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Application of Administrative Law in the Time of Reforms in the Light of the Scope of Judicial Review in Hungary

Stosowanie prawa administracyjnego w czasie reform w świetle zakresu sądowej kontroli na Węgrzech

SUMMARY

The Hungarian legal system and especially the administrative law is in the state of permanent change. This constantly transforming environment is a challenge for the rule of law. Every significant field of administrative law is impacted by these changes – even the judicial review model of the administrative decisions. The author analyzes the impact of these changes – especially from the last three years – on the application of administrative law. The issues raised in the article are focused on the transformation of the procedural rules, in particular on the impact of the new Act I of 2017 – Code of Administrative Court Procedure and its amendment in 2019. Two major institutions are analyzed further. First, the work analyzes the impact of the reform on the system of legal remedies in the administrative law, i.e. the reduction of the intra-administration remedies, the administrative appeal. Secondly, the extent of the judicial review was examined, in particular debates, codifications and amendments of the cassation and reformatory jurisdiction of the courts. The courts are currently the major interpreter of administrative law, whose change can be interpreted as a paradigm shift of the approach of the application of administrative law.

Keywords: administrative procedure; legal remedies; judicial review; judicial discretion; cassation; administrative courts; the right to an effective remedy

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INTRODUCTION: METHODS AND HYPOTHESIS

The Hungarian legal system and especially the administrative law and regulation on the administrative procedure is in the state of permanent change. The Hungarian administrative reforms have been focused on the transformation of the administrative structures and on changes of the administrative procedures[1]. The judicial review of the administrative decisions has been part of these permanent transformations, and in the last years the model of the judicial review has been one of the major elements of the Hungarian legislation. The application and the development of legal practice have been influenced by these reforms. This article is focused on the transformation of the scope of the judicial review of administrative acts, especially on the reformatory or squashing powers of the judgements.

In the article, the author's investigate the impact on the transformation of the legal practice and legislation.

The research method of the paper is mainly jurisprudential, using dogmatic and comparative arguments, comparing the different systems having regard to the scope of the judicial review of administrative acts and analyzing 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 – and the data available at the National Office for the Judiciary on the judicial review of the administrative decisions.

SHORT INTERNATIONAL OUTLOOK: THE REFORMATORY AND THE QUASHING POWER OF THE JUDGES IN THE DIFFERENT SYSTEMS

The judicial review of the administrative decisions (acts) is interpreted as a tool of the separation of powers and as an element of the checks and balances. In that concept, the judicial control of the executive branch is – at least partly – realized by the review of the administrative decisions[2]. Because of the concept of separation of powers – in the traditional British constitutional system, the *ultra vires* principle on the competences of the state organs – the traditional approach of the powers of the courts (and sometimes tribunals) is based on the "quashing" of the administrative decisions[3]. Therefore, traditionally the amendment of the administrative

[1] See M. Nagy, *Interdiszciplináris mozaikok a közigazgatási jogi felelösség dogmatikájához*, Budapest 2010, pp. 200–202.

[2] See L. Langer, *Judicial Review in State Supreme Courts. A Comparative Study*, Albany 2002, pp. 3–5.

[3] See M. Elliott, J. Beatson, M. Matthews, *Administrative Law. Text and Materials*, Oxford 2005, pp. 434–435.

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acts is permitted by the national legislation just as an exception. In the traditional approach the reformatory powers of the courts (and sometimes administrative tribunals) should harm the principle of separation of powers, because in that case the decision-making power of the executive is taken over by the courts and, thus, the competences of the executive branch would be violated[4].

This traditional approach which has been based on the quashing powers of the courts has been transformed. In Germany, the main principle is that the administrative courts can annul infringing decisions[5]. This principle has been transformed in Germany, as well. The courts can define by the tool of the so-called *Vornahmeurteil* the required activities of the administrative bodies during repeated procedures[6]. This regulation is interpreted by the scholars that it is close to the reformatory powers of the courts[7]. The *Vornahmeurteil* can be interpreted as a *de facto* reformatory decision, but the courts can amend the administrative decisions if a party of an administrative procedure is obliged to pay a sum, and the sum is defined precisely and only on the sum of the payment is infringing[8]. In Austria, the decisions without (administrative) discretion can be amended traditionally[9]. Similarly, the administrative acts without discretion can be amended by the administrative courts in Greece[10].

Similarly, the traditional French approach has been based on the quashing power of the Conseil d'État and the first instance bodies, the administrative tribunals. This traditional approach has prevailed in the legality disputes (*contentiuex de la légalité*), in which the judge is only of deciding on a matter of objective legality, and if it is stated that the administrative act is an infringing decision, he or she can annul it[11]. The reformatory powers of the judicial branches have been evolved in France, as well. One of the main characteristics of the French administrative system is that public contracts are widely used by that model. The amendment of the administrative decisions by the judicial bodies are permitted in the full litigation (*pleine contentieux*) cases[12]. In these cases, the procedure is on a public contract

[4] See K.F. Rozsnyai, *Hatékony jogvédelem a közigazgatási perben*, Budapest 2018, pp. 202–204.

[5] See S. Detterbeck, *Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht*, München 2011, pp. 551–552.

[6] See H. Gersdorf, *Verwaltungsprozessrecht*, Heidelberg 2019, pp. 51–52.

[7] See K.F. Rozsnyai, *Hatékony jogvédelem…*, p. 205.

[8] See *ibidem*.

[9] See T. Olechowski, *Geschichte der Verwaltungsgerichtsbarkeit in Österreich*, [in:] *Handbuch der Geschichte der Verwaltungsgerichtsbarkeit in Deutschland und Europa*, hrsg. v. K.P. Sommermann, B. Schaffarzik, Berlin–Heidelberg 2018, p. 1118.

[10] See K.F. Rozsnyai, *Hatékony jogvédelem…*, p. 206.

[11] See J.B. Auby, *Administrative Law in France*, [in:] *Administrative Law of the European Union, Its Member States and the United States*, eds. R. Seerden, F. Stroink, Antwerpen–Groningen 2002, p. 78.

[12] See D. Bailleul, *L'efficacité comparée des recours pour excés de pouvoir et des plein contentieux objectif en droit public français*, Paris 2002, pp. 278–279.

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or on public tortious liability. The reformatory powers of the judicial branch can be justified by the involvement of the defence of individual rights[13].

As I have mentioned above, the traditional British system has been based on the quashing powers of the courts. The main British remedies, the so-called prerogative remedies are based on the annulment of the infringing acts, the amendment of them are very rare in that system[14].

However, the traditional approach is based on the cassation power of the courts, there are different solutions. For example, as I have mentioned among the German model, the administrative decisions on payments can be amended but the sum of the payments is defined by the administrative bodies, however, the method of the calculation is based on the judgement of the courts. And there are other countries, where the reformatory power of the courts responsible for administrative cases have been recognized[15].

The role of judicial review has been transformed in the last decades; however, the traditional approach – based on the separation of powers – preferred the cassation powers of the courts, but the requirements have been changed based on effective legal protection. The reformatory powers of these courts became widely recognized in Europe. The traditional role of the judges has been transformed by these changes, now the judges are more important players in the field of the development of the administrative legal regulations, than earlier[16].

THE TRANSFORMATION OF THE HUNGARIAN REGULATION: DIFFERENT APPROACHES OF THE ROLE OF THE JUDGES (UNTIL 2017)

The first Hungarian administrative court, the Financial Administrative Court was established by the Act XLIII of 1883. This body had competencies only in the field of taxation and state finances. The first general administrative court, the Hungarian Royal Administrative Court was established by the Act XXVI of 1896. The regulation was based on the Austrian model: only one administrative court were organized in Hungary, so there was only one instance. The competences of the court were defined by an enumeration of the Act XXVI of 1896, and the court had partly reformatory powers, the administrative decisions could be amended by it. The so-called legality complaint (*törvényességi panasz*) – which was a tool for

[13] See J.B. Auby, *op cit.*, p. 78.

[14] See M. Elliott, J. Beatson, M. Matthews, *op. cit.*, pp. 434–438.

[15] For example, Sweden belongs to these countries. See K.F. Rozsnyai, *Hatékony jogvédelem…*, pp. 205–206.

[16] See Z. Fleck, *Szakmai és politikai érvek a közigazgatási bíráskodás kapcsán*, „Közjogi Szemle" 2016, Vol. 9(4), pp. 16–17.

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the defence of the municipal autonomy after 1907 – was the first action which was based on the approach of the cassation powers of the court[17].

The independent administrative court was abolished after the introduction of the Soviet-type system, which was based on the unity of the powers and not on the separation of them. The administrative court – as a tool of the judicial control of the executive and as a tool of the checks and balances – were strange in the Soviet-type system after World War II[18]. The judicial review of several cases – which cases were defined by the Act IV of 1957 – Administrative Procedures (*az államigazgatási eljárás általános szabályiaról szóló 1957. évi IV. törvény*) – were introduced after 1957. These limited cases have partly private law elements, e.g. the decisions on the tenancy (of the state-owned apartments). Because the administrative court was abolished, the judicial review of these decisions belonged to the competences of the (ordinary) courts. However, the judicial review was established in the late 1950s, the procedure of the courts was not regulated, these procedures were governed by the general regulations of the Act III of 1952 – Code of Civil Procedure (*a Polgári perrendtartásról szóló 1952. évi III. törvény*). This system was partly transformed in 1972, when an independent chapter on the special rules of the judicial review of the administrative acts were incorporated by the amendment of the Civil Procedure Code[19]. In 1981 the judicial review of the administrative decisions was renewed; theoretically, the courts could review the administrative acts generally, but in fact the courts can review those cases which were defined by a Government Decree[20]. During the Democratic Transition, the constitutional background of the judicial review has been transformed: the rule of law and the separation of powers became the main principles. It was stated by paragraph 2 section 50 of the amended Constitution, that "[t]he legality of the administrative decisions is controlled by the courts". The general base of the judicial review was guaranteed. After the new regulation, the former, enumerative definition of the cases which could be reviewed by the courts was annulled by the newly institutionalized Constitutional Court (*Alkotmánybíróság*)[21]. The new organization was based on the Socialist system: the judicial review of administrative decisions belonged to the competences of the (ordinary) courts. The procedural regulations were partly transformed. However, they were regulated by the Code of Civil Procedure (Chapter XX), but the differences between the "ordinary" civil procedure and the judicial review regulations

[17] See H. Küpper, *Verwaltungsgreichtsbarkeit in Ungarn*, [in:] *Handbuch Ius Publicum Europaeum. Band VIII. Verwaltungsgerichtsbarkeit in Europa: Institutionen und Verfahren*, hrsg. v. A. von Bogdandy, P.M. Huber, L. Marcusson, Heidelberg 2019, pp. 734–735.

[18] See K.F. Rozsnyai, *Közigazgatási bíráskodás Prokrusztész-ágyban*, Budapest 2010, pp. 46–51.

[19] See A. Patyi, *A magyar közigazgatási bíráskodás elmélete és története*, Budapest 2019, pp. 125–130.

[20] See H. Küpper, *op. cit.*, pp. 445–451.

[21] Decision No. 32/1990 (published on 22 December) of the Hungarian Constitutional Court.

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became more significant. The differences were strengthened by the reform of the procedural regulation in 1998/1999, when the appeals against the first instance judgements of the courts in judicial review cases were restricted[22].

The new model was based on the traditional approach of the judicial review. In this model, the courts were responsible for the control of the legality of the administrative decisions, therefore, the principle was, that they can annul the administrative acts. The *ultra vires* principle, which is based on the separation of powers prevailed[23]. However, the principle was, that the courts can only quash the infringing acts, but the principle of effective legal protection – which was interpreted as an element of the principle of rule of law, and an element of the right to remedies – resulted in a silent transformation. In several cases, the reformatory power was guaranteed for the courts. The *ius reformandi* was permitted in those cases, where rapid jurisdiction was required, e.g. in taxation, social benefits, administrative protection of the fundamental rights (i.e. election cases, decisions on media issues). The reformatory powers of the courts were permitted to courts by the Code of Civil Procedure or by different acts in 29 cases in 1999[24].

The role of the judges was transformed by the new regulation. However, they have mainly cassation powers, but the judgements became significant elements of the development of the administrative law in the age of rule of law. First of all, the legislation of the Democratic Transition was very rapid. The change of the political, economic, social and legal system had several challenges, and some of them were not solved by the legislation. The loopholes and contradictions of the legislation should be solved by the jurisdiction. Several new definitions and concepts should be interpreted, as well. Therefore, the jurisdiction has an important role in the Democratic Transition and in the transformation of the legal system. The right to remedies and the limitations of the judicial review were evolved by the practice of the courts. Thus, the right to appeal against those procedural (not substantive) administrative decisions by which the administrative procedures were terminated was guaranteed by a unity decision No. 3/1998 KJE of the Supreme Court of the Republic of Hungary (Magyar Köztársaság Legfőbb Bírósága). Similarly, the (material) breach of procedure was defined by a resolution of the Administrative Branch of the Supreme Court (Magyar Köztársaság Legfelsöbb Bíróságának Közigazgatási

[22] See D. Kiss, *A közigazgatási per*, [in:] *A polgári perrendtartás magyarázata*, ed. J. Németh, Budapest 1999, pp. 1448–1449.

[23] See *ibidem*, p. 1443.

[24] See *ibidem*, pp. 1445–1448. In 2013 the number of these cases became even higher, nearly 50 cases belonged to this group. See G. Barabás, P. Demjén, V. Dobó, A. Huber, A.Gy. Kovács, *Bírósági felülvizsgálat*, [in:] *Nagykommentár a közigazgatási eljárási törvényhez*, eds. G. Barabás, B. Baranyi, A.Gy. Kovács, Budapest 2013, pp. 838–841.

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Kollégiuma)[25]. Several important regulations of the (sectoral) administrative regulations were interpreted and defined by the courts, as well[26].

However, the new model of the judicial review had an important role in the development of the new, democratic administrative law, but there were several dysfunctions on the rules. First of all, the procedural rules were based on the procedures of the legal disputes of private law, which was partly strange from the dogmatics of public law[27]. Several dysfunctional problems could be derived from that logic, e.g., the execution of judgements in judicial review cases were regulated by the act on the execution of the judgements in private law cases. Thus, if a judgement of the court was not executed by the administrative body (e.g. the requirements of the courts were not followed by the administrative body in the repeated procedure), it should be executed by a private execution procedure, which was very strange and hardly applicable[28].

PERMANENT REFORMS, BACK AND FORTH – NEW CHALLENGES OF THE PROCEDURAL REFORMS AFTER 2016/2017

However, the Hungarian constitutional regulations were transformed in 2011/2012 (the new constitution, the Fundamental Law of Hungary – Magyarország Alaptörvénye – was passed on 25 April 2011 and it entered into force on 1 January 2012), the framework of the judicial review was changed just partially by that reforms. Firstly, from 1 January 2012 the Curia, the Supreme Court of Hungary became responsible for the legality review of the municipal decrees and a new special court was established, the Administrative and the Labor Courts (*közigazgatási és munkaügyi bíróságok*), which were first instance courts and which were established on the territorial level (county level).

The administrative reforms have been permanent in the last decades, and these reforms can be characterized as centralization and concentration reforms[29]. The general territorial (regional) agencies of the Government, the County Government

[25] See Res. No. KK 14 of the Administrative Branch of the Supreme Court of the Republic of Hungary.

[26] See A.Gy. Kovács, K.F. Rozsnyai, I. Varga, *A közigazgatási perorvoslatok szabályozásának lehetőségei európai perspektívában*, „Magyar Jog" 2012, Vol. 59(12), p. 707.

[27] See K.F. Rozsnyai, *Perjogi önállósulás és különbírósági jelleg a közigazgatási bíráskodásban*, „Közjogi Szemle" 2016, Vol. 9(4), pp. 4–5.

[28] See eadem, *Current Tendencies of Judicial Review as Reflected in the New Hungarian Code of Administrative Court Procedure*, "Central European Public Administration Review (CEPAR)" 2019, Vol. 17(1), DOI: https://doi.org/10.17573/cepar.2019.1.01, p. 15.

[29] Similar, but not as radical reforms can be observed in another V4 countries, like in Poland. See M. Karpiuk, J. Kostrubiec, *The Voivodeship Governor's Role in Health Safety*, „Studia Iuridica Lublinensia" 2018, Vol. 27(2), DOI: https://doi.org/10.17951/sil.2018.27.2.65, pp. 66–67.

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Offices (*fővárosi és megyei kormányhivatalok*) were strengthened, several formerly independent regional agencies were merged into these bodies[30]. The majority of the delegated state administration cases of the municipal officers were transferred to these bodies. The district offices of the County Government Offices have been established, which became the general first instance bodies of the state administration. Therefore, the former limits and separations between the first and second instance bodies have been blurred: the first instance bodies were mainly the local departments of the second instance authorities[31].

The judicial review and the system of the remedies have been impacted by these reforms. First of all, it should be emphasized that the remedies against the first instance decisions of the administrative bodies are traditionally modest in Hungary. For example, in the first half of 2016 only 0.21% of the first instance decisions of the district offices were challenged by appeal and only 0.01% of them were reviewed by the courts (see Figure 1).

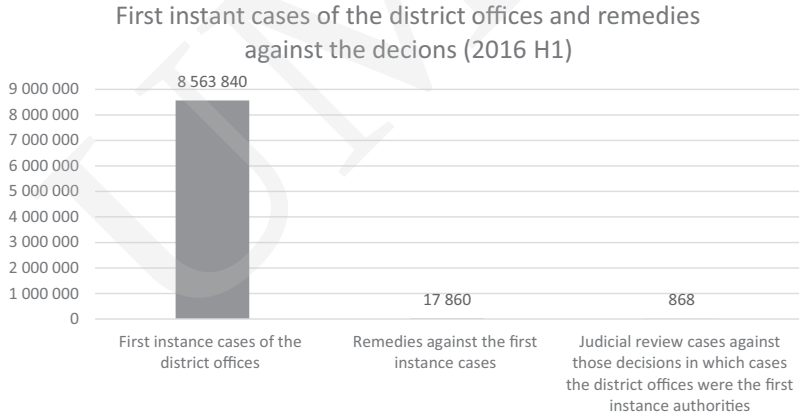


Figure 1.

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

The Hungarian administrative procedure was transformed by the new Act CL of 2016 – Code of General Administrative Procedure (hereinafter: CGAP, in Hungarian: *az általános közigazgatási rendtartásról szóló 2016. évi CL. törvény*). The system of judicial review has been changed radically by this act. The intra-administrative remedy, the administrative appeal against the first instance decisions

[30] See J. Fazekas, *Central administration*, [in:] *Hungarian Public Administration and Administrative Law*, eds. A. Patyi, Á. Rixer, Passau 2014, pp. 299–300.

[31] See Z. Józsa, *A hatósági szolgáltatások ellátásának telepítése*, [in:] *Közszolgáltatások megszervezése és politikái. Merre tartanak?*, eds. M.T. Horváth, I. Bartha, Budapest 2016, pp. 887–888.

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of an authority has become only an extraordinary type of the remedies, because in principle the first instance cases could be challenged by an appeal only in the cases defined by an Act of Parliament. The judicial review of the administrative decisions has become the major remedy against the acts of the authorities[32]. The traditional broad approach of the Hungarian administrative law – e.g. the issue of judicial control of administrative decisions belongs to broadly understood branch of administrative law – has been strengthened by these reforms. In principle, the judicial review has become the main tool of protection of subjective rights[33].

The reform of the procedural regulations of the judicial review of the administrative decisions was linked to this transformation. Because the administrative litigation has become the main form of the remedies against the administrative decisions, and – at least in principle – the intra-administrative remedies were strongly restricted, the approach on the powers of the courts should be changed[34]. The principle of effective legal protection has become a crucial element of the disputes on the reform. If the former appeal has been restricted, then the role of the courts should be rethought. Thus, the approach was changed by section 90 of the Act I of 2017 – Code of Administrative Court Procedure (hereinafter: CACP, in Hungarian: *a közigazgatási perrendtartásról szóló 2017. évi I. törvény*): the reformatory powers of the courts became the principle. It was emphasized by the scholars, that the principle of the effective legal protection became more important than the principle of the separation of powers. Because the courts have become the major bodies responsible for the remedies against administrative acts, the permission of the *ius reformandi* to the courts seemed to be a necessary change[35].

However, in theory, the appeal became an extraordinary remedy; in fact, the situation changed just partially. The possibility of the appeal was permitted by point a) paragraph 2 section 116 CGAP if the first instance authority was a district office (*járási hivatal*) or municipal authority (except the representative body of the municipality). A radical transformation of the first instance competences could be observed after that regulation: most of the former county-level competences were transferred to the district offices (see Figure 2).

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[32] See G. Barabás, *A fellebbezés*, [in:] *Kommentár az általános közigazgatási rendtartásról szóló törvényhez*, eds. G. Barabás, B. Baranyi, M. Fazekas, Budapest 2018, pp. 691–693.

[33] It is similar to the approach of the German jurisprudence. In Germany, the analysis of the judicial review of the administrative decisions belongs to the topics of the administrative jurisprudence. See, e.g., S. Detterbeck, *op. cit.*, pp. 514–516; W. Kahl, *Grundzüge des Verwaltungsrechts in gemeineuropäischer Perspektive: Deutschland*, [in:] *Handbuch Ius Publicum Europaeum*, Bd. 5: *Verwaltungsrecht in Europa: Grundzüge*, hrsg. v. A. von Bogdandy, S. Cassese, P.M. Huber, Heidelberg 2014, p. 143.

[34] See A. Bencsik, *Az ügyfél jogorvoslathoz való jogának biztosítása mint a közszolgálati tisztviselök kötelezettsége*, „Pro Public Bono – Magyar Közigazgatás" 2019, No. 4, DOI: https://doi.org/10.32575/ppb.2019.4.1, pp. 10–11.

[35] See K.F. Rozsnyai, *Current Tendencies…*, pp. 18–21.

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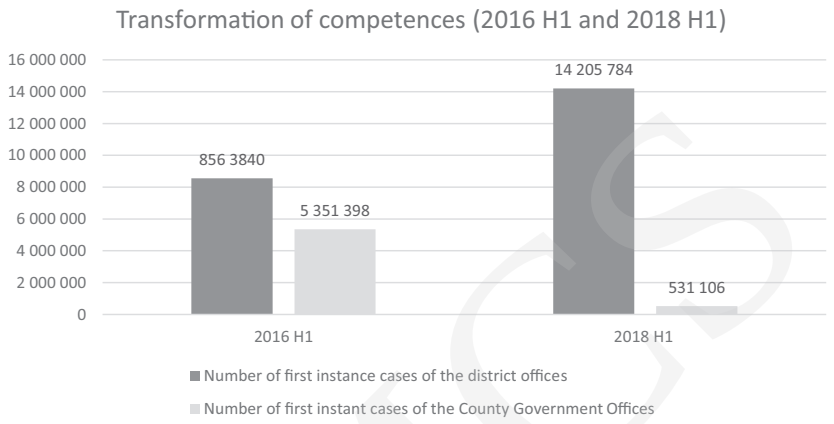


Figure 2.

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

Thus, the tradition of the intra-administrative remedy fought against the new approach of the remedy model of the CGAP and CACP. As I have mentioned, the sectoral regulation on the competences were transformed, and these sectoral regulations and legislation tried to avoid the new principle. This "fight" lasted till March 2020. Late 2019 the CAGP was amended and the general possibility of the appeal against the first instance decisions of the district offices has been repealed. Therefore, the administrative litigation has become the major remedy in the Hungarian system since early 2020. It is interesting, that a very rapid regulatory activity could be observed after this reform: several former county-level competences which were transferred to the district level in 2016/2017 have been retransferred to the county level by Government Decrees passed in December 2019.

In this new system, the role of the judges has become even significant. Now the judges are the main bodies responsible for the remedies. However, the central agencies and the ministries (and partly the County Government Offices) have wide responsibilities in the field of ex officio remedies, but the major bodies responsible for the protection of individual rights are the courts. The role of the courts has been strengthened by the approach of the CACP, which is based on the general review of the administrative acts and not only the review of the decisions of the authorities[36]. Thus, the courts became even more important players in the development and application of the administrative law.

[36] See M. Fazekas, *Közigazgatási bíráskodás a hatósági ügyeken túl (a Közigazgatási perrendtartás tárgyi hatályának néhány kérdése)*, [in:] *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara I. kötet*, Budapest 2018, pp. 208–210.

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If we look at the new regulation which was passed in 2019 and entered into force in 2020, several processes in opposite direction can be observed in the Hungarian legislation. However, the courts became major players in the field of remedies, the regulation on reformatory powers have been changed. Since 2020 the principle is the "cassation powers" of the courts, thus the courts can only annul the infringing acts, and the infringement shall be corrected by the annulment of the decisions or by a repeated procedure. The court has the power to define requests for a lawful repeated administrative procedure, which requirements shall be applied by the authorities. The possibility of *ius reformandi* has been restricted to those cases in which the requests of the courts are not executed by the authorities and to those cases which are defined by the Act of Parliament. The first case, when the amendment of the Act can be interpreted as a sanction of the omission or intentional disregard of an administrative body is accordance to the decision of the European Court of Justice in the case *Torubarov*. In this case, the court argued – similarly to the new regulation on the possibility of amendment of the administrative decisions – 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 remedy. 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)[37]. If we look at the second case of possibility of the amendment of the administrative acts, it should be emphasized, that those cases are correlated to the regulation before the CACP, so it can be characterized as a "back and forth" transformation.

If we look at the legal regulation, the role of the judges has been strengthened significantly by the CGAP and CACP. But this strengthening cannot be observed by the analysis of the data on the judicial review. First of all, as I have mentioned, the share of the remedies is very low in Hungary, and thus the number of administrative litigation is a modest one. Secondly, the strengthening of judicial competences has not been mirrored by the number of administrative court procedures. The number of court procedures has not been increased – in opposite, a decrease[38] can be observed (see Figure 3).

[37] Judgement of the Court (Grand Chamber) of 29 July 2019, case C-556/17, 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]. See K.F. Rozsnyai, I. Hoffman, *New Hungarian Institutions against Administrative Silence: Friends or Foes of the Parties?*, „Studia Iuridica Lublinensia" 2020, Vol. 29(1), DOI: https://doi.org/10.17951/sil.2020.29.1.109-127, pp. 119–120.

[38] The increasing number of the administrative litigation in 2016 was related to the refuge crisis: the number of the judicial review of the decisions on asylum were increased significantly.

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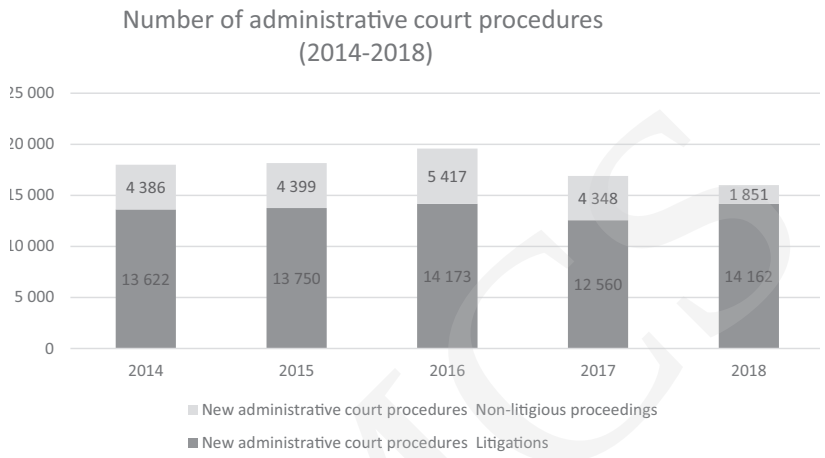


Figure 3.

Source: National Office for the Judiciary, Statistical Data, https://birosag.hu/ugyforgalmi-adatok [access: 25.02.2020].

It is very interesting, that the permanent judicial reforms have a side-effect: the legal practice has become very uncertain, and the mistakes are very often. The share of the rejected cases and the terminated cases (which are ended because of a procedural cause) are traditionally high in the Hungarian courts. If we look at the judicial review of the cases, in the first half year of 2018 the share of these decisions was 45.24%. The application of the regulations of the CACP changed the practice, the share of these cases which were terminated by procedural causes increased to 71.12%.

The transformation of the regulation on the amendment resulted a significant transformation in the practice. In the first half year of 2018, the share of the cases in which the administrative decision was amended by the courts was 1.70%, and this share increased to 5.18% in the first half year of 2019. The change is more significant if we look at only the judgements (substantive decisions). In the first half year of 2018, the judgements by which the administrative decisions were amended was 3.11% of the substantive decisions, in the first half year of 2019 this share was 17.93%. Thus, the practice has changed significantly, however, the major decision of the judgements has remained the annulment of the administrative act and obligation to conduct a new procedure (see Figures 4 and 5).

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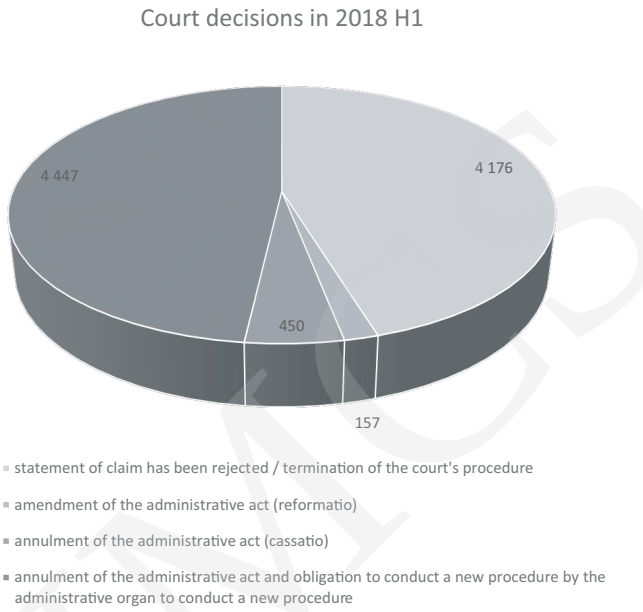


Figure 4.

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

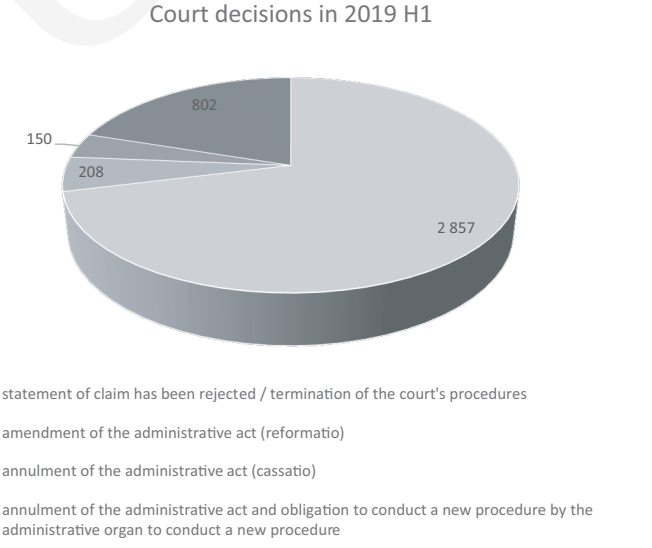


Figure 5.

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

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CLOSING REMARKS (?)

The legislation on the judicial review and on the remedies of the Hungarian administrative acts transformed significantly in the last decades. If we look at these permanent reforms, the role of the judicial review has been constantly strengthened. The judicial review has become the major tool of the protection of subjective rights and the main form of the remedies against the administrative decisions in the Hungarian administrative (procedural) law. However, the judges have been strengthened by the legislation, but the effectiveness of the developing role and the legal protection of the judicial branch has been strongly impacted by the constant changes, by which adverse effects were partly resulted.

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STRESZCZENIE

Węgierski system prawny, a zwłaszcza prawo administracyjne, nieustannie się zmienia. To stale zmieniające się środowisko stanowi wyzwanie dla rządów prawa. Zmiany te mają wpływ na wszystkie istotne instytucje prawa administracyjnego – nawet na model kontroli sądowej decyzji administracyjnych. Autor analizuje wpływ tych zmian – zwłaszcza z ostatnich trzech lat – na stosowanie prawa administracyjnego. Problematyka poruszona w artykule jest skoncentrowana na transformacji przepisów proceduralnych, w szczególności na wpływie nowej Ustawy I z 2017 r. – Kodeks postępowania administracyjnego i jej nowelizacji z 2019 r. Po pierwsze, w pracy przeanalizowano wpływ reformy na system środków prawnych w prawie administracyjnym, w szczególności na ograniczenie środków wewnątrz administracji, czyli odwołania administracyjnego. Po drugie, zbadano zakres aktywności sądowej, w szczególności debat, kodyfikacji i zmian instytucji kasacji oraz reformatorskiej właściwości sądów. Sądy są obecnie głównym interpretatorem prawa administracyjnego, którego zmiana może być rozumiana jako zmiana paradygmatu podejścia do stosowania prawa administracyjnego.

Słowa kluczowe: procedura administracyjna; środki prawne; kontrola sądowa; dyskrecjonalność sędziowska; kasacja; sądy administracyjne; prawo do skutecznego środka prawnego

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