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THE LEGAL REDRESS SYSTEM OF THE PUBLIC ADMINISTRATION PROCEDURAL
LAW IN HUNGARY

(Thesis of PhD Dissertation)

Miskolc
2012

I. Summary and goals of the study

My study is connected to legal remedy, more specified to those of applicable in official administrative procedures. In my opinion the question of legal remedies are regarded to be an evergreen topic as they are defined to be the basic granted law in the procedure rules. An important feature of the administrative procedure is that there are many of them and can be applicable to all segments of our life. Consequently, all members of the society are the part of such procedures. Further important feature of official procedures is that they can be considered to be smaller-scale proceedings – at least in financial aspect. Thus, in most cases no legal representative is supporting the client so he participates in the procedure as a completely lay person. In my opinion - and based on the above mentioned - it is very important that an adequate system of instruments and tools should be available for the client in case he feels that he has suffered injury during official procedures.

The goal of preparing this dissertation and of the study was to find out whether the legal remedies satisfy the clients needs in case of official administrative procedures or not.

In connection with the regulation of legal remedies a new law is always issued in our country, called insitutional requirement. It arises from the fact that the Constitution and also the Constitutional Law declares the right to legal remedy as a fundamental right. This fact determines one direction of the study. Namely, the study has to unfold whether the existing legislation system satisfies the requirements of the Fundamental Law or not.

I have drawn the following consequence during making my studies: even if a legal remedy system applies to the fundamental requirements that does not mean that it meets the clients expectations. Consequently, further goal of my dissertation was to answer the question whether the clients' expectations are satisfied by the regulation in force. This need was agreed to describe as a

practical point of view in my dissertation and the results of this kind of studies were worked out in a separate chapter.

According to my position, sooner or later the question arises in all people who are studying the existing law: how could we get this far? Why are the legislations like they are and what kind of history effected them? Legal remedies are forming a system in case of official administrative procedures. The question arose for me why the current system is like this, had this been or could this be different? We can get the answer only one way: if we start mapping the development and history of it, do a legal historycal study in fact. In connection with this I have tried to seek answer for my question that what was the motivation of the legislation powers to regulate legal remedies this way. Can these causes and effects change just in time or are they always the same? Do they effect the legislation at this moment or in the future?

During my research after studying the official law, mapping and processing the history I have drawn the consequences that I have to find the answer for why legal remedy must exist. In the interest of protecting the client's right the answer seems to be meaningful as the Fundamental Law contains that in fact – related to the official procedure, of course. But, in my opinion and according to my research this is not that simple. So I thought that it was necessary to address and map the roles of legal remedies in general. According to this goal I have made an exploratory research for the theoretical basis of the legislation system on one hand and have made studies highlighting the method of the fundalmental rights legislations, on the other. In connection with the legal remedies their operation in public administration is coming into view. When I generally invesigated this topic I set up that making such researches is also a necessity.

II. Methods and sources of the study

Regarding the dissertation's structure it appears as the result of a reverse study. The reason is that processing the existing legislation needed the most profound researches. However, I have done the studies based on a double standard. First of all I was seeking the answer whether the existing legislation applies the constitutional requirements.

Thus, the first topic to explain is how does this constitutional standard show? The right to legal remedy was first declared among the fundamental rights in 1989. So clearly, I could only choose a legal entity who was born after that date. So first I had to interpret the relevant text of the Constitution which had been in force during writing the dissertation and doing the research. The text of the Constitution provides only a frame information regarding which conditions have to be met in a certain legal remedy legislation. As far as I know no further comprehensive studies were made in the topic of the conditions composition. Though, more people, for instance Géza Kilényi, Éva Szalai, Fábíán Józsa, Anita Paulovics have studied certain resolutions issued by the Constitutional Court as well. These were also made in connection with the right to legal remedy. Their published research results were good starting point but I have realized that I could get more thorough answers only by processing the Constitutional Court's relevant jurisprudence. Therefore I was focusing on examining the Constitutional Court's decisions. As a result of relevant studies I have set up measures which could be obtained from different decisions made mainly in connection with official cases. As the Constitutional Court always comments on a certain practical jurisdictional issue my measures can easily become superseded by the time passing.

I have regarded legal remedies as the study's main topic from the clients and the enforcement staff's point of view. It was trivial to do so while

processing legislation in force. I have used studies, legal commentaries, ministerial justification and the law in force related to this topic to be the bases of the research. I was studying the Supreme Court decisions as a complement and the examined Constitutional Court's resolutions were a good basis as well. During my studies I have drawn the consequences that the source material written solely by experts can only partially contribute to get appropriate result. I thought that it was necessary to take the law enforcement and client segment's opinion into consideration. It is not easy to get adequate information on this field, so I chose test-based analysis. This was realized as followings. It happened that in certain cases – like the obvious existence of legislation – problems could arise. These times I interviewed the potential clients and actual law enforcement staff. Being a member of university education staff I have made these interviews as a test with the compliant students. Namely, there are quite a lot of students who are working for public administration as law enforcement staff. Unfortunately this method was only partly successfully but supported my thesis respectively. Although I applied my method on an anonym basis and involved more persons in the meantime I was clearly asked not to publish the results. The dissertation does not consists the numerical results. Nevertheless I thought and still think that it is necessary to apply this method as it confirmed the concerns that have emerged in me.

Researching historical antecedents takes a relevant part of the dissertation. The legislation relevant to a certain period was processed based on Corpus Iuris Hungarici. This provided the basis of the historical researches. But studying the legislation itself is not enough to do that thoroughly so I have attempted to process the works of researchers who had relevant studies to a certain period as well. Within this framework I have read works of József Valló, Károly Kmetty, Zoltán Magyary, Ede Márfy. And of course works from such currently active researchers were included who have made studies in this topic, namely István Sipta, Anita Paulovics. The goal of studying the historical

research was not only chronologically processing the legislation but also mapping which processes influence the given legislation. So it was necessary to study such sources also which contains the overall social, political and economical features of a given historical period.

During studying legal remedies and the relevant fundamental law I thought that it would be important to determine the origin of this legal institution. So I started to look up that from which theoretical basis can the existence of legal remedies and fundamental law derived. Is the existence of legal remedies is necessary in legislation and if it is then why? Is the claim for legal remedy the invention of the new age or did former lawyers and legal philosophers have this idea already? The result of these researches was settled in the first part of the dissertation which discusses the legal remedies in general. The works were based on Antal Ádám and Miklós Szabolcs theory researchers.

The claim for studying public administration's supervision arises from time to time. The essays consists and mark the legal remedies or at least some forms of them as the part of the control system. Thus, I think it is unavoidable to mention this kind of role of legal remedies when a dissertation is issued in the topic. The examination of legal remedies' role in controlling public administration is only slightly connected to the leader line of this dissertation. This is why I have made relevant researches only in a necessary level. The basis of these researches are provided by Géza Kilényi, András Patyi and András Zs. Varga for instance, who had made their studies in the connecting topic.

It was important to examine why and how was the legal remedy recorded in the Constitution and later in the Fundamental Law. So in connection with this I have attempted to process studies which were concerned on rights to legal remedy in some aspect. This includes but not limited to certain works of János Sári, András Holló and András Bragyova.

The question arises study by study whether it is worth and if it is then at what level to do international outlook and researches. For my part I have the

opinion that we can tell for more areas of legal science that it is not sure at all that we can have verifiable results on international side. As a result of the research of right to legal remedy on a national level we can say that this is an internationally unique legislation. So I could not really base on the international result in this topic. But the situation is completely different when we examine the regulation of legal remedy system in official procedures. There are more existing official procedure system in international practice but that is not coherent even if a law for general regulation official public administration procedure ever existed. The research focusing on this topic had highlighted soon whether the researcher described results in a separate dissertation or just slightly examined them. As now the strict subject of the research is different I have only made my international studies for a european outlook. It was enough to read works of hungarian researchers to be the source of this, I have used foreign-language sources only to the extent necessary.

III. Results of the research and the possibilities of their use

I was looking for answers for two main questions so this determined the mainstream of the research.

First was to see whether the 'KET' (Administrative Procedures Act) regulation applies the constitutional requirements that is does the right to legal remedy properly come to force or not? I assessed from the result of the requirement test that the regulation in force meets the legal requirements based on the Constitution (Fundamental Law). However, I draw the attention to the fact that the dissertation's statements within the frame of this topic are applicable exclusively up to the manuscript closing. Related to this topic there can such situations in life occur when the Constitutional Court has to react and as a consequence my statements will not be complete anymore. Despite the above I think that the conditions of law enforcement access to legal remedies has

been thoroughly worked out. Therefore no significant change is expected in this subject. Anyway, in connection with the present practice I have to mention that it had not been developed with the full agreement of the members of the Constitutional Court. The composition of the board is changing and therefore the positions can be different even in the same questions but related to different period. Most probably these are the reasons why the practice is weak at some point. In such a controversial position the right to legal remedy is only extended for the normal legal remedies. The current practice can be based on the fact that the establishment of judicial review has become general during official procedures by now. Practically, this is to serve the completion and correction of the official legal remedies. As the judicial review is also a fundamental request beside the legal remedy it can cause its restrictive interpretation. In this currently established position it has already happened and can happen anytime in the future that the right to legal remedy can be breached as a consequence of this restricted interpretation. There for in my opinion the current practice is questionable at this part.

It cannot be disputed that the judicial review can amend official legal remedies, but in its current form it is not able to make for their absence. The institution of judicial review is only limitedly intended to correct expediency considerations and harms of interest. A differentiated regulation of the legal concept of judicial review could solve this problem. In my opinion in this topic the social interest requires it in such a measure that it overwrites the counterarguments – which would cause power withdrawal of administrative authority for instance. It happened that the Constitutional Court explained its position, namely the enforce access of right to legal remedy should be interpreted always taking the given circumstances into consideration and it is not always enough to examine according to the regular remedies. As for my part I think that this last position is much more acceptable. But it cannot be questioned that the fundamental regulations of rights to legal remedies have

progressive effect on the legal remedy system of official procedures. Due to this a defective control could be corrected in many cases.

I think and would like to mention as a summary that the means of effective legal remedy are given in current official procedures. The occurring errors are mainly arising from the shortage of special rules. Still, this is the smaller failure as the well-developed general rules are the standards and they can help in mapping and correcting the deficiencies and failures in special rules.

Secondly, I was examining whether the legislation in force satisfies the considerations of expediency. Unfortunately, I came to the consequence that there are weak points in the legislation. First of all I would highlight the name „legal remedy and decision review“. In connection with this I think we can talk about two different legal concepts. There is disagreement even within the legal profession itself in this question and a lot of people use these two terms in a different meaning. Although that is true that legal remedy is possible in both cases but the goals of the two legal concepts are different. The goal of legal remedies is hiding in the protection of clients' rights but in case of decision review it is to meet the requirements of legal certainty. We can approach this question from a different point of view as well. In this case the legal remedy is intended to protect subjective right and the decision review is intended to protect objective rights. There is therefore no doubt that decision review can realize legal remedy or personal judicial protection but this will never be its prior goal. At the same time decision review is also some kind of legal remedy as it serves the goal that the decisions should comply legislations. But it happens in the public interest and not on subjective basis. Using this consideration as a starting point I would find the name „legal remedy“ much more acceptable for chapter title – as was stated also in the proposal of Codification Board of 'KET'. Based on the above described I think the range of the entitled is irrelevant at legal remedy classification. In my view exclusively

the client has the right to pursue legal remedy. But these are didactic aspects as I have found much more shortage in the legislation in force from the practical side.

Such shortage is the not obvious wording in cardinal questions, which would be one condition of legal certainty. Even the first sentence of the legislation - which should clarify the general and specific regulations relations - needs interpretation. Well, it makes the question open practically. Researches confirmed my assumption that wording is not clear and obvious. So I think the the legislation needs correction in this aspect. I have drawn similar consequences in connection with examining legal remedies regarding the administrative body's silence. Similar to the former problem the main problem is also the wording of regulation as it is complicated and hard to interpret. A specific legal remedy to be named would help in such cases. The effectiveness of legal remedies against the right of silence needs correction as well as the current solution is quite slow and lengthy. A possible mean is the more wide-range access to the legal institution of „silence gives consent“. There is a change which can provide solution. Namely, when the 'KET' generally allows and let to decide whether to apply this principle or not to be made on the bases of special regulations with the following sentence:

„If law does not preclude.“

In this case the current risk can be reduced as the regulation is inapplicable now. Almost none of the legislations allow this solution even if it was well-founded. In the meantime, the risk of application in not expedient cases is really law as the special legislation could exclude it. I think that in other cases it is appropriate to treat omission as a refusal decision and to provide legal remedy according to this. Applying such a solution would make the procedure faster. I believe that the legal remedy related to disrespect of essential procedural requirements is missing from the legislation in force. To prove it I was examining the process based on objective liability which is applicable at

road traffic offences. I made studies in this topic as there can be many related examples found. I draw the consequence that there is no appropriate mean for this though the irregular procedure's occurrence is pretty high. This is an important question as no appropriate mean existing for the society, which would force the public administration to carry out adequate procedures. At the same time it is not sure that the regulations of legal remedies should be changed, it might be enough to alter the usual practice.

In connection with means of legal remedy I cover to a more detailed description by 'KET' of two new means. *Equity procedure* is out of the legal remedy tools by now. The new regulation is correct in this case as my opinion is correspondent with the fact that equity is not legal remedy. I think its basic reason is that there were no decisions to be corrected in case it had to be applied. Another new mean is *resumption*, which should be taken place within official legal remedies in my opinion as it fills a gap that has been existing for a long time. I believe that the request for proof and the petition for rebutting presumption of delivery cannot be respected as legal remedies. Although some thinks that they are even if not regulated within the topic of legal remedies. I consider these conceptions to be much closer to equity then to legal remedy. The legal remedy feature of execution complaint is not questionable. I have not paid attention to this in my dissertation as it is not an integral part of official legal remedies (rather the most separated from them) and it is based on different legislations.

In summary, it can be stated that legal remedy system of the 'KET' meets the constitutional requirements but it does not entirely apply to expediency considerations. So I can conclude that my two different basic points of view are not closely related to each other. In my opinion it is not enough when the legal remedy system meets the constitutional requirements but it has to apply to other aspects. I attempted to develop solution methods for the mentioned deficiencies, these can be disputed, of course.

The nature of the official procedure influenced me in drawing up my point of view. Namely that a lay person is standing on the client's side in most cases. However, the fact is that often incompetent persons lacking of knowledge of law are taking part in decision making, as well. That is why the clear, obvious and easily applicable legislation is necessary mainly in this segment of law.

During my studies I have tried to explore what kind of circumstances affect the legislation procedure - most respectively the legal remedy system of official procedures within. This is why I split the historical studies of the dissertation by taking the country's social and political situation into consideration and not the chronological order of the legislation development. In this legal history part of the dissertation I had the opportunity to analyse these social and political influences from the aspect of changes to the legislation. I draw the consequences of my studies that the economic state of the society has a basic influence on the legislation in legal remedy's aspect. If bringing the cost of public administration down is also an interest then one of its means can be to change the regulation of legal remedy system. However, it is obviously detectable and highlighted as a positive fact that the client's interests and legal certainty were always required at drawing up the legal remedy system. More or less, interests of power appear as legislating aspects, but it depends mainly on the political system. It is also significant, that the abovementioned facts are arising and influencing legislation next to each other. Also outstanding that the constitutional requirement appears after the change of regime in 1990 and this is arising from the constitutional fundamental status of right to legal remedy. This is a legal-professional requirement in fact but originates from the fundamental legislation, which is also to show basic society interests. According to my current point of view the social interest can affect the legislation the most this way.

It was necessary to examine the theoretical basis of right to legal remedy to make the dissertation complete. This was not easy as there is no or only a very limited national and international literature available in the relevant topic. The reason is that the right to legal remedy is not regulated in fundamental legislation in other countries and it has no long history in Hungary, either. In the dissertation I describe the regulation of the right to legal remedy, the public administration's review function related to legal remedies and their place within the circle of means of supervision. Hereby I believe that my dissertation had become complete and exhaustively analyses the topic appearing in the title.

VI. List of publications used in the dissertation

1. Enforcement of 'KET' legal remedy system in legal administration In: Forum of PhD Students Miskolc, 13th November, 2007. 321-324.pp.
2. Additives to the examination of the hungarian public administration apellation system in the 19th century In: Celebration studies in honor of teaching work of Prof. Dr. Tibor Kalas lecturer Miskolc, 2008. 313-323.pp.
3. Constitutional Court decisions related to rights to legal remedy In: Studia Iurisprudentiae Doctorandorum Miskolciensium IX. Miskolc 2008. 477-497.pp.
4. Development of legal remedy regulations related to the right of silence In: Forum of PhD Students Miskolc, 13th November, 2008. 169-173.pp.
5. Historical development of legal remedy system in the hungarian public administration In: Sectio Juridica et Politica, Miskolc University Press 2008. 227-242.pp.
6. Prosecutor's protest as legal remedy in public administration In: Forum of PhD Students Miskolc, 5th November, 2009. 165-168.pp.
7. Legal remedy and faulty procedure in public administration In: Forum of PhD Students Miskolc, 5th November, 2010. 187-190.pp.
8. The legal remedy system of the Public Administration in Hungary before the 20th. Century In: History of private law in Europe – international conference Kosice, 26-28th May, 2011., 321-326.pp.

9. Conditions of right to legal remedy's appropriate practical application based on the practice of Constitutional Court In: Sectio Juridica et Politica, Miskolc University Press, 2011. 333-351.pp.
10. Legal theory aspect of right to legal remedy In: Legal Review Miskolc, 2011. 6th year 2nd issue, 101-110. pp.