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Trust, Resilience: The Legal Regulation and Reality of the Epidemical Legislation and Municipal Decision-Making in Hungary in the Time of Corona(virus)*

Zaufanie, odporność (skuteczność). Regulacje prawne i rzeczywistość ustawodawstwa epidemiologicznego oraz podejmowanie decyzji przez gminy na Węgrzech w czasach koronawirusa

INTRODUCTION: EPIDEMIC SITUATION AND ADMINISTRATIVE LAW

The COVID-19 pandemic has had a significant impact on the Hungarian administrative system. The pandemic could be interpreted as a “resiliency stress test” of the administrative systems and as a challenge of the trust in these systems. During the pandemic, the administrative procedural law has been partly transformed in Hungary. First of all, the so-called “verified notifications” were introduced, by which the permission activity of the administrative bodies has been transformed and the primacy of the Act CL of 2016 on the Code of General Administrative Procedure has been weakened by these special statutory rules¹. The interpretation of local self-governance has also changed. The financial autonomy of the municipalities has been restricted, first of all, by the centralisation of several local or shared taxes and the amendment of their rates and secondly by the

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¹ M. Fazekas, *Az Ákr. hatálya. Az Ákr. tárgyi hatálya: a hatósági ügy, [in:] Közigazgatási jog. Általános rész III*, ed. M. Fazekas, Budapest 2020, p. 194.

establishment of the special economic zones. The decision-making procedures of the municipalities have been amended, as well. Even the state of danger has been transformed after the end of the third wave (after June 2021) of the pandemic, and during the summer of 2021 special and highly debated pattern evolved – a state of danger with limited restrictions. The trust in the Hungarian administrative system has been influenced by these reforms, and the resiliency of the Hungarian system has been challenged.

LEGAL FRAMEWORK OF THE SPECIAL MEASURES RELATED TO THE COVID-19 PANDEMIC

If we look at the Hungarian constitutional regulation, it should be emphasised that the Fundamental Law of Hungary (April 25, 2011; hereinafter: the Fundamental Law) has closed taxation on the reasons which justify the state of danger. Para. 1 Article 53 of the Fundamental Law states, that the state of danger (*veszélyhelyzet*) can be declared “in the event of a natural disaster or industrial accident endangering life and property”. Thus, the epidemic situation has not been among a justifiable reason of the declaration of special legal order. The detailed regulation on the establishment and introduction of the state of danger as a special legal order (emergency) is regulated by the Act CXXVIII of 2011 on Disaster Management (hereinafter: the DMA). The rules of the Fundamental Law are interpreted broadly by point c Article 44 of the DMA. The regulation states that “human epidemic disease causing mass illness and animal epidemic” is a justifiable reason of the declaration of the state of danger. In the case of a special legal order (emergency), in accordance with the Fundamental Law, most of the measures defined by Chapters 21–24 of the DMA could be introduced by the Government, which may issue decrees with a content contrary to the acts of Parliament for a transitional period of 15 days. In addition to the emergency government decree regulations, a limited number of ministers, such as the minister responsible for education and vocational training or the minister responsible for national property, may also take decisions that constitute individual acts.

It is shown by the above regulation that the Hungarian public administration – like other European administrations – was unexpectedly affected by the COVID-19 pandemic at the level of constitutional regulation². At the beginning of the pandemic – when Hungary has not been affected by it – the institution of “health crisis” (defined by the Act CLIV of 1997 on Health Care) was used (by which the

² M. Horvat, W. Piątek, L. Potěšil, K.F. Rozsnyai, *Public Administration's Adaptation to COVID-19 Pandemic – Czech, Hungarian, Polish and Slovak Experience*, “Central European Public Administration Review” 2021, vol. 19(1), pp. 147–148.

provision of the health care services can be transformed)³. The Hungarian system – which has been typically modelled for the treatment of industrial and elemental disasters⁴ – did not contain detailed provisions for an emergency situation related to the management of a pandemic. Within the above-mentioned framework, the state of danger – due to the COVID-19 human epidemic – was declared by Government Decree No. 40/2020 (III. 11). The Hungarian administrative regulatory ecosystem was not prepared for a pandemic situation in 2020⁵. The shortcomings of the regulation of the constitutional regulation were also recognised by the legislation. The legal basis for imposing specific restrictions was created by the Act LVIII of 2020 on Transitional Rules Related to the Termination of the Emergency and on Epidemiological Emergency (hereinafter: the Transitional Act), by which a new institution, the epidemiological emergency was introduced by the amendment of the Act CLIV of 1997 on Health Care. The regulation on health crisis has been reshaped significantly by that Act. Different restrictions – based on the epidemiological emergency, which is defined by the Act as a special type of health crisis – can be introduced by the government. This regulatory model follows the pattern of the Visegrád countries, because sub-constitutional quasi-emergency situations were institutionalised during the COVID-19 pandemic by these countries. This solution fits into the trend in the Hungarian legislation, as well. During the last decade, several quasi-emergencies have been institutionalised by the Acts of Parliament, as well⁶.

The first state of danger – which was declared on 11 March 2020 – was terminated by Government Decree No. 282/2020 (VI. 17). The Act XII of 2020 – which extended the scope of the emergency government decrees – was repealed by the Act LVII of 2020 on Defence against Coronavirus. The application of the special rules created for the period of the emergency was extended by the Transitional Act, typically until August 31, 2020. Based on the new provisions on epidemiological emergency, this state was declared by Government Decree No. 282/2020 for half a year. The regulation on epidemiological emergency was a transitional regime between the first and second waves of COVID-19 in Hungary (from June 18, 2020 to November 4, 2020). During late autumn a second, and a serious wave

³ M.D. Asbóth, M. Fazekas, J. Koncz, *Egészségügyi igazgatás és jog*, Budapest 2020, p. 39.

⁴ In Hungary, after the Democratic Transition, a state of danger has been declared several times, although typically not the whole territory of the country was covered by this emergency. Thus, for example, the government declared a state of emergency during the flood on the Danube in 2002 (Government Decree No. 176/2002, III. 15) and after the red mud (industrial) disaster in Devecser (Government Decree No. 245/2010, X. 6).

⁵ I. Hoffman, I. Balázs, *Administrative Law in the Time of Corona(virus): Resiliency of the Hungarian Administrative Law?*, “*Studia Iuridica Lublinensia*” 2021, vol. 30(1), pp. 105–108.

⁶ I. Hoffman, P. Kádár, *A különleges jogrend és a válságkezelés közigazgatási jogi kihívásai I*, “Védelmi-biztonsági Szabályozási és Kormányzástani Műhelytanulmányok” 2021, vol. 1(2), pp. 3–6.

of infections and illnesses evolved in Hungary. Because of the serious epidemiological situation, the state of danger was declared on November 3, 2020 (the state of danger entered into force on November 4). The new Act CIX of 2020 has been passed. The scope of the emergency government decrees has been extended by this Act. But opposite to the regime of the Act XII of 2020, the extension has not been indefinite. The Act has declared 90 days deadline for the authorisation (and for the scope of itself). Thus, the major criticism⁷ on the former regulation has been corrected by the Parliament. The Government of Hungary has not received indefinite authorisation for passing emergency decrees. Even the constitutional regulations have been amended at the end of the year 2020. The Fundamental Law was amended by the 9th Amendment by which the legal regulation on the state of emergencies has been transformed.

DECISION-MAKING AND TRANSPARENCY IN THE TIME OF CORONA(VIRUS) IN THE MUNICIPAL ADMINISTRATION IN HUNGARY

The trust in administrative bodies and administrative systems is significantly influenced by the transparency of their decision-making procedures⁸. Therefore, the transformation of the municipal decision-making could have a significant impact on the trust of the Hungarian local and regional administrative system.

A special regime of the municipal decision-making has been introduced by the emergency regulations in Hungarian public law. Because of the extraordinary situation which requires rapid answers and decisions, the council-based municipal decision-making is suspended by the DMA. It is stated in para. 4 Article 46 of the DMA, that the competences of the representative body (*képviselő-testület*) of the municipality are performed by the mayor when the state of danger is declared by the Government of Hungary. There are several exceptions, thus the major decisions on the local public service structure cannot be amended and restructured by the mayors. Therefore, the mayors have the local law-making competences, as well. The position of the mayor was strengthened because of the extraordinary situation, the rapid decision-making is supported by personal leadership. The role of the mayor was strengthened in early 2021. It has been declared by the DMA, that the competences of the representative body (actually the municipal council) are performed by the mayor. There weren't any direct rules on the competences

⁷ For example, see T. Drinóczi, A. Bień-Kacała, *COVID-19 in Hungary and Poland: Extraordinary situation and illiberal constitutionalism*, "The Theory and Practice of Legislation" 2020, vol. 8(1–2), p. 184; F. Gárdos-Orosz, *COVID-19 and the Responsiveness of the Hungarian Constitutional System*, [in:] *COVID-19 and Constitutional Law*, ed. J.M. Serna de la Garza, Ciudad de México 2020, pp. 159–161.

⁸ S.G. Grimmelikhuijsen, *Transparency of Public Decision-Making: Towards Trust in Local Government?*, "Policy & Internet" 2010, vol. 2(1), pp. 7–9.

of other municipal bodies, even collegial bodies, like the committees of the representative body. Therefore, it was questionable, because these bodies are collegial, and it could be justified that the competences of these bodies could be performed by the mayors. During the first wave of the pandemic (from March 2020 to June 2020), a joint communication of two state secretaries “recommended” for the mayors to fulfil the competences of the committees. But this communication is not a real legal norm, and therefore, this solution was controversial, because it hardly fitted the concept of rule of law. During the second wave of the pandemic (from late October 2020 to December 2020), it was officially declared by Government Decree No. 15/2021 (I. 22) that the competences of the committees should be performed by the mayors.

This regulation resulted from different solutions in the Hungarian large municipalities. It shall be emphasised, that the mayor has a greater power, but his or her responsibilities are increased by this regulation. During the “normal” operation of the public administration, the mayors are the heads of the operative leadership of the municipalities, the strategic decision-making and the local law-making belong to the responsibilities of the municipal councils (called *képviselő-testület*, representative bodies). During the state of danger, the powers and duties of the council (representative body) is performed by the mayor, thus the mayor is the dominant position during these extraordinary legal regimes. Therefore, the responsibilities of the mayors are increased by these enhanced powers. For example, in the largest Hungarian municipality, the Capital Municipality of Budapest, a special decision-making regulation has been introduced during the period of a state of danger. The decisions of the Capital Municipality are made by the Mayor of Budapest, but there is a normative instruction issued by the Mayor of Budapest (No. 6/2020, III. 13), that before the decision-making the Mayor shall consult the leaders of the political groups (fractions) of the Capital Assembly. After the first state of danger (from March 11, 2020 to June 18, 2020), the decrees issued by the Mayor were confirmed by a normative decision of the Assembly of Budapest (No. 740/2020, VI. 24). However, this decision can be interpreted as a political declaration, but it shows, that the Mayor of Budapest tried to share his power and even his responsibility. There are different patterns among the Hungarian large municipalities, as well. For example, in the County Town Győr several unpopular decisions and land planning regulation were passed by the mayor, who fully exercised his emergency power.

However, the state of emergency remained, the competences of the representative bodies have been restored by Government Decree No. 307/2021 (VI. 5). The restoration of the collegial bodies has been problematic. First of all, Government Decree No. 307/2021 was based on the regulations of the DMA – as I have mentioned, the emergency government decrees are authorised by the DMA to deviate from the Act of Parliaments. But the regulations of the DMA

are actually amended by the (emergency) Government Decree No. 307/2021. Because the full executive power of the mayors and the actual ban of the sessions of the representative bodies are regulated by para. 4 Article 46 of the DMA. Thus, a decree based on the DMA amends the law by which its authorization is based. Secondly, only the sessions of the representative bodies are permitted by the Government Decree, the sessions of the committees are not regulated by this decree. And Government Decree No. 15/2021 remained in force. According to these regulations, the competences of the committees have been transferred to the mayors. However, because the sessions of the (larger) representative bodies have been permitted, the Hungarian municipalities organised the sessions of the (smaller) committees. The legality of the practice is highly questionable, but the supervision authorities have not started procedures against these local practices yet. That second mistake has been partly corrected in late December by Government Decree No. 749/2021 (XII. 21). It is stated by the actual, amended regulation of that Government Decree, that the sessions of the committees are permitted, and the committees could perform their duties, as well. The correction was just partial, because the regulation of Government Decree No. 15/2021 has been in force, therefore, according to the actual regulations the municipal committees can have sessions (according to the amended Government Decree No. 307/2021), but there are two decrees in force: one stipulates that the powers of the committees are exercised by the mayors (Government Decree No. 15/2021) and the other stipulates they could perform their powers and duties (Government Decree No. 749/2021).

A CONTROVERSIAL REGULATION: STATE OF DANGER WITH LIMITED RESTRICTIONS AND SPECIAL RULES (?)

The approach of the Hungarian administrative law has been significantly transformed during the summer of 2021. The majority of the restrictions have been recalled, even those restrictions which were linked to the so-called “immunity card” which proved and declared that the given person was infected and recovered of COVID-19 or was vaccinated against the disease. For example, the obligatory wear of face masks has been terminated and even the sports events, cultural events, etc. have been opened (with limited restrictions). Similarly, the major transformations in the field of administrative law – as we have mentioned earlier, for example, the amended competence performance in the municipalities – have been terminated or suspended. Therefore, the justification of the state of emergency became a topic of the public discourse. The justification became controversial during the debates, because the major elements of that kind of state of emergency have been linked to the extraordinary and mainly personal leadership and the simplified administrative procedures. During the summer, the majority of

these elements have been reduced or dissolved. It is now a question whether this “reduced” state of danger should be maintained or not.

CONCLUSIONS

It is clear now that the COVID-19 pandemic leaves lasting traces on the Hungarian legal (and administrative) system and it has a significant impact on the trust on the Hungarian system. Several important regulations will remain after the COVID-19 pandemic. Some of these regulations were only indirectly linked to the epidemiological measures.

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ABSTRACT

The Hungarian administrative law has been significantly impacted by the COVID-19 pandemic. Several rules – which were introduced during the state of danger based on the epidemic situation – have been incorporated into the Hungarian legal system. The administrative procedural law has been influenced by the epidemic transformation. Although these changes have been related to the current epidemiological situation, it seems that the “legislative background” of the pandemic offered an opportunity to the central government to pass significant reforms, and therefore these reforms significantly impacted trust in the Hungarian public administration.

Keywords: Hungarian administrative law; epidemiological situation; trust; resilience; municipalities; Hungary; COVID-19

ABSTRACT

Pandemia COVID-19 wywarła znaczny wpływ na węgierskie prawo administracyjne. Do węgierskiego systemu prawnego włączono szereg przepisów, które wprowadzono w stanie zagrożenia w związku z sytuacją epidemiologiczną. Transformacja epidemiologiczna wywarła wpływ na administracyjne prawo procesowe. Wprawdzie zmiany te były związane z aktualną sytuacją epidemiologiczną, ale wydaje się, że „tło legislacyjne” pandemii dało rządowi centralnemu możliwość uchwalenia istotnych reform, dlatego też reformy te w istotny sposób wpłynęły na zaufanie do węgierskiej administracji publicznej.

Słowa kluczowe: węgierskie prawo administracyjne; sytuacja epidemiologiczna; zaufanie; odporność; gminy; Węgry; COVID-19