28 The Rethought Administrative Procedural Law in Hungary

Code of General Administrative Procedure

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On its assembly held on the 6th of December 2016, the Parliament adopted the Act CL of 2016 on the Code of General Administrative Procedure regulating the new order of the administrative procedure (abbreviated and hereinafter referred to as 'General Administrative Procedure Act' or 'Ákr.'). The General Administrative Procedure Act entered into force on the 1st of January 2018. The new procedural code is aimed at renewing administrative procedural law by ending the permanent modification process that has characterized the past decade; also, aimed at establishing procedural institutions that enables the rights of clients to prevail, ensures a more predictable law enforcement and, at the same time, promotes efficiency and concentration of procedures. The Act has several new features in comparison to the former act: it settles a shorter, simpler, more transparent regulation; it confirms the primacy of the code towards special procedural rules; it ensures automated decision-making, summary proceedings, conditional decisions and the priority of administrative arbitration in the legal remedies system, etc.

28.1 The Reasons for the Renewal of the Administrative Procedural Law

The guiding principle during the re-regulation and repositioning of administrative procedural law is that the codification should be based on a secure, solid theoretical base. It is therefore worth to *in abstracto* review the characteristics of the administrative procedure.

On the one hand, it is a common mistake to place private interests at the heart of an administrative procedure, since its essential purpose is to enforce public interest. Moreover, in a large number of cases, private interest appears only indirectly: in a procedure opened upon request, the client does have an actual interest in conducting the procedure and obtaining a decision. At the same time, we must also see that, in the course of the

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procedure – and that is the purpose of public administration –, the public authorities must enforce and take into account a number of elements of public interest, depending on the exact life situation.[1] In the end, the outcome of the procedure has a direct impact on the realization of a specific public interest.[2]

On the other hand, in the administrative procedure, the public interest is represented by the acting authority, which also decides on the merits of the case. If we add to this a perceived or real forced result-making by the public authorities, it can be seen that in a constitutional state based on the rule of law it is essential that clients are protected by adequate guarantees by the state. The principle of the rule of law and, in particular, the requirement of legal certainty requires adequate substantive legislation (by which arbitrary decisions are excluded) and, that is more important regarding the subject matter hereof, the necessary procedural framework. I believe that these two sets of rules must complement each other perfectly: the greater 'margin of manoeuvre' is guaranteed for the authority by the substantive law, the more procedural rules become a guarantee.

It should also be recalled that while the former Constitution of Hungary did not specify the right to adequate administration and – the right to due process related to administrative procedures (the Constitutional Court derived it from the interrelation of the right to judicial procedures and the protection of procedural guarantees arising from the concept of the rule of law definition) the Fundamental Law of Hungary now ensures it in its 'Charter inspired'[3] Article XXIV.

After describing the conceptual basis, some nodes should be identified, that, as I believe, could be determinative elements of the renewal of the public administration procedures, guidelines to describe the direction of the review process and also represent a different, simpler approach than the ones of the previous regulation.

A general prerequisite for the re-regulation of administrative procedures is a code of procedure that establishes the basic rules of procedures of public administration that shall

1 It is more difficult to determine at a high degree of abstraction but can be inferred from the rules of substantive law. In a procedure of the traffic authority this is to ensure safe participation in traffic; in a building management case, it is to ensure the building's stability, its fitting in the townscape or even its environmental impact can be investigated.

2 József Valló, *Közigazgatási eljárás* (Public Administration Procedure), Budapest, Magyar Közigazgatástudományi Intézet (Hungarian Institute of Public Administration Sciences), 1937, p. 13.

3 According to the reasoning of the proposal of the Fundamental Law of Hungary: "The right to a fair trial is also set forth in case of the administrative procedures – just like in judicial procedures – according to the model of the right to 'good administration' laid down in the Charter of Fundamental Rights."

be applied in as many cases as possible.[4, 5] This would assist clients in the access to the law providing them with more predictable law enforcement and, at the same time, it would make it possible for the state – acting either as a general government official, a public service official or a notary – to ensure adequate human resources quicker, easier and smoother for the managing the cyclical or unforeseeable increase of the number of cases.

However, according to experiences, the former Act on administrative procedures (hereinafter referred to as 'Ket.') did not fulfil these conditions as the legislator could not eliminate its unsustainable legislative practice of 'as many procedures, as many rules' that was dangerous to legal certainty, which implied that the procedural safeguards desirable for creating a general procedural law might be lost.

Clients may have every reason to feel that the same or very similar procedures might proceed under generally different rules. A regulation like this makes it difficult for citizens to access their rights and manage their cases as well as for the authorities to ensure a balanced standard of law enforcement. Unfortunately, bad regulations had also led to a social consequence that the administrative procedure and indirectly the authorities had lost the confidence of citizens.

It is the elementary interest of both the clients, the public authorities and, of course, the legislator to bring order to the current lack of transparency in the general and special procedural rules, thereby regaining public confidence in public administration, public administrative bodies and in the theory of good state.

According to the Public Administration and Public Service Development Strategy, "institutions must operate to provide users, *i.e.* taxpayers and customers, with a competitive service in international comparison. That is, they shall work cost-effectively; ask for procedural fees and duties, and work with procedural deadlines that are beneficial to Hungarian clients; provide public services that are cost-effective and accessible to citizens, communities and economic operators, so that this can help them provide added value."[6] The typical solution of the administrative reforms that intended to reduce bureaucracy so far was to shorten procedural deadlines. Now, in order to increase the efficiency of the administrative procedure and to accelerate it, the currently 21-day general administrative deadline, which is typically far more than 21 days in reality, can no longer be responsibly

4 On the basis of the works by József Valló, we agreed that a code of that nature might be referred to as "general administrative ordinance. On this topic, *see*: József Valló, *Törvénytervezet az általános közigazgatási rendtartásról indokolással* (Draft-law on the General Administrative Procedure with Justification) Budapest, Magyar Közigazgatástudományi Intézet (Hungarian Institute of Public Administration Sciences), 1942.

5 *See also*: Government Decision No. 1352/2015 (VI. 2.) on certain tasks related to the preparation of the Act on Procedural Rules of Judicial Review of Administrative Decisions and the preparation of the Act on General Administrative Procedures also named the new Procedural Code this way.

6 Közigazgatás- és Közszolgáltatás-fejlesztési Stratégia 2014–2020 (Public Administration and Public Service Development Strategy 2014-2020), p. 25.

attempted to be shortened it is essential therefore to establish procedural legal institutions that facilitate the efficiency and the concentration of procedures.

During the codification, it is of high importance that the legislator shall know the practical implementation of the legislation as well. This can primarily be supported by the official statistics of the National Statistical Data Collection Program (in Hungarian: Országos Statisztikai Adatgyűjtési Program; shortly OSAP), but OSAP can be considered as neither life-based, nor case-based because it essentially focuses on the flow of case-files. This, on the one hand, makes the prognosis of regulatory procedural changes difficult and, on the other hand, it significantly sets back the basic change of attitude. Therefore, it is no longer to be overlooked by the legislator: the vast majority of clients are not thinking that their cases are what the law implies, but what they want to get done in their life situations: such as 'paperwork' relating to the birth of a child, solving problems arising from a permanent and irreversible reduction of working capacity or the licensing of a used second-hand vehicle imported from abroad. The mentioned life situations, despite the fact that these are typically related to one another or are closely related to one another, are subject to several official procedures, and a number of personalized client-authority meetings are assumed. In these cases, clients only feel that they are sent from authority to authority, or in the best case, they only need to manage their affairs in the monotonous, frustrating and often incomprehensible crowd of sequential queuing with numbers.

Nothing proves better the fact that the administrative procedural law had to be renewed that, until the beginning of the codification work, nearly 200 sections of the former Act on administrative procedures were affected by more than 750 amendments. Until the beginning of the codification, however, – due to its length not mentioning the rules of reduction of bureaucracy arising since 2016 – the rules in force were only 'caressed' without any substantive change. The administrative reforms of the legislator so far have been consisted only in reducing the procedural deadlines, which, in itself, was not enough to create a real, XXI. century-level public administration in Hungary. If that were the case, Hungary would have had an insurmountable competitive disadvantage due to its protracted and unjustifiably complex administrative procedural law. Therefore, with real procedural reforms, as a realistic alternative, we shall create the required but still not enough basis for making the administration really cost-effective, making decisions that are on a higher standard, and working with predictable procedural deadlines – which last is perhaps the most important for the private sector. In order to achieve these objectives, it is essential to review the merits of the sectoral substantive and procedural rules, in addition to the establishment of general administrative regulations. However, for the renewal of the Hungarian public administration, the rationalization of procedural regulation is not enough: handling the administration-management and organizational solu-

tions shall be treated equally, as efficient and fast procedures cannot be carried out without an efficient and fast organization of public administration. Likewise, a simple change of organizational and competence regulations cannot achieve its intended purpose without proper procedural frameworks.

Last but not least, the rules of administrative procedural and substantive law traditionally have a highly differentiated set of legal tools to enforce clients to act in compliance with law and if clients fail or are just even reluctant to meet the obligations, the authorities call upon the full range of their assets to enforce it, but, on the other hand, they are very indulgent with themselves regarding their own omissions. It has become apparent for today that the rules of sanctions laid down in Ket. for the defaults and failures of the authorities to meet deadlines were unsuitable for their purpose. The basic requirement for a constitutional state based on the rule of law is to ensure that the rules on the legal system itself are to be enforced,[7] meaning that it is a constitutional requirement that the rules of procedure be respected by the authorities as well.

28.2 Major Innovations of the General Administrative Procedure Act

28.2.1 The Actually General Rules

While in its title, Ket. had also proposed a general regulation, in reality, the former law would have been regarded general in terms of the General Prussian Law (Allgemeines Landrecht für die Preußischen Staaten – ALR): due to the accelerated social and technological development and the differing views of the exchanging governments, it was not possible for the law to become a legal basis of administrative procedures of authorities, due to the fact that, in 10 years, practically all of its sections were modified, its text and its regulatory scope has expanded, while at the same time its coherence weakened and in the end, it became a sort of 'manual for administrators'.[8] A key prerequisite for the re-regulation of administrative proceedings is a code of procedures ensuring a scope of general application, laying down basic rules of administrative procedures of public administration – which, as we earlier mentioned referring to József Valló, might have been named 'general ordinance'[9] – that shall be applied in as many cases as possible.

Two of the six excluded procedures regulated in Ket. (procedure for territorial organization and the proceedings for the judicial oversight of local governments,) were cer-

7 Decision 11/1992. (III. 5.) AB of the Constitutional Court, III. 3.

8 On the history of the codification of law of public administration *see also*: András Patyi, 'A közigazgatási hatósági eljárás mai rendjének kialakulása Magyarországon' (The Development of Today's Administrative Procedure in Hungary), in: András Patyi (ed.), *Hatósági eljárásjog a közigazgatásban* (Procedure in Public Administration), Budapest–Pécs, Dialóg Campus Press, 2012, pp. 50-55.

9 Valló 1942.

tainly not public administrative procedures; and the number of the separately mentioned particular types of procedures listed in fifteen points had, without any theoretical basis, grown to sixty. General and special procedural rules were further made subtler by privileged procedures in which the law or government decree may, in varying degrees, allow the derogation of the regulations of Ket. In addition, Ket. made it possible in number of cases for special procedural regulations to set different rules.

The main doctrine of the legislation of the General Administrative Procedure Act was that the most important elements of the thousands of types of procedures cannot be set forth in one act, so the codifier sought to impose only the rules that are common in all procedures and all the other specification of the necessary features shall be laid down in sectoral, special procedural regulations. At the same time, in contrast, the possibility of variance with the general rules is excluded or significantly restricted. (While the Ket. allowed variance in the seventy-two places – counting the sixty separated particular types of procedures as one –, the General Administrative Procedure Act allows the variance in about ten cases only).

The General Administrative Procedure Act specifies in detail that additional procedural regulations in accordance with its rules can be laid down by other law with the exception of ministerial decrees. This can ensure that the sufficiently general provisions of the Ákr. – at a higher abstraction level compared to Ket. – supplemented by the detailed provisions of other laws, can together form a complete uniform procedure. During the negotiations, several questions arose as to what constitutes to be a concordant and supplemental regulation to the General Administrative Procedure Act? No exhaustive, definable answer to this question can be given. The special procedural legal assets can lay down provisions that are not regulated by the General Administrative Procedure Act (*e.g.* official mediator, public hearing, certification body, protected witness, etc.). However, if the effect of the supplementary rule downplayed the client's right to good administration, it would surely be contrary to the basic principles of the General Administrative Procedure Act, and this way it could not be conceptually harmonious and supplemental to its rules and mentality. And, if the General Administrative Procedure Act contains a provision with respect to a legal institution, again, the basic principles and the underlying basic rights provided by the Fundamental Law of Hungary shall serve as a basis for deciding whether or not the rule is a supplementary rule or an unacceptable deviation from the provisions of the law.

28.2.2 Shorter, Simpler, More Transparent Regulation

The length of the General Administrative Procedure Act is a small fraction of that of the former Ket. This, in a large part, is already the result of deregulation itself. We tried to rid the procedural code from all non-procedural norms (from substantive law rules or from

rules that cannot be categorized as being part of a legal relationship of an administrative procedural nature). The language of the General Administrative Procedure Act is much simpler and more homogenous than that of Ket. was. This does not only help the work of official administrators, but it also eases the clients' access to their rights.

During the codification, based on legal and educational experiences, one had to examine where to locate each legal institution. Without being exhaustive, this is why own motion procedures and specific rules of certain regulatory actions got a separate chapter, and also the reason why the official witness deserved a place in the title of recording procedural steps.

28.2.3 Changes Related to the Scope of the Act

28.2.3.1 Reduced Number of Excluded Procedures

The General Administrative Procedure Act reconsiders the regulatory system of administrative procedural law and breaks with the three-leveled solution according to which the Ket., in addition to its generally applicable rules, made the excluded procedures also applicable, furthermore, the procedures under partially differentiated rules were also applicable, in the cases of which, the Ket. remained only as its background law.

In contrary, the General Administrative Procedure Act specifies procedures that are not covered by its scope, so those laws may establish autonomous and complete procedural rules. These include procedures which, by their very nature, are governed by a specific set of rules that cannot be settled in the system of a general procedural law of any other proceedings. These are the following: misdemeanour proceedings, election procedures, referendum initiatives and referendum procedures, taxation and customs procedures, asylum and immigration procedures, and – with the exception of the issue of certificates of citizenship – citizenship proceedings. However, among the excluded procedures only the definition of those procedures can be justified, that are per definitionem administrative procedures,[10] but for some reason, it is not expedient, lifelike or feasible to apply the rules of the General Administrative Procedure Act.

The excluded nature of taxation and customs procedures – like in the German law – is justified by the need to carry out procedures with sui generis legal institutions, definitions and procedural logic.

10 Thus, the material scope of the new law is based on András Patyi's definiton of administrative procedure, that is to say, an act of law legally regulated in a legal entity's case who is out of the scope of an administrative body, which is in the course of managing an individual case, proceeded under an authority's law enforcement, in order to issue or enforce a specific act (regulation) which has a direct legal effect on the entity concerned, or is a response to a dispute or violation of the law. (The procedure naturally requires an administrative body acting as a public authority according to the authorization of the law and the active involvement of other entities in the procedure.) András Patyi, 'A közigazgatási hatósági eljárás meghatározása és elhatárolása más eljárásoktól' (The Definition of Public Administrative Procedure and its Separation from Other Procedures), in: Patyi 2012, p. 30.

The General Administrative Procedure Act does not exclude the regulatory solution in which the legislator assigns the application of the code outside the scope of the act and partially or wholly it only 'borrows' it.[11] This practice is not objectionable, on the contrary, it is generally useful as it increases the transparency of procedures and, this way, it may contribute to the establishment of uniform and guarantee-based procedures. In addition, such a practice may be useful in terms of 'norm efficiency', as there is no need to set up a completely new procedural order. In the case of the 'borrowed Ákr' (but only in that case!), of course, it may also happen, that the legislator requires to apply not the whole act, but only certain provisions thereof.

28.2.3.2 The Administrative Action

The General Administrative Procedure Act clarifies the definition of administrative action in a more general way and states that the administrative action purports to determine the client's rights and obligations (breaches of the law), to settle the client's disputes, to make data verifications or to keep records and, as a new element, it expressly specifies that enforcement of decisions belonging to these cases are also one of the conceptual elements of the administrative action.

So far, the relationship of the regulatory inspections and the administrative action was subject of disputes. According to the General Administrative Procedure Act a regulatory inspection is not an administrative action, but the rules of the act must be applied to it. This ensures that, even at the level of procedural acts, it is possible to clearly distinguish a regulatory inspection from an administrative action that is ex officio launched related to its outcome.

28.2.3.3 The Client

The definition of client in Ket. ("natural or legal person whose right or legitimate interest is affected by the administrative action") remains fundamentally persistent. However, with regard to the legitimate interest, it disambiguates that only direct concern to the case can be taken into account for recognising a person as a client. This was necessary because of the general nature of the General Administrative Procedure Act, as in the future it will not be possible to use a special client definition in a separate law, but with requiring the direct concern, these cases can be handled in practice without any doubt. (At the same time, the possibility exists that a law or a government decree may, in a specific category of cases, determine the persons and entities who [are] subject to the law, even if they are not directly concerned.) The General Administrative Procedure Act specifically names the quality of the client subject to regulatory inspections, so it

11 András Zs. Varga, 'Tűnődések a Ket. hatályának dogmatikai alapjairól' (Reflections on the Dogmatic Basis of the Scope of the Ket.), *Magyar Jog*, No. 2014/6. p. 327.

should be clarified that, although the inspection is not a matter of administrative action, the inspected person is, of course, subject to a client's rights, legal status and obligations.

Sectoral legislation may continue to define those who have a legal status of a client under the procedure in question, without any further examination in subject.

28.2.3.4 Rules Related to Minors, Persons with Disabilities and Persons Whose Legal Capacity Is Partially Limited

In the General Administrative Procedure Act, with regard to persons in a special situation and to the constitutional interest for the high protection of their rights – the supportive nature of the authorities' activity is more emphasized in the case of children, persons with disabilities, persons with partially limited legal capacity and incompetent persons.

In order to improve the protection of persons limited or impeded by their personal circumstances, using positive discrimination to counteract their disadvantages – in accordance with Article XV of the Fundamental Law of Hungary regarding the protection of the groups referred – the General Administrative Procedure Act sets forth specific rules and requirements. Exceptional treatment based on the nature of the limitations or disadvantages of the various groups (by limiting the data management and restrictions on the right of access to files and by laying down specific rules for summons) and, together with promoting to exercise the rights of the clients in general, a proactive obligation to take measures is imposed on the public authority.

28.2.3.5 Automated Decision-making – Summary Proceedings – Conditional Decisions

The General Administrative Procedure Act defines the types of proceedings, distinguishing between the summary proceedings and the full hearings, moreover as a special method of summary proceedings: the automated decision-making. The automated decision-making and the summary proceeding are essentially procedural forms that can be used in cases of simple assessment where a fast closing of the case is possible, if its other conditions are met. The full hearing is, in contrast, the classic administrative procedure in which all procedural actions can be carried out.

An automated decision-making procedure is applied if

- the decision does not require deliberation,
- there is no adverse party,
- all the information necessary for the decision is available, and
- it is expressly permitted by law or government decree.

The specific course of decision-making and its technology is governed by Act CCXXII of 2015 on General Rules of Electronic Administration and Trust Services.

However, the possibility of a summary proceeding is provided in all cases in which all legal requirements of making a decision (application, required annexes and other infor-

mation accessible by the authority) are available, meaning that no further procedural action is necessary to ascertain the facts and there is no adverse party. In such a case, the decision must be made within eight days. If any of the conditions are missing, the authority will conduct a full hearing and, where appropriate, take a conditional decision or other decision that excludes conditional decisions (such as termination of the procedure, suspending the procedure, etc.).

It is an important innovation that, in the case of an automated decision-making procedure and a summary proceeding, the client may, within five days following the delivery of the decision request the authority to conduct his or her application in a full hearing. This is, on the one hand, a new procedure conducted quasi by virtue of the authority's office, but on the other hand, it is intended to prevent the courts from examining only facts; the authority may be able to correct and support remedy on any mistakes or anomaly. This does not affect the finality of the decisions. However, in case of objections or violation of rights, it is possible to examine the case more thoroughly.

Act CLXXXVI of 2015 on the Amendments on the Reduction of Public Administrative Bureaucracy introduced the legal institution of conditional decision, which was adopted by the General Administrative Procedure Act with an unchanged content, and it only extended its scope to procedures with a deadline of more than sixty days and the ones that are longer than two months. However, it is still not necessary to make a conditional decision when the authority decides in the merits of the case within eight days, refuses the application, terminates or suspends the proceedings, or suspends the procedure or holds the proceedings in abeyance.

If there is no place for a decision of conditional effect, nor is there any closure in the merits of the case or a decision to exclude the whole procedure, the authority shall conduct the full hearing but within eight days it has to make the decisions that will "advance" the proceeding (e.g. contact a specialist authority, arranges for necessary procedural actions, invites to remedy the deficiencies and provides information about the legal effects for exceeding the time limits).

By this the General Administrative Procedure Act creates the possibility of a generalized objective administration deadline, which was opened up by the Act on the Amendments on the Reduction of Public Administrative Bureaucracy and enforces the decision to be taken on time in all cases.

The General Administrative Procedure Act creates a kind of 'gradualism' that in case of non-application or exclusion of a conditional decision, the rules on exceeding the administrational deadline come into force. Therefore, the procedure consists of the following three levels:

– in principle, all procedures start as a summary (or automated decision-making) proceeding,
– if the procedure cannot be conducted in a summary proceeding, the authority shall make a conditional decision, and

– in case of the exclusion of a conditional decision, a full hearing shall be conducted with the legal consequences of making enforceable decisions that justify the entire procedure within eight days.

Moreover, the General Administrative Procedure Act also corrects several 'deficiencies' of the conditional decision. The legal institution does not apply to any procedure and its application can carry serious risks. Therefore, in procedures where the rights granted to a client in the case of unlawful 'silence' of the public administration are or may seriously affect or violate a public interest that is more significant than the individual interest of the client, the application of making a conditional decision must be excluded. The applicability of the legal institution must therefore be decided on the basis of a comparison between the interests of the client and the public interest affected by the right conferred on the client.

28.2.3.6 Strengthening Cooperation between the Authorities

Beside the administrative procedure of the specialist authorities as a general model of the cooperation of authorities, the reform of the territorial administration allows for the introduction of other solutions as well, which result in simpler and faster procedures. In order to improve the efficiency of the procedures that presume the involvement of more than one authority, the General Administrative Procedure Act laid down rules to encourage cooperation between the authorities. Today, the customer-friendly design of many sequential procedures is unresolved, therefore, the General Administrative Procedure Act introduced a special mode of co-operation that would facilitate the effective one-stop procedure: it designates a 'main' authority that obtains or facilitates the administrative decisions required to comply with the client's request from the other authorities concerned. Thus, for example, after the birth of a child, the parent can connect only one authority to access the child's birth certificate, address card, tax card, and family support benefits (maternity allowance, baby bonds, child-care allowances etc.). According to the Ket.'s system, the parent had to be personally contact two authorities (notary, capital and county government offices) to initiate these cases – due to different procedural deadlines typically more than once –. In order to strengthen cooperation between the authorities, the strict deregulation of the sectoral rules in a life situation-based approach was at a high importance during the codification, a result of which, it shall end up in the realization of a real, wide spectrum 'one-stop-shop' administration in Hungary.

The related procedure can be advantageous where the client's final aims require the completion of several procedures (e.g. registration of a vehicle imported from abroad, obtaining documents related to birth and obtaining social support). In the related procedure, the client is only contacted with one authority (at the beginning of the process) and, in the subsequent related procedures, the firstly contacted authority becomes the mediating authority. The mediating authority shall forward its own decision, the application

submitted and the related evidences to the actual authority in charge in the related procedures, and the decision of that authority shall be transmitted by the mediating authority to the applicant client. According to the General Administrative Procedure Act this legal institution may also be applied in proceedings built on each other, where the prerequisite procedures fall within the competence of the same authority.

The rules of the related procedure may only be applied upon the client's request. The client may, based on the information received from the authority, consider whether he or she would like to conduct procedures related to the original application in accordance with the rules of the related procedure, but may also request that only certain related procedures be conducted by the authority in this way. It shall be emphasized that a rule of the substantive law shall stipulate that the decision of an authority in a given case may be subject and prerequisite to a decision to be taken in another official procedure and thus it establishes the applicability of the rules of the related procedure.

The regulation also settles the case where a decision to be taken in another – prior – procedure is required to settle the client's request. In such cases, the authority shall initiate the decision to be taken by the authority acting in the prior procedure, and the client's consent thereto shall be presumed. This solution is capable of effectively and quickly settling a number of issues that previously had solely the suspension of the procedure as an option.

The system of specialist authorities is an old institution of Hungarian administrative procedural law; the idea of fundamental change or elimination thereof emerged during the drawing of the new act, but in the end, due to the emphasized importance and role of specialist authorities (regarding both the priority issues and the exception of the institution of the special authority itself), the legislator considered justified to keep it. An important change, however, is that a law or a government decree on the assignment of specialist authorities may require the co-operation of specialist authorities on the grounds of overriding reasons in the public interest. The new code thus significantly simplifies the rules described in the Ket., getting closer to the rules of Áe. as it sets out the constraints and criteria that may be referred to as a reason for the need of the assistance of the specialist authority. It should also be noted that the system of specialist authorities is closely related to the theory of 'one-stop-shop' administration. The elimination of the entire system of specialist authorities may also affect the fulfilment of the European Union obligations as it is indispensable to meet the requirements of the Articles 6 and 8 of Directive 2006/123/EC of the European Parliament and the Council on services in the internal market (the creating of such one-stop client services).

It should be noted, however, that if, based on the experiences, there is no need for specialist assistance in certain types of procedures, this can be solved by reviewing the rules of the substantive law on the procedures of the specialist authorities and not by transforming the general procedural rules.

28.2.3.7 Changes Related to Administrative Time Limits

The General Administrative Procedure Act binds the starting date of the time limit for the administration to the initiation of the procedure, but in case for the starting date of the procedural time limit, the act allows diversion from its rules at a statutory level. The reason for this is that Article P of the Fundamental Law of Hungary stipulates that "Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations." For procedures based on Article P, it may therefore be necessary to establish a special starting date for the procedures, which is adapted to the various biological and ecological rules (e.g. vegetation period). For the protection of the cultural heritage of the nation, in certain construction cases, it may also be necessary to define a starting date other than the general.

The General Administrative Procedure Act breaks with the former regulation of the legal institution of general administrative time limit because of the fact that it has never really been considered as general, and also because the time limits not included in the administrative time limit set forth in subsection (3) of Section 33 of Ket. [points a)-l)] it was unsuitable for the client or for the authority to deduct any realistic conclusion regarding the expected duration of the procedures. This, according to the practical experiences, has led to such unpredictability in the law enforcement that has become incompatible with the requirement of legal certainty derived from the theory of rule of law declared by Article B(1) of the Fundamental Law of Hungary. The re-regulation of the administrative time limit reflects the legislative aim described by the Article XXIV of the Fundamental Law that decisions shall be made within a reasonable period of time. According to this, the General Administrative Procedure Act, by further developing the rules of the Act on the Amendments on the Reduction of Public Administrative Bureaucracy, establishes a sixty-day 'gross' time limit (administrative time limit) during which the case must be closed by a decision on the merits of the case.

The structure of the system of administrative time limits is the following:

- one day in automated decision-making procedures,
- eight days in summary proceedings,
- sixty days in full hearings, and finally
- if the time limit for the compliance of a procedural step or for the bringing of a ruling is not provided for in a law or government decree, the Act shall set out a general time limit of eight days.

The new deadline for handling the full hearing should be considered as a calendar period into which only some limitedly defined periods of time cannot be counted in order to meet the statutory goal: in sixty days the case must be finished with a decision.

In the case of a conditional decision, only suspension and establishing a stay of action are only those which cannot be included in the administrative time limit. If there is no place for a conditional decision to be made due to the nature of the given type of case, in addition to the periods mentioned above, the time limit for the duration of the default or delay of the client and any period of time required to fulfil the obligation imposed by the authority shall not be counted into. That is, the time periods that arise in the sphere of interest of the public authorities (including the time of the request, the procedure of the specialist authority etc.) cannot lead to an extension of the administrative time limit. In the case of a conditional decision, it is ensured that a decision on the client's case shall be made in a truly objective, strict calendar date (deadline).

Further extension of the non-counted periods of time would lead to a similar emptiness as it was experienced in Ket. regarding administrative time limits, and for this reason, it cannot be supported in the future. It shall be noted that József Valló described a similar rule in subsection (1) of Section 112 of his private draft law, with the difference that the time limit was set at four months – considering far worse infrastructure conditions and no electronic contact with clients.[12]

However, as a guarantee requirement, the General Administrative Procedure Act also orders that, 15 days before the expiry of the administrative time limit, the case must be managed out of the line, in order to be able to end the case with a decision by the last day of the administrative time limit. Under this requirement, the authorities must take all reasonable steps to complete the case before the expiry of the time limit.

In complicated cases, of course, the General Administrative Procedure Act also allows that, if provided by the law, an administrative time limit of more than sixty days for the entire procedure take place.

28.2.3.8 Suspension of the Procedure and Establishing a Stay of Action

The General Administrative Procedure Act places the institution of suspension of procedures on a new basis. Similar to the Code of Civil Procedure, it differentiates the suspension of the procedures from the establishment of a stay of action.

If the decision on the merits of the case depends on a preliminary decision of an issue, which falls within the competence of another body or cannot reasonably be assessed without the other decision of the same authority (in this case, a separate statutory provision is required to suspend it), when the preliminary question falls in judicial competence and when contacting a foreign authority is requested, the suspension of the procedure is necessary. The same applies if the client requests (or clients collectively request) that the procedure be suspended for a maximum period of six months provided that this option is not excluded by the law.

12 "The time-limit laid down for the decision-making shall not include any delays caused by the failure of the party." Valló 1942.

However, it is important to note that, in the procedures that are initiated upon the request of a client (or a group of clients), with the exception of suspension due to contacting foreign authority, the authority is obliged to continue its procedure and make a decision on the merits of the case. This may lead to the rejection of requests, but this way a special remedy is possible as the supervising body or the administrative court can make a decision that may declare that the suspension was unjustified.

In practice, it emerged that the other authority acting upon the preliminary question did not know that, in the light of its procedure, the authority suspended the main procedure. Thus, it was not clear when and how the procedure of the authority acting in the preliminary question was closed, nor that the subject-matter of its procedure was not the subject-matter of the suspension. In order to prevent such misunderstandings, the General Administrative Procedure Act also ensures that the "other authority" shall be aware of the suspension of the procedure.

Based on the consideration that the applicant is the 'principal of the case' whose interests shall be eminently taken into account by the client-friendly regulations: his or her applications can be submitted, amended or withdrawn, the Act also ensures that the procedure on the assessment of the clients' application can be suspended. In view of the principle of acting in good faith, however, it provides that if the client does not request the continuation of the procedure within six months, the procedure that can only be initiated upon request shall be terminated ex officio, on which the authority shall notify those to whom the decision would have otherwise been communicated. This entails a new reduction of administrative burdens, as there is no need to issue a formal decision to terminate the procedure.

Suspension can in many cases result in a more effective solution, a closure of the case on the merits, and clients shall be given the opportunity to settle their legal disputes in a peaceful manner. In order to facilitate this, in the case of sectoral procedures – again, as it is in the Civil Procedure – duty or fee reductions can also be provided.

28.2.3.9 Regulatory Inspections and the Own Motion Proceedings of the Authorities

Regulatory inspections (like in the former regulation) are described in a separate chapter of the Act, as the regulatory inspection is a special administrative activity of the authorities which, as a result of the change mentioned earlier at the scope of the Act, is not an administrative action, but for the inspections the relevant regulations of ex officio administrative procedures shall apply. The General Administrative Procedure Act does not contain a specific provision for the duration of the inspection, since this is not a matter of general regulation. The application of the administrative time limit is not excluded from the chapter on regulatory inspection, its application is not objectionable for other realistic reasons, so the legal institution is available. The variance from this rule is possible on the basis of general rules.

Regulatory inspection is a separate type of administrative activity, a special construction, as in the subject of the breach of law identified as a result of the inspection, the law enforcement sanctions are not issued in a uniform procedure. The regulatory inspection is a separate – partial and incomplete – act of the authority, which, in case of the violation of the law, is followed by another official or non-official procedure and, in the absence of the violation of the law, it ends with the declaration of this fact.

Fact-finding and investigation with the means of regulatory inspection can significantly reduce the number of ex officio procedures and, on the other hand, reveal facts that are necessary to the regulatory actions of the authority. In addition to controlling the enforcement of the administrative decisions, the role of determining the need whether to initiate an administrative procedure is becoming more and more important. The task of the authority is also to control the law-abiding behaviour of legal entities.

The regulatory inspection does not conclude with a formalized administrative decision, but by establishing the fact-finding on whether there was a breach of law or not, or by initiating a procedure at another authority, at the court or at other state body. The General Administrative Procedure Act does not – in principle – provide on how the closure of the procedure should take place or how the documentation of the closure should be kept if an administrative procedure is initiated as a result of the inspection. It is the role and responsibility of the given authority to record the documentary evidence in a credible and demonstrable manner. The authority shall issue an official certificate to justify this circumstance in every case of a regulatory inspection initiated on request where no violation of law was detected and upon the client's request in every case of ex officio regulatory inspection. In order to ensure the effective performance of the on-going inspection tasks, the prior notification of the client can be dispensable in the case of this type of regulatory inspections.

It may also arrange the earlier divergent and criticized practice that – as it necessarily derives from the rules of the General Administrative Procedure Act on administrative time limit –, after the violation of the law has been identified, the authority shall immediately, but in no later than eight days, ensure the initiation of administrative procedures and, this way, it excludes the possibility of initiating the procedure only weeks, months or even years after identifying the violation of the law.

As mentioned in the introduction, a major innovation in the code is that it governs the specific rules of administrative proceedings (as compared to that of the procedures initiated on request) in a separate chapter. (It is necessary to distinguish between the regulatory actions contained in a separate chapter, which the authority is also entitled to do ex officio, but it is also possible to request them in procedures that are initiated upon request).

Cases of termination of procedures in ex officio procedures are left out of the law. The reasoning behind this is that the cause of termination due to the lack of competence has become unnecessary due to the rules for refusing the application. The reason for the

elimination of further cases of the termination of the procedure – if the ex officio procedure does not identify violation or the situation could not be clarified, and no further result is expected from further procedural step – is that it do not constitute a real administrative burden reduction if the authority does not decide with a resolution but with a ruling. The result, in essence, is the same, so, in the future, the authorities must make a decision on the merits of the case. It shall also be pointed out that the client has a legitimate interest in obtaining a final decision on the merits of the fact that no violation has occurred since it creates a res judicata.

The General Administrative Procedure Act, as an opposite to the Ket., obligates the client to provide information only in ex officio procedures, but there it is a main rule. The reason for this is that in the case of an ex officio procedure the client's procedural cooperative behaviour is highly expectable and, in such procedures, the client is typically not interested in promoting the work of the authority and, therefore, the law allows that the sectoral legislation may, in addition to the procedural fines, set sanctions for failures to submit the data and information ordained.

28.2.3.10 The System of Legal Remedies

In the view of their differing nature, and in particular their difference from the client's point of view, it is necessary to maintain the boundary between the two main forms of legal remedies settled by Ket. in the General Administrative Procedure Act as well: the ones that requested the client's activity and the ex officio forms of decision supervising, initiated either with the client's passivity or even against the client's will. At the same time, the terminology is changed by the new code, considering both 'types' as legal remedies, only the initiations thereof are different.

The General Administrative Procedure Act establishes the types and rules of ex officio initiated legal remedies in line with today's conditions, ensuring their consistency with the rules of administrative judicial procedures.

It is important to point out that two legal remedies that were previously applicable according to Ket. have ceased when adopting the new act. The reason for leaving the provisions on the re-opening of the procedure is that the legal institution did not fulfil its promises, statistics show that it has not actually been applied in practice. Where it is necessary in sectoral procedures, there is, of course, a possibility to recall it by other laws as a complementary procedural provision, but keeping it as a general rule of procedure did not appear to be justified. The regulation of the proceedings opened based on a resolution of the Constitutional Court has become unnecessary in the new Code. The former rules were important because there was no legal remedy against the decision that approved a settlement. The General Administrative Procedure Act, however, also allows in such cases to challenge the settlement, so the provisions were no longer necessary.

Article 13 of the European Convention on Human Rights (hereinafter referred to as 'the Convention') provides for the right to an effective remedy ("Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."). The case law of the European Court of Human Rights declares a legal remedy effective when the applicant has an individual material right to exercise it, the power of authority may make an overturn decision in the merits of the case, may change or revoke the decision and, during its procedures, it may examine the merits of the application, the legal questions and the factual ground of the case.

However, Article 13 of the Convention does not confer the right to a particular form of remedy. Neither does the Convention imply the obligation to maintain legal remedy within the public administration, nor the possibility of using a direct administrative court action regarding any decision.

Due to the fact, that the appeal has traditionally been a non-binding title in Hungarian administrative procedural law and can be used to produce entirely new arguments, clients and public authorities often consider the two-level administrative procedures as a uniform process, so the real fact-finding of the case only takes place in the second 'level' of the process. After overviewing the models of the European public administrative appeals, it can be stated that post-socialist procedural law systems, regarding their main elements, have the same rules on legal remedies as stated in 'Áe.' (i.e. the former act on administrative procedures) and, consequently in the Ket.; and they are aware of non-titled, non-justified appeal, in which new facts can be relied without any restrictions and which shall be determined by the superior body of the authority.

When developing the new regulations, like the most recent European trends and in compliance with the rule of law, the General Administrative Procedure Act found the administrative action (the type of procedure that is outside the scope of the system of public administration) more appropriate as a legal remedy, than an appeal in the scope of public administration system, which is a general remedy. One of the main purposes of the procedural rules is to promote and enforce (ensure) the final decision. Thus, the institution of res iudicata has a prominent role, which makes the decision unchangeable and definitively closes it. The General Administrative Procedure Act keeps in mind the primary desire of settling the public administrative cases, and so, during the shaping of legal remedies, the remedies available against decisions are adjusted to the earliest possible time of the res iudicata.

The primary form of legal remedy in the system of the General Administrative Procedure Act is the administrative action. Detailed rules thereof are found in the Act on Procedural Rules of Judicial Review of Administrative Decisions. Thus, the procedural law can only settle the questions that are relevant to the administrative procedure and may capture the points of attachment of the two acts (the possibility of seeking legal

remedy and the question of what the decision-making authority can do on the basis of the application).

The transformation of the system of legal remedies has found consistency between the effective protection of public interest and the enforcement of client's rights and, this way, the General Administrative Procedure Act also regulates a pre-filter, self-correction mechanism. In the new system of legal remedies, the application also serves the function of a traditional appeal if the authority itself finds that the decision in question is against the law and, on that basis of this fact, the authority can modify or revoke it.

It is also important to emphasize that the use of this self-correction mechanism can together take place only once in the same case, thus preventing the so-called 'yo-yo effect'. It should also be noted that the decision-making authority must also submit its new decision to the court and, according to the rules, the subject-matter of the case will be the new decision (if the appellant's claim is upheld in relation to the new decision).

In the system of legal remedies of the General Administrative Procedure Act, appeal is only possible if it is expressly permitted by the Code itself – against the decisions of local administrative bodies – or, if it is permitted by sectoral law. The theoretical basis of the appeal is that legal remedies are not justified to be sent on judicial proceedings in the case of the rulings or by the decisions made by the head of a district office or, with the exception of the representative body, the local government authority (typically a notary). In the event of such a dispute, the superior body of the acting authority can more effectively clarify the facts and, this way, the courts might not be so overwhelmed with cases.

In the case of decisions made in summary proceedings and automated decision-making procedures, ensuring a separate appeal is not justified since it is stipulated in the rules of the primary procedure that in such cases the client may request a full hearing within five days. On the other hand, for reasons of guarantees, it is appropriate to specify the cases in which the appeal is also excluded, but an administrative action may be initiated.

An appeal has suspensive effect on the enforcement of the decision unless the authority has declared its decision immediately enforceable under certain conditions.

An important innovation in the rules of appeal is that the Ákr. breaks with the 'tradition' that new facts can be infinitely introduced in the appeal and the client has no obligation to state reasoning. It is also expected according to the general principles that the client should support his or her claim for appeal at least to the extent that he or she describes the decision to be against the law to what reason. It is also unsustainable for the authorities that any petition submitted by the client related to the decision must be considered an appeal against the decision. In accordance with the practice of the European Court of Human Rights in relation to Article 13 of the Convention the General Administrative Procedure Act prescribes that appeals are admissible only on the grounds of a content justified and directly related to the contested decision or only on the basis of a request for a violation of right or an interest arising directly from the decision. The General Administrative Procedure Act also limits the possibility of referring to new facts.

It is important to point out that, in the case of administrative procedure on the second instance in the General Administrative Procedure Act, the principle of total revision applies only to an unlawful decision, meaning that, in case of appeals based on the violation of interest, the authority is bound by the merits of the appeal. The regulation thus provides a proper and realistic settlement in this regard, since the principle of being fully bound by the appeal, such as in civil procedure, cannot be enforced in the course of administrative procedures. On the one hand, the protection of public interest requires it and, on the other hand, it would enforce objections that probably would not be examined by the appeal in case of ex officio legal remedies.

Further innovation is in consistence with the government's efforts to reduce bureaucracy and facilitate a faster closure of cases, that, in the event of an appeal, the additional demonstration of evidence must always be proceeded in front of the authority competent to rule on the appeal as there is no place for a new procedure.

28.2.3.11 The Possibility of Self-Correction

The rules on modifying or withdrawing the decision by virtue of the authority's office had been considerably simplified, issues that can be deduced from the general rules are not regulated by the General Administrative Procedure Act. In the future, such legal remedies may take place only once.

The act also states that, within the supervisory power, the decision of the decision-making authority can also only be modified or repealed once, thus facilitating the closing of cases as soon as possible.

The Ákr. states expressis verbis that decisions made in the supervisory procedures may be challenged only by administrative action. In order to avoid possible uncertainties in the interpretation of the law, it is clear that – even if ad absurdum it could take place – there is no place for appealing to a new, possibly third, or quarterly instance.

28.2.3.12 The Simplification of Internal Workflows

An innovation shall be highlighted and that is the broadening of the scope of simplified decisions. According to the General Administrative Procedure Act, in the simplified order, the information on legal remedies can be left out and the justifications should state only the legal grounds on which it is based. The authority can make a simplified decision if the application is fully covered and there is no adverse party, or the decision does not affect the right or legitimate interest of the adverse party and also in case of the approval of a settlement. Rulings that cannot be challenged with an independent legal remedy, in addition to the abovementioned substantive requirements, should only contain the information on legal remedies. In this context, it is important to point out that the Ket. knew only the first of the three cases identified in the General Administrative Procedure Act (or, as a further case, if the ruling only determined the date of a procedural action).

28.2.3.13 Law Enforcement

Considering the experiences of administrative law enforcement in practice, the new regulation states that the Act on general administrative procedures should not lay down detailed rules on law enforcement, but that it shall be appropriate to place the enforcement of the law to the act on judicial law enforcement, with the declaration of the fact that the state tax authority shall be appointed as a general administrative law enforcement body. This may provide a chance to create concentrated resources and ensure effective law enforcement.