https://eakta.birosag.hu/anonimizalt-hatarozatok>, accessed 10th September 2024.

Dombrovszky, B. (2024). Oktatásügy és esélyegyenlőség az ítélkezésben: szakmai és szakpolitikai elemek a bíróság előtt. Állam- és Jogtudomány, 65(1), pp. 3–37. https://doi.org/10.51783/ajt.2024.1.01

Dombrovszky, B. and Hoffman, I. (2023). When social policy walks into the justice system. Central European Journal of Public Policy 17(2), pp. 1–12. https://doi.org/10.2478/cejpp-2023-0013

Dragos, D. C. (2022). Administrative Justice in Transitional States. In M. Hertogh, R. Kirkham, R. Thomas, J. Tomlinson, eds., The Oxford Handbook of Administrative Justice. Oxford (UK): Oxford University Press, pp. 285–305. http://dx.doi.org/10.1093/oxfordhb/9780190903084.013.35

Ecsédi, O. (2016). Magyarázat az Szt. 101. §-ához. In Hoffman, I. and Mattenheim, G., eds, Nagykommentár a szociális törvényhez. Budapest: Wolters Kluwer Hungary, pp. 487–494.

Gál, R. I. (2017). Long-term care for the elderly in Hungary. In B. Greve, ed., Long-term Care for the Elderly in Europe. Development and Prospects. Abingdon (UK) and Northampton (MA, USA): Routledge, pp. 8–22.

Fazekas, M. and Asbóth, M. (2024). A humán-közszolgáltatások. In M. Fazekas, ed., Közigazgatási jog. Általános rész II. Budapest: ELTE Eötvös Kiadó, pp. 115–159.

Fuglinszky, Á. (2015). Kártérítési jog. Budapest: HVG-Orac.

Herczog, M. (2015). Poor Children, Poor Services, Poor Outcomes: Child Poverty and Its Impact on Referral and Placement in Public Care System in Hungary. In E. Fernandez et al., eds., Theoretical and Empirical Insights into Child and Family Poverty. Children's Well-Being, Cham: Springer, pp. 239–256. https://doi.org/10.1007/978-3-319-17506-5_15

Hoffman, I., Fazekas, J. and Rozsnyai, K. (2016). Concentrating or Centralising Public Services? The Changing Roles of the Hungarian Inter-municipal Associations in the last Decades. Lex localis – Journal of Local Self-governments, 14(3), pp. 451–471. https://doi.org/10.4335/14.3.451-471(2016)

Hoffman, I. and Rozsnyai, F. K. (2024). Broadening judicial protection against failures to act? - Recent Hungarian developments. International Journal of Public Law and Policy, 10(ahead of print), pp. 1–15. https://doi.org/10.1504/IJPLAP.2024.10066623

Horowitz, Donald L. (1977). The Courts and Social Policy. Washington D. C. (USA): The Brookings Institution

Hungler, S. and Pozsár-Szentmiklósy, Z. (2023). Hungary. In A. Nussberger and D. Landau, eds. The justiciability of economic, social and cultural rights. Cambridge (UK), Antwerp, Chicago (US, IL): Intersentia, pp. 183–202.

Kiss, V. et al. (2021). An empirical study of actions on custodianship in Hungary. International Journal of Law and Psychiatry, 78(101719), pp. 1–13. https://doi.org/10.1016/j.ijlp.2021.101719

Kiss, V. and Tóth, F. R. (2021). Kutatásmódszertani megjegyzések az alávetett csoportok joghoz való viszonyának megismeréséhez. Állam- és Jogtudomány, 62(3), pp. 43–73. https://doi.org/10.51783/ajt.2021.3.03

Kokemoor, A. (2020). Sozialrecht. München: Verlag Vahlen.

Kovač, P. (2017). Innovative Administrative Procedure Law: Mission Impossible? The NISPAcee Journal of Public Administration and Policy, 10(2), pp. 93–117. https://doi.org/10.1515/nispa-2017-0013

Kovač, P. (2021). Debureaucratization Limits in Administrative Procedures Codification: Lessons from Slovenia. Administrative Sciences 11(1), pp. 1–17, https://doi.org/10.3390/admsci11010001

Krémer, B. (2009). Bevezetés a szociálpolitikába. Budapest: Napvilág Kiadó.

KSH (2024). A tartós bentlakásos és átmeneti elhelyezést nyújtó szociális intézményekben ellátottak ellátási típusonként, At <https://www.ksh.hu/stadat_files/szo/hu/szo0026.html>, accessed 10th September 2024.

Maurer, H. and Waldhoff, C. (2020.) Allgemeines Verwaltungsrecht. München: Verlag C. H. Beck.

Nagy, M. (2019). Administrative law. In: A. Harmathy, ed., Introduction to Hungarian law. 2nd edition. Alphen am Rijn: Kluwer Law International, pp. 23–45.

Nagy, M. (2022). Szerződés a közigazgatási jogban. Jogtudományi Közlöny 77(4), pp. 137–146.

OBH (2023.) A bírósági ügyforgalmi adatai 2023, At <https://birosag.hu/sites/default/files/2024-04/kiadvany.2023.ev_ertek.xls>, accessed 10th September 2024.

Rozsnyai, F. K. (2019). Current Tendencies of Judicial Review as Reflected in the New Hungarian Code of Administrative Court Procedure. Central European Public Administration Review, 17(1), pp. 7–23. https://doi.org/10.17573/cepar.2019.1.01

Rozsnyai, F. K. (2020). Hatékony jogvédelem a közigazgatási perben. Budapest: ELTE Eötvös Kiadó.

Rozsnyai, F. K. (2021). The Procedural Autonomy of Hungarian Administrative Justice as a Precondition of Effective Judicial Protection. Studia Iuridica Lublinensia, 30(4), pp. 491–503. https://doi.org/10.17951/sil.2021.30.4.491-503

Rozsnyai, F. K. (2022). Az eljárási kötelezettség aktuális kérdései. KözigazgatásTudomány 2(1), pp. 125–139. https://doi.org/10.54200/kt.v2i1.32

Szikra, D. (2014.) Democracy and welfare in hard times: The social policy of the Orbán Government in Hungary between 2010 and 2014. Journal of European Social Policy, 24(5), pp. 486–500. https://doi.org/10.1177/0958928714545446

Szikra, D. and Öktem, K. G. (2023). An illiberal welfare state emerging? Welfare efforts and trajectories under democratic backsliding in Hungary and Turkey. Journal of European Social Policy, 33(2), pp. 201–215. https://doi.org/10.1177/09589287221141365

Virág, Cs. and Völcsey, B. (2020). A korlátozott precedensrendszer és a polgári perjog kapcsolata. Magyar Jog, 67(3), pp. 125–135.

Webley, L. and Samuels, H. (2012). Public Law. Text, Cases and Materials. 2nd edition. Oxford (UK): Oxford University Press.