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Rifts and deficits – lessons of the historical model of Hungary’s administrative justice

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Abstract: The establishment of independent administrative courts at the beginning of 2020 was repealed by Parliament, including the underlying constitutional provisions, it is still the ordinary courts (including the Supreme Court – Curia) that handle legal disputes of administrative nature. The article introduces the historical model of Hungary’s administrative justice (between 1884 and 1949), emphasising its limited use as an example for the current challenges. We cannot speak of continuous historical evolution. It is more accurate to talk about fragments or fragmented short time periods. The changes and reform plans from 27 February 1884 (the “birthday” of Hungary’s administrative justice) are analysed in the article. The different proposals from the jurisprudence and the only administrative court itself are explained in detail. The role similar to the constitutional courts aspired by the administrative court is also examined. An important declaration from all of the judges of the administrative court (in 1947), according to which the court would not apply legal regulations violating a person’s natural and inalienable rights listed in the Act I of 1946, is also analysed.

Keywords: Administrative justice in Hungary, lower administrative courts, royal administrative court, historical model of judicial review of administrative acts, unrealised extension of the administrative court’s powers, protection of fundamental rights by the administrative court.

1. INTRODUCTORY THOUGHTS

1.1. Since Hungary’s transition to democracy in 1989, hardly any area (or institution) of the coun-

try’s public law and state administration has been subject to such vicissitudes as administrative justice. Even the Constitutional Court declared in its Decision no. 22/2019 (VII. 5.): “Restoring the independence of the administrative court system has been continuously debated by the profession since Hungary’s transition to democracy.”¹ It is indeed difficult to keep track of all the changes that have affected the organisation, powers and procedures of judicial control over administrative decisions, and of judicial protection against public administration, in the past 30 years.² The establishment of independent administrative courts at the beginning of 2020 could have been the most sweeping of these changes, but Parliament repealed the underlying constitutional provisions, the act dedicated to administrative courts, and also the law stipulating the relevant transitional regulations.³ So the planned change was blocked: it is still ordinary courts (including the Curia) that handle legal disputes of an administrative nature. But for 65 years, initially a Financial Court and then an Administrative Court were in operation at the highest judicial level. The institution and activity of a separate administrative court are considered major achievements of Hungary’s historical constitution. It is now widely known that the abolition of the Administrative Court in 1949 was one of the measures leading to the communist dictatorship.

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1.2. Any semblance of dedicated administrative justice ended when the administrative and labour courts, which had been relatively independent, were disbanded as of 31 March 2020.⁴ The “mock mixed” system introduced in 2012-13⁵ had shown at least a few signs of separate administrative courts (albeit under a shared roof with labour courts). But the new forums that emerged after 1 April 2020 unfortunately maintained one of the most problematic solutions of the planned separate administrative court system: county/capital courts are charged with handling first-instance administrative cases based on regional/territorial competences. Furthermore, the residents of 12 counties must travel rather far, i.e. outside the county of their residence, if they want to launch administrative court procedures, which have become a common legal remedy in the wake of the transformation of public administration procedures. In addition, two courts (the Metropolitan Court and the Budapest Regional Court) are located in the capital city, which means that there are only six courts with divisions dedicated to administrative cases outside Budapest.

In view of what has become constant experimentation by the legislator, the question arises as to whether the origins and historical models of administrative justice in Hungary can provide useful examples. In other words: are any of the lessons and experiences learned while organising and establishing administrative courts nationwide still valid? This is the subject of the following short overview, with which I hope to contribute to the constant quest in the area of Hungary’s administrative justice.

2. HISTORICAL MODEL OF HUNGARY’S ADMINISTRATIVE JUSTICE – AN EXAMPLE OF LIMITED USE

2.1. The historical model of Hungary’s administrative justice, which evolved between 1884 and

1949, is of limited use as an example for the current challenges. In fact, it is difficult to speak of continuous historical evolution; it would be more accurate to talk about fragments or short time periods. If we wanted to find a date of origination, that would be 27 February 1884, the day that could be called the birthday of Hungary’s administrative justice. That is when the Royal Hungarian Financial Administrative Court convened for the first time, marking the start of the era in Hungary’s state and legal history when administrative decisions could be overruled and judgements could be passed on the lawfulness of such decisions via court procedures. That is why we must go back to 1884 when examining the forerunners and development of administrative justice.⁶

It is easy to work out that the above date was 15 years after the drafting of Act IV of 1869 on exercising judicial powers. Fifteen years elapsed before the National Assembly, the political decision-makers of that time, gathered the courage to allow judicial control over one part of a single administrative area (financial administration). This could be one of the lessons of the history of Hungary’s administrative justice: the passing of the laws that governed the powers of Hungary’s administrative judges was an extremely slow process, and this was often burdened with major compromises. After the launch of financial administrative justice, it took another decade or more for a general administrative court and judicial procedures to be introduced.

2.2. The basic problem, i.e. the total lack of first-instance (or lower) administrative courts, had emerged back in 1883-84. This phenomenon lingered for 150 years, as no independent, dedicated administrative courts were set up then, or between the two world wars, or after 1990. Both the Financial and the Administrative Court operated as separate courts at the same level as the Curia, the country’s highest court. But they had no lower-ranked organisations, and there was no preceding administrative procedure by other (“ordinary”) courts. The first-instance proceeding was the only procedure by a central court. The bill aimed at establishing an administrative

court had referred to lower courts, but the National Assembly removed that reference during the debate of the bill. The powers of the court were listed exhaustively, i.e. the administrative areas not specifically listed were not subject to judicial protection by the new court. The administrative court was not authorised to judge police, law enforcement or construction activities, or property protection issues, so its tools for legal protection were limited.

Comparing the first administrative court with current institutional requirements confirms that the old institution simply could not be copied or adopted in our age. Hungary had no written constitution then, so there was no itemised catalogue of fundamental rights until Act I of 1946. The country was not a party to the European and international system for protecting human rights, so no supranational court or community of states was active in this regard. There was no code of administrative procedures. (Just consider how easy it is to consult any procedural act, but these were not available back then.) There was no regulated public administration system, which also means that public administration was subordinated to law through this single court only, even though its powers were strongly limited.

As another important difference, a Constitutional Court or similar institution was missing throughout the historical era, whereas Hungary’s administrative justice after 1990 is unconceivable without the role of the Constitutional Court, which passed a number of important decisions besides declaring an omission and abolishing the previous act on administrative procedures, which had limited any judicial review. I refer especially to Decision 39/1997 (VII. 1.) by the Constitutional Court, which confirmed that a court was authorised to review administrative deliberations. But besides this decision, which provided for legal remedies against administrative rulings, the Constitutional Court has passed at least 10 further imperative decisions which forced or allowed Parliament to establish or strengthen the conditions of administrative justice from time to time.

2.3. Without an actual Constitutional Court, the old administrative court had to (or could) assume an *ersatz* Constitutional Court’s role. This role was tested in 1947 when a Court’s Statement (or Declaration) was issued in support of the human rights defined in the preamble to Act I of 1946 on Hungary’s form of government as a republic (the so-called “small Constitution”). The administrative court would probably have been disbanded anyway (as happened in all countries occupied by the Soviet Union), but its stalwart resistance expressed by the above-mentioned declaration of support for the protection of rights probably hastened its abolition, which finally came in 1949. It should be emphasised again that there was no lower (first-instance) administrative judicial system; we need to bear this in mind when examining the new administrative court structure set up in 2018 and postponed in the following year, because this was the first time when independent first-instance administrative courts could have been established in Hungary’s legal history. Consequently, it is not the era of the Austro-Hungarian Monarchy or the time between the two world wars which can serve as a prelude, but rather the period between 2013⁷ and 2020, when mixed administrative and labour courts were in operation.

3. AN UNREALISED LOWER ADMINISTRATIVE COURT

The concentration of administrative justice at a single level (without lower courts) did not result from any theoretical consideration but from a momentary political concession. The method of defining these courts’ powers and the limited scope of those powers were fervently opposed by contemporary lawyers.⁸

The 52-year history of the Administrative Court (1897-1949) was characterised by numerous reform proposals and plans. These plans “do not cast a shadow on the original achievement of the organisation of administrative justice, but merely indicate that changing times, circumstances and needs necessitate modifications of both a temporary and final nature”, as the president of the

court noted, taking a rather lenient stance towards the deficiencies of the system.⁹ But the reform plans failed, and the “guiding principles” of the act on the establishment of the court, along with its fragmented structure, *were maintained* until its abolition. This is not surprising because the idea and institution of administrative justice were not very popular in political circles, and the government was not really interested in the legal issues involved.¹⁰ Despite a continuous, albeit limited extension of its powers, the court continued to operate in the same system. Its powers were defined in an exhaustive listing, there was no second-instance procedure, and the court operated at the highest level (besides the Royal Curia). It was separated from both public administration and general courts; half of the judges were qualified in public administration, while the other half were judges. The decisions of the court were final and meritorious, and it was authorised to overrule the examined administrative decisions. Still, I consider the following overview important because I am convinced that *matters of principle* or practical solutions may be found that could, at some point in time, affect the understanding or structuring of current administrative justice in Hungary.

3.1. First and foremost, the issue of *lower administrative courts* (or the lack thereof) should be discussed. Several theories have been devised to patch up the incomplete structure of the administrative court and extend the legal protection provided by it, and various governments promised reforms over the decades. Besides other considerations, the establishment of lower courts was necessitated by the *excessive workload* on the single administrative court. The extension of the court’s powers started in the years following its inception, so the sole administrative judicial forum became increasingly overburdened. As the court was the only one of its kind, the legislator’s options for legal protection were the following: granting a right to complain (file a suit) before this forum, or not granting such a right at all. Consequently, many *cases of minor importance* were assigned to the administrative court, and much of the time of this prestigious and hugely costly court was spent with petty disputes about taxes and duties. The

burdens were exacerbated by the “appeal” nature of the procedures. As the parties to a lawsuit could raise new facts in their complaints (petitions or responses in today’s legal parlance), many cases were tabled by the court without any preparation, and a long evidencing procedure was required before a decision could be made.¹¹ Besides unburdening the only judicial forum, another reason for the establishment of lower courts involved the high number of case types excluded from administrative legal protection (despite the continuous extension of the court’s powers). These case types could not have been handled in the structure of a single high-level court.¹² Accepting the need to define the court’s jurisdiction through general principles (as had been touted by legal experts for decades) “*would inevitably have pointed towards the necessity for organising lower courts*”.¹³ A two-tier setup would also have promoted the simplification of the system of administrative forums, and specifically the simplification of an appeal system, because thorough procedural regulations could have prevented the cases handled by lowest-ranking authorities at the first instance from being elevated to the highest forums via various legal remedies.¹⁴

3.2. The proposals for establishing lower courts *evolved* gradually. The initial idea, already included in the original bill (referred to as the *Hieronymi proposal* after its originator), had called for not quite independent bodies of mixed and rather suspicious composition; later proposals advocated the establishment of councils of qualified lawyers equipped with all the guarantees of judicial independence. Unfortunately, all of these ideas were discarded, so several proposals before the decade preceding World War 2 eschewed the idea of lower courts and intended to reform the structure or procedures of the existing administrative court in order to overcome the difficulties caused by the excess workload and a huge backlog of cases. The original *Hieronymi proposal* had called for two judicial levels, each passing meritorious judgments. One first-instance administrative court was to be set up in each county seat and each major city with the authority of full self-government, including Budapest. A higher (second-instance,

final) royal administrative court for the entire territory of the country was to be established in Budapest. The first-instance courts would not have been actual judicial bodies characterised by independence, stability and legal qualifications, but would have been more closely related to public administration.¹⁵ Their close ties to public administration were evidenced by the fact that they would have been chaired by the local Lord Lieutenant (*főispán* in Hungarian) or, in the case of Budapest, the mayor, while their members would have included the deputy lieutenant (or, in larger cities and Budapest, the local/district mayor), the local chief attorney, as well as three ordinary and three substitute members elected from the members of local municipalities. The cases would have been presented by the local chief attorney.¹⁶ The most fervently opposed idea was to appoint the Lord Lieutenant, representative of the government and central public administration, as the head of the first-instance court, even though the originator of the proposal considered this indispensable; the Lord Lieutenant wielded significant administrative powers without actually being a public administration officer.¹⁷

3.3. Care should be exercised when comparing a past legal institution or organisation with the requirements of our age; such historical structures should rather be examined in the context of their own era. I refer to an oeuvre from 1912, in which *Sándor Benedek* came up with a plan that was similar to the original bill: the lower courts organised around greater *local municipalities* would be chaired by the highest-ranking officer of the municipality. The local attorney would serve as the deputy chairman, and the cases would be presented by an administrative officer. The membership of the court would consist of two judges and two lay members (from the public administration committee). The reasons for the dysfunctional operation were analysed in detail¹⁸ (in a study also published in 1912) by *Gyula Wlassics*, who was then the president of the Court. He attributed the rejection of the *Hieronymi* proposal to a lack of trust in the organisation, and to a disregard of the guarantees involved in judicial procedures. He noted that hardly any of the states that had served

as examples upon and after drafting the act on administrative courts (France, and German states) had a similarly specialised body of independent first-instance judges. In fact, Austria’s court was the only single-instance entity; its powers had been defined in a general manner, but it handled a much lower number of cases thanks to its authorisation to annul decisions, and because it was compulsory in Austria to go through all steps of the public administration procedure before a lawsuit could be launched.¹⁹ In view of the Hungarian court’s huge backlog of financial cases, Wlassics proposed setting up lower financial administrative courts and increasing the number of judges in the public administration department of the Court. He did not dare propose a comprehensive organisation reform because, as he wrote, “our public life is used to seeing such a major reform introduced together with sweeping reforms of public administration in general”. And there was little chance of the latter. In addition, President Wlassics promoted the idea of mixed courts established next to regional courts, with the involvement of financial and municipal officials, and chaired by independent judges. Naturally, non-judicial members would work “under the protective shield” of judicial independence, and could only be held accountable pursuant to the law on judicial responsibility.²⁰

3.4. *István Egyed* contributed to the topic with valuable aspects that are still relevant today. He discarded the idea of lower courts organised purely bureaucratically (administratively) within the public administration system. He also argued against charging municipal bodies (and specifically so-called administrative committees) with the task of adjudicating administrative cases. Finally, he also arrived at the proposal to set up *mixed courts*. He considered an organisation of many members unsuitable for the task, as it would have lacked certain basic traits of judicial operation. A court’s activity involves constant and regular work by qualified persons characterised by a high degree of interest, dedication and expertise. Professor Egyed also rejected the idea of charging the country’s ordinary courts with first-instance administrative cases, partly because of the different nature and specific procedures of

such lawsuits, partly due to the sheer volume of the relevant substantive law, and also because the judges of ordinary courts did not know the conditions in that area of justice. In a modern state, the work of judges has grown beyond the simple and routine application of itemised law. “In the vast areas of administrative law, too, judges can work well if they have obtained specific knowledge of the diverse branches of the field, and have gained insight into the special spirit of administrative law; judges who are familiar with continuous work and life in public administration.”²¹ From a multitude of options, Professor Egyed preferred *mixed courts* with a heavy reliance on the judicial element. However, he proposed organisationally separate courts (similar to the single existing administrative court). One third of a court’s members would be qualified judges, one third would be public administration officers, and one third would be members elected by municipal bodies for a relatively long period. The courts were to be set up next to regional high courts. He proposed delegating to administrative courts only cases which have reached the stage of litigation, instead of the cases in the multi-stage administrative appeal procedure of that time. The cases would be delegated to the courts based on their general (not exhaustively listed) powers, including those that involved deliberation (and an infringement of interest). As István Egyed proposed maintaining single-instance justice, the higher court would deal with legal remedies only.²² But this proposal, which took almost all aspects into consideration and offered several options, was not implemented either, primarily due to World War 1.

3.5. In 1923, Interior Minister *Iván Rakovszky* (who was later appointed president of the administrative court) compiled a general plan of *three-person* lower administrative courts next to regional high courts, mostly along the lines drawn by István Egyed. As one significant difference, the cases would be presented to the judges by an active public administration officer assigned by the Interior Minister. This idea was heavily criticised. According to Minister Rakovszky’s proposal, the new courts were to be established next to regional high courts, and their presidents and vice presi-

dents would be persons who have held high public administration offices for at least three years. Besides the chairman, the council would have one member of a higher judicial rank, as well as a legally qualified member elected by the local self-government, who would be a local resident.²³ These new entities were to be inserted into the system of administrative legal remedies, with limited opportunities to appeal to the higher court.²⁴ Not surprisingly, this proposal was not implemented either. It is equally not a surprise in the history of Hungary’s administrative justice that the National Assembly *instructed the Interior Minister* (in a resolution adopted by both Houses) to table a bill for the establishment of lower administrative courts. Before that happened, *Zoltán Magyary*, who worked on streamlining and reorganising public administration in general, proposed establishing one lower administrative court in Budapest, as he considered the expected volume of cases too low for several lower courts across the country. He also proposed continuing to extend judicial legal protection to further legal disputes, i.e. to increase the powers of the court.²⁵

The bill ordered by the National Assembly was drafted in the Finance Ministry in 1932. Independent lower administrative courts were to be established at regional high courts (i.e. in Budapest, Szeged, Győr, Pécs and Debrecen). Half of their members were to be judges, while public administration officers were to comprise the other half. All of them would have enjoyed full judicial independence. The cases were to be handled by three-person councils. One major innovation that went against the rules in effect (which stipulated that a court procedure could only be initiated against a second-instance administrative decision) was that a complaint against a first-instance administrative decision would also have been allowed.²⁶ Together with this bill, the National Assembly discussed what was later promulgated as Act XVI of 1933 on the continued reorganisation of public administration. According to that law, the public administration procedure and all forums were to become two-instance, and it was not allowed to contest or initiate the review of a second-instance resolution passed based on an appeal. The legisla-

tors trusted that such reviews would be replaced by complaints filed to lower administrative courts. But the government did not put the act into force (the authorisation for which was granted in section 43), partly because the establishment of lower courts was postponed; Interior Minister Ferenc Keresztes-Fischer attributed the delay to nothing but the lack of funds in the central budget.²⁷ Specifically, payroll costs could not be financed; the act called for the appointment of judges and support staff for the new administrative courts. However, the change would also have resulted in savings: assigning public administration disputes to lower courts and abolishing administrative reviews would have caused a significant reduction in the administrative headcount, especially in ministries, which were the most expensive to operate. And if lower courts had not been organised as first-instance entities (i.e. if it had been impossible to appeal against their rulings to the higher courts), then the cases relegated to them from the administrative court would have resulted in some headcount reduction at that higher level (the administrative court).²⁸

3.6. However, the purported or actual lack of budgetary funds may not have been the only reason. The establishment of lower courts was also opposed within the existing administrative court, the staff of which thought that changing their entity’s organisation and procedures would be sufficient to improve its performance and speed, thus avoiding a transfer of powers to lower courts.

According to one of these proposals, the cases were to be categorised; some of them would be handled by five-person councils, others by three-person councils, and again others in newly proposed single-judge proceedings. As this proposal would also have required a certain headcount increase, the new judges were to be ranked lower (as “only” court of appeal judges). Single-judge jurisdiction would not have been an exclusive solution; a single judge could have submitted a case requiring further discussion to the president of the judicial council; in fact, the case could have been transferred to a three- or five-person council with the president’s consent. And the president of the judi-

cial council would have been authorised to overrule the judgements made by a single judge. This proposal was heavily criticised for being rough around the edges, but even more for the single-judge procedure, which was claimed to lack the benefits of case handling by a council (“two heads are better than one”). Logically, it would also have precluded the intended involvement of both administrative and judicial expertise, which was deemed important upon the establishment of the Administrative Court.²⁹

A second noteworthy idea made the restructuring (or, to be more specific, the completion) of the Administrative Court conditional on general public administration and judicial reforms. The argument was that the burdens on the Court had to be alleviated internally, primarily through a headcount increase, until the final structure of regional / high courts emerged.³⁰ The establishment of first-instance courts was supported by another expert’s opinion that was close to Hieronymi’s original plan: a lower administrative court was to serve as the first-instance court before an administrative court of appeal, i.e. all legal disputes were to start at that lower level. This view rejected the institutionalisation of parallel powers (i.e. that certain legal disputes could be started at the upper level).³¹

4. THE UNREALISED EXTENSION OF THE SOLE ADMINISTRATIVE COURT’S POWERS

4.1. When the legal profession discussed the original bill proposing the establishment of the Administrative Court, two basic deficiencies concerning the powers of the upcoming new court were already apparent. It was clear even then that full legal protection and an unconditional rule of law would have required a general, principle-based definition of the court’s powers. The exhaustive listing of powers was also recognised as very limited, with many case types omitted which should have been subject to judicial legal protection and

the judicial review of administrative functions for the enforcement of an individual’s important universal rights. The limited and very fixed nature of the court’s powers is proven by the fact that the author of the original bill, *Károly Némethy*, had already considered it possible at a lawyers’ meeting in 1894 that cases related to nationality, guardianship, military and industrial administration could also be handled by the Administrative Court. He argued that these additional fields involved many serious breaches of universal rights, more than the violations resulting from the “petty police measures” [sic!]³² proposed by Győző Concha. Fifty years later, these case types were in fact listed elsewhere, not in the actual definition of the court’s extended powers, but rather in *János Martonyi*’s proposal made in 1940. Realising the constant but hopeless battle waged by the proponents of the Administrative Court’s general powers, Professor Martonyi proposed adding all possible legal disputes to the Court’s jurisdiction. In 1944, he listed the main case types to be added, and the first four items on the list turned out to be the same as those proposed by Némethy in the 1890s.³³ More than 100 legal amendments to the Court’s powers over 50 years had not been enough to delegate those important case types to the Administrative Court.

4.2. So what were the “new” case types proposed for several decades? First of all, cases involving *nationality*. It is important to note that János Martonyi did not propose transferring all such administrative decisions to the Court. He proposed omitting decisions based on wide-ranging deliberation, such as those about (re)naturalisation, dismissals, etc. He primarily intended to add court decisions that were a quasi-automatic method to obtain or lose one’s citizenship (based on family lineage, legitimation, marriage, etc.). Naturally, he was not the only one to propose that extension of the court’s powers; at the Lawyers’ Meeting of 1928, both keynote speakers (the above-quoted István Egyed and administrative court judge Viktor Majzik) had proposed the same.³⁴

Concerning *military* matters, Martonyi made a very careful proposal in the looming shadow of WW2:

he advocated omitting decisions about compulsory military service (where the previous proposal was for them to be handled by the Administrative Court), and recommended only including cases which were connected to compensation for the use of military services in times of peace. He also proposed adding to the Court’s jurisdiction all guardianship and trusteeship cases, as well as all local business regulation matters, apart from cases requiring discretionary deliberation or the issuance of “closed” business licences.

Furthermore, Martonyi identified five other case types to be handled by the Administrative Court. The first involved the compensation payable for expropriation by the state or a public institution, which were defined by ordinary courts at that time. Secondly, Martonyi proposed transferring to the Administrative Court disputes about indemnification payable for damage caused to external persons by public (state or municipal) officials, because such damage was always based on the violation of substantive administrative law or procedural rule. Also, in view of the close connection, the Administrative Court was to handle cases of recourse (arising from vicarious liability) by state or local entities to their members at fault. Martonyi further proposed including claims arising from the silence of public administration. Thirdly, disputes about other taxes (not specifically listed in the definition of the Administrative Court’s powers) were to be added. Fourthly, village municipalities were to be allowed to submit “warranty claims” to the Court. And fifthly, disputes about the remunerations of state employees were to be handled by the Administrative Court.

Referring to the different nature of disciplinary cases involving public officials and violations by police officers compared to administrative lawsuits and administrative review functions, Martonyi did not propose transferring these case types to the Court. Regarding disciplinary cases, he considered it sufficient to rely on the existing disciplinary court within the Interior Ministry, established via Act XXX of 1929. As to offences by policemen, he differentiated between administrative justice (i.e. reviewing – annulling or changing

– an administrative entity's unlawful decisions) and procedures aimed at punishing or preventing misdemeanours that endangered or violated order or the system of public administration.³⁵ In contrast to the above, the president of the Court supported the addition of public officials' disciplinary procedures to the Court's jurisdiction; in fact, he proposed adding disputes about debts that could be collected like taxes but were not payable to the state or autonomous bodies.³⁶

In connection with other organisational reforms, further proposals have been made to speed up the Administrative Court's procedures and reduce its backlog of unresolved cases. Logically, these ideas involved reducing the Court's powers, while maintaining judicial legal protection. Obviously, the cases involved were to be reassigned to various levels of ordinary courts. Such matters included road toll issues, cases about care in public hospitals, as well as lawsuits about the wages of household servants and about communities of house owners (as clearly private law issues).³⁷

But the powers of the Administrative Court were not reduced based on such principles – with continued judicial legal protection – until after WW2, and neither were the Court's exhaustively listed powers extended. Courts' jurisdictions changed considerably after 1945; analysing these changes requires a wider historical context, so below I touch upon issues of constitutional jurisdiction only.

4.3. The issue of protecting the Constitution gained traction in the years following World War 2, along with the question of the Administrative Court's powers from the perspective of constitutional law. János Csorba, the last President of the Court, devoted his inauguration speech to this question,³⁸ even though the Administrative Court had never operated as a Constitutional Court in a modern sense; its primary responsibility was not the maintenance of legality or the actual enforcement of the norms that the legal system had set for itself. The Administrative Court's authorisation to directly evaluate the validity of administrative laws was limited to municipal self-government rights, and did not extend to Acts of Parliament but only

to government or ministerial decrees. In terms of its objective and results, this authorisation was not meant to have been conferred for *norm control*; it was not aimed at assessing the lawfulness of legal norms, but protected the self-government rights of municipalities from actions by the government (and its entities), regardless of the form of those actions (resolution, measure, ordinance). This activity was not limited to decrees.³⁹ In connection with other powers of the Court, it was authorised for indirect norm control only.

The Administrative Court was not authorised for norm control, concerning the content of laws, procedures or jurisdictions.⁴⁰ Thus the Administrative Court was not a Constitutional Court (even though it aspired to fulfil that function) from the perspective of independently adjudicating the validity of norms. Nevertheless, its role in protecting the Constitution and its importance in public law (beyond mere public administration) was often emphasised.⁴¹

4.4. The Court's role in public law and the protection of the Constitution was created by its administrative jurisdiction, because judicial legal protection against public administration was of constitutional significance in itself. Despite the incomplete power of the Court, institutionally guaranteed judicial legal protection played a crucial role in subordinating public administration to the law, and in establishing the rule of law. Another important role of the Court was the possibility, albeit limited, of a sort of indirect norm control. It was indirect because the lawfulness of a norm could not be directly reviewed. And it was limited due to the partial (incomplete) nature of the Court's powers, as the Court was only authorised to preliminarily review cases which were assigned to its jurisdiction by law (or another authorised source of law). Also, as the Court's decisions were effective between the parties (*inter partes*) only, they had no effect (possibly involving the development of law) beyond the case at hand and the parties thereto. It is this *limited, accidental and indirect* review opportunity that the Court wished to use to obtain a true Constitutional Court's powers, which the Administrative Court's meeting of 17

February 1947 actually laid claim to. According to an “assembly agreement” (a declaration from all of the judges of the court) accepted at the full session, the Court would not apply legal regulations violating a person’s natural and inalienable rights listed in the preamble to Act I of 1946 on the republic as Hungary’s form of government;⁴² legal regulations listing human rights were to be considered normative instead.⁴³ The full session of the Court stated that all legal regulations or provisions that conflicted the above rights *would lose effect without being specifically revoked*. The reason is that those rights were enacted concurrently with defining the system of government; also, the legislators stated that enforcing those rights was the objective of the overall system of government.⁴⁴ However, the Court had no express competence to pass such a decision; maybe that is why it was called an “assembly agreement”. The Court also did not have express competence to declare in the justification of the above-mentioned position statement that, based on its authorisation granted in Section 19 of Act IV of 1869, it would not apply the legal regulations that went against the preamble to Act I of 1946 in the cases *to be adjudicated in future*, but would instead enforce nothing but man’s natural and inalienable rights in its judgements.

4.5. After that “assembly agreement”, Court President János Csorba perceived the Court to be a Constitutional Court that assumed a position equal to the legislative and executive powers.⁴⁵ Very optimistically, President Csorba opined that the Court had already been charged with the task of safeguarding human rights, which would lead it to “the pinnacle of the pyramid of Hungary’s constitution”, to assume a position equal to the other branches of power. This indicates clear ambitions of power.⁴⁶

But the Administrative Court’s resemblance to a Constitutional Court may also have been based on legally defined *direct powers* besides an implied, interpreted jurisdiction. These were primarily powers related to the self-government rights of municipalities, as well as to election-related authorisations. The authorisation to dispense justice concerning the election of local municipal officers had already been listed among the Court’s

original powers; but 20 years had to go by until, in 1907, municipalities received judicial protection against decisions by central state entities that limited their rights. The weight of administrative justice was further increased when, in 1925, the power to adjudicate matters related to the election of members of the National Assembly was transferred from the Curia to the Administrative Court. This authorisation was used boldly, with a commitment to the spirit and rule of law. Resisting attempts at limiting democracy, the Court stripped many ministers, state secretaries and National Assembly representatives of their mandates obtained unlawfully or aggressively.⁴⁷

This latter power, i.e. the authorisation to adjudicate cases related to the election of National Assembly members, was the first to be withdrawn in 1945, when it was transferred to a newly established Election Court. One member of that entity was assigned by the Justice Minister, but the majority of the members (the “election judges”) were delegated by competing political parties. This marked the end of independent election justice in Hungary for a long time.⁴⁸ And a few years later, in 1949, the Administrative Court itself was disbanded.

5. LESSONS TO BE LEARNED (IF ANY)

What lesson can be learned from the above historical overview? Sometimes, the only lesson is that there is no lesson, apart from the fact that history sometimes repeats itself. It is also clear that the organisation and powers of administrative justice have posed major challenges to Hungary’s legislators in all eras, and these challenges have not really been resolved. What can be concluded, though, is that an independent Administrative Court has always championed individual and even constitutional rights, and it has always served as an important tool for legal protection against public administration. Its reinstatement would have enhanced the rule of law instead of weakening it. It is a pity that Hungary’s society and the law-seeking public are once again deprived of experiencing that.

Notes

- 1 Indokolás (Justification) [48]
- 2 For a detailed overview of the changes, see: PATYI András: A magyar közigazgatási bíraskodás elmélete és története [The Theory and History of Administrative Justice in Hungary] Dialóg Campus, Budapest, 2019; chapters III and IV, pp. 159-321.
- 3 Act CXXXI of 2018 on the entry into force of the Act on Administrative Courts and Certain Transitional Regulations was repealed pursuant to Section 1 of Act LXI of 2019 on postponing the entry into force of the Act on Administrative Courts, i.e. Act CXXX of 2018, which was thus added to the *corpus juris* as a duly legislated and promulgated act that did not take effect. As to the provisions concerning administrative courts in the Fundamental Law, they were annulled by the eighth amendment to the Fundamental Law on 12 December 2019. This marked a return to the changes introduced in the seventh amendment.
- 4 Pursuant to Section 197/A (1) of Act CLXI of 2011 on the organisation and administration of courts, as stipulated in Section 88 of Act CXXVII of 2019 on amending certain acts in connection with the introduction of single-instance official procedures.
- 5 Herbert KÜPPER: Magyarország átalakuló közigazgatási bíraskodása [Hungary’s Transforming Administrative Justice], MTA Law Working Papers, 2014/59, Hungarian Academy of Sciences, TK JTI, Budapest, ISSN 2064-4515, http://jog.tk.mta.hu/uploads/files/mtalwp/2014_59_Kupper.pdf, p. 11.
- 6 “The newly appointed judges first convened on 27 February 1884, and ruled on 98 cases in the rest of the year.” STIPTA, István: A pénzügyi közigazgatási bíróság archontológiája [Archontology of the Financial Administrative Court], FORVM Acta Juridica et Politica, volume VII, issue 1, Szeged, 2017, p. 104. For further thorough analysis, see: STIPTA, István: A pénzügyi közigazgatási bíróság bíráinak rekrutációja (1884-1896) [Recruiting Judges for the Financial Administrative Court (1884-1896)]. In: Ünnepi kötet Dr. Zakar András egyetemi tanár 70. születésnapjára. [Volume for the 70th Birthday of University Professor Dr. András Zakar] Acta Universitatis Szegediensis. Acta Juridica et Politica. Tomus LXXX. Szeged, 2017, pp. 279-290.
- 7 Section 191 (1) of Act CLXI of 2011 on the organisation and administration of courts: “Administrative and labour courts as well as regional administrative and labour colleges shall start their operations on 1 January 2013.”
- 8 Concerning the establishment of the Court, see: Patyi, András: *Közigazgatási bíraskodásunk modelljei. Tanulmány a magyar közigazgatási bíraskodásról* [Models of Administrative Justice: a Study of Administrative Justice in Hungary] (Budapest: Logod Bt, 2002), pp. 18-33, and: Stipta, István: A közigazgatási bíraskodás előzményei Magyarországon [Antecedents to Administrative Justice in Hungary]. Jogtudományi Közlöny, 1997/3, pp. 117-125; Stipta, István: A pénzügyi közigazgatási bíraskodás hazai előtörténete [Preludes to Financial Administrative Justice in Hungary] Szeged, Officina ny. 1997. 34, [2] p. /Acta Universitatis Szegediensis de Attila József nominatae. Acta juridica et politica. Tomus 52. Fasc. 9./; Schweitzer, Gábor: Közigazgatás - igazságszolgáltatás - jogállamiság, avagy a közigazgatási bíraskodás kezdetei Magyarországon. [Public Administration – Justice – Rule of Law, or the Beginnings of Administrative Justice in Hungary] Állam- és Jogtudomány 1996-97/1-2[98], pp. 21-35. Stipta István: Az 1875. évi osztrák közigazgatási bíróság hatása a magyar közigazgatási jogvédelemre [Effect of Austria’s Administrative Court of 1875 on Administrative Legal Protection in Hungary] In: Emlékkönyv Szabó Andrásnak [Memorial Book for András Szabó], 1998, pp. 353-362
- 9 PUKY Endre: A negyven éves közigazgatási bíróság multja és jövője [The Past and Future of the 40-year-old Administrative Court] Budapest, Pallas, 1937, p. 11
- 10 MÁRTONFFY Károly’s presentation. In: A Közigazgatási Bíróság reformja - a Magyar Jogászegylet közigazgatási szakosztályában tartott előadások és hozzászólások [Reforming the Administrative Court – presentations and comments in the Public Administration section of the Hungarian Association of Lawyers] Jogászegyleti Szemle. 1947, 2nd issue, p. 7
- 11 EGYED István: Az alsó fokú közigazgatási bíraskodás [Lower Administrative Justice], Budapest, 1916, Székesfőváros Házinyomdája, p. 4
- 12 Ibid.: p. 5, WLASSICS Gyula: Bírói szervezeti és hatásköri kérdések [Issues of Judicial Organisation and Powers], Jogállam. 1909, pp. 1-14, Presented by: DICZIG Alajos: Az alsófokú közigazgatási bíraskodás kérdése [The Question of Lower Administrative Justice] (Klny. “Pénzügyi Fogalmazók Lapja”, 1936, issues 7 and 8), Kecskemét, 1936, p. 5
- 13 EGYED 1916.: p. 6 (highlighted in the original)
- 14 MARTONYI János: A közigazgatás reformja és a közigazgatási bíróságok [Public Administration Reforms and Public Administration Courts] (In: Dolgozatok a közigazgatási reform köréből [Studies of Public Administration Reforms]), 1940, Budapest, Dunántúl Pécsi Egyetemi Könyvkiadó és Nyomda, p. 146
- 15 NÉMETHY Károly: A közigazgatási bíróság szóló törvényjavaslatáról [On the Bill Presented by the Administrative Court Inde-

pendently] Presentation in the Hungarian Lawyers’ Association on 21 January 1894. Magyar Jogászegyleti értekezések, volume X, book 7, Budapest, 1894. Franklin, p. 6.

16 NÉMETHY Károly: A közigazgatási bíróságokról szóló törvény magyarázata [Explanation of the Act on Administrative Courts], Budapest, 1897. Pesti Könyvnyomda Rt, p. 7.

17 CONCHA Győző: A közigazgatási bíróság törvényjavaslatáról [On the Bill Tabled by the Administrative Court]. In: Magyar Jogászegyleti értekezések, volume X, book 8, Budapest, 1894, Franklin, p. 28

18 WCLASSICS Gyula: Reformjavaslat a közigazgatási bíráskodásról [Proposal to Reform Administrative Justice], Jogállam, volume XI, 1912: pp. 32-41

19 Ibid.: p. 37

20 Ibid.: pp. 40, 41

21 EGYED 1916: pp. 24, 25

22 Ibid.: pp. 29-33

23 MARTONYI 1940.: p. 158

24 DICZIG 1936.: p. 6, MARTONYI János: Az ötvenéves közigazgatási bíróság [The 50-year-old Administrative Court]. Városi Szemle, 1947, volume XXXIII, p. 192

25 MARTONYI ibid. The work referred to: MAGYARY Zoltán: A magyar közigazgatás racionalizálása (a m. kir. miniszterelnök úr elé terjesztett javaslat) [Streamlining Hungary’s Public Administration (proposal to the Royal Hungarian Prime Minister)] Budapest, Egyetemi Ny., 1930.

26 MARTONYI 1940.: p. 148

27 Proposal and the Prime Minister’s speech presented by: DICZIG 1936, p. 7, MARTONYI 1940, p. 159

28 MARTONYI 1940, p. 152. Knowing the habit of bureaucratic structures to expand and their aversion to any loss of power, the author himself had his doubts about the anticipated headcount reduction.

29 DICZIG 1936, p. 13: Further simplification proposals included the introduction of a limited obligation to have an attorney, the charging of procedural costs in the case of unfounded complaints against taxes and duties, and levying fines on such plaintiffs.

Ibid. p. 14: The idea of introducing *reformatio in peius* was raised, along with – as a last-resort solution – decreasing the powers of the Court by examining the facts of a case and excluding discretionary and petty cases.

MARTONYI 1940: p. 154.

30 Ibid.: p. 160; DICZIG, 1936, p. 15.

31 VÖRÖS Ernő – LENGYEL József: A közigazgatási bírósági törvény magyarázata, a Közigazgatási Bíróság újabb anyagi jogi, hatásköri és eljárási joggyakorlata általános közigazgatási, adó és illetékügyekben [Explanation of the Act on Administrative Justice – Recent Legal Practices Employed by the Administrative Court Regarding Substantive Law, Jurisdiction, and Procedures in Cases Related to General Public Administration, Taxes and Duties] Volumes 1-2, Budapest [1935]. Published by the authors, p. 2

32 NÉMETHY Károly’s comment made at a meeting of the Lawyers’ Association, 1894: pp. 16-17

33 MARTONYI János: Közigazgatási bíráskodásunk továbbfejlesztése [Advancing Our Administrative Justice], Budapest, 1944, Attila Nyomda, pp. 8-9

34 Ibid.

35 Ibid: pp. 10-12

36 PUKY Endre: A negyven éves közigazgatási bíróság multja és jövője [Past and Future of the 40-year-old Administrative Court]. Budapest, Pallas, 1937, p. 8

37 Ibid.: p. 12; MARTONYI 1944: p. 13

38 CSORBA János: The administrative court as a protector of the Constitution. The President’s inaugural speech given on 18 June 1945 at a full session of the Administrative Court in the meeting hall of the House of Representatives. Budapest, 1945, Officina Ny.

39 According to Section 1 of Act LX of 1907 (in current spelling): “Over and above the cases listed in chapter II of Act XXVI of 1896 on Hungary’s Royal Administrative Court, that Court shall conduct a procedure against any resolution, decision or measure by a minister (government) or any entity thereof that is injurious to a territorial self-government, on the grounds of a violation of the lawful powers of that self-government or its bodies or entities, or on the grounds of exercising an authority’s rights unlawfully against that self-government, or on the grounds of violating a law or other statute, unless the case at hand has been assigned to an ordinary court.”

40 According to the second sentence in Section 19 of Act IV of 1869, a judge “shall not question the validity of duly promulgated laws”.

41 PUKY 1937, p. 9: The author raises the possibility of changing the Court’s name to a more traditional Hungarian phrase (“*Közjogi Szék*”, approximately meaning “Court of Public Law”). (This idea is similar to a draft Constitution compiled by former Governor and President Lajos Kossuth in Kütahya, Turkey, in which Kossuth proposed setting up a court named the “Constitutional Guard Court”.); PUKY Endre: The Holy Crown Doctrine and administrative justice (speech delivered by Endre Puky, president of the Royal Hungarian Administrative Court, at the year-opening full session of the Administrative Court on 13 January 1941), *Magyar Közigazgatás*, volume LIX, issue 1941/3, pp. 16-20; CSORBA János, 1945, p. 14; MÁRTONFFY Károly’s lecture, 1947, p. 5; EGYED István’s comment in: Reforming the Administrative Court (lectures delivered and comments made in the administrative section of the Hungarian Lawyers’ Association), *Jogászegyleti Szemle*, 1947, issue 2, p. 24, MARTONYI János: *ibid.*, p. 49; SZABÓ József: *ibid.*, p. 58.

42 “The republic guarantees its citizens the natural and unalienable rights of man” [...] “The following especially are natural and inalienable rights of citizens: personal freedom; the right for human life without oppression, fear and depravity; the free expression of thoughts and opinions; the freedom of religion; the freedom of association and assembly; the right to property, personal safety, work, a decent livelihood, and free culture; and the right to participate in governing the life of the state and the local governments.” “No citizen shall be deprived of these rights without a legal procedure, and Hungary shall guarantee these rights to all citizens universally and to an equal extent, without any distinction, as part of a democratic state structure.”

43 Position statement by the Administrative Court in the defence of human rights. *Pénzügy és Közigazgatás*, 1947. pp. 96-97.

44 *Ibid.* p. 96

45 CSORBA János: A hegyoldalról [From the Hillside], in: *Magyar Közigazgatási Bíróság ötven éve (1897-1947) [Fifty Years of Hungary’s Administrative Court (1897-1947)]*, Budapest, [1947] *Közigazgatási Bíróság*, p. 3

46 *Ibid.*: p. 4

47 *Ibid.*

48 According to Section 53 (1) of Act VIII of 1945 on the election of the National Assembly: “The validity of the elections shall be decided by the Election Court. The Justice Minister shall appoint one member of the Election Court from the members of the Hungary’s Curia, one from the members of the Administrative Court, and one from the members of the National Council of People’s Tribunals, with one additional member assigned by each political party participating in the elections. A person nominated to the National Assembly shall not be a member of the Election Court.” Article (2) made it clear that the new entity’s leadership could not rely on the Administrative Court: “The President of the Election Court shall be a judge appointed from the National Council of People’s Tribunals.”