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Doctoral School of State and Law

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Doctoral {PhD} theses

Fair OFFICIAL PROCEDURE
CONSTITUTIONAL PRINCIPLE
AND THAT
VALIDITY IN HUNGARY

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I. Summary of the research objective

The main purpose of the dissertation is to examine which constitutional requirements, laws, and social influences have made or are making the public administrative procedure fair in our country.

This work intends to analyze the legal framework of the fair procedure defining official procedures and the judicial practice concerning the subject. Through this, I am trying to reveal what legal-administrative path the dilemma of fair and unfair proceedings has taken in the 21st century.

The focus of my thesis is the constitutional principle of fair procedure. XXIV of the Basic Law. However, in addition to the provisions of Article (1) and the legal provisions interpreted by judicial practice, i.e. the legal meanings, the term also has a common meaning, which cannot be completely separated from the legal plane. In this study, I use the term fair procedure on the one hand in the sense of official procedural law, as an expectation of good public administration, and on the other hand, I refer to the nature of fair procedure understood in the judicial sense, however, these two meanings are sufficiently separated from each other by the context of the text.

Through the exploration of the legal framework of the functioning of the Hungarian public administration system, I also placed emphasis on the procedural rules within the existing organizational structures, since it is through these that the public administration procedures themselves are shown with the legal entities. I examined what principled requirements must be met for a fair public administration procedure, and what international charters represented the tasks to be declared in this area in relation to the Hungarian public administration.

So, during the planning of the doctoral research for the foundation of the dissertation, as my research objective, I scrutinized the relevant legal environment and judicial jurisprudence concerning the topic, which made it possible to formulate a series of hypotheses.

II. Research direction

As a first step, my aim was to explain what the criteria for the fairness of the proceedings are. The right to a legal remedy and a fair procedure were declared fundamental rights in 1989, and then the Basic Law elevated the right to fair administration to an independent procedural fundamental right.[1]

By definition, the research could only focus on the legal document created after that, however, I considered it necessary to present the path leading to it as well.

I could not undertake to be complete in my work, since the right to a fair trial is today an umbrella concept, the subject right with a thousand faces, which appeared as an international legal norm incorporated into domestic law for legislation. our rule of law. In the practice of the Constitutional Court, it is a basic right, and as a basic principle of judicial administration, it is a basic principle that arises in countless cases in the civil, criminal and public administration fields. For this reason, we analyzed the most prominent principles related to state administration procedures.

My research method was primarily dogmatic, descriptive, as well as official decision analysis and constitutional court decisions. When writing the work, I tried to keep in mind the limitations of the scope, and with proportionality in mind, I tried to process the most significant influencing factors in each chapter.

[1]See more: András Patyi: The right to fair procedure and administration The main issues of procedural fundamental rights and procedural constitutionality. Fundamental rights Constitutional protection of human rights in Hungary. Edited by: Stefánia Bódi - Gábor Schweitzer. National Public Service University Ludovika University Publishing Office 2021. p. 157

III. Scientific methods used during the research

The dissertation examines the domestic regulation of the requirement of fair official procedure, and also tries to shed light on the relevant regulations found in other international legal systems.

The research was primarily based on library and literary sources. I carried out its investigation by studying the relevant legislation, the literature, monographs, studies and commentaries. I drew conclusions by taking into account the relevant judicial practice and analyzing the substantive law. I organized these research methods using the overview, descriptive, evaluation and comparison methods. The relevance of the research is currently indisputable. The thematically examined Hungarian-related cases also show that the conceptual delimitation of the parts of a fair official procedure is essential from the point of view of the enforcement of basic rights, - customer rights - the right to information. Due to the complexity of my topic, it was necessary to adapt the research methods to these separable topics.

In the case of developing the legal concept of fair procedure, I used the method of legal historical analysis to evaluate it and to reveal the initial system of requirements during the creation of the thesis.

During the delimitation and detailed analysis of the concept of fair official procedure, especially its conceptual parts that can be interpreted from a jurisprudential point of view, I used a dogmatic method in order to make all essential parts of the concept graspable. in the area of public administrative authority procedure, and one of these narrower sub-elements can be established and examined in relation to the application of official law.

In this context, I performed a legal and judicial analysis of the examined legal institutions and provisions, because in this way well-founded conclusions can be drawn from them.

III.1. Historical method

The realization of the principles of a fair administrative procedure is not a completely new and unprecedented requirement, in the constitutional law of modern legal states, basic principles with a long history can be found almost everywhere. The way in which a legal principle is formed, its constitutional traditions, and its development can explain the strength of its enforcement, and in fact, so I considered it essential to pay attention to legal historical antecedents. A kind of heterogeneity can be observed among the basic principles of the administrativprocedure.

Certain principles, such as the principle of official responsibility, can be interpreted by projecting the general legal principles of the constitutional state onto the administrative law, so they did not exist in our country before 1848, since the principle of the responsibility of the public administration carries a special administrative character, and its existence can be linked to the development of modern public administration. For this reason, the research could not start anywhere else than at the foundations of our country's responsible public administration in 1848

III.2. Normative method

After examining the legal history, XXXI of 1989. I tried to interpret Act XX of 1949 with an amending law. i.e. the amended text of the Constitution and the Basic Law, which defines the framework and conditions for the regulation of the right to decency. By examining the historical antecedents, I revealed the fairness criteria that can be derived from the legal documents concerning official cases. E-government is now widespread, it is a specially regulated segment of public administration that cannot be summarized in a single chapter, so I have dealt with this topic with proportionality in mind.

III.3. Functional method

From the point of view of presenting the appearance of European Union principles in domestic regulations, it was important to take a look at how these requirements appear in domestic administrative law, at which levels of legislation and what kind of regulation was necessary.

Regarding the processing of legal materials, I tried to make it clear - from the point of view of legal practitioners - the derivation according to the expediency aspects of Ket[2]. and Akr[3]. contexts, taking into account the Basic Law.

In connection with the general presentation of the Akr., I will try to reveal the specific procedural rules of the public administrative authority procedure, the relevant most important provisions and, not least, the specific procedural rules of administration from the side of those involved. deadline.

III.4. Comparative method

As a result of the research on the right to a fair official procedure, it can be said that - with the exception of the main criteria - very different and unique regulations are implemented at the international level in the field of detailed rules. In this part, the reliance on international results was an important detour for research concerning domestic implementation, but not primary.

A double process can be observed in the European history of the development of public administration principles. A specific public administration system primarily includes certain general legal principles, such as the principle of responsibility, participation or transparency. After that, in the second step, a complex transfer of these legal principles takes place, during which they are transferred from one legal system to another. This process was generally expected and accelerated by various international legal organizations and courts, so it had to be an integral part of the work.

What is certain is that there are several official procedural systems in international practice, and it is not even uniform whether a law has been passed that generally regulates the administrative procedure.

The international research work has highlighted that this issue can either be presented within the framework of an independent dissertation, or I will only deal with it tangentially. Since the topic of my present work focuses specifically on domestic practice, I did not provide a comprehensive European outlook.

[2]2004 CXL. The Public Administrative Authority Procedure Act, hereinafter Ket.
[3]2016 CL. The Act on General Administrative Procedures, hereinafter Ákr.

On the one hand, my thesis tries to shed light on the development process of the desire for a fair trial, so I approached the issue by examining the background of successive legislation.

In my research, however, I record the basic rights that had to be enforced in order to implement a fair official procedure. The right to a fair official procedure basically imposes requirements on the operation of the public administration and provides guarantees - primarily of a procedural nature, i.e. regarding the manner of exercising public authority. During my work, I also examine the factors influencing the decision.

IV. Structure of the dissertation

The present study follows the following chronological line of thought. The starting point is the III of 1848, which regulates the formation of the first responsible Hungarian government. starting from the article of law, without claiming to be complete, I will determine their significance based on the domestic and international legal documents and judicial decisions that affect and regulate the principle of fair official procedure during the 174 years of our country.

In some cases, I also shed light on the factors influencing the organizational composition of the office and the procedures of the office. In addition, I make an attempt to explain the basic principles of fair procedures in the examined legal documents, which are general in public administration, but are also emphasized in the field of constitutional law, especially the right to a decision to be made within a reasonable time frame, or the enforcement of the right to legality, equality of law, impartiality, and the right to judicial review.

In the course of the work, I also tried to formulate the requirement of good public administration procedure and define its content. In connection with this conceptual foundation, I also examine some special administrative principles designed to implement good administrative procedures, as well as the requirement of a reasonable period of time, the obligation to provide reasons, the requirement to provide information, and the essential element of the delivery of the decision.

In a comparative manner, I highlight the legal documents governing the official procedure of our time and those before it, regarding the principles affecting fairness that I have focused on.

V.Research hypotheses

The fundamental right to a fair official procedure is now a routine reference, both in the field of administrative procedural actions and in the jurisprudence of the courts, as a reference to a violation of rights. The fact of establishing a violation is a multifaceted task that requires special interpretation skills.

Hypothesis 1.

The enforcement of the elements of a fair official procedure can be traced back to the existing constitutional and rule of law requirements.

Hypothesis 2.

Our Basic Law can enforce the basic legal expectations related to fair procedure laid down in international treaties.

Hypothesis 3

Administrative procedure law and administrative litigation law together ensure the enforcement of the right to a fair procedure.

Hypothesis 4

The Akr. indirectly, through the Basic Law, it ensures fair and reasonable administration within a deadline.

Hypothesis 5

The trend of changes in judicial practice in the light of official decisions made beyond the deadline points towards the lack of binding force of the judgment.

I try to support the validity of the hypotheses by analyzing legislation, constitutional court decisions, and judicial decisions

VI. Conclusions drawn during the research

The legal environment of the examined period mostly stood the test of morality and fairness and met the expectations, since legal and ethical norms often have the same content. The content identity of legal and moral norms promotes the acceptance of another system of norms.

The thesis raised in my first hypothesis, according to which the enforcement of the elements of the fair official procedure can be traced back to the existing constitutional and rule of law requirements, has become verifiable. Regardless of the fact that the implementation of the laws of the oppressive power or even the dualist era is often done voluntarily, out of internal consideration, because the citizen identifies with the values laid down in the law, with those social and legal expectations, it is born into him, so even without legal regulation, he would behave in the way prescribed by the law. At the same time, it can also be established that a legal system that is not accepted by society, that is, that lacks social acceptance, cannot be maintained for a long time.

History has proven that popular representation and democratic constitutional frameworks ensure the social acceptance of all states. It is indisputable that in the original text of our previous constitution of 1949, the principle of equality before the court was only partially included, and the right to a fair trial was not included at all. All of this can be justified on the one hand by the political system at the time, and on the other hand by the fact that only the Rome Convention of 1950 made these a general principle at the international level. Section 57 (1) of our previous Constitution was replaced by Act XXXI of 1989 on amending the Constitution. law passed. adopted by law. was adopted by law. This law brought about the change, because for the first time in our country, the right to a fair trial and the principle of equality before the court were brought to the constitutional level. The legislators are the XII of the Constitution. basic rights and obligations were written in chapter Our Basic Law in force today enshrines the right to a fair trial in two places. On the one hand, Basic Law XXIV. Article (1) generally requires guarantees in relation to all authorities. On the other hand, XXVIII. article contains the principles of justice

Nowadays, the right to a fair trial is considered a guiding principle, and although it is a very complex fundamental right consisting of several sub-principles, the implementation of the sub-principles has gained outstanding importance in itself.

In 2009, our Parliament created CLXIII of 2009 on the protection of fair procedures. law, as well as the related amendments to the law, and therefore assumes the values of the democratic rule of law, the purity and enforcement of public life. promoting the public interest, reinforcing the importance of the fight against corruption.

Due to the research of the second hypothesis, reviewing the importance of the primacy of EU law, we can read about the processes of integration into Community law by touching the basic treaties. We examined the consequences of the violation of EU law and reviewed the law applied by the EU public administration. Efforts made to achieve community goals, presentation of the limits of the powers of EU rules. I presented the requirements of fair procedures through examples from the jurisprudence of the European Court of Justice. By presenting the Charter, we analyzed the basic principles imposed on civil servants, as well as the ethical expectations imposed on civil servants, that is, the European Code of Conduct and its significance.

We have summarized the criterion segment of good public administration procedures, as well as the direction of public administration law affecting public administration. From all this, we can summarize that the EUSZ. The purpose of Article 6 is to protect individual fundamental rights, which are guaranteed by the institutions of the European Union. Its provisions apply to the institutions, bodies and offices of the Union, as well as to the persons who actually implement them.

The right to an effective remedy and a fair trial is declared in Article 47. It can be concluded that the Charter contains the rights provided by the ECHR. Comparing the provisions of Article 6 of the ECHR with similar provisions of the Charter, we see that the Charter provides for justice in a separate chapter. In addition to criminal and civil proceedings, the charter on the right to a fair trial is a guarantee for all administrative official proceedings, with an agreement. The Charter itself provides that the rights granted in the Convention must be interpreted in accordance with the Convention when applying the Charter, but there are cases where it may extend beyond the scope of application and in these cases broader protection should be provided. needs to be considered.

It can be said that the unreasonably prolonged delay of official procedures may even call into question the requirement of legal certainty, and thereby shake the trust of individuals in the functioning of the state. In the course of my work, my finding that the right to a fair procedure applies together with the Public Administration Act and the Public Administration Hearing Act is no longer in question.

Given that, in addition to the codification of administrative procedure law and the essential connections of court law, the definition of the requirements of a fair official procedure and the definition of the right to a fair procedure also became clear, the legal environment outlined in the antecedents was connected to the so-called and became clear the protection of the individual against the public authorities knowledge of warranty elements.

While examining whether the Ákr. indirectly ensures the constitutional rights, we come to the conclusion that the functions of the basic principles have not actually changed between Ket. compared There are still principles and values that help the application of law, primarily the interpretation. What immediately stands out, however, is the quantity, because the Ákr. names fewer principles than Ket. It does not mention, for example, the consideration of the interests of minors, nor the protection of rights acquired and exercised in good faith. Of course, it does not follow that these principles are no longer part of administrative law. This only means that the Ákr. no longer names it. It does this because these basic principles – at least a significant part of them – are already recorded in other legislation, can be deduced, and can be held accountable.

It is certain that the Ákr. its creators aimed for a much shorter and more to the point regulation compared to Ket., but considering the principles themselves, no significant difference can be observed. Examining the structure of the comprehensive official procedure regulation, no substantive change can be observed between the two legislations, and it can also be established with regard to the concept of the official case.

The Akr. remarkably, unlike Ket., it mentions the decision of the legal dispute as a type of official case. The Ket. under its scope - even before - there were legal cases and proceedings, but these were not named as case types by the law. I assume it got its name from its increased importance.

Also, unlike before, it is named separately by the Ákr. establishing the violation as a sub-case within the concept of the official case.

Until now, it was a violation of the law and there was also an official procedure when one of the previous administrative regulations was legally violated, but now this law is also named separately. The execution of the decision has also become a separately named subsection of the official case, which mostly refers to the enforcement procedure.

It can be concluded that the right to a fair procedure, the right to fair administration in the official procedure is a legal abstraction, its content is completed by the sub-rights connected to it, i.e. the named and derived rights[4]. The Akr. through its basic idea, the importance of detailed rules regarding general and special administration deadlines could become clear.

When I researched that the tendency of changes in jurisprudence in the light of official decisions beyond the deadline points towards the lack of binding force of the judgment, we arrived at the theoretical and sketchy practical presentation of the requirement of a fair procedure. I considered it important to explain the right to fair administration, because in practice the question arises even on the part of administrators as to what their scope actually covers, when it is needed, and in which cases they can be applied.

In my opinion, the presentation of practical examples is of great importance because the reader was able to see that it is revealed from case to case what the individual principles actually cover. It is almost impossible to derive all requirements and sub-principles related to fair procedure and fair administration. "The constitutional provision of the right to a fair trial can be interpreted in several ways. It can also be interpreted that certain words ("against", "any", "accusation", "some kind of lawsuit", "rights and obligations", "negotiation", etc.) are emphasized, but the rights contained in them and implicitly inherent in them can be interpreted unfolded."[5] However, I confess that by examining the decisions of the Constitutional Court, I managed to summarize the most important decisions that laid the foundation for the concept of fair official procedure.

It is certain that the requirements are shaped by judicial practice, and judicial practice is constantly changing with legislative changes. XXIV of the Basic Law. for the validity of Article 1, we see that it is not enough for the authorities to comply with the substantive and procedural legislation governing the management of official affairs.

[4]See more: Nóra Balogh-Békesi: The right to fair administration and fair proceedings. In: Editor: Balázs Gerencser – Lilla Berkes – András Zs. Varga: Current issues of domestic and EU administrative procedural law Budapest, Pázmány Press, 2015. pp.53-66.
[5]In the same place pp.53-54.

It is also necessary that both the individual administration and the relevant legislation help the enforcement of customer rights.

The opposite of this is the norm that makes it practically impossible for the parties involved, the client, not to receive complete and detailed information about their case and to act in defense of their rights and legitimate interests with all the necessary information. to the requirement of fair trial. I tried to present a narrow segment of the current judicial practice in connection with my research topic, in which I also tried to point out that it is impossible to confuse Basic Law XXIV. (1) with reference to XXVIII. (2), because they must be separable. Based on the research so far, there is nothing left but to verify my hypotheses, for which I am also conducting an experiment.

VI.1. Other research conclusions

With regard to administrative deadlines, I have come to the conclusion that the efficiency of public administrative authority procedures cannot be increased by means of continuous and further shortening of procedural deadlines. The speed of the procedures is really essential for the offices to provide adequate and competitive services in an international context as well. However, this basically requires procedural legal institutions that promote the efficiency and concentration of the procedures with the provision of sufficient public administrative human resources.

By now, it has become certain that the reduction of public and public spending definitely results in an improvement of competitiveness. This represented a challenge and a task to be solved for all EU member states.

One of the means of red tape reduction is the simplification of public administration-authority procedures, the transformation of the state organizational system, the reduction of the degree of legal regulation – deregulation – and the expansion of electronic administration.

Sooner or later, all Governments have been faced with revising the huge amount of legislation created successively over the decades. They are forced to simplify and consolidate their regulations in order to adapt them to the changed social and economic expectations and conditions.

This legislative revision task is also important because some rules no longer serve the interests of citizens and may even hinder economic growth.

Therefore, since the 1990s, deregulation and measures aimed at reducing the transparency and extent of legal regulation have been in force in our country, the most recent such regulation being 1113/2019. (III.13). Government Decision No. 1, which stated that, in the future, negotiations can only begin on draft legislation that takes into account the aspects of red tape reduction and substantive, i.e. substantial, deregulation.

Turning a small investigation to e-public administration, I can state that a new type of sectoral organization method has opened up. Thanks to this, we have come closer to modern, fast and simple public administration that uses technological achievements. I have many doubts about this. Not because of technological or regulatory deficiencies.

Many cases can be initiated electronically, data storage, signatures, and authentication are also possible, but at the same time, e-public administration is a disadvantage for people living in very poor areas due to the use of electronic public administration, the decade-old habit of traditional paper-based administration, and for the generation over sixty years old. The reason for this is the human side. Many people are unable or unwilling to change their way of thinking.

The technology is a given, so is the legal regulation, only the transition between paper and ePaper must be sufficiently ensured between generations.

From the point of view of my research, I did not look for an answer to the question of whether this is fair to the older generation in the case of case types that can only be submitted electronically. because they fear that they have neither knowledge nor intelligent tools in the world of IT, so it is difficult for them to manage their affairs.

Also, I have to mention once again those living in extreme poverty who, due to their financial situation, cannot always meet the criteria of e-administration, see, for example, CXXIII of 2020 on family farms. by law, the primary agricultural producer class.

In my opinion, our country has the necessary legislative background to ensure fair official procedures, and in my opinion, this is also realized in practice, except for one individual case. It can be concluded that there is no competition in the official procedures, the law enforcers do not operate on a market basis, the organizational structures are stable, primarily linear-functional structures. The order of responsibility in the offices is regulated, service routes must be respected, the right to give instructions is natural.

During my research, I also became certain that the old "we don't go against the authorities" mentality is characteristic of our larger county. In vain, Hungarian law offers review through courts of second instance, judges, prosecutors, or even the Commissioner of Fundamental Rights - to help if these options are not used. This is regrettable, as our law on administrative procedure now satisfactorily settles the administrative authority's obligation to provide information on legal remedies. In all cases, the possibility of legal redress, the place and deadline for submission, as well as information about the legal redress procedure must be indicated in the section under the title of substantive decisions.

Many people may wonder whether the fair official procedure is only a desirable moral goal, without any legal effect, or whether it has legal elements that make the procedure mandatory and effective. With my present work, I expect it to be somewhat exhaustive, so that in our country there is no longer just a moral constitutional expectation, but a legally valid and enforceable basic right supported by countless judicial rulings. It can be seen that the right to a fair trial has many aspects, these aspects can be examined from the point of view of all legal entities, and they have several elements. My research topic is therefore also of great importance in everyday legal practice, as it is perhaps the most important procedural principle not only for the authorities, but also for the concerned citizens seeking justice.

I am confident that the hypotheses raised in the thesis and the conclusions drawn during the work are suitable for the comprehensive examination of the enforcement of the constitutional principle and fair official procedures for those dealing with the topic scientifically. The work can also be a kind of connection point for theoretical comparative law scholars, as it also presents the results achieved in the relevant domestic administrative and constitutional law systems.

VII. Proofs of the established hypotheses

Hypothesis 1.

The enforcement of the elements of a fair official procedure can be traced back to the existing constitutional and rule of law requirements.

In relation to this hypothesis, we can state that the range of general and political ideas has been changing dynamically until now. According to the law, this also affected factors relevant to a fair trial. During the examination of legal institutions and regulatory frameworks, these changing aspects had to be taken into account in the framework of the longitudinal analysis of legal history. This thesis examined the elements of the fair official procedure embedded in certain legal environments, in order to preserve the coherence of the thesis.

It is not necessary to prove that the government of the time had influence on the development and enforcement of the principle of fairness. During the legal historical analysis, I undertook to justify the exploration of the path leading to fair official procedures of the national state administrative organizations through the presentation of the current government goals and the current organizational system. This approach is not a set of sectoral procedural knowledge that takes into account the peculiarities of the state administration organizational system, but a work based on unique examination criteria, independent methods, and its own practical approach. The reader can go far with the 174-year-old legal background check.

It is indisputable that since April 1848 countless state and government measures and countless laws have led to the realization of today's fair Hungarian official procedures. My legal history analysis was important in order to get a clear picture of the precise and detailed regulation of the development of certain parts of the examined warranty requirement. After that, the relevant international and EU legislation was reviewed. During my research, I did not have a unified systems theory approach to development. Along the lines of chronological effects, I established that legislative will is always focused on a specific, analytical area.

Looking at the laws of different eras, government programs, government decrees and proposals affecting public administration, the ranking can be clearly established.

First comes deregulation, then regulation, followed by the transformation of organizational conditions, then IT e-public administration developments, and then the transformation of personnel policy. Finally, the series ends with the specific task, i.e. the regulation of the performance of public administration tasks. Throughout history, since the dualist government affected the independent institutional system of our country, or in our one-party system, the principle of equal treatment could not even arise. The will of the government influenced the fair official procedure in our country. It became clear that the legal institutions, measures, and efforts that ensure the fairness of official procedures can be traced back to the constitutional and rule of law requirements imposed on the public administration. As a result of the research, official law enforcement activity, as an activity of an official nature, means and serves to enforce these fairness requirements, ensuring their enforcement.

Hypothesis 2.

Our Basic Law can enforce the basic legal expectations related to fair procedure laid down in international treaties.

Regarding the second hypothesis of the thesis, I researched the enforceability of the basic legal expectations related to a fair procedure, partly through the analysis of international documents, the jurisprudence of the European Court of Human Rights, and the jurisprudence of the Court. partly through the analysis of the decisions of the Constitutional Court. We can now claim that there is no difference between the enforcement of rules and principles. Through the incorporation of international principles into national law, the principles became rules. As we move forward in time as we review this work, it becomes apparent that the procedural issues are becoming more diverse and complex. While the XXI. the century, the fair procedure appeared as a completely new, client-side demand, as a special, different basic requirement together with the will of the legislator. I presented the development and modernization legal documents, legal cases, and concepts regarding official procedures that are typical and have influenced the regulation of our country.

These proved that there is currently no European Union fundamental right that cannot be enforced by the Basic Law.

It can be formulated as a proposal that with regard to regulatory concepts, special and general rules, more emphasis should be placed on the fact that the stakeholders, especially the lay subjects of the case, are easily accessible and have sufficient procedural information about the legal regulations. requirements. business. to achieve due process in the conduct of their official affairs. With regard to the official activity and the relevant legal rules of the given case or type of case, it is necessary to strive for a simple wording and an unmistakable context, because navigating the procedural actions is closely related to the factors that directly influence the execution. are part of a fair official procedure.

Hypothesis 3

Administrative procedural law and judicial procedural law together ensure the enforcement of the right to a fair trial.

Based on the research results, it could be established that my hypothesis, that the administrative procedural law and the judicial procedural law together ensure the enforcement of the right to a fair procedure, was confirmed during the research of the work. As a practicing professional, knowing the official practice, I come to the conclusion that since the regime change, i.e. from 1989, although gradually, the right to a fair procedure formulated as a requirement of the Basic Law has been satisfactorily enforced. The validity of this is ensured by the administrative procedural law and the court litigation law administrative procedural law together. The conditions for an effective legal remedy are given in the official procedures, so if a decision conflicts with the law or violates a fundamental right, it can be corrected with a legal remedy. The errors that could be found were mostly based on special rules, precedence and subordination. However, this can also be eliminated, since the well-developed Kp. and the Akr. the rules always serve as a standard. According to my conclusion, the principle of legal protection is the basic rule of the public administrative procedure, which is defined in Kp. Paragraph (1) of § 2 defines it as the basic task of the court.

The task of the courts is to ensure effective legal protection in the event of a well-founded investigation of state administrative violations.

Legal protection according to the rule therefore applies both to the enforcement of substantive law and to the protection of the rights of clients and other litigants of the proceedings based on the Basic Law or legislation.

Also Kp. Paragraph (2) of § 2 defines as a procedural principle that the court must adjudicate the administrative dispute in a fair, purposeful and cost-saving procedure.

Regarding the content of the multi-component rule, I referred to what the Ákr. in connection with its fundamental principles, the right to a fair trial, i.e. Basic Law XXVIII. I explained in paragraph (1) of § in connection with the analysis of effective legal protection. What was said in the chapter on smooth legal protection and fair procedure is also valid here as a conclusion. In connection with the desire for effective legal protection, legal protection should be smooth. This is served by the general clause of the Civil Code regulating the concept of administrative procedure, which allows you to appeal to the court against any administrative activity, regardless of whether the Ákr. on the basis of which the given decision was made, maybe not, but this is an omission or the silence of the authority.

Hypothesis 4

The Akr. indirectly, through the Basic Law, it ensures fair and reasonable administration within a deadline.

The Akr. administration is ensured indirectly through the Basic Law in a fair manner and within a reasonable deadline, and here reasonableness is provided by Article VI. the focus of my chapter, since the Ákr. it can be established that the rights of the official client contained in the Basic Law must be implemented through its detailed rules. The decision-making public administrative authorities are established by law, the law also defines the body's authority, power and authority, the given decision must comply with the relevant legislation. During their proceedings, they must always comply with procedural legislation.

Our Basic Law provides for the fair administration procedure and related warranty requirements, so there was no need for the Ákr. XXIV of the Basic Law and XXVIII. quote articles verbatim.

Mainly because it is also prohibited by the legislative act.[6] furthermore, it prohibits the repetition of what is regulated at a higher level in the lower legislation. I think it is important to emphasize that the conclusion can be drawn from the historical research of the regulation of administrative procedures that the guarantees set out in the laws on administrative procedures only achieve the legislative goal, and the official procedure will only be fair if the requirements of the procedural rules are observed in the official procedures . These are valid for all procedural actions, the guarantees are actual and practical.

If the guarantee system contained in the Official Procedures Act does not come into effect in practice, then despite the legal regulation of guarantees, we cannot speak of a fair official procedure.

Hypothesis 5

In the light of official decisions made beyond the deadline, the trend of changes in judicial practice points towards the lack of binding force of the judgment.

According to the Basic Law, there is no doubt that no one can be above the law, everyone is subject to the same law and the same. Everyone has the right to the usual legal remedy against those who unlawfully restrict the exercise of their indicated rights, Article XXIV of the Basic Law. Based on (I). In the application, the practice related to the Charter is no longer an interpretation obstacle for the Constitutional Court and the courts in deciding interpretation questions, and even helps. It also became clear that the number of decisions settling objections related to regular administration and fair procedure is extremely high. We can also record that the Ákr. according to its principle provisions, the general characteristics of the procedure were properly organized.

With reference to the Basic Law, its rules contain all the basic principles to which the Constitutional Court's jurisprudence applies to the procedure. You don't have to be a legal scholar to know that there is no legislator who does not have the highest level of jurisprudence as a reference point in terms of basic principles when formulating legislative or even administrative rules.

[6]CXXX of 2010. § 3 of the Act "Identical or similar living conditions must be regulated in the same or similar manner, preferably in the same legislation for each regulatory level. Regulation cannot be unjustifiably parallel or multi-level. The legislation may not repeat the provision of the Basic Law or a provision of a law with which the law may not conflict based on the Basic Law"

It can be formulated as a limitation of judicial judgment, i.e. as a criticism, that Kp. its regulation is not consistent in the sense that it does not ensure the competence of the trial courts to remedy the unfair procedural act that is objected to and deemed harmful. If a specific, so-called restorative obligation could be issued, and not "just" for a new procedure, it would definitely increase citizens' confidence in the justice system.

However, there is another dimension to this criticism. The constitutional purpose of the courts is to decide on the legality of administrative decisions, to ensure that the authorities do not exceed the limits set by the legislator in the exercise of public authority. The court is not tasked with substantive decision-making in administrative matters. Consequently, the authority of the court, in accordance with the principle of the separation of powers, is to establish the illegality of the official decision and to terminate its legal consequences by annulling it.

The new decision must be made by the public administrative authority. This circumstance is particularly important for decisions based on the discretion of state administrative bodies, since the authorities can make several equally legal decisions based on their discretion based on the same legal facts. In these cases, the determination of the illegality of the official decision does not mean the exclusive legality of the given decision with different content, because the authority can choose the decision it deems appropriate from among several equally legal solutions. We see that if the court annuls such a decision, it will not be clear to it what the correct decision would have been, since the authority could have chosen from a number of legal solutions.

State administrative bodies must examine and take into account many extralegal factors, this consideration requires special official expertise. And this special expertise is not given in court proceedings, the decision of these technical questions cannot be entrusted to the courts established exclusively for judging legal issues. If the courts were empowered to change such special cases, they would be able to perform their task as a result of very lengthy and complicated evidentiary procedures. Thus, the hope of the number of legal remedy procedures would be dimmed, and the decision within a reasonable time would also become doubtful.

It can be stated that the practice of the Constitutional Court has adapted to the constitutionality requirements in terms of compliance with the administration deadline and the completion of cases within a reasonable deadline. After all, before the entry into force of the Basic Law, the assessment of exceeding the administrative procedural deadlines was that the decision of the public administrative authority beyond the procedural deadline was basically assessed as a violation of the law that did not affect the merits of the case, but this has brought about significant changes in assessment in the last ten years. Prioritizing compliance with procedural deadlines and the weight of administration within reasonable deadlines has become common, due to the fact that Article XXIV of the Basic Law. article, the right to fair administration appeared, which created a direct reference basis for the requirement of administration within a reasonable period of time.

The author's publications on the subject

1. Andrea Juhász: In The shadow of professional ethics code.

Public administration law [author] István Stipta is the chairman of the Council of the Doctoral School [ed.] Conference volume in English (Book) Scientific.
Published: University of Miskolc Science Organization and International Department, Miskolc, Hungary, 11972 p. 2013

2. Andrea Juhász: The duration of cohabitation calculation errors. [author]

István Stipta to the Council of the Doctoral School president (ed.) Published: University of Miskolc Science Organization and International Department 2013, 12597 p. ISBN: 9789633581064 Conference Volume (Book) Scientific [3073975] [Public]

3. Andrea Juhász: In The shadow of professional ethics code. [author]

István Stipta, President of the Council of the Doctoral School (ed.) Published: University of Miskolc Science Organization and International Department 2013, 11972 p. ISBN: 9789633580874 Conference Volume (Book) Scientific [3073985] [Public]

4. Andrea Juhász: Legal harmonization of civil service ethics. [author]

Published: University of Miskolc, Faculty of Law and Law
Law studies of doctoral students from Miskolc 14 pp. 179-199. 21 p. 2014 Article (Journal Article) Scientific [3073994] [Public].

5. Andrea Juhász: Reflection on the official administration deadline. [author]

Béla P Szabó, Sándor Szemesi (ed.) Published: Debrecen University Press, Academic Press 2015, 15776 p. Other conference volumes. Scientific [3073991] [Public]

6. Andrea Juhász: Simple can also be decent. [author]

Published: University of Miskolc, Faculty of State and Law, Miskolc legal studies of doctoral students 16 pp. 159-179. 21 p. 2015 Article (Journal Article) Scientific [3073989] [Public]

7. Andrea Juhász: Headlines administration official deadline. [author]

Miklós Szabó (ed.) Faculty of State and Law Section publication. Published: University of Miskolc, 2016 pp: 10583 Conference announcement (Book excerpt) Scientific [3073992] [Public]

8. Andrea Juhász: The international dilemma of legal force. [author]

Miklós Szabó (ed.) Ph.D. Students' Forum: Állam- és Sectional publication of the Faculty of Law Published: University of Miskolc, (2015) Conference announcement (Book excerpt) pp: 41776 Scientific [3073987] [Public]