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New Hungarian Institutions against Administrative Silence: Friends or Foes of the Parties?

Nowe węgierskie instytucje zapobiegające milczeniu administracji publicznej – działają na korzyść czy przeciwko interesom stron postępowania?

SUMMARY

The Programme for the Reduction of Bureaucracy launched by the Hungarian government in 2015 has several directions, such as rethinking of the system of administrative organs, reshaping of civil service, simplification of administrative procedures, and fight against administrative silence, as well. New codes on the administrative procedure and on the judicial review of the administrative decisions were passed in 2016 and 2017, and the sectoral regulation has been transformed, as well. The most important change of the sectoral procedural rules was the replacement of procedures for permissions to a simple duty of notification. The authors investigate, if these institutions really help to reduce the burdens citizens and companies have in connection with bureaucracy: whether they are efficient tools against administrative silence and really are improving the situation of the parties *vis-à-vis* the administration and fostering good administration. They also take a closer look on the newly established action for failure to Act I of 2017 on the Code of Administrative Court Procedure (in force since 2018) intended as an additional tool, as well as its other new institutions addressing the problem of silence of administration.

Keywords: administrative silence; legal remedies against failure to act; court action against failure to act; right to good administration; right to an effective remedy

INTRODUCTION: METHODS AND HYPOTHESIS

The Programme for the Reduction of Bureaucracy launched by the Hungarian government in 2015 has several directions, such as rethinking of the system of administrative organs, reshaping of civil service, simplification of administrative procedures, and fight against administrative silence, as well. Already with the first legislative step, more than 100 acts regulating sectoral questions of administrative procedure were modified. The General Rules of Administrative Proceedings and Services[1] has known serious alterations, too. One of its major novelties was the so-called "conditional decision", which institution was upheld by the new Hungarian Act CL of 2016 on the Code of General Administrative Procedure[2] (GAP) with some modifications. This institution practically aims at one hand at replacing silent decision-making, an institution known in Hungarian law, but not really used in praxis and, on the other hand, prevent the emergence of administrative silence.

The most important change of the sectoral procedural rules was the replacement of procedures for permissions to a simple duty of notification, e.g. in the construction and building administration, the sector which was most affected with failure to act in the previous years and decades.

In this study the authors investigate, if these institutions really help to reduce the burdens citizens and companies have in connection with bureaucracy: whether they are efficient tools against administrative silence and really are improving the situation of the parties *vis-à-vis* the administration and fostering good administration. They also take a closer look on the newly established action for failure to Act I of 2017 on the Code of Administrative Court Procedure[3] intended as an additional tool, as well as its other new institutions addressing the problem of silence of administration.

Theses of the paper are:

1. The conditional decision cannot generally replace an institution which gave parties the possibility to contest the silence of administration in a general way, like the former plea for failure did. Albeit the new institutions of administrative court procedure significantly increase the efficiency of legal protection, they cannot fully replace the less formal and less costly legal remedies of administrative procedural law.
2. Administrative actions are like equations. Reduction of bureaucratic burdens resulted in other types of burdens both for parties and administrative organs. They involve additional costs and working hours at administrative organs and have the effect that more applications are turned down and thus

[1] Act CXL of 2004, in Hungarian: Ket.
[2] In force since 1 January 2018, in Hungarian: Ákr.
[3] In force since 2018, in Hungarian: Kp.

rights precluded than before. Risks traditionally borne by the administrative decision are now faced by the parties and result in additional costs.

3. It is not (only) the procedural rules, which need reforms, but material law, which is too complicated and not harmonised. Better training of civil servants would also be vital for more timeliness.

The research method of the paper is mainly jurisprudential, using dogmatic and comparative arguments, analysing past and present legislation as well as connected jurisdiction. The contribution also makes use of the aggregated data available at the official statistical program of the Hungarian Central Statistical Office – the so-called OSAP statistics – on the administrative activities of Hungarian authorities and of in-depth interviews with civil servants and legal representatives of parties to evaluate the new instruments. Unfortunately, the database of the National Office for the Judiciary does not have detailed data which could be used similarly.

THE EVOLVEMENT OF A NEW SYSTEM OF INSTITUTIONS TO PREVENT ADMINISTRATIVE SILENCE

From 2015, the Hungarian legislator successively created a completely new system of procedural institutions to prevent the silence of administration. This system has two pillars: an administrative procedural and an administrative judicial pillar.

Belonging to the first pillar, the Programme of Decreasing Bureaucracy was launched by the government in 2015. It has several directions, i.a. also the simplification of administrative procedures. The first step in this direction was Act CLXXXVI of 2015 on Amendment of Acts Related to the Reduction of Administrative Bureaucracy and the Government Decree No. 441/2015 (published on 28 December 2015) connected to the act. This act modified more than 100 other acts regulating questions of administrative procedure and contained serious alterations to the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, as well. One of its major novelties was the so-called conditional decision, an institution of positive silence of administration. This institution practically replaced silent decision-making. The most important change of the sectoral procedural rules was the abolishment of the building permit for the erection and reconstruction of family houses of less than 300 m^2.

These changes made by the Parliament and the government had to be fitted better into the system of procedural rules. The centralisation of state administration, on the one hand, caused the integration of territorial state administration into one single organ in each county (except for fiscal administration and police) in 2011 and 2015 respectively, and the dissolution of the majority of central agencies (agencies under ministerial supervision) in 2016, transferring their tasks to the supervising ministries and, on the other hand, it created a need to reform the system of second-instance

procedures[4]. Given the interdependencies with court procedures, the codification of administrative court procedures made necessary some adjustments, too. So, the first pillar was strengthened by the codification of a new Hungarian Act on the Code of General Administrative Procedure. This new code was adopted in order to provide for a framework for almost all administrative authoritative procedures, only regulating the rules which are common to these procedures and thus general[5]. A further aim was to ensure timeliness in administrative procedures. The main goals were thus to postulate only rules that are common in all procedures and leave the necessary deviations to the sectoral, special procedural legislation, resulting in shorter, simpler, but general regulation for all sectors. The legislator did not expand the scope of the code, the GAP – as did the Ket. – only regulates the process and outcome of authoritative single decision-making administrative procedures[6].

The Programme of Decreasing Bureaucracy continued in 2016 with the reduction of the number of central government agencies followed with Government Decree No. 378/2016 (published on 2 December 2016), which dissolved approximately 60 government agencies and other (so-called "back-up") institutions financed by the ministries or the government[7].

The currently last episode of the Programme of Decreasing Bureaucracy was in December 2017, when the Act CLXXXVI of 2017 on Amendment of Acts Related to the Reduction of Administrative Bureaucracy and to the Simplification of Certain Administrative Procedures again simplified several sectoral procedures, for example those in building law already modified before. There were also separate acts on the modification of single administrative sectoral rules with similar aims[8].

The second pillar contains the institutions connected to judicial protection against the failures of the administration. At the beginning of 2015, the Hungarian

[4] See more J. Fazekas, *Centralization of Government and Legal Traditions in Hungary*, [in:] *Legal Traditions and Legal Identities in Central and Eastern Europe. Collection of Research Papers of the 76th International Scientific Conference of the University of Latvia*, ed. K. Strada-Rozenberga, Riga 2018, p. 383.

[5] See more B. Hajas, *Alapelvek*, [in:] *Az általános közigazgatási rendtartás magyarázata. A közigazgatási eljárás szabályai I*, red. F. Petrik, Budapest 2017, pp. 27–28.

[6] Neither contracts, except for the so-called authoritative contract (in German law the *Amtsvertrag*), nor normative decisions belong under the scope of the code. The rules for e-administration are regulated separately, entering into force in several stages expanding e-obligations of administrative organs and parties successively since the beginning of 2016 (Act CCXXII of 2015). The general substantive rules of administrative sanctions, which have been regulated formerly in the Ket, the previous code on administrative procedures, were also transferred to a separate act (Act CXXV of 2017 entering into force on January 1, 2019, and for the transitional period until then Act CLXXIX of 2017).

[7] See more J. Fazekas, *op. cit.*, pp. 385–386 (supra note 3).

[8] One of which would have been the simplifying the drilling of private wells by changing the need for permission to a duty of notification. This modification was annulled by the Constitutional Court upon the preliminary motion of the president of the republic by its decision from 28 August 2018 (published as Decision No. 13/2018).

government finally decided not to regulate administrative court procedures anymore as a special civil procedure. The Code on Administrative Court Procedure (CACP) was promulgated finally on 1 March 2017 to take out the administrative court procedures after almost 70 years of the realm of civil procedure[9].

These procedural institutions can handle not only the most typical form of silence of administration: the non-deciding upon a request, but are aimed also on abolishing other types of failures, like the non-execution of administrative court judgements, and the non-compliance with judgements, as well as protracted *ex officio* procedures or the administration's actions to hinder the judicial review of its action by not complying with procedural obligations. Before going into the details, let us summarise the system (see Table 1).

Table 1. Pillars of the system against administrative silence

First pillar	Second pillar
1. Structured system of three types of administrative procedure	1. Action against failure to act
2. Conditional decision	2. Court procedure to enforce compliance with a judgement
3. Cutting back the possibility of suspension of procedure	3. Several types of interim measures
4. Loss of power to sanction in case of overdue procedures	4. Pecuniary sanctions for failures in the court procedure
5. Duty of notification instead of permission	5. *Ius reformandi* as a sanction of non-compliance with the judgement

Source: Authors' own study.

FIRST PILLAR: INSTITUTIONS IN THE ADMINISTRATIVE PROCEDURE

1. Structured system of three types of administrative procedure

The GAP formally regulates three possible types of administrative procedure, the existence of which could be deducted from previous regulations. These three types of procedures created are the full, summary and automatic decision-making procedure[10]. The summary procedure is to be conducted if the facts of the case are clear (all necessary evidence is available to the authority) and there is no party with opposing interests: in this case, the authority must take a decision immediately, but

[9] See more K.F. Rozsnyai, *Current Tendencies of Judicial Review as Reflected in the New Hungarian Code of Administrative Court Procedure*, "Central European Public Administration Review" 2019, Vol. 17(1), DOI: https://doi.org/10.17573/cepar.2019.1.01, p. 7.

[10] See more G. Barabás, *Sommás eljárás és teljes eljárás*, [in:] *Kommentár az általános közigazgatási rendtartásról szóló törvényhez*, red. G. Barabás, B. Baranyi, M. Fazekas, Budapest 2018, pp. 310–314.

at the latest within eight days. The automatic decision-making, in which decisions shall be issued within 24 hours, is practically a special type of the summary procedure, with the extra condition that no deliberation is needed to issue a decision. This is the case for example in speed driving detected by a speed control device, as in Hungary the fees are fixed by law according to the excess speed. Where the authority establishes that any condition listed before is not met, it has to conduct a full procedure and shall make a conditional decision. The same applies if the party submits a new piece of evidence or makes a motion to present evidence. The administrative organ also has to adjudicate the application in a full procedure, if the party requests this within five days from the communication of the decision made in an automatic decision-making procedure or summary procedure. In this case, the authority reconsiders the application in a full procedure[11].

2. Conditional decision[12]

This institution has been introduced already from January 2016 in course of the Programme for Reduction of Bureaucracy, and was to some extent revised by the GAP. If there is no possibility for conducting a summary procedure – either because of other parties taking part in the procedure or because the facts of the case are not clear – the authority must switch to the full procedure and issue some sort of decision within eight days: the application either has to be rejected, the procedure suspended or a "conditional decision" has to be issued. The conditional decision grants the right asked for in the application conditionally: it only becomes effective on the condition that the authority fails to decide the case within 60 days from the beginning of the procedure (generally the day of receipt of the application). The conditional decision further grants upon its entering into force the reimbursement of the fee to pay for the procedure, in its absence a payment of HUF 10,000 (approximately EUR 35). This institution is only applied in procedures on demand with no special time limit set, and the GAP determines a wide range of procedures where it cannot be applied, like when the sum to be paid depends on the deliberation of the authority[13]. Further, in the majority of first instance cases of the central agencies in Hungary, conditional decisions have not to be made, several of these agencies are fully exempt from this obligation (see Table 2).

[11] See more A. Forgács, *Az elsö fokú eljárás*, [in:] *Közigazgatási jog. Általánosrész III*, red. M. Fazekas, Budapest 2017, pp. 249–251.

[12] Or previously translated as "decision with suspensive effect", which can be traced back to the too complicated Hungarian name of the institution "függö hatályú döntés".

[13] See more G. Barabás, *op. cit.*, pp. 318–319.

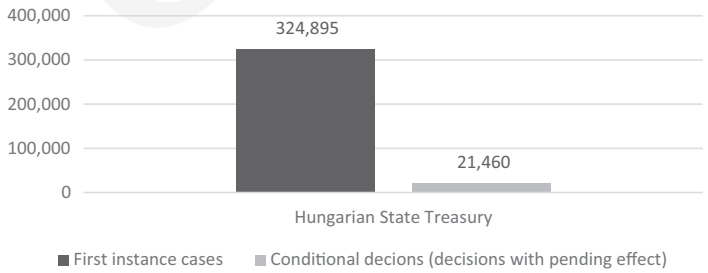
Table 2. First instance decisions of central agencies in 2018 H2 (without the decisions of the Hungarian State Treasury)

Central agency	First instance decisions	Conditional decisions
Immigration and Asylum Office (BMH)	383	0
Hungarian Competition Authority (GVH)	1,076	0
Hungarian Energy and Public Utility Regulatory Authority (MEKH)	10,175	0
National Tax and Customs Administration (NAV)	1,140	0
National Media and Info-communications Authority (NMHH)	15,142	0
National Directorate General for Disaster Management (OKF)	1,124	0
National Headquarters of the Hungarian Police (ORFK)	853	0
Hungarian Intellectual Property Office (SZTNH)	17,129	0

Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

There is just one important exception: in special first instance pension cases the Central Office of the Hungarian State Treasury has to issue conditional decisions (see Figure 1). It is firstly related to the competences of the State Treasury on the aid to the agricultural entrepreneurs and secondly because of the grave risk of administrative silence in regard to the existential security of retired persons[14].

Figure 1. Conditional decisions in the first instance cases of the Hungarian State Treasury (2018 H2)



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

[14] See more Á. Molnár, Á. Pánczél, *Igényérvényesítési és eljárási szabályok*, [in:] *Nagykommentár a társadalombiztosítási nyugellátásról szóló törvényhez*, red. Á. Pánczél, Budapest 2019, pp. 346–347.

3. Other institutions providing protection against the silence of administration

In the previous system, the regulation was focused on the time limit of the procedure (generally 21 days). There were a lot of intervals which did not count in respect of the time limit. This logic of regulation has now been abandoned, and the new regulation uses a "gross" deadline, from which only the time of the suspension of the procedure can be deducted. The possibility of suspending the procedure at the same time was narrowed: there is a need for special permission of the sectoral legislator except for preliminary issues.

In *ex officio* procedures, the sanction of the silence of administration is the loss of the right to sanction: if the authority fails to bring a decision within twice the time limit (generally 120 days), it loses its power to sanction and can only establish the fact of the violation of law and impose the obligation to terminate the unlawful conduct or restore the lawful situation[15].

The exclusion of the appellate procedure is a great step backward as it means less protection *vis-à-vis* the administration, as judicial procedures do not equal the less formal and uncomplicated inner-administrative remedy. Also in regard of the silence of administration, the backlog is eminent, as personnel resources are reduced drastically in view of to the abolishment of appellate procedures, which has the effect, that there is no personnel to act on behalf of the supervisory authority in cases of failure to act. This is further aggravated through the omission of the institution of the plea against failure to act, by which the party could ask the supervisory authority to examine the case and order the subordinated failing organ to realise the omitted administrative action[16]. Of course, the supervisory authority is further entitled to do so, but the party has no right to have his or her plea examined by the supervisory authority.

In the building and construction administration, the abolishment of building permits has a lot of negative effects, too: the rising of the expenses because of the greater responsibility of the architects, as well as risks of non-compliance with local or national rules, as well as disputes with neighbours before civil courts (tort law). Doubts regarding the safeguards of the right to good administration of neighbours as parties also arise, given that they are not informed previously of the building activity nor is there an administrative act they could bring to court. To file a case in such constellations is almost impossible before the end of the building activity, so much greater harm can arise from such cases to both the builder and the neighbours.

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[15] See more M. Nagy, *Dogmatikai alibi megoldások – a közigazgatási szankciós törvényröl*, "Jogtudományi Közlöny" 2018, Vol. 73(5), pp. 256–257.

[16] I. Hoffman, A.Gy. Kovács, *Mulasztási per*, [in:] *Kommentár a közigazgatási perrendtartáshoz*, red. G. Barabás, K.F. Rozsnyai, A.Gy. Kovács, Budapest 2018, pp. 691–692.

SECOND PILLAR: INSTITUTIONS OF ADMINISTRATIVE COURT PROCEDURES

1. New action against failure to act

There is a failure to act, if the administrative action is prescribed by law and the administrative organ has not performed it (if there is a time limit, within the time limit set). Against such omissions of administrative organs, if the action is governed by administrative law, access to court is provided through the procedure against failure to act. If the court finds, that there is a failure to act, it only establishes that there is an obligation prescribed by law, which the administrative organ responsible for failed to realise. According to the rules of the CACP, the administrative organ is obliged in this case to carry out the action *ex lege*, without further prescriptions of the judgement.

Before 2018, access to court had to be guaranteed only for two types of omissions. Against the failure to act in administrative authoritative procedures, i.e. the omission of issuing an authoritative decision (mostly permits), there was a non-contentious administrative court procedure available to the parties of the administrative procedure. Only the administrative authority responsible for the legal supervision of local governments could bring omissions outside authoritative procedures before court.

The CACP by its wording allows access to court not only against failures of authoritative action, but also against other kinds of failures. With respect to this much broader access to court, there was need for a differentiated regulation of the omission judgement of the court. One such element is that the court does not prescribe how the failure has to be healed, as this field is a very large one, with different types of obligations, varying in their conditionality or finality. The regulation is following the logic of Article 266 of the Treaty on the Functioning of the European Union. If the court states the failure to act, the institution whose failure to act has been declared shall be required to take the necessary measures to comply with the judgement, so the administrative organ is obliged *ex lege*, by law to realise the omitted administrative action within the time set in sectoral regulations or, if there is no time limit set there, within 30 days.

Another element of the regulation is – in order to strike a fair balance between free access to courts and the non-engulfment of courts with omission procedures, which would render access to court practically ineffective – is the differentiated system of deference of the court to establish the failure to act. The CACP knows three types of omissions: first, the failure to act where there is a time limit given by law for the performance of administrative action. Authoritative decisions and decisions in internal appellate procedures, for example in disciplinary procedures of professional bodies or universities, belong to this category. The second category is

the omission contested by the supervising organ. In these two types of cases, if the court states the failure to act, it has to establish the unlawfulness of the omission. For all other failures to act, the court has a margin of appreciation: if there is no compelling reason of public interest, it does not have to establish the unlawfulness of the failure to act, so no obligation to realise the omitted administrative action arises from the judgement of the court, as the action will be turned down[17].

2. Procedure to handle the silence of administration in the course of the implementation of a court judgement

In order to secure the closure of the administrative procedures ordered by the administrative tribunals within a reasonable time, sanctioning the administration for failure to respect court decisions became possible in various countries. There are two main types of judicial decisions where court enforcement mechanisms do not work: judgements ordering the repeating of procedures and omission judgements, according to which the administrative organ has to fulfil the obligations stated to be omitted by a court. The judgements upon the action of the legal supervisory organs often belong to this category too, as specialised forms of annulment or omission judgements, as well as the judgements ordering the calling of the meeting of an organ of the professional body.

A separate chapter deals with these problems in the CACP – it is Chapter XXVI entitled "The procedure to enforce compliance with a judgement ordering a new procedure or establishing failure to act". According to its rules, the court has several possibilities, if the plaintiff or the interested person signals the non-fulfilment of its judgement. After requesting clarification from the administrative organ, if its explications are not satisfactory or none is given, the court can impose a fine on the administration, which is much higher than the procedural fine, up to HUF 10 million (approximately EUR 30,000). This fine is not the only tool for achieving fulfilment of the judgement, the court may also order another administrative organ or, depending on the type of omission, the supervisory authority to perform the duty instead. If these tools are of no use, the court can order provisional measures until the administrative organ fulfils the obligations which arise from the judgement. In the case of a repetitive omission, the leader of the administrative organ can in person be fined with a procedural fine, which can be an effective measure against the obstruction of administration[18].

[17] A.Gy. Kovács, *Különleges közigazgatási perek és egyéb közigazgatási bírósági eljárások*, [in:] *Közigazgatási jog. Általános rész III*, red. M. Fazekas, Budapest 2017, p. 530.

[18] See more *ibidem*, p. 432.

3. Interim measures against silence of administration

The CACP regulates a set of tools of interim relief. On the one hand, the court can order suspensory effect to the administrative action, which cannot be performed or have any other effects until the judgement is delivered. Typical for public service provision disputes, and also in some environmental cases, the sectoral law provides for the suspensory effect to be entailed by the submission of the statement of claim. As the inverse tool to ordering the suspensory effect, it may in such cases be dissolved partially or in full by the court. Obviously, in the cases of failure to act, these tools are not sufficient to provide interim relief. As a third tool thus, the court may order any provisional measure within the limits of the decision to be adopted in the court procedure to provide protection immediately. The taking of evidence in advance is the fourth tool completing the system[19]. The possibility of provisional measures is enhancing the protection in cases of failure to act to a great extent, as the court can order measures by which the omitted action is practically performed for the time of the court procedure.

4. Reforming the decision issued after retrial as a sanction of non-compliance

The implementation of judgements annulling administrative action is not only supported by the above tools. Albeit it is formally not a case of silence of administration, it practically has the same effects: the administration hinders the party in the exercise of its rights. If the new administrative action does not follow the instructions given in a court judgement clearly ruling on its obligations regarding the procedure to be conducted after the judgement, the court is conferred the possibility to reform it as a sanction, even in cases where it is generally not possible for the court to reform (vary) the administrative act[20]. The new CACP gives this possibility to the courts. This new rule – together with the rules for the enforcement of court judgements – even had some "retroactive" impact on Hungarian practice, as the request for a preliminary ruling from the Administrative and Labour Court, Pécs in the proceedings *Alekszij Torubarov v. Bevándorlási és Menekültügyi Hivatal*, can be seen as directly flowing from this new rule. In this case, the court argued – similarly to the argumentation of the minister for justice attached to the CACP – that the narrowing of the powers of the first-instance court or tribunal to annulment only in the case where the competent administrative body does not comply with a decision of that court legislation effectively deprives applicants for international protection of an effective judicial

[19] K.F. Rozsnyai, *op. cit.*, p. 14.

[20] See more P. Kovač, *Šutnjau prave izmed u teorije i prakse u Sloveniji*, "Zbornik Pravnogfakulteta Sveučilišta u Rijeci" 2011, Vol. 27(2), p. 871.

remedy. The fact that the court has no power either to order the administration to grant international protection to the applicant concerned or to impose a penalty for the failure by the administration to comply with its first judgement, entails the risk that there is a judicial or administrative ping-pong[21] procedure can be prolonged indefinitely, contrary to the rights of the applicant. Following the argumentation of the requesting court, the judgement of the European Court of Justice has practically given retroactive effect to this new sanction of non-compliance as the Court (Grand Chamber) ruled in his judgement (Case C-556/17):

> […] that, under the criteria laid down by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, that applicant must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, disapplying as necessary the national law that would prohibit it from proceeding in that way[22].

FINDINGS AND ANALYSIS OF THE PRACTICE

The effects of the conditional decision are of mixed nature. Although according to ministerial opinions the conditional decision is to be the general form of decision in the full procedure, numbers do not reflect this role. In 2016, conditional decisions have been issued in only 4.72% of the cases of the district offices, the general first instance authorities in Hungary. Since then their share has been moderately increasing to 5.16% of the cases of the district offices in 2018 (see Figure 2). The number of cases of the district offices had increased significantly. The organizational reforms in 2017 transformed the system of the first instance authorities. Formerly the major first instance authorities were the district offices, but the complicated cases were decided mainly by the county government offices. On 1 January 2017, the majority of the first instance competences of the county government offices were transferred to the district offices – especially to the district offices of the county seats – thus the number of the cases changed significantly.

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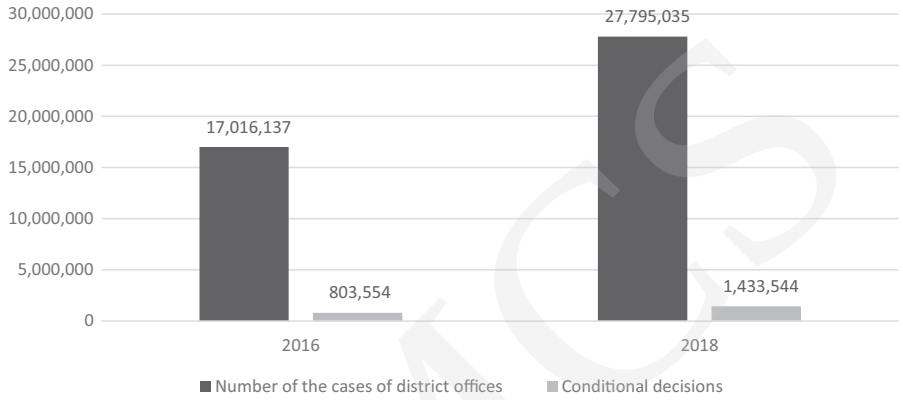
[21] As Advocate General Bobek called it in his opinion delivered in the case *Alekszij Torubarov vs Bevándorlási és Menekültügyi Hivatal* on 30 April 2019, Case C-556/17, ECLI:EU:C:2019:339. http://curia.europa.eu/juris/document/document.jsf?text=&docid=213503&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5871063 [access: 10.02.2020].

[22] Judgement of the Court (Grand Chamber) of 29 July 2019, ECLI:EU:C:2019:626; http://curia.europa.eu/juris/document/document.jsf?text=&docid=216550&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5666736 [access: 10.02.2020].

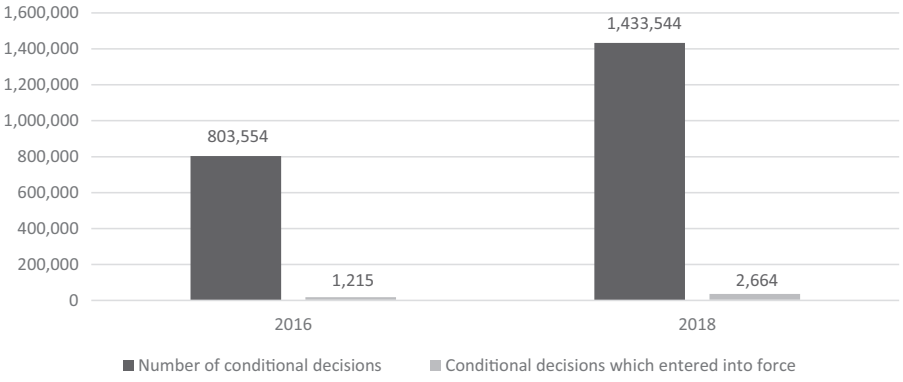
Figure 2. Conditional decisions in the practice of the district offices (2016 and 2018)



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

Albeit the conditional decisions themselves have a limited role in the battle against administrative silence, as from the total of conditional decisions which have been issued, in 2016 only 0.15%, and in 2018 – 0.19% of the conditional decisions became effective, within its field of application it can be deemed to be an effective institution against the silence of administration, as more than 99.8% of the cases with conditional decisions were completed within the deadline (see Figure 3).

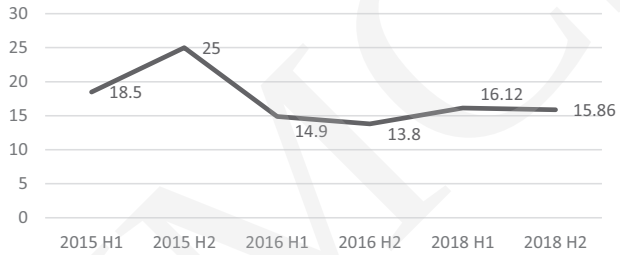
Figure 3. Conditional decisions which became effective



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

In spite of the small share of conditional decisions, the institution itself certainly accelerates administrative procedures. An accelerating effect can be detected, as before the introduction of the conditional decisions in 2016 the average duration of administrative was 25 days (second half of 2015). In the first half of 2016, the duration of the administrative cases was shortened significantly to only 14.9 days, and in the second half of 2016 even to 13.8 days (see Figure 4).

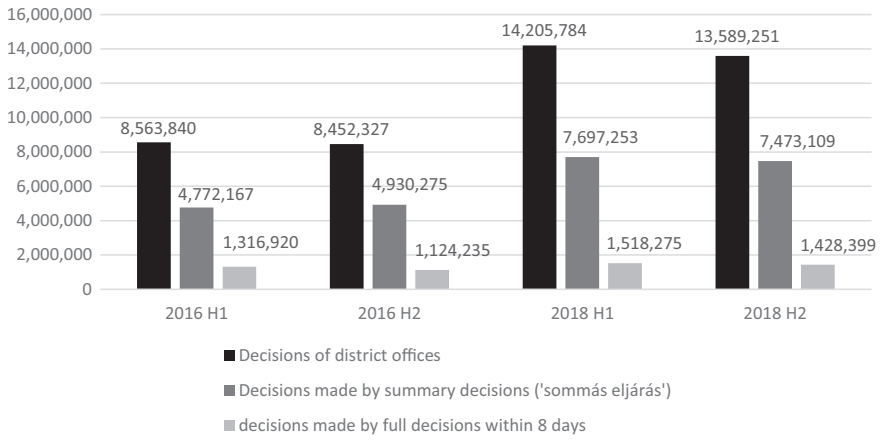
Figure 4. Average duration of the administrative procedure (in days)



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

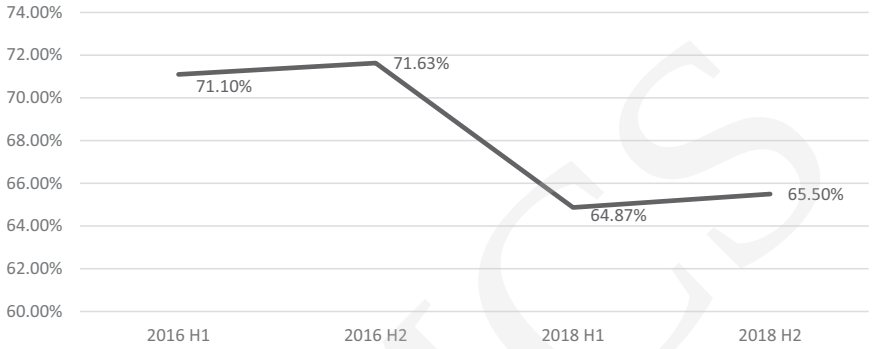
This is due to the fact that administrative organs try to keep cases in the summary procedure and issue the decision within 8 days in order to avoid switching to the full procedure where they would be obliged to issue a conditional decision also within 8 days from the commencement of the procedure (see Figures 5 and 6).

Figure 5. Decisions made within 5 days



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

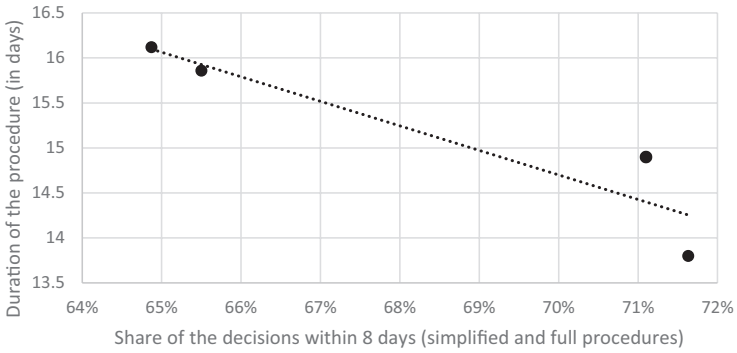
Figure 6. Share of the decisions made within 8 days (of all decisions of the district offices in %)



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

Although the duration of procedures has slightly increased for 2018, it is still significantly shorter than before the reforms, because of the reduction the number of decisions made within 8 days. Thus, there is a correlation between the share of the decision made within 8 days and the average duration of the procedures: when the share of the decision made within 8 days decreased, the duration of the procedures was prolonged. Thus, one of the main accelerators of the duration of the procedures was the increasing share of the decisions made within 8 days (see Figure 7). This backslash in 2018 is probably due to the fact that the GAP, entering into force on 1 January 2018, narrowed the field of application of the conditional

Figure 7. Correlation between duration of administrative procedure and decisions made within 8 days



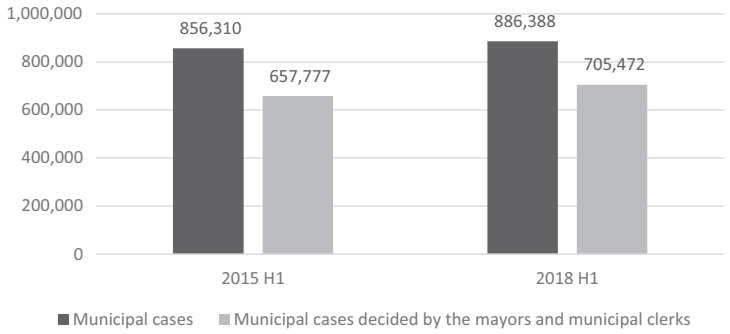
Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019], edited by the Authors.

decision, as most central agencies are now exempt from this obligation. This finding also supports the former thesis on the accelerating effect.

Nevertheless, it may constitute a problem that in order to keep the procedures in the summary procedure and away from the full procedure, more applications and requests are turned down as before. Unfortunately, no detailed statistics are available as to the nature of the decisions brought in the administrative procedures. Further systematic research will be necessary to clarify this point.

The introduction of the institution of conditional decision also has another interesting side effect which is connected to the distribution of competences in the field of the municipal administration. Generally, the representative bodies (the councils) of the municipalities are responsible for decision making in municipal administrative cases, but it is allowed by the Hungarian Municipal Code to transfer those powers to the personal leaders of the municipalities, both to the politician leader, the mayor and to the professional leader, the municipal clerk (*jegyző*). This is due to the fact that conditional decision – as well as decisions in the summary procedure – has to be issued promptly, the deadline of 8 days is simply too short to be functioning in the decision-making procedure of a collegial body. Thus, the single-person decision making has been strengthened by the introduction of the conditional decision. Before the introduction of the conditional decision, 76.82% of the municipal cases were decided by the mayors and municipal clerks. After the reform, this share slightly increased to 79.59% (see Figure 8).

Figure 8. Concentration of the decision making in municipal cases



Source: OSAP statistics, www.kormany.hu/hu/dok?page=10&source=7&type=308#!DocumentBrowse [access: 20.08.2019].

The main reforms of the new administrative procedural rules have mainly impact on the speed of the administrative actions, but the silence of the administration was influenced limitedly by these new institutions.

In the second pillar, we can witness a great step towards effective judicial protection against the silence of administration. Unfortunately, no judicial statistics can be found on their impact, therefore the practical use of these institutions cannot be analysed at the moment backed with data, but only through personal interviews.

CONCLUSIONS

Effective institutions against the silence of administration are those which devolve the powers of administration from the administrative organ failing to act. This type of sanction is used presently in a construction of positive silence of administration in the Hungarian administrative law. However, there are fields of administrative action where this institution is not suitable to combat the silence of administration, namely that of *ex officio* administrative procedures. This problem can be eased to some extent by a broad notion of the party enabling the interested persons or even the interested public to speak up in such cases, but it does not solve it. We can conclude thus, that the conditional decision cannot generally replace an institution which gives parties the possibility to contest failures, like the former plea for failure did. Given the restricted field of application and the fact that it is only an institution for procedures upon request, there are a lot of cases, where this instrument cannot help. Of course, the institutions of the administrative court procedure, *par excellence* the action for failure to act do give effective judicial protection in these cases, but its formalities and costs factually often restrict its effectiveness and cannot fully replace the less formal instruments provided within the administrative procedure.

The cases of administrative silence can also be tackled to some extent by reducing bureaucratic burdens. Nevertheless, the reduction of burdens regarding the starting and leading of administrative procedures for permits can easily result in other types of burdens both for parties and administrative organs. They involve additional costs and working hours at administrative organs and have the effect that more applications are turned down and thus rights precluded than before. Risks traditionally born by the administrative decision are now faced by the parties and result in additional costs. So, we have to face the fact that there are some burdens which cannot be totally deleted. Administrative procedure is like an equation – if we take away some burdens from one side of the equation, they have to be added to the other side. We can conclude that it is not the procedural rules, which need reforms over and over again, but material law, which is too complicated and not harmonised. Better training of civil servants would also be vital for more timeliness.

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STRESZCZENIE

Rozpoczęty w 2015 r. przez rząd węgierski Program Ograniczenia Biurokracji zawiera kilka kierunków, jak np. zmiana koncepcji systemu organów administracyjnych, zmiana kształtu służby cywilnej, uproszczenie procedur administracyjnych, a także walka z milczeniem organów administracji. W latach 2016 i 2017 wprowadzono nowe kodeksy postępowania administracyjnego i sądowoadministracyjnego oraz znowelizowano regulacje sektorowe. Najważniejszą zmianą w sektorowych przepisach postępowania była zamiana procedur związanych z uzyskaniem zgody na prosty obowiązek zgłoszenia. Przedmiotem artykułu było zbadanie, czy instytucje te istotnie pomagają w ograniczeniu biurokratycznych obciążeń obywateli i przedsiębiorstw oraz czy są one skutecznym narzędziem do radzenia sobie z milczeniem organów administracji i czy faktycznie poprawiają sytuację stron wobec administracji i sprzyjają dobrej administracji. Artykuł przybliża również nowo ustanowioną w Kodeksie postępowania sądowoadministracyjnego (obowiązującym od 2018 r.) skargę z tytułu bezczynności, pomyślaną jako dodatkowe narzędzie, a także nowe instytucje tego kodeksu dotyczące problemu milczenia organu administracji.

Słowa kluczowe: milczenie administracji publicznej; środki prawne na bezczynność organu; skarga na bezczynność organu administracji publicznej; prawo do dobrej administracji