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Articles

Public Administration and Literature

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Abstract: Nowadays *Law and Literature* courses become more and more popular worldwide; this is also true for Hungary. Examining these attempts, we may conclude that legal problems do reach the students through mainly fictitious literary stories instead of real cases. Accordingly, the idea of *Public Administration and Literature* courses can be proposed, as well. Among the reasons to introduce such courses we can detect new demands on the side of the students, the need for the methodological renewal of teaching and also the fact that the National University of Public Service already offers MA levels in administrative sciences. This paper – providing several examples – summarizes the main fields and subjects of public administration showed in fine literature and it also collects those genres by which administrative topics are most frequently introduced.

Keywords: Hungarian literature; indirect representation of administrative phenomena; law and literature; teaching public administration

1. Introduction

Nowadays the various *Law and Literature* courses are gaining popularity all over the world, including our country. If we analyse these trainings and experiments merely from a methodological point of view, we will see that these courses present legal issues not through real-life cases but through stories belonging to fiction, still showing some similarities with real life. The presentation and interpretation of each legal institution will be thus possible through a *shared* experience that would otherwise only partially be possible if using other conventional studies, as most students, especially in the Prussian type of educational environment, are *unprepared* or have limited professional preconceptions when attending a course or a seminar, and this gives unnecessarily large space for the teacher, who often, at least in Hungary, repeats at the seminars the extended version of the theory presented during the courses.

Similarly to the approach mirrored by the *Law and Literature* initiative the *Public Administration and Literature* course can also be taken into consideration as a possibility. In case we try to compare the well-known outlines of law and literature with the contours of the newly introduced concept (public administration and fiction), on the one hand we will find that the latter extends its investigations to a wider range because it goes beyond the law of public administration but on the other hand it is also possible to conclude that

the subject of public administration and fiction is narrower than that of law and fiction, given that the non-strict administrative implications of the law are outside the interest of the researchers dealing with this domain. The apparent contradictions and tensions of these two approaches are very well overcome by the fact that the fictional representations of administrative phenomena appear to be predominantly in conflict with the ideals of these phenomena, as conceived by legal instruments, thus relativizing and blurring the theoretical boundaries between law and literature respectively between public administration and literature.

The question to which this study also seeks to answer can rise other questions: whether literary and legal texts can provide meaningful contexts to each other, and whether the study of texts belonging to one of these categories can have any benefit with respect to the interpretation of the texts belonging to the other category.[1] Of course, it is not satisfactory to deal with this problem only from the perspective of intertextuality.[2]

This paper seeks to explore the possibilities of involving literary works in the formation of public administration students, listing the reasons and arguments that support the need for these kinds of approaches. It is obvious that first of all the contours of a theoretical framework should be created taking in consideration the justification of the existence of public administration and literature as a separate field of science. In addition to the theoretical challenges, the real, practical significance of the topic is increased by the fact that university education and doctoral training are also taking place in the Hungarian public administration professional training, thus – presumably – the necessity for the justification of methodological and didactic considerations is also increasing.

2. The Concept of Science of Public Administration and the Transformation of Its Internal Structure

The science of public administration can be mostly defined as a set of disciplines dealing with the same subject – that is public administration – with different scientific methods, while the diversity of approaches for each subject does not necessarily involve integrating and synthesizing partial results. That is why it is more accurate to talk about public administration disciplines and not about unified administration science.

However, among the public administration disciplines, some disciplines have a prominent, central role, which are called major branches of science by the scholarly literature, especially if their essential and central goal is to investigate the main context of public administration. Admittedly, administrative law, political science, or even organizational science may be included among the major branches of science. Those branches of science that are loosely associated with public administration or the latter is merely on the periphery of their research, or they focus only on some of the administrative phenomena, or on some of the narrower aspects of public administration – according to some authors – do not even belong to the public administration disciplines in their narrower sense, thus they are often considered interdisciplinary areas of science by the scholarly literature.[3] These include some of the new areas, such as e-administration as an

independent, interdisciplinary field of science. Public administration and literature as a field of study, in principle, might become one of the large numbers of these areas (each having different degree of importance). Public administration and literature, as we have already mentioned, is not sharply delimitated from the more traditional and more embedded area in Hungary that is law and literature.

We must also emphasize that traditionally in Hungary, both public administration and the science of public administration have an extremely legal character. However, this is partly natural, because the analysis of public administration with legal methods and having a fundamentally legal approach towards it is somehow obvious due to the fact that "the issues of public administration can be legally made unambiguous and their mechanisms have been deliberately established since the beginning of the 19th century based on law, and this principle dominates the actual practice as well".[4]

Of course, legal approaches and descriptions cannot be exclusive; it is not advisable to come to a conclusion regarding actual changes in society only through changes in law. Quoting András Sajó: "The constraint of adaptation to the new and the over-emphasis of social control of law often indicates significant moves even in segments where nothing happens."[5] Public administration and literature as an area of science is trying to reconcile the everyday reality of administrative law and society by using reality-related, but decisively fictive *cases* in the application of legal experience and in teaching legal history and in the same making inevitable the analysis of the connections from sociological, cultural-anthropological, ethical and sometimes explicitly religious perspective. Nowadays, the relationship of other social sciences with literature is well documented (scientifically founded), e.g. for sociology and sociography, it is evident that certain basic literary works become the imprints of social and cultural life of the given *crisis period* and as important elements of the cultural life, they have strong impact even upon collective historical consciousness.[6]

We can also summarize what has been written before by concluding that law is a part of people's everyday life regardless of the manner we define it: a set of normative rules that are compulsory for everybody or voluntary following of norms related to individual administrative decisions, or institutions that provide protection for the rights of clients, or behaviours defying norms – if these are present in the most common relations of everyday life, they must appear in the literary works that reproduce, represent and interpret these relations.

3. From "Law and Literature" to "Public Administration and Literature"

As we have just mentioned, the so-called law and literature is slowly becoming a separate discipline also in Hungary, intending to interpret and represent the fictional contexts and imprints of legal phenomena. According to the simplest – and perhaps the most commonly used – scheme in this research area, there can be distinguished two distinct basic approaches: one that analyses how law appears in literature and the other one that considers the law itself a particular literary genre (law as literature).[7]

The *law in literature* approach is closely linked to the criticism of law and state,[8] *and in addition to this fact the works of modern novel literature can serve as valuable sources for researches on legal sociology*. Let's note that some trends in sociography can be seen as a kind of common cross-section of public administration in its broadest sense and fiction – Gyula Illyés's works being perhaps the best examples of this.[9]

We must not forget that the fundamental function of law is to maintain the community, that is why its essence stands in constitutive rhetoric – meaning that the retelling of the stories of the community members in a legal frame also contributes, as the final act of the legal conflict, to the integration or reintegration of the individual into the community, or help him find otherwise his homey, meaningful place.[10] With some simplification, we may say that the primary purpose of both the administration and of fiction is the restoring of "order and the re-balancing the diseased equilibria".[11]

The relationship between law and literature has been in the focus of interest of legal scientists for a long time, several studies of the scholarly literature analyse the importance of the alternative use of this area and the need to develop relevant didactic tools in legal education.[12] Through its stand-alone perspectives and tools the law and literature approach may make a useful contribution to the more precise presentation and interpretation of the content of legal texts and even of legal practice using well-crafted artistic examples.

In the meantime, we find that in the field of studying and teaching administrative phenomena, the legal-natured approach is still the dominant one, which emphasizes the descriptive presentation of rules and institutions. This approach, however, in itself does not give a complete picture of a particular issue of social reality (see the previously quoted study by András Sajó), thus getting acquainted with the community attitudes developed towards a particular institution, and with the individual motivations[13] become essential to get an adequate picture of society (community meaning both the public administration staff and the *customers*).

Limiting or adapting the so far described aspects to public administration, we have to say that the emergence of structures, operations and personnel of a public administration having a highly legal character in older or contemporary literature can also contribute to a better and more scientific understanding (and research) of the real forms and directions of change of public administration, or of the repetitive features of the studied field. For now, these possibilities are only theoretical, substantive research on these contexts has not so far been conducted in Hungary.

3.1. Arguments in Favour of Law and Literature

There have been attempts to present the existing and possible forms of relationship between law and literature in Hungarian scholarly literature,[14] but the role of the area in legal and/or administrative education needs further elaboration.

This modest writing intends to take the first and further steps in these two directions: on the one hand it presents the reasons that make this area acceptable and even in some respects necessary in the legal/administrative education; on the other hand, it presents the structured catalogue of the relationship between public administration and literature,

making more accessible the main possibilities of systematization through concrete examples.

The transformation of the law and literature *method* to public administration and literature and its conscious incorporation into the curriculum of law schools and administrative faculties can be recommended for at least eight reasons:

1. *It opens up a new communication channel for those who otherwise* – or by other means – *cannot be or can hardly be involved in the education process.* This mode of knowledge transfer teaches through play, strengthening the concept of homo-ludens and minimizing the factor of constraint in the process of learning (while being appropriate for the achievement of the goals related to content);

creating and accepting new public social agreements is easier if the conveying of the desirable patterns is not made – exclusively – in a frontal manner, e.g. through *teaching* legal or other norms, but indirectly through the stories of *imagined worlds.* This method is performing similar functions as the tales for children: through the tale children will gain the knowledge of the distinction between good and bad.

2. *It educates for life* – meaning that it restores the original, natural, and most striking purpose of the academic higher education that is to prepare students for situations that are not closely related to professionalism but have at least the same importance, especially if we accept that the quality of life of the lawyer/administrative practitioner is not determined solely by professional success. It is sufficient here to look at the higher education goals set out in the *2007 London Communique towards the European Higher Education Area:* instead of descriptive science, the new aspirations of education focus on cause and effect relationships aiming to offer a qualification for living in a democratic society, promoting *self-realization* and educating for life in a narrower meaning of the phrase and – in today's Hungarian usage – referring as well to the so-called training of intellectuals. The latter appears at Jakab as a special (main) goal amongst the aims of legal education, a goal meant to serve the "education of men with general culture".[15]

Education for life also means that the training not only presents space- and time-isolated knowledge and forms of knowledge that can be used merely in a narrow area, but it takes into account the processuality, globality and particularly complex needs and expectations of the new age. This opens new horizons by which the classical, partly legal, partly independent framework for public administration education is stretched out by the concept of the so-called *lifelong learning,* which does not only involve preparation for public administration or professional exams (etc.), but also training courses tailored to specific sectors and in addition to these more and more education programs in other fields, too.

3. If one is trying to find the most important *call words* and goals of today's public administration and its staff, or if one wants to deduce these from the various official programs and plans, one of the most commonly used terms would certainly be *integrity* (in Hungary). Modernizing societies have increasingly established relationships – and upon these relationships there have been organized more expansive social forms – in which the participants became important only from one aspect while their personality as a whole was left out of these forms. Each individual thus participates with increasingly specialized roles in modern society, with the disciplined suppression of the rest of his personality, and it is

this disciplined and socially structured interpretation of roles that the intricate complexity of the society rests on.[16] *It is therefore indispensable to show to people – in our case students of law schools and public administration faculties, public servants participating in professional training – that the process of becoming a lawyer/administrative expert and the acquisition of new law-enforcement skills is not just a role, or one of the future roles of the individual, but something that must express a unity with the other important roles, such as the most important areas of private life, of family relationships, and with a sound and clear world view, etc.*

In this regard, it is also important to note that renunciation of a comprehensive philosophical worldview is an important symptom of the recent age. Thus, it seems unavoidable to re-create the philosophical synthesis between the legal norms governing public administration and the facts of its actual operation. It can be stated in general that, as a result of the crises, social sciences are increasingly forced to investigate the underlying meaning of things and the broader frameworks of the examined phenomena instead of the descriptive aspects of the mode of operation. In times of crisis, when our expectations are shaken by everyday experience, legal and political theory is also radicalized: it is forced to examine and rethink the validity of its own presumptions. *Philosophizing* gains justification again, since from the discourse of political theory (and the theory of public administration) that wants to act as a descriptive scientific discipline it is becoming increasingly difficult to exclude questions that are not related to the mode of operation, but to the meaning (i.e. the framework of interpretation). *In the recent decades, legal and especially administrative-jurisprudential thinking has not shifted towards philosophical reflection; it was satisfied with the questions and answers necessary from the perspective of practice. One of the impressions of this – in this particular field – is the dominance of* commentary-literature *as a genre.*

We also have to face the wrong position, which seeks to reduce the ideas and proposals related to the renewal of legal training/professional training of public servants to the issue of *practice or theory*.[17] It is worthwhile to mention that the training of legal practitioners/public servants has a third element, that has a strong emphasis if related to the other two elements; this is the ethical and moral aspect that has been the most neglected area of the entire legal/administrative higher education in the last 60–65 years.[18]

For illustrating, interpreting, and exemplifying these problems, it is very helpful to deal with the realistic and life-like dilemma or work-related and vocational difficulties of the literary heroes. Since the relationship between public administration and justice is not only a catalogue of *ageless* problems, but it is also reflected in situations that are very closely related to the age, situation and social constellation, a major pathway of law and literature and public administration and literature courses must obviously and necessarily be the study and interpretation of the works of contemporary literature. This, of course, does not mean the dethronement of classical and modern dramatic literature, or of the fiction of the 19th–20th centuries, but for the education and development of the reader (student), both synchronicity and the possibility of processing situations similar to personal ones related to personal reality have a decisive influence. Equally important is the clarification of the contemporary nature of literary works (conceptual narrowing): obviously, those literary projections and contemporary works have the strongest explanatory power on a subject that reflect the elements of the same (or at least similar) legal culture and wider social reality. That is to say, although Hungarian literature is only a small cross-section – at least

compared to the entire universal literature – it is not negligible the continuous and analytic incorporation of contemporary Hungarian literature into the material and set of arguments of law and literature and public administration and literature courses.

4. *Transforming attitudes of public administration, rendering values.* The picture would not be complete without mentioning, for example, that the weaknesses and shortcomings of public institutions in contact with e.g. the Roma are often the results of the faulty attitudes, inappropriate interpretations of roles by the public administration personnel, etc. Defective attitudes cannot be changed exclusively by legal regulations, by performance assessment and monitoring, etc.; for the description of the mental state of the public servant and of the concrete social situation and of the interaction of these two, the methodology of social psychology can also be very useful.[19] This modern social psychology is no longer exclusively aimed at restoring information asymmetries but rather attempts to promote profound value-changing (!), and outlines a complex socialization[20] process in which one of the decisive elements of "mental programming is the overwriting of unwritten but valid public agreements and rules".[21] The change, therefore, depends, partially, on the programs that, – referring to the example used at the beginning of this sub-chapter – do not specifically have an impact on Roma and Roma organizations, but they offer a "qualification for a transformed attitude on the side of public administration".[22] *In this process the role-play-based development focusing on active participation has or can have an inescapable role while another important factor is the discovery and the individual and group processing of literary parallels. Regardless of the manner in which we look at the possibilities (reasonableness) of the* public administration and literature method, *it is a fact that the number and the importance of the courses and issues related to ethics and integrity [see also sub-chapter 3. of this chapter] had grown lately, that indirectly also points to the fact that the need for the elaboration of truly new approaches and for the use of original methods is stronger than ever.*[23]

5. We must also take into account the fact that the public servant working in public administration does not simply implement law, provide services and organize activities, but also encounters human conflicts, fates (losses), and in some cases he or she is as well involved.

Is it possible to resolve a dispute, settle any major legal issue in such a way as to exclude emotional difficulties and mental injuries from the process with complete certainty? Éva Ancsel writes – referring to Wittgenstein that "the education of today is aimed at reducing people's capacity for suffering".[24] Quoting an American saying: "parents are happy if the children have a good time". Ancsel also adds that education reducing the capacity of suffering and any other impetus that is striving for compassion, at the same time blocks the path from the knowledge available through the experience of these feelings.[25] While the literature teacher's vocation is to teach the students how to read,[26] the teacher of legal and administrative sciences must be able to develop, strengthen, and establish the basis of the knowledge of law students and of future administration professionals in order to be altruistic in their future activity. If we remove this (main) function from legal and administrative training, it will mean that we support the view according to which it is possible to train legal and administrative practitioners only by e-learning and distance education without any personal presence, since most things are conveniently learnable from books and electronic interfaces.

One of the possible forms of teaching how to *mourn* personal and community tragedies (i.e. the development of human responses expected in the service of the community) is the creation of a toolkit that permits experiencing and processing through literature and at the same time is partly independent from any worldview. In this case, the stories that appear to be fictitious and those that are realistic, but appear in a literary masque, will not only be simple legal cases that raise questions that can be easily answered with basic legal knowledge, but complex tasks – emphasizing legal contexts, as well – which will force students of public administration to totally reconsider (think over) the situation through real and inevitably personal relationships, to a certain extent, realizing the goals of self-knowledge and community knowledge of the current psycho-drama courses.

It is a matter of the teacher's attitude to what degree the law and literature/public administration and literature courses are characterized by the aspiration of moral education, and to what degree by the need to explore the new and emerging problems of interpretation,[27] and consequently by the need to develop the basic legal and debating skills, or by the intent to create a sense of security that is essentially worthless and can be best expressed by the phrase "something I have heard". However, wherever the focus of training is placed, it is a fact that the *explanation* of legal/administrative institutions by literary works is not merely one of the possible aids to "acquire the material, but rather a new approach to legal-administrative communication that has the ability to redefine and refresh the ethical component of the law (and of the public-political sphere) by an overwhelming representation of diversity".[28]

If one takes a look at the scholarly literature, it is obvious that almost all the contemporary authors make proposals regarding the reform of legal and administrative education in which the decisive, sometimes exclusive, element would be the introduction of practice-oriented training.[29] This is also consistent with the fact that, according to Hungarian experience,[30] the most successful trainings in the field of public administration are those based on personal presence: "The strengths of this kind of training programs are practical elements, methodological solutions supporting experience-based learning. There is exceptionally good feedback from participants to training-based programs, where group cohesion between public servants increases, personal relationships are born, and self-knowledge is evolving beyond professional knowledge".[31]

These scientific conclusions also highlight the possibilities offered by the method of *public administration and literature,* and open the way for such and similar *experimental programs.*

6. *Indirect exercising of text comprehension, text processing and verbal expression.* In addition to the classical problems of our higher education (and generally our Hungarian education), new difficulties have also emerged and have become massive in the last decades. The spread of bad reading comprehension skills is added to old mistakes such as self-serving teaching of rules without lacking the undergrounding knowledge. Regarding the latter, Marcell Benedek says: "the curriculum will have goals completely different from the ones planned. It does not teach how to recognize the beauties, it teaches only rules and facts from which the pupil as a reader cannot draw any conclusions."[32]

The training and output requirements of administrative professionals can be captured from the side of the social expectations raised towards them. In this circle, besides the

willingness of compassion and the existence of professional knowledge, one of the *legitimate expectations* raised towards public servants working for the benefit of the community is to have very good oral communication skills and good writing skills making them able to produce texts without distorting effects using appropriate words, style, language, etc., and avoiding mistakes.

One of the basic elements of the education and training of public administration employees is (or at least should be) the conscious and direct development of their oral and written skills.[33] There is obviously a need for controlled interactivity and for basic competences on both sides (students and trainers).[34] According to our point of view, the concept of public administration and literature is one of the most usefully targeted forms of this interaction.[35]

7. In addition to the practical considerations – related to communication – *there are more general arguments related to the conscious renewal of the Hungarian legal-administrative language.* Any training that focuses on the questions of language cultivation in its narrower sense, can also contribute to the conscious development of the given specialized vocabulary.[36]

The Hungarian state administration language was created during the language reform that took place in Hungary in the Reform Era. Its special suffixes (some of them still used), as well as its overly complicated sentence and phrases, its curious circulars were salient even in those days.[37] Dezső Kosztolányi's movement for the cultivation of the mother tongue in the early 20th century fights against, among other things, the excessively legal character of this language register (the so-called *wooden language* [*bikkfa-nyelv*]).

The oldest commonality of official language cultivation is the legal language; today, in particular, the interpretation of various kinds of loan words and loan translations, such as the interpretation of certain phenomena characteristic to the EU language use, and the action against Anglicisms have come to the fore. The most obvious problems include the fact that citizens do not understand, or do not properly understand laws or forms, etc., a reason of which, among others, is the fact that the administrative language (specialized vocabulary of law and administration) is strongly characterized by the lack of preverbs and the use of some specific preverbs in a manner that contravenes the rules of standard language use. Similarly, it is typical that mistaken practice uses phrases compound of a *meaningless* verb linked to a noun; for example, to exercise control, to take an action in sentences where the simpler and more accurate verbs *to control* and *to act* would be more suitable.[38]

It is essential that the introduction and dissemination of a unified terminology or the simplification of legal and official texts, the clarification of their content in order to make them *customer friendly* are tasks that are not possible solely through workshops of the employees of the sectoral ministry; these efforts need to be given a wider range of impulses by a wider circle of participants who – through debates – may reach the best solutions.[39]

8. *The need for more conscious appearance of pedagogy and didactics in legal education.* In today's most widely accepted approach to pedagogy, teaching is primarily to promote the acquisition of socially relevant cultural content, to develop the skills and the abilities to perform certain operations, to develop basic and special competences, to educate for a cultivated behaviour, to have an appropriate attitude in society (tolerance, cooperation,

empathy).[40] This definition is also suitable for describing the goals of the transfer of legal/administrative knowledge, with the remark that today's teaching is strongly lopsided; the systematic transfer of professional dogmatics-based knowledge has become the focus point of the aspirations, to the detriment of the development of human qualities and of the general training of future intellectuals (as possible functions) (see earlier). In the Middle Ages, the methods used in scholasticism are applied to universities: the presentation of the theses to be proved, the listing of arguments, and of the counter-arguments, the detailed presentation of the theses and the denial of the counter-arguments. The terminology of *didactics* was introduced by Comenius, father of didactics, in his work entitled Didactica Magna. In his work presenting new approaches, he suggests that things be presented through sensuous, experiential, intelligent, self-reflective considerations. His emphasis on authoritarianism is under burden, but he does not stop at the level of empirical knowledge, as he considers that the senses cannot by themselves lead to the knowledge of the essence of things, though their use is inevitable in the process of cognition. The theoretical concept of didactics, in addition to the intellectual elements, is as well built on emotions.[41]

What should a child learn? – the old question is formulated. According to Fináczy a child should learn that he/she is interested in by his/her natural desire for knowledge: "The main driver of a child when learning is the instinctive curiosity for the things that are unknown to him/her in the outside world."[42] Rousseau in his work entitled *Emil, or Education,* referring to this curiosity, warns educators, too: "While feeding the child's curiosity, never hurry to fully satisfy it. Offer him/her the question and permit them to solve it by themselves."[43] *Ready-made knowledge – according to Rousseau – is not worth much: "the child should not learn the science but find it."*[44] *In the (law and literature), (public administration and literature) courses, one of the most exciting tasks for students is the reconstruction of the story and novel events. In the current system of legal/administrative education, which focuses essentially on the acquisition and dogmatic analysis of rules, the students rarely encounter the task of fact finding. Even in those law courses where court decisions are being analysed, students have to deal with already prefixed legal facts that highlight the most relevant elements of the case, so the difficulties and pitfalls of the fact-finding itself have remain unknown for the students.*[45]

The relationship between law and literature (public administration and literature) is a lucky match for all those who want to renew the didactic features of legal/administrative education.[46] It is indeed lucky because, with some exaggeration, many of the negative tendencies in today's legal/administrative education can be handled well and can be controlled by using this method in a deliberate and planned manner. The most disturbing features of higher education in the domain of legal studies in our days – such as the lack of integrity, the rapid decline in the level of general literacy, the lack of interest, the lack of career and vision, the lack of mutual respect in the relationship between teacher and student respectively between students – can be well compensated by a legal/administrative higher education that builds on the relationship between law and literature. It should be emphasized that although higher education has a certain internal logic and framework elaborated centuries ago, one of the decisive reasons behind the *alienation* of students is the presence of Prussian-type teaching methods and environmental elements that remained unchanged in education. In this context, any method that really contributes to the

development of a pleasant environment and helps the free expression of opinions can become a real breakthrough in higher education. In this endeavour, increasing the number of practical courses and the forcing of seminarization cannot, in itself, lead to breakthrough results. The introduction of additional stimulating elements is also necessary, such as creating and offering an *aha experience* as a result of personal reading experiences; the atmosphere reminding of exams being delayed – at least for the seminar and, perhaps the most prominent element: presenting moral dilemmas as a perspective for the future socialisation of students in the world of legal practitioners, and at the same time as a tool for enhancing the career image and enhancing self-confidence.

Thus, according to the didactic-methodological approach, new forms of indirect transfer of knowledge should also be introduced in the process of education (e.g. through reading together literary works that deal with issues of public administration, describing, interpreting, analysing and adapting these works). These indirect methods play a particularly important role in dictatorships, since the only possibility for free interpretation of reality is art, but these methods may also be useful in a democratic social structure for the perception of processes, and for the understanding of the real weight and value of the social phenomena.

The connection between the two areas (administration and fiction) is, of course, not recent. There are also works that use fiction as an excuse to present the author's administrative, organizational and leadership theories or political ideas. A good example of the latter is Balzac's novel,[47] *The Government Clerks,* that is the carefully elaborated, detailed, administrative reform plan of the author aiming to reduce bureaucracy.

It is also necessary to highlight the civilizational fact that until the first third of the twentieth century legal-administrative literacy was not primarily a *labour-market factor* in the public sector and society; it was rather intended to signify the belonging to the respective political elite and ruling class, and its intention. For a nobleman or a civilian who respected himself, the opportunity to access higher education and to obtain theoretical education in the field of law or theology was precisely the consequence of his social status. It is important, however, to emphasize that this knowledge was in many cases more widespread than good; the social status and the relations, the general culture and the language skills of the public administration staff and state apparatus (German, Latin, French, minority languages) in most cases proved to be enough, especially when it was supplemented with the practical knowledge acquired with each case. However, as society became more complex, administrative and other legal activities had become more and more complex, as well and required more[48] specialized expertise from those working in different administrative areas.

4. The Possible Relations Between Public Administration and Literature

According to the simplest – and perhaps the most commonly used – scheme (see Chapter 2) in this research area there can be distinguished two distinct basic approaches: one that analyses how law appears in literature and the other one that considers the law itself

a particular literary genre (law as literature).[49] *This latter may become the subject of literary analysis.*[50] As a result, we may state that a differentiation must be made between public administration that appears in literary works and administrative law as a literary performance. This study – for practical reasons – uses the former approach to explore the criteria and the exemplified arguments suitable for group-formation that will allow the scientific examination of this area and will make progress in the field possible.

4.1. Law in Literature, Public Administration in Literature

In the relationship between law and literature (public administration and fiction), it is an essential question how close the legal motive is to the literary frame and genre? To what extent is the existence of a kind of symbiotic relationship important/necessary for the presentation of these aspects as a meaningful, contextual opportunity for interpretation? We instinctively give the answer that *the legal/administrative problem appearing in the literary work should be expressed and more or less well-defined and the character of the depicted figure should have sufficiently sharp contours.* This means that the presence of the law or of a legal practitioner/of the administrative phenomenon or of an administrative expert in the literary work is some sort of a guiding motif, or at least must be strongly emphasized in the work.

The vast majority of law and literary courses offered in higher education in law, follow the method presented by Anna Kiss. Everyone chooses a literary work, a novel, a poem, a short story or a drama and analyses it from a legal point of view; the end-of-semester evaluation is mainly based on this work.[51] Obviously, the interpretation of works that deal with administrative problems (that can be regarded narrower or wider than the legal subject matter) is made in a similar way.

The path leading to the correct interpretation of literary works is generally suggested to go through – not just in the context of law and literature/public administration and literature – three stages: contextualization, de-contextualization, and finally through re-contextualization. Contextualization is the intellectual effort to discover the meaning of the work in the light of the circumstances of its creation. This includes the discovery of the author's relationship with literary traditions and social problems of the age, as well as the presentation of the work's place in the author's oeuvre and the highlighting of the literary themes and aesthetic issues the author was interested in. In short, contextualization aims to outline the author's intentions, or at least to draw the horizon of acceptable interpretations, which, of course, include a multitude of possible interpretations, since the author's intention can never be clarified precisely. In the second phase of the interpretation, that is the stage of de-contextualization, we concentrate our attention on the work itself, as an aesthetic and intellectual whole, thus extracting it from the context of its creation. For a novel, this traditionally includes, for example, an explanation of the plot, of the characters and of the roles played by the characters; of the relationship between the narrator and the characters, and of the dramaturgical structure of the work. The very purpose of our investigations is to bring to surface the meaning hidden in the work, irrespective of the original intent of the author. Finally, the re-contextualization of the literary work seeks to

define those aspects of the current literary tradition and of social conditions, that can be used to delimit the variations of the meaning of a literary work perceived by us and – as a consequence – at the same time we can find a basis for our aesthetic values.[52] *The most definitive "[d]idactic result of the contextual interpretation may be the amplification of the students' emotional vibrations existing in the contradiction between reality and imagination, identification and critical distancing, which is not merely the basis of legal profession and literature, but it gives the basic tone of the creative human life in general, too".*[53]

If we try to make order in the domain of *public administration and fiction* – thus also helping towards a more and more conscious use of this method in the areas of legal/administrative education – we need to find the right categorization criteria that can be used to catalogue the dispersed and possibly displayed elements of the existing relationship in literature so far. In this study we will use three major approaches for the purpose of categorization:[54] 1. firstly, the administrative background and activity of the author of the literary work; 2. secondly, the literary genres used to represent the administrative theme; 3. and thirdly, I classify the otherwise available (collected) works according to the upcoming administrative themes (problems).

4.1.1. The administrative background of the author of the literary work

There are some authors for whom we cannot draw far-reaching conclusions from the fact that they attended law school or studied law when they used to be university students, or later they worked in public administration; in their works, the legal/administrative themes are often absent or only very indirectly present. This group includes Georg Philipp Friedrich von Hardenberg, also known as Novalis, who first had studied law at the University of Jena and then at Wittenberg, and later used his knowledge in the mining industry.[55] In spite of this biographic fact, his work entitled *Heinrich von Ofterdingen* does not deal with the law, the world of law or the *mining administration*.

Looking for Hungarian (counter) examples: János Arany – one of the greatest writers of our literature who worked both as deputy notary and as public servant in the Ministry of the Interior and was for a shorter period of time employed in the Hungarian public administration, in his works often recalls neighbourly disputes, and other similar legal problems.

Perhaps neither would have Péter Esterházy become who he had become if he didn't work as an employee of the ministry,[56] because the experience gained there obviously helped him in creating a new literary language promoting the legal-administrative wooden language and "interpreting the medium of this linguistic register".[57] The language form used by Esterházy in his novel entitled *Termelési-regény* [Novel of Production] is the result of conscious choice of style; the author could not have found a more suitable tool for describing and displaying this hard, brittle and in many ways opaque world.

As far as the staff of today's Hungarian public administration is concerned (in this respect, not including public servants, teachers, university lecturers), there are not many spectacular literary performances combined with an intensive participation, and even the existing works belong almost exclusively to the category of poems and short stories.

Of course, our aim cannot be a subtle evaluation of particular performances or of some kind of *total performance,* but it must be noted that the visibility of literary forums, workshops and experiments generated by the wider public sector or even within the public sector is low.

4.1.2. The literary genres used to represent the administrative theme

1. The first appearance of the subject under review is bound to the genre of *drama.* In *Antigone* of Sophocles, which is the third most frequently used dramatic work in the *Law and Literature* courses, after William Shakespeare's *Measure for Measure* and *The Merchant of Venice,* Antigone and Kreon are examples of self-righteousness and legal thinking, as opposed to the figures of Ismene and Haemon. Both Kreon and Antigone take in consideration only a particular sphere of values – for Kreon the city's prosperity, while for Antigone the family's unwritten rules are the only important issues, and both ignore the values represented by the other. Of course, the diversity of viewpoints and interpretations can be explained by the opinion of George Steiner, who distinguished the five fundamental conflicts of human life that can be the basis of a dramatic confrontation: man and woman, elderly and young, society and individual, living and dead, and the conflict between humans and gods. According to Steiner, Antigone is one of the few dramatic works in which all five conflicts appear.[58]

One of the peculiarities of public administration, particularly in dictatorial circumstances, is that the regime wants to encroach in the relationships of each of the above mentioned opposition pairs. Often in the literary representations of administrative systems having basically democratic structure, the focus is on the erroneous methods of solving these basic conflicts thus criticizing the wrong and unreasonable appraisal of the law, the content of the defective legislative instruments, or the attitude of the public servant who represents the lawful but inhumane procedures, sometimes without any consequences.

2. Among genres, perhaps the *novel* is best suited to present a request, an application, or an official decision in its integrity, without damaging the content of the text. Woolf has a very particular approach towards the novel: "The novel, and I think art in general, wants to capture our vision of life in its intense and intact entirety and not in its components, or interpreted aspects."[59] *This totality of epical tools is the motive for which law cannot lack literature; the institutions and texts of the law are so far from the most subtle contents of the notion of life, that it is worth using the mediating and interpretative role of literature that can offer solutions to understand the context of law.* In our days, law in many respects is like a modern novel, which is restricted to the presentation of the story or of the events without any emotions – and in this case this is a negative criticism – from which, in Virginia Woolf's opinion, "life disappeared and evaporated like camphor".

Similar issues are discussed by Peter Brooks, who examines the act of confession in the light of law, literature, and psychology and concludes that the law is incapable of providing the "fearless story telling".[60] *The latter reason is the one that almost compels the literary frame, thereby promoting the linkage of law with life.*[61]

Today's universal literature gives a number of examples, which cannot be all listed here, dealing with the administrative theme. Perhaps it is not coincidental, that the first novel of the most well-known authoress of our time addressed to adults, also presents an administrative problem. J. K. Rowling's *The Casual Vacancy* is a novel about the process and the background of filling a vacant seat in the council. In the shadow of the elections peppered with passion, tergiversation and astonishing blasts, Rowling draws the portraits of social workers and the local teachers in an extraordinarily *living way.* The plot follows several threads of action and gives a rather complex picture of not only the wider public life of the small town, but also the narrower public administration and its social environment.

Hungarian fiction, especially in the 19th and early 20th centuries, gives many examples of the faulty, sometimes humorous functioning of the public administration and of the executive power, highlighting at the same time difficult moral dilemmas, as we can see in Jókai's or Mikszáth's works. The newer Hungarian novel – similarly to international trends – often uses topics of secret services and police investigations. Under the pseudonym David J. Doesser, Dr. János Nagy, a former intelligence officer from the Information Office, published in 2012 at the Athena Press in London the book entitled *A Very Important Message* which is a memoir based on real events, disguised as a novel. The book is mostly based on events taking place in Hungary, and the focus of the novel is on the intelligence service of the Socialist Age, called III/I and its successor organization, the Information Office. An interesting thing related to the book – due to its author – is that Nagy, at the time of the first Orbán Government, was removed from the Office for espionage on behalf of the CIA.

Within the genre of the novel, a rarely used form is the *verse novel.* The most popular piece of the examined field is János Térey's *Protokoll. Regény versekben* [Protocol. A Verse Novel].[62] The protagonist of the novel, Ágoston Mátrai, the Chief of Protocols of the Hungarian Ministry of Foreign Affairs, leaves behind a Scotian dinner and drives to the beach. He is sitting alone in the middle of the deserted northern landscape and takes account of his life: "There is no way of doing anything, and this makes me sad. / What we had been left, will be handed on by us: the rituals are transmitted. / Help everybody, solve everything? / Our show: a symptomatic treatment." This resigning recognition is quite different from the life-wisdom that Mátrai formulates at the beginning of the volume: "You are my god, Frosty Protocoll! And you are my gods, you all, / Ordinary / mutually agreed / norms! If you don't exist any more / the unfold jungle will suffocate us." While this opinion considers protocol a culture-conscious, meaningful and civilizational activity, the former regards it as a substitute activity that, in most cases, is just an afterthought. There is apparently a great distance between these two opinions, and this is the journey that the hero of the Protocol is taking on the pages of the novel.[63]

One of the strengths of the novel is that it illustrates the inseparability of politics and public administration, and it also provides an accurate insight into this domain.

3. The genre of the *short story* is also a common framework and instrument for representing legal events and cases and characterizing administrative/legal professionals: Anton Pavlovich Chekhov's short story entitled *The Death of a Government Clerk* represented in those days the renewal of the genre. When reviewing the Hungarian examples, we also perceive the dominance of, or at least the emphasis, of police activity as

a theme in this genre. In the earlier Hungarian literature Kálmán Mikszáth's short story entitled *Egy rendőrzseni* [A Genius Policeman] and in the present days Krisztina Lamos' work entitled *Késésben* [Being Late] are good examples of the genre.[64]

4. In addition to the dramatic and epic genres, of course, we cannot forget *poetry,* which also has lots of special instruments like: intense depiction of reality,[65] humorous and at the same time revealing rhymes, epigram-like compactness, mysterious atmosphere of ballads – all of these contributing to the presentation of problems reaching almost philosophical altitudes related to the life of the community and[66] to the representation of the depths and disadvantages of law-making. Among the numerous examples here is Miklós Radnóti's two lines from one of his poems that is a masterful example of the genre being a tribute to a lawyer. The poem is entitled *Tünemény* [Phenomenon]:[67]

Couldn't it have become a law for itself,
so many smaller rules came to force to help.

4.1.2.1. At the border of fiction

Beside the most traditional genres, there are also combined genres, as follows:

1. The traditional form of displaying science accessible to the public is the genre of *study* and that of the *essay.*[68] *One of their characteristics is that they often use literary tools in the processing of their subject, and they (also) strive for literary influence.* It would be a mistake to hide the fact that both the study and the essay have changed dramatically with the rise of the electronic media. Indeed, not only the forms of speaking about the law/public administration, but also the way in which the legal and administrative sphere is operated had been fundamentally changed by the fact that legislative processes and individual decisions are not merely subjects of debate for a narrower circle (as it is conceived in its traditional sense), but also for the broader popular public, and consequently the media speaks about them as its *own.*[69] One of the peculiarities of the *new law life* that dissolves in the knowledge about law/public administration is that the otherwise complicated subjects of law are aimed to be presented to the reader with eloquent simplifications renewed and developed day by day. We do not even have to look for faraway cases: the writings concerned with the tax system appear on various websites on hundreds of pages.

2. Another genre being at the border of fiction is the *biography,* which itself as a genre belongs to the essay literature, if its purpose is not (primarily) the scientific research and communication of data but the portraying of the human character, which always requires a kind of artistic imagination.[70] Because of the very stylistic nature of the biography, it necessarily shows *literary values* in the presentation of a lifeway and of its carrier. These kinds of writings differ from scientific rendering of facts, due to the fact that (auto) biographies having lots of biographical data become a special journal, a work that presents life to the reader, the opinions and the worldview of the protagonist of the biography (both in case of a real self-written journal, and in case of journals having external authors).

3. Another genre related to the former is the *interview-volume consisting of edited conversations,* many examples of this genre being available in Hungarian literature. Here we

can mention the volume based on a long series of conversations with the well-known lawyer, Dr. György Bárándy.[71]

In Hungary, there is a tradition to publish volumes of interviews and biography-like writings with the current prime minister, and these books are not merely scientifically elaborated studies, or collections of newspaper articles, but they want to affect emotions, too.[72]

4. In addition to interview volumes of prime ministers and ministers, as we have already mentioned, the world of secret services[73] is constantly present in our broader literature with a genre related to the aforementioned genres, that is *fact-finding and investigative (essay) literature,* because there is demand for such books.

5. The systemic features of the legal-administrative sphere, the universal misery and limitations of the system, can be very well presented by certain genres such as *humoresques* and *pamphlets* – which are particularly suited for criticizing the law and the lawyer, revealing their plight in a moral sense, and, in all cases, this presentation is turned into sharp and ruthless criticism – of the society. Mark Twain's pamphlet, *Running for Governor* (in fact, a short story) is an excellent example of a literary representation that reveals with meticulous accuracy the scandalous reality behind a satirically exaggerated sloppy jumble, which on the one hand justifies the purpose of selfish means in legal procedures and on the other hand it laughs at its ineffectiveness. During the presentation of different forms of the death of law, the writer is in a state of difficulty, as he presents a problem the professional characteristics and legal delicacies of which are not or are hardly accessible to a significant part of his readers. In this case, the most obvious solution is to increase the malaise, pumping it into a giant balloon, and then make it spectacularly ridiculous.

6. We cannot forget about some of the *transient or mixed genres* either – that specifically deal with the subject of public administration. An example of this is the pamphlet-like writing, which essentially mixes the features of the scholarly studies and of the essays, among which the most well-known is C. Northcote Parkinson's volume entitled *Parkinson's Law: The Pursuit of Progress,*[74] *a book that does not lack scientifically based arguments, is a sharp criticism of the bureaucratised public administration, and having an ironic tone in its every sentence, becomes a totally sarcastic review of public administration.* According to Parkinson's calculations, based on mathematical formulas, there is a moderate increase in the number of officials on an average of 6% per year, regardless of the actual workload. That is, bureaucracy not only reproduces itself, but also expands and always has a decisive role to play in its continuous self-importance.

7. Moreover, we cannot forget the joke as a specific literary genre, as it is still a flourishing area that produces new crops every day, to present law and especially to portray the scumbag lawyer/civil servant.[75] *In the narrower domain of public administration, the largest number of jokes is about police officers, this type of joke is likely to occur on a daily basis in at least dozens of jokes in Hungary.*[76]

We also encounter books that bring together jokes, short *humorous stories* (anecdotes [adomák]) from several public areas. One of the most popular such volume is the book entitled *Mosolygó közigazgatás* [Smiley Public Administration] by József Pogány published before World War II. "Where does the humour of dry formal life generally come from?"– Pogány asks, then he answers: "First of all, from the degeneration of the so-called

bureaucracy, secondly, from the discrepancies between regulations and their implementation, that appear in the very moment when the statutory provisions face the individual. When private life is limited by regulations, people respond by mocking the situation. People would like to survive regulations, so either they try to ignore them or if this is not possible, they – while suffering from their absurdity – make jokes of them. But most of all, the humour of public administration, appears when simple-minded people, lacking any education for official life, gain the right of action (policemen, criers, coroners). It is no wonder, that while they do their work with serious obedience, in their actions or writings humour appears by itself."[77]

In conclusion, besides acknowledging the primacy of the novel – we can conclude that there is hardly any literary genre that would not be suitable for displaying certain administrative topics; indeed, because of the characteristics of each genre, certain themes may appear more comfortably and sometimes even more appealing in frameworks dictated by certain representation forms.

4.1.3. The possibility of categorizing according to processed topics

Due to the diversity of possible topics, I would like to point out only examples in this section; I do not aspire to completeness nor do I want the categories that I describe to be homogeneous. This latter aspect also means that works in a certain category are in many cases matched to successive categories; some novels would stand in almost all categories...

It can be seen that authors and writers of different nations often run along well-defined themes while creating their works. The significance of historical, geographical, cultural and other determinations cannot be overestimated. Obviously, in the works of Heinrich Böll, many of the moral and thus legal conflicts of German society after World War II appear, and consequently, many aspects of the problematics "I did it for it was an order", emerge. In case of Böll, the great value of the literary gown is that he illustrates not only the peculiarities of defence administration by presenting in an objective manner without any emotions, banal cases like the stealing of butter by mess officers,[78] *or more serious cases of war crimes, but he also outlines the circumstances, motivations and other legally relevant facts that should otherwise be explored in any case. "Oh God, I have often wondered what a terrible power must it be the force that can deprive millions and millions of their will, and can force them to face death – even if they are cowards or frightened – as we have done it in that night."*[79]

If we were to find out on the basis of our literary works what areas and aspects of the Hungarian public administration were in the focus in our post-regime society – assuming that fiction is the imprint of what is really important in the given era – the outlines of some areas could be well perceived. Obviously, the privatization or the appearance of the banking world were among the most important topics. These topics, which can be treated as important elements of economic and political transition, have provided many administrative contexts that appear in reference works sometimes with a documentary character. Gábor Lenkei's novel entitled *Vegyünk bankot!* [Let's Buy a Bank!],[80] the main character of which is *Péter Ovács, a young lawyer, presents the tragicomedy of privatization in*

the 1990s in Hungary. In the story, the state-owned bank financed its own sale, and Ovács with his formerly fired friend from the bank received the cash for the disbursement from the bank. The semblance of legality is maintained all over the story, so the ending of the novel is not at all suspenseful. However, in P. G. Woodehouse's style, the author puts a curved mirror in front of all the actors of the process: the buyer (Ovács who seems to be the successor to Psmith), the bank itself and the state officials who let this transaction take place in such a form.

During the privatization process, not only Gábor Lenkei was encouraged to write, but others like István Kerékgyártó also tried to reveal a segment of the life of Hungary between 1989 and 1997. His book, *Vagyonregény – Ipszilon történet* [The Book of Riches – the Y-story][81] is a diary with personal reflections and sociological-political commentaries, the entries being written by two women, responding to each other's thoughts. The story with surprising methods, however, responds to the state of the public at that time, most of the journal entries correspond to real events, so the novel becomes a picture of the society.

Of course, the relationship between public administration and fiction can be explored not only according to the particular area of administration, but also taking as a basis the characteristics of public servants. The applier of the ruthless law reverts to being a human through literary means, and will become a sentient creature for whom it is difficult to express the feelings and desires otherwise important for him.

In the significant part of these works it is not revealed (because it is not particularly important for the message),[82] whether the public servants, the clerks or the officials have any legal studies or they act on birth right, or based on a diploma obtained after graduating a simple course. Not only do we experience in practice that relationships, habit and skills often blur for a certain person the conditions otherwise necessary to fill a particular job; in literature, these details appear to be of even lesser importance because they are not so relevant for the transmission of the message.

In the Hungarian literature we see that earlier, the actors of the local and regional public administration *dominated the market.* This is well illustrated by books like *A falu jegyzője* [The Village Notary] by József Eötvös or *Egy falusi nótáriusnak budai utazása* [83] [The Village Notary's Journey to Buda] by József Gvadányi. The Village Notary is the most famous novel of József Eötvös being the first really important intent to give a cross section of the entire society. The novel sets objectives similar to those of Balzac's work.[84] In the novel, we get acquainted with a Hungarian county in the Reform Era with its whole staff and poor people, political struggles and everyday life together with the typical forms and locations of county life. Macskaházy who is the lawyer of the sub-prefect's wife, helps her steal the patent of nobility of Tengelyi Jónás, the village notary, together with some materials and documents uncomfortable for the lady, thus stopping the clerk from running at the local elections.[85]

Jókai's work, entitled *A régi jó táblabírák* [The Good Old County Judges] deals with a topic related to local-territorial administration.[86] *In his work he raises questions as whether public interest may be subject to private ownership; or more precisely: can the hungry, flood-prone mass be satisfied from the provisions storehouse of the landlord?*

The basic question is the same in Zsigmond Móricz's novel entitled *Rokonok* [Relatives]. In the last great Móricz novel, the hero, István Kopjáss, is a young member of

the gentry who is superior to the average and aims high, using his talent. As a simple cultural consultant, he still has great plans and dreams, but as soon as he becomes the prosecutor of Zsarátnok (a small Hungarian town), he soon begins to deny his principles, and is absorbed by the world of the Panamas, and he only cares about his own career. By the time he finds out the cruel truth, there is no moral ground for him to mend the situation and he commits suicide... The *Relatives* illustrates that those who make a series of compromises will lose their most precious features and will be just like the *born villains*.

The latest Hungarian literature – compared to the above quoted works – is attracted mainly to the institutions and actors of the central administration. What exactly is in the background of this attraction, cannot be exactly known, although it may be suspected that nowadays the everyday life of a ministry is even more accessible for the writers. Among the reasons we may include the fact that the literary *elite* is also in contact with representatives of this sphere, for example, when participating on official dinners, receptions or other social events.

László András in his novel[87] entitled *Egy medvekutató feljegyzései* [Notes of a Bear Researcher] presents with means of literary parody the start of a career in the ministry. Zsolt Koppány Nagy's novel entitled *Nem kell vala megvénülnöd 2.0* [You Shouldn't Have Grown Old 2.0] creates a grotesque world with vitrioliously[88] humorous and vigorous precision, a world that is very similar to our present. János Fényező Nagyjuhász, a civil servant growing old and hungry for love, lives his everyday life in the Department for Salt and other Brining Materials that is muggy with intrigues. In the negative utopia of Zsolt Koppány Nagy, the older civil servants are liquidated, so the protagonist can do nothing but flee and think about his life... Counter to the work of László András (in which we meet the hero at the beginning of his career) Nagy presents the emotional, psychological and physical tribulations of leaving office for good.

The ministry and the life of a ministerial employee – being an ideal subject of a novel – are recalled in other places, too: the above mentioned verse novel written by Térey takes the reader into this world.

Additionally, one of the most commonly used legal-administrative roles in a literary work is that of the employee dealing with law enforcement – sometimes called a judge, sometimes having another function (e.g. a civil servant deciding on neighbouring issues, etc.): as the notion of a county judge for instance is not valid any more, it should be replaced under the present conditions with another role having an essentially administrative character. A judge sometimes is an oracle, a real hero, but sometimes a person having surprisingly human features: "Who was the one who could administer public affairs with wisdom and honour – but little money? The good old county judges. Who excelled in theology, science and morality? The good old county judges."[89]

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2 That is, if we approach from the perspective of literature, either the legal-administrative theme (issue of law, codification problem, etc.) appears directly in fiction, or the legal language used in a literary oeuvre becomes the subject of the research. As a third possibility: the indirect effect of legal texts on the process of literary creation might become demonstrable. From the point of view of law (science of law), the question arises: what was the role played by the literary works of the age, by the political, social criticism of the particular era, etc. and by some quasi-literary works, for example, the Bible, in the formation of legal texts, and that of language use, new terminologies, and so on.

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8 Szilágyi, *supra n. 8,* at 6.

9 Empirical sociology, the actual *sociography,* came into being at the beginning of the 20th century, its current mission being the description and characterization of *all conditions and status* of a community in a particular age using every possible tool and device. As Bartha points out, "emphasis is on 'every tool and device', which opens a wider spectrum to the practitioners of the genre compared to those available for scientific sociology. The arena was extending from statistics to economics, from geography to pedagogy, from politics to literature that was theoretically gaining its independence at the time when sociology was born, and it was used by our sociographers profoundly in the discussed period. Paradoxically [...] the complexity of sociology was the most elaborated in Eastern and Central Europe". Ákos Bartha, Szaktudomány vagy szépirodalom? Szociográfia a Horthy-korszakban [Science or Fiction? Sociography in the Horthy Era], 54, in *Debreceni Disputa: kulturális-közéleti folyóirat,* vol. 14, no. 4 (2010).

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In the meanwhile will he lose his stamp?
Is the community a pack if persons lack
Any sense of the pack?
Will the pack say to the person what to do?
Without taking its right to do?
Is the pack for all? Or all for the pack?
ABC: language or shop?
And what is the role of the Pack?
If I write about it will I be the sad sack?
Thanks pack, but no thanks.

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Public Administration on the Financial Market in the Czech Republic

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Abstract: This article is dealing with licencing of the financial institutions on the financial market. Licence procedure is a special administrative procedure dealing with systemic important institutions – banks. Good public administration in this area is a basic prerequisite for stabile financial market, because only those institutions proven to be good and stable enough might pass through the difficult administrative procedure, which is licencing procedure. This article aims to confirm or refute the hypothesis that a proper and consistent procedure of taking away licences supports the general objective of regulation and supervision, namely the maintenance of financial market stability.

Keywords: public procedure; administrative procedure; licence; bank; liquidation; bankruptcy

1. Introduction – Granting and Taking Away Licences and Permits on the Financial Market

It is clearly believed that one of the most important parts of financial market regulation and supervision is the stipulation of conditions on which one may gain access to the financial market as a financial market entity with subsequent monitoring ensuring that the conditions are met and business is conducted in the proper way. These are macro-prudential rules stipulated for the entire financial market – if one wants to become a financial market entity, a licence (banks) or a permit (all the other financial market entities) must be gained. It is far beyond the scope of the present paper to analyse the licencing procedure for all financial institutions so only two are discussed here: banks and securities traders, arguably the second most important financial market entity after banks.

This article aims to confirm or refute the hypothesis that a proper and consistent procedure of taking away licences supports the general objective of regulation and supervision, namely the maintenance of financial market stability. The hypothesis only applies to the termination of financial market entities because when licences are being granted, it is crystal clear that a proper procedure observing all the conditions necessary for the licence to be granted helps to maintain financial market stability.

There are two reasons why only two entities (banks and securities traders) are discussed here in connection with licences and permits. Firstly, the two are undoubtedly the most important institutions conducting business in the financial market (especially banks and their conduct is essential for the stability of the entire system). Secondly, legal norms linked with these entities are rather specific (this is especially true of banks) and they thus illustrate the issue very well.

Taking away licences and permits is further analysed here on a more general level, i.e. in connection with all financial institutions, and not just banks and securities traders. This is justified by the fact that the end of licences and permits is more or less the same (barring a few irregularities), regardless of which financial institution's licence or permit is cancelled.

2. Licencing Procedure for Banks

If anybody wants to offer banking services (i.e. conduct business as a bank in the Czech Republic), there are two options according to Act no. 21/1992 Coll., on banks (hereinafter the Banks Act).

1. The first option is to gain a banking licence from the Czech National Bank (hereinafter CNB) or a permit to offer banking services, i.e. accept deposits from the public and offer credit.
2. The second option is to offer banking services in the Czech Republic by banks whose headquarters is in another EU member country by means of a branch as a result of the so-called single licence in the banking market; two conditions are necessary: the foreign bank must own a valid licence from the country of its headquarters and it must follow the procedure stipulated by EU law.

In accordance with the international contract, the CNB can issue a directive raising the number of countries whose banks have the same advantages while doing business in the Czech Republic as banks that are from EU countries. Whoever conducts business under the single licence in another country, is supervised by the domestic supervisory body, with the exception of a few clearly-defined legal norms of the home country. If a bank wants to offer services via its branch, it must go through the so-called notification procedure, in which it presents information regarding its business plan, its list of services, its headquarters, its organisational structure, and its head. These branches only need to comply with the registering obligation of taxable entities stipulated in a special legal norm.[1] Banks with the headquarters in EU member countries are entitled to conduct business even without setting up a branch if their business is not permanent.

However, this paper only goes on to discuss the granting of a banking licence (hereinafter licence) in a licensing procedure – when a new banking institution under the supervision of the CNB is established.

The licence application (the required form) is submitted to the CNB along with a proposal of the association articles. The minimum capital for would-be banks is CZK 500,000,000, and this is also the required minimum amount of money gathered by deposits on a pre-arranged account. The licence requirements are stipulated by the CNB directive no. 233/2009 Coll. The application must be submitted in writing and it must include basic information about the applicant, the reason(s) for the application, the objective of the bank, a business plan and a market analysis, plus a number of other documents. All of these are considered in the licensing procedure.

The licensing procedure formally begins when the CNB informs the applicant that the procedure has commenced. This is, of course, only possible once the application form has been submitted. Along with the commencement of the licensing procedure, the CNB asks the applicant to comment on/make a complaint about the documents submitted in the application form or the method of their assessment. Typically, the licensing procedure lasts 6 months unless it is interrupted because the CNB requires supplementary information. In such a case, the licensing procedure can last up to 12 months. The CNB assesses especially the capacity of the main shareholders regarding their financial stability and power, but it also looks into the level of expertise and the moral standards of persons proposed to form the statutory and executive boards of the bank. Moreover, technical and organisational equipment necessary for the services to be offered is examined, as well as the feasibility of the economic plans for the future liquidity and profitability of the bank. The applicant must pay an administrative fee of CZK 200,000.[2]

Provided that all the necessary conditions are met, the CNB grants the licence. Typically, the category of administrative discretion is applied here because while some aspects and conditions affecting the decision to grant the licence may be objective, others appear rather subjective and their assessment is thus left to the discretion of the assessor. For instance, in some cases it might be disputable whether a given person reaches the required level of expertise or moral behaviour, or whether the technical background is appropriate enough for the type and range of services that the banking institution plans to offer. In order to prevent such unclear situations that may result from some rather vague categories, the CNB issues official notices that provide more information about the categories and they specify the requirements that applicants should meet. The assessment of such categories as expertise or credibility is thus hopefully clearer and more predictable.[3]

If the application is successful, the licence is given for an indefinite period. The licence stipulates the activities that the bank is allowed to perform; alternatively, it provides a list of conditions that must be met before another type of activity is initiated or that must be observed during the performance of this activity. Some activities present in the licence may be conditioned by the granting of a special permit (e.g. a permit for services in the investment industry which is granted under Act no. 256/2004 Coll., Capital Market Undertakings Act).

In a nutshell, before a bank comes into existence, there must first be a joint-stock company which, sooner or later, manages to meet the requirements of the Banks Act; only after the company has been granted a banking licence, can the company call itself a bank.[4] The purpose of business activities listed in the List of Company Registers is banking services or all the services that the applicant is entitled to perform according to the licence.

If the CNB's decision is negative, the applicant may file a remonstrance, which is a regular remedial measure present in the administrative order; the decision (which is irrevocable) is then made by the Bank Board of the CNB. The remonstrance, however, has no suspensory effect and the provision about the possible conclusion of the remonstrance proceeding cannot be applied.[5]

3. Granting Permits According to the Banks Act

In a number of cases the Banks Act demands that banks, prior to making a certain step, ask for permission or inform the CNB of what they are going to do. A prior permission is required in the following cases:

1. a person intends to obtain direct or indirect share of the bank worth at least 20%, 30%, or 50% of the voting rights of the bank, including a person who wants to reach the above-mentioned limits of the basic capital of the bank, including a person who will become an executive member due to a contract to control the bank – this obligation also applies to persons acting in compliance,[6]
2. prior to a contract about the sale of the bank ort its part,[7]
3. prior to a bank merger, a division of a bank, or a transfer of funds to another bank as a shareholder,[8]
4. when a decision to terminate a bank is reached at the level of the general meeting or when the decision affects the activities which can only be performed by a licence holder,[9]
5. when the basic capital is reduced, unless it is a case of loss compensation,[10]
6. when an auditor is about to be chosen.[11]

Within two days after receiving the application, the CNB must confirm in writing its acceptance, and it must inform the applicant of the deadline by which the CNB must reach a decision. The CNB must do so no later than 60 working days after sending the confirmation notice. If this deadline is missed, the applicant can act as if the licence has been granted.

It should be stressed, though, that if there is an increase in the qualified interest in the bank or if there is a takeover without the consent of the CNB, this does not mean that such a legal act is automatically nullified. Yet, the voting rights linked with this act cannot be exercised until the permission from the CNB is granted. Legal acts and resolutions of the general meeting made without a prior consent are invalid.

The participant in the prior consent proceeding is only the requesting bank; in the following cases it is also the second contractual party: when the bank or its part is transferred according to letter b), or when there is a bank merger or a bank division, or the funds are received according to letter c).[12]

The notification duty is applicable in the following cases:

1. the reduction of the direct or indirect share of the bank under 20%, 30%, or 50% of the voting rights – this duty also applies to persons acting in compliance; after the Banks Act amendment, the duty also applies when the share in the basic capital is reduced below the above-mentioned limits or when there is a loss of control over the bank; further, if there is a proposal to transfer such an amount of share or other rights that constitutes qualified interest in the bank,[13]
2. a change in the association articles,[14]
3. a change of personnel in the statutory body of the bank or in the executive board,[15]

4. an intent to open a branch abroad[16] – having received the notification about the branch abroad, the CNB decides in an administrative proceeding whether the conditions stipulated by EU law are met (according to Article 5c – 5m of the Banks Act)[17] and if the decision is negative (the conditions are not met), it is reviewable in court,
5. the acquisition of qualified interest of another legal person.[18]

4. Licensing Procedure for Securities Traders

The establishment and conduct of business of securities traders is governed by Act no. 256/2004 Coll., the Capital Market Undertakings Act (hereinafter CMUA). Before the application is submitted, it is necessary for the applicant to clarify its business intent since it is a key aspect in determining the line of business, particularly as regards the scope of investment services. This also determines the minimum capital requirements, the capital adequacy requirements and other material, personnel and organisational requirements.

The only participant in a permit procedure is a joint-stock shareholder or a limited liability company with its headquarters in the Czech Republic; the application must be submitted in the form prescribed by the CNB including all the compulsory supplements. The application can be submitted by a company even before the company is listed in the List of Company Registers, but it must meet all the criteria required for the permit before its entry in the List – the company must be able to prove them in a trustworthy manner. During the permit procedure it is possible to order a hearing in which the CNB officers specify what additional information is needed to complete an imperfect application. The CNB decides whether the permit is granted or not within 6 months from the day it received the application, unless there have been delays caused by an incomplete or imperfect form. This deadline became stipulated by law in accordance with the MiFID Directive.

In case an existing securities trader plans to make a change in their scope of business, there needs to be a new permit procedure, which is, to a certain extent, similar to the original procedure. The CNB must assess all the lawful requirements as when a new permit is about to be granted; though in this procedure the applicant only provides that information which is relevant for the change in question. Of course, the applicant may refer to the documents that have been submitted in the past three years, providing the relevant data have not changed.

The application seeking to gain a permit or a permit expansion (including all the relevant documents) is purely the responsibility of the applicant and the CNB is in no way obliged to look for documents that are necessary for the applicant to meet the legal requirements.

The administrative fee, payable before or along with the application, is CZK 100,000[19] for a permit, or CZK 10,000 for a permit extension. If the fee is not paid, the CNB informs the applicant and sets an extended deadline; if even this deadline is missed, the CNB terminates the administrative procedure.

It is interesting to note that along with a permit application (or even later), the applicant may apply for the registration of another business activity (i.e. other than investment services).

Such a registration is for free and it is not decided in an administrative procedure.[20] If the conditions linked with this business activity are met (i.e. they do not prevent the offer of investment services and they do not prevent efficient supervision of the securities trader), the CNB registers the activity and issues a registration notification.[21] This registration certifies that the conditions stipulated by law have been met. Yet, such a registration can *modify* itself into an administrative procedure, if the applicant fails to give evidence that the lawful conditions have been met – the CNB then initiates an administrative procedure with the applicant and cancels the registration application providing the applicant does not meet the criteria even during the administrative procedure.

5. Taking Away Licences and Permits of Financial Market Entities

Miroslav Singer, the former CNB governor, asserted[22] that by close of observation of liquidation rules the CNB helps to increase the transparency of the financial market for its participants, which is why I deem it apposite to include the matter of taking away licences and permits in this article. I attempt to analyse what happens when a financial institution is being liquidated or when it is declared insolvent; in other words, when preventive measures and lawful requirements aiming to prevent the bankruptcy of financial institutions fail.

The licence to conduct business in the financial market is revoked in the following ways:

1. revocation of a licence or a permit as a sanction,
2. revocation of a licence or a permit at the request of a financial market entity,
3. revocation of a licence or a permit resulting from the decision of a financial market entity to close down,
4. revocation of a licence or a permit resulting from the decision of a financial market entity to terminate the activities for which the licence or the permit is needed,
5. revocation of a licence or a permit after it has expired.

Once the licence or the permit has been revoked, the institution enters liquidation unless it enters a different type of market where the licence (permit) is not required; alternatively, an insolvency proceeding may also be initiated.

6. A Company in Liquidation

Generally, liquidation of a legal person is treated in Act no. 89/2012 Coll., the Civil Code (hereinafter the CC), which states that the primary objective of liquidation is to settle and distribute the property of the legal person, to settle its debts to creditors and lawfully dispose of the property that remains after liquidation.[23] The ultimate objective of liquidation is the expungement of the institution from the Commercial Register. A legal person enters liquidation the day it is cancelled or declared invalid. Once the legal person has entered liquidation, the liquidator, without unnecessary delay, makes an entry about it in the public register.[24]

As far as the liquidation of a financial institution is concerned, the crucial thing is the appointment of a liquidator. There are only a few particularities in comparison with general legal norms. Natural or legal persons can become potential liquidators for all financial institutions apart from banks, where the liquidator must only be a natural person.[25] Such a provision is motivated by the unquestionable importance of banks and the extremely high level of responsibility that their liquidation entails – a natural person is liable for unprofessional conduct with all their property as collateral. What is important is the fact that the liquidator is appointed or removed by the court, which follows the proposal of the CNB – the court has 24 hours to announce its decision.[26] The CNB plays a prominent role in the process of liquidation since it is not only a supervisory authority – it actually also determines who will be appointed or removed as the liquidator (the court is the institution ultimately responsible for the decision but it always follows the proposal from the CNB). Furthermore, the CNB also determines the liquidator's remuneration, which is paid from the property of the liquidated institution. If the property does not cover the total remuneration, it is covered by the state. The liquidator is obliged to act with *due managerial care,*[27] hence their liability for any damage; an exception is the liquidator of an investment company or an investment fund –they must act with *professional care.*[28] The liquidator's obligation to act with due managerial care can be inferred from Article 159, par. 1 of the Civil Code, which maintains that whoever "accepts the office of a member of an elected body undertakes to discharge the office with the necessary loyalty as well as the necessary knowledge and care. A person who is unable to act with due managerial care although he must have become aware thereof upon accepting or in the discharge of the office and fails to draw conclusions for himself is presumed to act with negligence".[29]

What is the difference between the two notions? Professional care is generally perceived to entail a higher level of expertise, higher requirements and, inevitably, a higher amount of liability for a breach of the *professional care* rule. If the rule is violated, it is a case of an administrative offence with all the administrative and legal consequences (administrative punishment) with the CNB acting as the administrative body. If the *due managerial care* rule is violated, the consequences are *only* in the area of civil procedure – the given institution can only demand a loss compensation via a lawsuit. With the exception of the liquidator of investment companies and investment funds, the CNB does not currently have the power to sanction liquidators who fail to adhere to the rules.

As for the liquidators of financial institutions, the CNB chooses them from persons who are on a special list of trustees in bankruptcy; these persons have passed a specific exam for trustees and they are expected to possess a high level of expertise in this area. The same requirements that apply to the choice of trustees in bankruptcy also apply to the choice of liquidators, which seems wholly logical.

Once it is known who the liquidator is going to be, the CNB submits a proposal of their appointment to the relevant Commercial Court in charge of the Commercial Register. The court then officially appoints the liquidator and the appointment comes into effect the moment it is disclosed either on the official noticeboard of the court or on its electronic noticeboard. When this happens, the liquidator acquires the competence of a statutory body and one of their main duties is to announce in the Official Business Journal that the institution has entered liquidation. The announcement also contains an

appeal to potential creditors of the institution to submit their claims. The deadline for the creditors cannot be shorter than three months.[30] A problem may arise if there are more creditors than previously expected and the financial situation of the institution reveals that there is, in fact, no other option but to initiate an insolvency proceeding of the financial institution. In my opinion, it is reasonable not to conclude the process of finding out creditors too soon, and the insolvency proceeding submission should also be considered carefully. The reason is that liquidation is closely supervised by the CNB (the CNB can even remove the liquidator, i.e. it submits such a proposal and nominates another liquidator). In contrast, an insolvency proceeding is not supervised to the same extent because the CNB can only demand information from the trustee in bankruptcy; this, however, is not even enforceable. I am convinced that liquidation is fairer, more carefully controlled and more transparent because of the CNB's intervention and because of the requirements placed on liquidators.

7. Insolvency Proceeding of Financial Institutions

There are several substantial differences that apply to financial institutions in insolvency proceedings compared to other entities. Financial institutions are not even subject to the same legislation; or rather, the type of insolvency proceeding is determined by the fact whether it concerns a credit institution or not. It is worth highlighting that unlike in a typical list of financial institutions, Act no. 182/2006 Coll., the Insolvency Act, as amended, states that a financial institution is a bank, a savings or credit bank, an insurance company or a reinsurance company.[31] The bankruptcy of financial institutions is dealt with in the Insolvency Act (Article 2, section IV), which explicates the differences in comparison with a *regular bankruptcy*. While there are, admittedly, certain differences between banks and (re)insurance companies, these seem to be rather minute and I thus treat the insolvency of all financial institutions as one group here.

A big difference from the usual insolvency proceeding under the Insolvency Act, is the fact that for financial institutions the trustee in bankruptcy may only be a trustee with a special permit.[32]

What has been mentioned so far clearly suggests that there are, as a matter of fact, two schemes of bankruptcy. On the one hand, there are financial (credit) institutions, on the other hand, there are other institutions such as securities traders, investment companies, investment funds, pension companies and pension funds. If these non-credit institutions go bankrupt, they are dealt with in the *regular bankruptcy* scheme. It is not even necessary that their licence or permit be revoked; unlike with financial institutions where licence revocation is a prerequisite for the application of the Insolvency Act.

What is then the main difference between the two schemes? Apart from the above-mentioned necessity to revoke the licence before an insolvency proceeding may begin, it is also people who can submit the insolvency proposal – for financial institutions, the proposal may be submitted by, except for creditors and debtors, the CNB, as well. Another unique option is a solution via liquidation. Yet another important option is the announcement of the crucial parts of the insolvency decision in the Official Journal of

the European Union, as well as the fact that the claims of creditors resulting from the accounting of the debtor are registered automatically, of which the creditor is informed by the trustee in bankruptcy within 60 days of the company going into liquidation.

These exceptions are quite logical and straightforward. As the CNB supervises these institutions and it has a large amount of highly relevant information about them, it is desirable that it should have the right to lodge an insolvency proposal. It is also wholly logical to include automatically all the creditors present in the accounting because the insolvency of a financial institution is always of such a scope and magnitude that one cannot expect all the creditors to be informed of the insolvency and to submit their claims; this is especially true of foreign creditors. This would also undoubtedly result in an immense administrative overload for the trustee in bankruptcy and the insolvency court – it would be neigh impossible to process such a vast number of documents. Naturally, problems may arise if the accounting is badly kept or even missing – this means a considerable load for the trustee in bankruptcy that must do their best to obtain the relevant information. If the information is still unavailable, there is no other option but to include those creditors that have been found out – either from the accounting or by means of applications submitted after the announcement in the Official Journal of the European Union.

I have suggested above that liquidation is more favourable for creditors than bankruptcy. What happens, though, if, theoretically speaking, these two clash? The CNB may revoke a licence or a permit and suggest a liquidation entry while submitting a proposal to the relevant Commercial Court with a proposal as to who the liquidator should be. The court has 24 hours to decide and in this interval a debtor or a creditor may submit an insolvency proceeding proposal. The insolvency proceeding commences the day the proposal physically appears at the court.[33] The insolvency proceeding is thus opened and, a few hours later, the court opens liquidation and appoints a liquidator. Thus, the two clash and the institution is both insolvent and in liquidation. Insolvency is, of course, stronger and the court must deal with the insolvency proposal and possibly declare a bankruptcy. If the court dismisses bankruptcy, the insolvency proceeding is cancelled and liquidation may go on. However, if the insolvency proposal is justified, then the institution is declared insolvent and liquidation is put on the back burner – the role of the liquidator is purely formal. I believe that liquidation is beneficial for all the parties involved. One of the reasons why I think so is the fact that if the decision is based on a proposal made by such an institution as the CNB, then there should be no problem with loss compensation. One may assume that if the CNB proposes liquidation, it knows very well why, and it is then up to the liquidator and his integrity to submit an insolvency proposal if need be. Of course, there is still the court that assesses whether all the requirements for declaring bankruptcy have been met; if the court decides so and the requirements have actually *not* been fulfilled (i.e. it would have been possible to deal with the situation by means of liquidation), then the state must compensate the loss.

8. Conclusions

The CNB performs the role of an administrative body as far as investment and banking services are concerned; a bank that also wants to offer investment services according to the Capital Market Undertakings Act, can thus submit only one application and the CNB only makes one decision – if it is a positive one, it enables the bank to offer the services. Banks present in the Czech banking market take part in other financial services by means of creating financial groups that might include, for example, an insurance company, a pension fund, an investment company, an investment fund, a financial leasing company, a factoring company, etc.; the CNB carries out supervision over the whole group. The dangers that a bank faces may be caused by its presence in the financial group. That is why some rules of prudential business (especially the capital adequacy, the commitment, and the inner control system) are applied to the group as a whole.

It may be concluded that it is a correct decision to entrust a single body with administrative procedures permitting an activity or granting a licence, as well as subsequent supervision of financial institutions owing to the fact that financial services are globalised to such an extent that many financial institutions are active in a number of financial areas. If supervision were carried out separately (including the granting of licences and permits), it would take more time and there would be a greater danger of imperfections because the administrative bodies would have to share information and the decision-making process would be more complicated and time-consuming. This is hardly acceptable these days.

As regards the termination of business activities, it is clear that the current legislation (based on EU law) considers liquidation and insolvency of financial institutions a serious issue; it is, after all, to everyone's benefit to make sure that these proceedings affect the stability of the economic system as little as possible. Except for the specific issues of liquidation and insolvency, there are also *buffers* such as the Deposit Insurance Fund and the Financial Market Guarantee System, which provide a certain form of guarantee that deposits or other entrusted finance will be paid out should financial institutions be declared insolvent.

In case there is a potential clash between liquidation and insolvency, I am convinced that liquidation should be given preference (the reasons are outlined above); all the more so because, occasionally, insolvency proposals are submitted without a proper reason. I also believe that the liquidator, carefully chosen by the CNB, provides a sufficient guarantee of an objective assessment of the debtor's financial situation – the insolvency proposal will be filed if the conditions stipulated by law are met.

I can certainly confirm the hypothesis set at the beginning of this article, namely that the right and consistent method of terminating the activities of financial institutions supports the general objective of regulation and supervision: the maintenance of financial market stability. Public administration in this area is without any doubt one of the tools which supports the financial market stability when good administration is applied. It is evident that without clear rules and their consistent application the financial market can barely be kept transparent. If there were any doubt surrounding the end of a financial institution (whether it be an enforced or a voluntary decision) by means of liquidation or insolvency, financial institutions would be left in relative uncertainty as to how to conduct

business in the financial market. Without realising and accepting the negative consequences of improper conduct of business activities (e.g. taking excessive risk without sufficient safety measures), financial institutions might find it difficult to avoid such conduct that could result in terminating their business.

References

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2 Item. 65/1, letter a) of Act no. 634/2004 Coll., on administrative fees, as amended.
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4 Cf. Article 3, par. 1 of the Banks Act.
5 Cf. Article 152 par. 5 Act no. 500/2004 Coll., the administrative order.
6 Cf. Article 20 par. 3 of the Banks Act.
7 Cf. Article 16 par. 1 letter a) of the Banks Act.
8 Cf. Article 16 par. 1 letter c) of the Banks Act.
9 Cf. Article 16 par. 1 letter b) of the Banks Act.
10 Cf. Article 16 par. 1 letter d) of the Banks Act.
11 Cf. Article 22 par. 4 of the Banks Act.
12 Cf. Article 16 par. 1 of the Banks Act.
13 Cf. Article 20 par. 14 of the Banks Act.
14 Cf. Article 16 par. 2 letter a) of the Banks Act.
15 Cf. Article 16 par. 2 letter b) of the Banks Act.
16 Cf. Article 16a par. 1 of the Banks Act.
17 It is a provision connected with the principle of a single licence, i.e. the possibility to provide banking services in the member countries of the EU, without the need to acquire the licence in every single one of them.
18 Cf. Article 16 par. 2 letter c) of the Banks Act.
19 Item 65/2 letter b) of the Tariff of Administrative Fees, amendment to Act no. 634/2004 Coll., on administrative fees, as amended.
20 Registration in the administrative procedure does not follow part two of the administrative code, but it follows part four (Articles 154 to 158); more specifically it is a different act according to Article 158 of the administrative code.
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26 Cf. e.g. Article 36 par. 1, of the Banks Act.
27 It can be inferred from Article 159 par. 1, of the CC.
28 Cf. Article 348 Act no. 240/2013 Coll., on investment companies and investment funds, as amended.
29 Kurka, Paříková, *supra n. 24,* at 62.
30 Cf. Article 198 of the Civil Code.
31 Kurka, Paříková, *supra n. 24,* at 150. See also Article 2 letter k) of the IA.
32 Cf. Article 3 par. 2 of Act no. 312/2006 Coll., on trustees in bankruptcy, as amended.
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The Status of e-Administration in Hungary – Are We on the Right Track?[1]

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Abstract: The goal of this study is to define (or find out) where Hungary currently stands in the development of e-Administration solutions. The issue is more topical than ever, as infocommunications became an integral part of our daily lives, affecting both the private and public sectors, and changing our ways of working – thus, it requires our understanding. When it comes to the public sector, however, striking changes can only be achieved if the entire process of public administration is (or would be) changed. The goals are clear: work should be faster, as it would result in satisfied clients, cut costs and more efficient procedures. The question to ask now is where Hungary stands in this endeavour. Are we on the right track?

Keywords: e-Administration; e-Management; e-Communication; interoperability

1. Introduction

The European Union already realized back in the 1990s that it can only compete with Japan and the United States of America if it strives to create a knowledge society. Reaching this goal, however, requires being a leading force in electronic developments, as well. This, of course, does not just mean the development of new technologies, but also the training of people who can and want to use such innovations. Private sector enterprises have long come to understand the necessity of this transformation, hence their attempts to gradually change their marketing and ways of working. When it comes to the public sector, a different approach is necessary, where the regulation itself has to be studied in the first place, to understand the system and current state of e-Administration.

Concerning the regulation, it basically fulfils its role and meets the actual expectation. On the one hand, centralization (which already appears in numerous aspects of e-Administration) is required; on the other hand, making various functions and services available on the market to ensure the more efficient and complete service of clients is certainly a good direction. E-Administration requires standardization and central decision-making, due to the complexity of its technical background, to ensure the interoperability of its systems, and eventually to achieve its general availability.

The developments are already underway, and the organizational integration of regional-level state administration leads to the need of establishing permeability among the various specialized systems. At the same time, on the level of self-governments, the deployment of the ASP also serves the same goal of standardization and unification. The procedure thus started – we are now looking forward to its continuation.

We must admit that Hungary is lagging a decade behind the EU when it comes to e-Administration: after all, while the EU took concrete steps to develop the strategy of e-Administration in the 1990s, the first initiatives in Hungary were only made at the beginning of the 2000s. We also could not meet the related deadlines of the EU, such as the eEurope 2005 or the CLPBS recommendations. The idea of using integrated, interoperable systems and services is good, but we should not forget that there are several countries which use such services for years now.

I can only hope that the next five years will bring substantial changes in this field; however, launching the new developments, along with their reconciliation and alignment to practical needs will not occur without problems – just like the elimination of the resistance against the new and unknown.

To be able to outline the current stance and the arc of development of Hungarian e-Administration, first we must define the concept itself. I find this very important to clarify, as international literature tends to specify it in a variety of ways. For example, *e-government* stands for a different concept in English-speaking countries than in Germany or other territories. In a wider sense, *government* and *governance* comprise all agents and activities of the executive power; however, the Hungarian scientific literature defines these terms as the agents of public administration, legislation, and the President of Hungary. As such, e-Administration in Hungary comprises the IT technologies and procedures of state administration (that is, the central and regional executive bodies of the government), and the administrative actors of the local self-governments. My goal is to describe this narrowly-defined type of e-Administration as it has been realized in Hungary so far.

2. E-Government and E-Administration: Clarifying the Fundamental Concepts

Legislative literature offers several definitions for e-Administration. The website of the Magyary Programme for example defines the concept as follows: "e-Administration is an extensive task, an aspiration in public administration development which aims to improve its work efficiency by utilizing the most suitable IT solutions."[2] Ancsin, however, defines the goal of e-Administration as "the transformation of the internal and external contacts of the public sector via the modern technical means of infocommunications, and the transactions that can be realized by those".[3] I myself consider the second definition as the definite one. e-Administration, in a wider sense, means the computerization of public administration, the digitalization of traditional office work to electronic solutions, the online availability of public administration services and electronic records, and the use of computerized administrative systems. Due to their specialized nature, the systems and records used in the specific administrative branches are subject to those specific parts of the administrative system. In this sense, e-Administration also comprises all specialized areas of administration where some (or all) activities are digitalized (such as hospital records, employee registration, electronic communication between the court and authorities, or the public procurement of administrative agencies). In a narrow sense,

e-Administration means the computerization of public proceedings, along with their front office and back office connections.

We are living in the age of information society. Electronic procedures are becoming widespread, and take the lead against traditional, paper-based proceedings. As Szittner states, "the question is not whether computerization is needed; it is rather how it should be or should not be done".[4] At the same time, Tózsa concludes that "the electronic and communication networks, which channel the new resource of information, inevitably enter the administration of public duties."[5]

Electronic communication is present in almost all aspects and levels of life. IT systems are widely used not just by large companies, but by small and medium-size enterprises, as well. It is important to stress though, that there are still lots of problems to sort out in this area, so we are far from a full-fledged, actual e-Administration system at this time. Still, the topic is justified, and is worthy of research.

But what does e-Administration actually mean? No specific definitions are available, though its levels were tried to be classified multiple times.[6]

In my opinion, "electronic administration is neither equal to the automation of certain work processes, nor to the replacement of the human workforce with machines. [...] The term can be approached from a front office (client-side) and back office (authority-side) aspect as well: in this respect, it means providing new types of public services both for offices and clients, or at least facilitating to reach existing services via new methods. From the back office (or office) side, the state is able to *coerce* its subordinated organizations to switch over to these new methods, and can support this transformation and the development of the technical infrastructure via financial stimulations".[7]

In the EU, the digital and e-Administration services are measured by the following four indicators:

1. The e-Government User Indicator. This means the amount of administrative applications submitted electronically.
2. The presence of submitted intelligent e-Forms. This means the automatic loading of data available to authorities.
3. The complexity of public e-Services. This measures which and how many steps of public proceedings happen electronically.
4. The open data indicator.

   Based on the above, Hungary achieved a score of 39%, which earned her the 4th place from the bottom on the list of EU countries, against the EU average of 55%.[8]

3. The Domestic Evolution of e-Administration

The effort to digitalize various life situations, legal relations and services goes back almost two decades. While certain initiatives have been planned earlier than that,[9] the first legal form of digitalization manifested only in 2003.[10]

The *Közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény* [Act CXL of 2004 on the General Procedural and Service Regulations of Public Administration Authorities] (hereinafter *Ket.*) contained regulations for the general

procedures of public administration authorities (covering all branches of the administrative system). Originally, it covered the rules of main proceedings, legal remedies and execution – it was this framework, to which legislation added the regulations of e-Administration in 2004, concentrating mainly on the means of communication and the electronic availability of documents. In 2015, the *Elektronikus ügyintézés és a bizalmi szolgáltatások általános szabályairól szóló 2015. évi CCXXII. törvény* [Act CCXXII of 2015 on the General Rules for Electronic Administration and Trust Services] (hereinafter *e-Administration Act*) came into force, bringing fundamental changes in the area of e-Administration. As we will see, the process of e-Administration was unmatured at this time, both technically and also considering its legal status.

The *e-Administration Act* defines e-Administration as the electronic performance of administrative activities, or making declarations electronically.[11] It does not specifically concentrate on the process of administration (generally mapping a procedure), as its regulations go beyond the public administration organizations (and this was not a goal with *Ket.* either). The past and current regulations both aim to establish the framework that would help realizing e-Administration: mosaic services available to clients and the authorities alike that would offer secure means of electronic communication for both sides. There is, however, another service related to e-Administration which provides its lifeline: the IT backbone (with its equipment pool and software) and its services related to the information society (such as websites, or the front and back offices of the administrative user interface). In this approach, e-Administration basically means two things: besides having the clients initiating electronic cases and possibly submitting (uploading) declarations, it could also stand for the proceedings and decision-making mechanism of the related authorities. Therefore, their work must also be supported by IT resources which – by means of a framework – also require legal regulations.

Putting e-Administration into a legal framework raised many issues in the past years, the best proof of which is the fact that its rules were constantly shifting within the legal system and regulations. When *Ket.* took effect, the possibilities of electronic administration significantly increased, as the act made it possible to practice certain administrative actions electronically, as well as let authorities inform clients on their decisions by electronic means. However, most of the local self-governments were unprepared for this channel of administration; therefore, in line with the regulations of *Ket.,*[12] most of them enacted local decrees that ruled out the possibility of handling any official matters via electronic means.

Legislation has established a central electronic service provider system, and as part of it, an *ügyfélkapu* [client access portal] as well, to which self-governments and other organizations could also connect. However, at the beginning, only about 1% of the self-governments connected to the client access portal voluntarily. To speed up their electronic integration and connection to the client access portal, legislation forced self-governments via a government decree[13] to publish announcements electronically (via e-forms) on the client access portal. With this method, the state facilitated the creation of the technical background by legal means for the self-governments.[14]

In 2005, *Ket.* defined two means to initiate electronic administrative matters. The first method (the direct one) was the usage of high-security digital signatures, while the second

one was letting clients send their applications through the client access portal of the central electronic service provider system.

When *Ket.* took effect, e-Administration received a separate article within the act with the details expanded in implementing regulations by the legislator. However, it soon became apparent that the regulations within *Ket.* were only enough for the computerisation of public proceedings; the framework would not be enough to regulate the numerous services of the central system developed by the government. Therefore, the concept (and its regulations) have been expanded, and eventually received separate legal regulations[15] under the denomination of *electronic public services,* with its own implementing regulations. This central system became the sole channel of electronic client-authority and authority-authority communications. The goal of this regulation was to eliminate specialized developments and custom solutions or services, and to centralize electronic administration.[16]

The *Ekszt.* unified the concepts related to electronic communication that occurred in the various sectoral legislation branches, and made electronic administration available as an electronic public utility to almost all actors of the economy and to civil organisations, as well.

The *Ket.* received further modifications[17] in 2012, with the goal to replace the monopolistic solution (affecting both the delivery and development sides) with systems created from simpler, compatible and cooperative modules,[18] that would consider the pan-governmental interests with much more emphasis.

This concept shift was also justified by the ever-changing needs of the population along with the constant technological improvements.

The core elements of this shift were the following:

1. Instead of using one government system, create several modules called *szabályozott elektronikus ügyintézési szolgáltatások* [regulated electronic administration services]; (hereinafter SZEÜSZ[19]), which can be developed and offered by market participants, as well.[20]
2. Develop a reporting and authorization system – the *Elektronikus Ügyintézési Felügyelet* [Electronic Administration Supervision] (hereinafter *EÜF*)
3. Create technology-neutral regulations.

The modification of *Ket.* in 2011 ceased the former centralized model, and started focusing on the regulation of the proceedings instead of the regulation of the technology used. It established a regulatory framework which allowed public administration the flexibility of using proven solutions developed by market participants.[21]

This same modification in 2011 also repealed the regulations of *Ekszt.* and the *2009. évi LII. törvény a hivatalos iratok elektronikus kézbesítéséről és az elektronikus tértivevényről* [Act LII of 2009 on the Electronic Delivery of Official Documents and the Electronic Acknowledgment of Receipt] (hereinafter *Hiektv.*), placing the regulations of e-Administration in the *Ket.* again, within its separate section. Rather than focusing on a central system, the new wording defined regulated electronic services and service providers, though it also emphasized that electronic communication with clients and other organizations shall only be available via government communication services.[22] Regarding

the means of communication, the act also defined electronic channels as a valid, though non-written form of legal communication.[23] The government appointed the *Minister responsible for e-Administration* with nation-wide competence as the supervisory authority of electronic administration.[24]

The *Ket.* effective until 2017 did not consider electronic administration procedures as separate proceedings (regulated under a separate title); it rather fit them within the framework of traditional procedures, by introducing a couple of specialties in its section of e-Administration (Section 10). The equality of electronic and paper-based administration methods was guaranteed by Section II/A (defining the rules of communication), and the declaration[25] of equal probative values for electronic and paper-based documents.

By defining e-Administration as a means of communication, and establishing it as an accessible means of administration for clients, *Ket.* made electronic administration not just equal to traditional paper-based administration, but almost made it the primary means of proceedings. This was also supported by the main principles of speed, efficiency and cost effectiveness defined in the act. Exclusion of electronic means was only possible in unique cases, such as special legal regulations, the lack of technical conditions,[26] or when e-Administration was incomprehensible for the specific scenario. The modifications of *Ket.,* however, kept narrowing down these cases: eventually, only acts, government decrees issued in original legislative authority, and self-government decrees issued in self-governing authority matters could declare such scenarios.

2015 was another milestone in the history of Hungarian e-Administration. A new act took effect[27] that repealed the special regulations concerning e-Administration and its public proceedings, and also returned to the 2009 model, establishing a unified framework for all electronic proceedings. This framework was the *Egységes Digitális Ügyintézési Tér* [Unified Electronic Administration Environment]. The major difference between the current regulation and the 2009 one is that while the legislation realized the necessity of a centralized model and extended the rules of e-Administration to every sphere, it still retained the independence of the SZEÜSZ modules (available to clients and authorities) for market participants. While the regulations defined in the act cover electronic administration matters beyond that of public administration, this study focuses solely on the rules of electronic public administration; hence it does not cover the new regulations of other areas (such as trial procedures).

The act essentially strived to regulate two major areas. The first of these was the extension of e-Administration to all administrative sectors. This endeavour encapsulated two important statements that I would like to cover here. On the one hand, the new regulations restrict the possibility of excluding e-Administration methods even more: it can be ruled now only via acts or government decrees. This basically means that self-governments can no longer exclude electronic methods in their administrative affairs: they must provide the necessary services somehow. On the other hand, the legislation attempts to "realize the necessary developments in a way that, on the one hand, the already existing systems could be used by all claimants without the necessity of substantially modifying said systems; and on the other hand, where such systems do not exist, they shall be deployed easily and with low costs".[28] Unfortunately, the recently declared decree which defines the necessity of connecting to the self-government Application Service Provider (ASP) does

not really follow the above principles, as it makes connection mandatory for two systems (taxes and economy), and also enforces data transmission towards data banks regardless of the type of connection used. Besides this, the application to connect to the ASP (*Csatlakozási konstrukció az önkormányzati ASP rendszer országos kiterjesztéséhez* [Constructing Connection to the Nation-Wide Extension of the Self-Government ASP System] – PACSDOP-2.1.2-CCHOP-16[29]) provides pecuniary assistance only for those self-governments that choose complete connection (system connection) to the ASP. This effectively puts those self-governments at a disadvantage who stick to the old, proven systems, generating additional costs and extra development required for the connection.

Another aspiration of the act that deserves appreciation is that by targeting the realization of levels 4–5 of the CLBPS recommendation, it tries directing all possible communications (*client/consumer* [hereinafter client] – *authority/service provider* [hereinafter authority] or *authority/authority*) to electronic channels. Besides this, it also observes the parameters (identification method, representation) provided by clients, the form of maintaining contact, and the means of administration, as well (such as administrative stipulations or personalized administrative interfaces). It only regulates the means of communication and the technical requirements of data transmission; it does not create any new legal titles for data handling.

In order to expand e-Administration and ensure a unified regulation, the act merges several other former acts (such as the *Eat.*[30] and the *Ioptv.*[31]). With the further development of the system created for *Ioptv.,* it becomes possible to regulate the flow of all electronically available data between organizations bound to electronic administration. The eventual goal is to let all information and data necessary for the information-technological cooperation be available for all cooperating organizations. This can be ensured by enforcing their obligation to supply information.

The second major area covered by the act is the field of e-identification and trust services, on the grounds of the related EU directive.[32] This directive defines cooperative obligations for all member states regarding their e-identification systems. Its main principles are voluntary reporting and mutual acknowledgment: in other words, reporting the systems is optional, but in case a member reports its system, the rest of the member states must acknowledge it wherever it is used.[33] Needless to say, the mutual knowledge, inspection and acceptance of the specific tools and identification solutions would be of great help for clients utilizing cross-country e-services. The eIDAS-regulation also covers e-Government solutions and all security solutions used by market participants, essentially breaking the absolutism of e-signatures. In Hungary, supervision is performed by the *Nemzeti Média- és Hírközlési Hatóság* [National Media and Infocommunications Authority].

By defining and naming the concept of trust services, the eIDAS-regulation substantially restricts the scope for action of the Hungarian regulations. The goal with this was to increase trust in the e-communication methods, and to create a safe communication platform among member states.

Per the definition of eIDAS, *trust services* are electronic services usually provided for a compensation, and include the following:

1. electronic signatures, electronic stamps or electronic timestamps, electronic delivery solutions for registered mail, and creating, verifying and authenticating certificates for the said services, or
2. creating, verifying and authenticating website-authenticator certificates, or
3. keeping electronic signatures, electronic stamps, or certificates related to the said services.

With eIDAS taking effect, the *Eat.* has been repealed. Since then, the *e-Administration Act* ensures that the obligations toward the EU are met.

The act also names several identification services provided by the government: these are the client access portal, the e-card, and partial code-based phone identification. All these services are built from a unified client registration register.

The new regulation also allows the identification of economic organizations via natural persons acting as their representatives, provided that these persons are identified, and their power of agency is verified. Moreover, if the power of agency results from certified public records or the administrative stipulations of the economic organization, further verification of the power of agency is neither required, nor demandable.

In case it is required for electronic administration matters bound to identification, foreign clients (such as persons unregistered due to lack of Hungarian residence) can voluntarily register to the database of foreigners applying for e-Administration. However, they are, of course, entitled to utilize such services even if they decline registration, as long as they use the solutions defined in eIDAS.[34]

The freedom of service providing and the simplification of procedures in e-Administration were first defined as expectations in the Service Directive[35] of the EU; the Hungarian Government implemented these expectations with *A szolgáltatási tevékenység megkezdésének és folytatásának általános szabályairól szóló 2009. évi LXXXV. törvény* [Act LXXVI of 2009 on the General Rules of Commencement and Pursuit of Service Activities]. The guarantee of the possibility of single-windowed administration (or in other words, the Points of Single Contact, or PSCs) was also defined here the first time, which was eventually realized in Hungary with the so-called *kormányablakok* [government windows]. The eugo.gov.hu website was launched in effect to the Directive, and aims to provide information for foreigners, mostly for business activities; however, it unfortunately provides no e-administration services. Access to the client access portal was supposed to be provided by magyarorszag.hu for foreigners; however, the above-mentioned website provides no means to login to it, while magyarorszag.hu lacks any kind of foreign-language information.

4. The Means of Electronic Communication in Public Administration Proceedings

The legal regulation differentiates between the type and means of communication. As mentioned earlier, e-communication can be basically performed in every form (both oral and written), because due to the convergence, it is now possible to contact authorities or

service providers through almost any kind of IT device. *Ket.* and the *e-Administration Act* made this possible with various legal consequences.

Until 2017, the means of e-communication were listed by *Az elektronikus ügyintézés részletes szabályairól szóló 85/2012. (IV. 21.) Korm. rendelet* [Government Decree 85/2012 (IV. 21.) on the Detailed Provisions Regarding Electronic Administration].[36] One of the key properties of its regulations is that it provides relatively large freedom in the means of communication, and it does not enforce the usage of any specific system. That said, it should be noted that three out of the five means listed in the decree are SZEÜSZs provided by the state on an obligatory basis.

Legislation defined no detailed rules regarding mailing and document uploads, though the explicit identification of senders is unavailable in these cases; hence they can be used only with limitations.[37]

The secure e-delivery service has been developed by the *Magyar Posta Zrt.* [Hungarian Postal Service Inc.]. The legal consequences of this service are the same as the traditional notice of receipt, thus it is suitable for the delivery of official statements of decisions, as well.

The administrative stipulations are basically the representations of personalization.[38] They are used to authorize proxies, define the type of identification to use (client access portal, elevated-security access site, phone identification), list contact information, enable periodic notifications on the selected electronic activities, and also to enable or block the selected means of communication.

Regarding identification, Hungary chose the knowledge-based identification of providing a password-based login routine built in the client access portal for its citizens.[39] Recent developments aimed to expand the group of legal entities (economic organizations, non-administrative organizations, foreign individuals) who can use the client access portal (on client-side) or the official access portal for organizations, and also to offer means for multi-factor authentication (MFA) as well (via phone code). For the sole role of identification, a new SZEÜSZ, the *központi azonosítási ügynök* [Central Identification Agent] (hereinafter KAÜ) was created. These developments of course can use some improvements: for example, after logging in to the government portal, users need to re-log in on kau.gov.hu.

According to the currently existing legislation,[40] clients may utilize electronic identification services provided by ID cards containing storage elements (hereinafter e-ID card), the client access portal, and partial code-based phone identification as electronic identification services provided by the government on an obligatory basis. The records of the applicants using any of these services are kept in the *Központi Ügyfél-regisztrációs Nyilvántartás* [Central Client Registration Register] (hereinafter KÜNY).

Depending on the chosen method, clients may identify themselves as follows:

1. In case of using electronic identification services provided by e-ID card, by scanning the identification data stored on the card's storage element, and using the PIN code of the permanent ID card.
2. In case of partial code-based phone identification, by providing the user identification and password.

3. In case of using the client access portal, by logging in with the username and password, and using a secondary authentication method.

In case of using an ID card issued since January 1, 2016, clients may request access to the client access portal electronically, as well.[41]

Regarding the KÜNY, the government elected the following organizations, persons, and tools as its registration authorities: the capital and county government offices, the district-level offices of said government offices, the Minister responsible for e-Government services, the *Nemzeti Adó- és Vámhivatal* [National Tax and Customs Administration], the *Magyar Posta Zrt.,* the embassies and consulates of Hungary,[42] and the e-ID cards issued since January 1, 2016.

Electronic forms formerly authenticated by e-signatures are gradually falling into the background. Electronic ID cards now contain built-in e-signature and fingerprint information as well, though their use potential is currently unknown.

Also, in the age of smartphones, clients should be able to contact the authorities not just in person or online, but by phone, as well. This could be realized by the utilization of the e-identification functions of e-ID cards.

5. Interoperability in Practice

The need for cooperation, communication and data exchange among the IT systems have appeared in EU-level expectations already back in the 2000s,[43] due to the fact that administration usually involves the usage of multiple specialized systems even when handling a single case. To achieve actual and complete e-Administration, these systems must be able to forward data to each other, and they should possess no parallel databases, as that would often result in storing conflicting data for the same client.

Interoperability can be defined on multiple levels.[44] The optimal case is when it is realized on all administrative levels. In a political sense, interoperability means the willingness of decision makers to establish cooperation among the various organizations and systems. By 2016, this political interoperability certainly existed. On the organizational level, interoperability is ensured[45] by the establishment of county-level government offices, the creation of districts, the transfer of state administration duties from self-governments, the integration of special-duty organizations and tasks into county-level government offices and ministries, and the creation of the single-windowed PSCs.[46]

From the technical side, the European Committee created the European Interoperability Framework (EIF) of the European (cross-border) public services, and the European Interoperability Strategy (EIS). The framework is based on the agreement of the organizations aiming to cooperate with each other, and defines the public administration and private sector expectations toward public services, thereby creating the conceptional model of public services, and the levels of interoperability required for its realization.[47] This guarantees the common definition of interoperability on EU-level. The strategy also provides guidance and sets priorities among the European public administration systems regarding the cross-country and cross-specialization interactions, and the activities related

to the improvement of information exchange and cooperation during the establishment of European public services.[48]

In Hungary, the first regulation aiming to establish interoperability was in effect from January 2015, and was the *Az állami és önkormányzati nyilvántartások együttműködésének általános szabályairól szóló 2013. évi CCXX. törvény* [Act CCXX of 2013 on the General Rules of Collaboration Between State and Self-Government Records[49]] that enforced the cooperation between the records of the various authorities.

This regulation enforced only data connection: it did not define the means of how to record data, and what format to use. It primarily aimed to establish a data connection service, so that there would be constant communication between the various registers and records, thereby the latest information would always be available during queries, regardless of the authority where the query is made. This data connection service is a service whereby registers allow other registers to transfer data via manual or automatic data transfer, as defined in the act. The registry containing the primary data is obliged to provide information, while the registry handling the derived data is obliged to receive it. The job of the government then was to clearly define what *primary* and *derived data* means in such cases.

To establish the proper proceedings, the act ordered the affected registers to create data connection service rules, and to sign data connection service agreements between each other.

It also charged a separate organization with the supervision of the area, and assigned a central address register to ensure unified address handling. Most of the regulations of the act took effect in July 1, 2015, though the service providers received substantial days of grace as well: they are obliged to meet the regulations of the act by the first day of the 30th month following the act's entry into force (which means January 1, 2018).

Another expectation of the act was to make the already developed e-Administration systems and related specialized systems connectable, and to make them able to communicate and permeate each other. After all, e-Administration only makes sense if these conditions are met: only in this case can procedures be sped up, avoiding the concurrency and time-spending of paper-based traditional and electronic procedures.

Since January 1, 2017, the rules of interoperability are also part of the *e-Administration Act*. The cooperation is essentially defined on organizational, technical and semantical levels as well, as electronic data transfer among the various authorities have profound effects: their systems communicate with each other and interpret the received data, which results in better cooperation and more efficient work among the affected authorities. The act also restricts the means of contact: it can only occur either via delivery to an address in use for secure electronic communication, or by utilizing the file transfer service available between filing systems.

In light of the above changes it can be ascertained that the legal part of interoperability (along with its semantic part, due to the basic concepts laid down in the regulations) is properly regulated. Now, the regulations must be put into practice. After all, interoperability only exists if a government window offers a single solution to everyday situations. Once we are not directed to five different locations for five different certificates (despite attending business with a single authority), are not forced to visit the office a second time with

a proof of receipt, and are not instructed to wait for days to receive an official acknowledgment for a piece of data which can otherwise be queried from a database, only then we can state that interoperability has been put in practice.

6. E-Administration – Is it Still the Future?

Years ago, regarding the future of e-Administration, I wrote the following: "Although there are sporadic attempts to expand e-Administration, for example EU subsidies like the Széchenyi 2020 KÖFOP, it is clear that to achieve this, measures must be taken on a central level. It is simply not enough to introduce sparse adjustments in the administrative subsystem of self-governments (handling most of the state-level and local cases affecting common citizens); instead, due to the lack of funds and the appearing resistance, a standard, unified, and accepted government software is needed, that would be available to all self-governments – similarly to the specialized systems, like ONKA or ASZA. The emphasis should be, on the one hand, on its state-level development and free availability, and on the other hand, on its mandatory usage." This aspiration now seems to come to fruition with the ASP-project of self-governments, which is already enforced legally by the *Mötv.*[50] Hopefully, the provided modules, special systems, and the legislative-political intentions are indeed aimed to standardize administrative work, and to increase the efficiency and quality of public administration on the self-government level, instead of trying to achieve a greater level of control.

Another note of mine was made regarding document identification: "Its legislative background is substantially detailed, but it is missing the development and standardization of a unified system on the back office (authority) side, just like its nation-wide introduction (both on first- and second degrees for all administrative cases). This would require not just the technical development of an IT framework, but also the harmonization of IT, legal and organizational requirements; in other words, the creation of a knowledge-based workflow system, which would break down processes to individual steps, would also provide legal help and form templates for each step of the specific procedure, and would be flexible enough to immediately react to additional steps added any time to the procedure." Besides, it could handle the administrative and internal procedural deadlines, it would indicate omissions to the superior authorities or employers, and would always indicate the changes and availability of the documents related to the procedure. The system is also expected to connect specialized subsystems, ensure permeability, and eliminate the parallelism of paper-based traditional and electronic procedures.

It would be a huge improvement if the work of administrators could be proven not just by written documents, but the whole procedure would be mapped and stored electronically, and therefore could be checked up anytime, producing evidence when needed.

The Government itself also admits that "many times, the emphasis on the client-driven approach remained a mere buzzword, because in spite of the developments in legal regulations (for example having *Ket.* stipulating that clients cannot be asked to provide

data which is otherwise available in the records of other authorities), no good progress was made in general in the area".[51]

Based on the *Nemzeti Infokommunikációs Stratégia* [National Infocommunications Strategy], we would be able to administrate everything electronically by 2020 with a guaranteed bandwidth of 30 Mbps, and with a connection of 100 Mbps being available to at least 50% of the households. The strategy also aims to realize complete interoperability between databases by 2020, and to have central public administration institutions handle 80% of their processes via paperless, electronic means.[52]

Based on an EU survey, Hungary is the 4th worst performer when it comes to electronic public services, positioned far from the EU average.[53] We own the penultimate position in the eGov-indicator of client-drivenness, and are 3rd from the bottom of the list on the eGov-indicator of transparency.[54]

The basics of the current regulation are fine. On the one hand, the centralization (which already appears in numerous aspects[55] of e-Administration) is required; on the other hand, making the various functions and services available on the market to ensure the more efficient and complete service of clients is certainly a good direction. e-Administration requires standardization and central decision-making, due to the complexity of its technical background, to ensure the interoperability of its systems, and eventually to achieve its general availability. What is required is a standard, general and unified software/system accepted (and made mandatory) on a state level, which would be then made available to all administrative organizations, or at least to all organizations within the various administrative sub-systems. So far, regulation only covered the entry points used by the clients and authorities (the client access portal and office access portal, respectively – and which should be clarified further). However, to ensure the vitality of the area, the two entry points should be connected, and besides guaranteeing a secure backbone network, an IT, administrative and legal application is also required that would provide a complete workflow[56] for the entire administrative procedure, handling both front and back office processes from submitting a form through conveying decisions to providing electronic payment methods, as well.

The above statement is not completely true nowadays though, as the developments are already underway, and the organizational integration of regional-level state administration leads to the need of establishing permeability among the various specialized systems. At the same time, on the level of self-governments, the deployment of the ASP also serves the same goal of standardization and unification. The procedure thus started – we are now looking forward to its continuation.

My study focused primarily on the legal and administrative aspects of the need for e-Administration and electronic proceedings. That said, the topic could also be investigated from an IT perspective, focusing on topics such as the need for network developments, increasing bandwidth, establishing knowledge centres, and increasing interoperability in cross-authority communication.

The unstoppable expansion of electronic administration in the public and private sectors also justifies the effort to create a unified framework for e-Administration, regardless of the actors of e-communication (such as administrative organizations, courts, or public service providers). Challenges of the upcoming years in this respect include the

creation and maintenance of a cross-border digital infrastructure, the expansion of electronic public procurement, and the support of using contractual records. The EU aims to let enterprises run on public procurement tenders electronically anywhere in the EU by 2018, and to make e-billing an accepted form of billing by every public administration system by 2019. The Committee also plans further actions regarding e-identification to speed up its cross-border and cross-specialization usage.

We must admit that Hungary is lagging a decade behind the EU when it comes to e-Administration: after all, while the EU took concrete steps to develop the strategy of e-Administration in the 1990s, the first initiatives in Hungary were only made at the beginning of the 2000s. We also could not meet the related deadlines of the EU, such as the eEurope 2005 or the CLPBS recommendations. The idea of using integrated, interoperable systems and services is good, but we should not forget that there are several countries which use such services for years now.

I can only hope that the next five years will bring substantial changes in this field; however, launching the new developments, along with their reconciliation and alignment to practical needs will not occur without problems – just like the elimination of the resistance against the new and unknown.

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1 The work was created under the priority project PACSDOP-2.1.2-CCHOP-15-2016-00001 entitled "Public Service Development Establishing Good Governance" in cooperation with the National University of Public Service and the "DE-ÁJK Governance Resource Management Research Group" of the University of Debrecen. For the description of the underlying concepts, see: Tamás M. Horváth, Ildikó Bartha, Az ágazati közszolgáltatások rendszertanáról [The Theoretical System of Public Service Sectors], 25–37, in Tamás M. Horváth, Ildikó Bartha (eds.), *Közszolgáltatások megszervezése és politikái* [The Organization and Sectors of Public Services] (Budapest, Dialóg Campus, 2016).

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45 In line with the regulations of *A fővárosi és megyei kormányhivatalokról, valamint a fővárosi és megyei kormányhivatalok kialakításával és a területi integrációval összefüggő törvénymódosításokról szóló 2010. évi CXXVI. törvény* [Act CXXVI of 2010 on Metropolitan and County Government Offices, and on the Amendments in Connection with the Formation and Regional Integration of the Metropolitan and County Government Offices], starting from January 1, 2011, county and capital government offices became the regional general-authority administrative organizations of the government. Starting from 2011, regional special-duty authorities were gradually merged into county-level government offices, first generating a shared (organizational and specialized) management, and then numerous major departments and departments within the offices, as they lost their independence. District management has been introduced in 2013 by *A járások kialakításáról, valamint egyes ezzel összefüggő törvények módosításáról szóló 2012. évi XCIII. törvény* [Act XCIII of 2012 on the Formation of Districts and the Amendment of Certain Associated Statutes], as an administrative unit below the counties, belonging to the organization of county-level government offices. Following the inception of the districts, administrative duties formerly belonging to the self-governments (including those of the registrars, administrators and mayors) were gradually transferred/returned to the district offices.

46 Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market. In Hungary, it was realized under the name of *kormányablak* [government window].

47 Even this framework already builds the European public services as modules, which enables connecting the various services.

48 COM (2010) 744: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Towards Interoperability for European Public Services. Final text, 8.

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53 https://ec.europa.eu/digital-single-market/en/scoreboard/hungary#5-digital-public-services (accessed 26 July 2016). For example, in 2016, the amount of personalization in Hungary (that is, automatically filling forms with data available to the system or the administrative organization) was 19%, compared to the EU average of 49%.

54 http://digital-agenda-data.eu/charts/analyse-one-indicator-and-compare-countries/ (accessed 09 December 2014).

55 Such as in the NTG and specified SZEÜSZ providers. Examples of technical interoperability include the self-government ASPs and the *Ioptv*. Regarding organizational interoperability, examples include the integrated development of government offices and government windows *(kormányablakok),* along with the concentration of tasks.

56 "Breaking down administration to knowledge-based, process-driven steps. e-Administration does not merely mean the development of a framework: it rather means the harmonization of IT, legal, and organizational conditions, resulting in a knowledge-based workflow system offering both front office and back office services. Public administration proceedings can be divided to steps and sub-steps that can be modelled. There are elements which can be inserted into this flowchart, and there are also elements which may appear anytime during the procedure, and thus need to be handled as independent elements when developing an electronic system." Zsuzsanna Árva, István Balázs, Attila Barta, Bernadett Veszprémi, *Közigazgatás-elmélet* [Theory of Administration], 180–181 (Debrecen, Debreceni Egyetemi Kiadó, 2012).

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Case studies

The Invalidity of Foreign Currency Loans in the Hungarian Judicial Practice

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Abstract: After the economic crisis, a large part of the Hungarian population could not repay the suddenly increased instalments of their foreign currency loans. In lawsuits concerning the invalidity of these foreign currency loans, the different courts interpreted the provisions of the law differently, so the Curia (the highest judicial authority of Hungary) – fulfilling its constitutional duty – considered it necessary to unify the judicial practice. For this purpose, several Uniformity Decision were adopted. In this study I will briefly summarize the content of three Uniformity Decisions, namely, Decision No. 6/2013 PJE, No. 2/2014 PJE and No. 1/2016 PJE.

Keywords: foreign currency loan; invalidity of contracts; exchange rate spreads

1. Introduction

The subject of my paper is the evaluation of the foreign currency loan in the Hungarian judicial practice, which have been one of the major challenges for both the legislature and the courts after the economic crisis, as a large part of the Hungarian population had such loans and could not repay the suddenly increased instalments. In lawsuits concerning the invalidity of these foreign currency loans, the different courts interpreted the provisions of the law differently, so the Curia (the highest judicial authority of Hungary) – fulfilling its constitutional duty – considered it necessary to unify the judicial practice. For this purpose, several Uniformity Decision were adopted. "The Curia renders uniformity decisions in cases raising issues of theoretical importance in order to ensure the uniform application of law within the Hungarian judiciary. Such decisions are binding on all Hungarian courts."[1] In this study I will briefly summarize the content of three Uniformity Decisions, namely, Decision No. 6/2013 PJE, No. 2/2014 PJE and No. 1/2016 PJE.

2. Uniformity Decision No. 6/2013 PJE of the Curia

In this Uniformity Decision the Curia stated that foreign currency loan contracts are those in which the debtor is in debt in a foreign currency, but the loan is paid and repaid in the domestic currency (in this case HUF). At the time of the conclusion of the contracts, there

was no law that would have established a ceiling on the risk of the debtor or would generally have prohibited the risk of a change in the exchange rate.

In the view of the Curia, the assumption that the amount of repayment of foreign currency loans in the future could not be accurately determined at the time of the conclusion of the contract is considered false. "The debtor's debt [...] is clearly stated at the time of the conclusion of the contract: it is the amount determined in the calculation currencies. The fact that, at the time of the conclusion of the contract, it is not possible to tell how much payment currency is to be paid by the debtor to fulfil their contractual obligation, necessarily arises from the difference between calculation currency (foreign currency) and the payment currency (HUF). However, this does not affect the clear definition of the obligation." It is also considered a concrete definition of the amount of debt, if the amount paid out loan and the instalments are not quantified, but the contract clearly contains the calculation method.

Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter referred to as Hpt.) requires the financial institution to inform the debtor about the possibility that the exchange rate might change in the future, and what effects it can have on the debtor's obligations. However, the obligation to provide information did not, of course, cover the degree and direction of exchange rate change. Creditors did not have to declare the expected exchange rate of the Forint during the contract period as this is unforeseeable at the conclusion of the contract. Therefore, such a commitment could not be fulfilled. The unforeseen, unilateral shift in contractual burdens after the conclusion of the contract cannot be considered a cause of invalidity, because the reason for the invalidity must exist at the conclusion of the contract.

The Curia also found that foreign currency loan does not conflict with the law because of its aforementioned properties. This does not mean, of course, that a particular contract or contractual terms cannot be invalid for any other reason (e.g. unfairness). It only means that the foreign currency loan as a type of contract does not conflict with the law. Deciding whether or not each contract is invalid or not is only possible in specific cases.

A foreign currency-based loan agreement cannot be regarded as an immoral contract. According to the Hungarian judicial practice, a contract is considered immoral if the society has a negative value judgment on it. Foreign currency based loan agreements were not condemned by society at the time of their conclusion. Consumers took the risk of exchange rate fluctuations because they could have received a more favourable interest rate on a foreign currency based loan than for HUF-based loans. The unfavourable development of the circumstances after the conclusion of the contract, cannot justify the invalidity of the contract.

A foreign currency loan agreement cannot be regarded as a usury contract. According to the Hungarian Civil Code a contract is deemed to be a usury if the contractor has made a remarkably disproportionate advantage when exploiting the position of the other party at the conclusion of the contract. It follows from the nature of the blanket contracts used by financial institutions that the financial institution cannot take the financial situation of the consumer into consideration. The same terms of contract were used with consumers in a bad financial situation as with those who were in good financial standing. We cannot therefore say that the banks have taken advantage of the economic situation of the

consumers. The Curia also explained that the financial institutions did not receive wrongful benefit with this practice, because only the Forint equivalent of the foreign currency was repaid by the debtors at the time of repayment. The amount of debt remained the same in the foreign currency, even though its equivalent in Forint has changed.[2]

3. Uniformity Decision No. 2/2014 PJE of the Curia

According to this Uniformity Decision, a contractual provision allowing unilateral contract modification is unfair if it does not comply with the following principles: clear and comprehensible wording, item-by-item definition, objectivity, factuality and proportionality, transparency, termination, and symmetry principles (hereinafter referred to as seven principles).

In addition, the Curia has stated that, in foreign currency loans, a clause stipulating that the consumer will bear unlimited liability for exchange rate risk is considered to be the primary object of the contract. Therefore, its invalidity can only be examined and ascertained, "if the contents of the contract at the time of its conclusion – taking account of the text of the contract and the information provided by the financial institution – were not clear to a generally well-informed, reasonably attentive and circumspect average consumer", and therefore, they could reasonably believe that the exchange rate risk was not real.

The principle of clear and comprehensible wording has only been incorporated into the Civil Code by an amendment in 2009. The question therefore arises whether the principle should be applied before the entry into force of the amendment. By joining the European Union, Hungary is also obliged to interpret the provisions of the national law in accordance with EU law if it does not lead to contra legem interpretation. The provision of Directive No. 93/13 EEC – which states that the unfairness of a condition determining the main service is met, the principle of clear and comprehensible wording cannot be investigated – is not in conflict with the Hungarian law. Therefore, this principle must be taken into account when judging contracts concluded prior to the modification of the Civil Code.

According to Article 203 of the Hpt. "the financial institution shall disclose to the customer the risk of the contractual transaction, the acknowledgment of which is certified by the signature of the client". In determining the unfairness of a contract term, the court must take into account all the circumstances leading to the conclusion of the contract, including information provided by the financial institution to the consumer. If, on the basis of all these relevant circumstances, "a generally well-informed, reasonably attentive and circumspect average consumer" was able to recognize that the risk of exchange rate fluctuations would be borne without restriction, the unfairness of that condition could not be stated. In connection with this, the Curia establishes the presumption that if the customer has received the information required by law and has signed the declaration, it must be regarded as the wording of the contract was clear and comprehensible. The bank must demonstrate that the customer has been informed in this accordingly. The contract is considered to be unfair if the fact that it was not clear and comprehensible for the consumer

that he or she bears the risk exchange rate fluctuation is attributable to the financial institution. This must be proved by the consumer.

The debtors must therefore be placed in a situation to be able to measure their contractual obligations. This means that the contract must indicate the possible evolution of the contractual burdens. It must contain a list of reasons which must clearly disclose the mechanism and possible extent of the change in the obligation arising from the change of circumstances, that is to say, if the condition clearly and comprehensibly stipulates how and to what extent the debtor's existing debt is changed by the changes in the circumstances determined in the contract. The solution is not appropriate in this context if the contract merely lists the circumstances giving rise to a contract modification. Without adequate explanation, these do not comply with the principle of transparency. The terms for unilateral amendment of the contract is not unfair if it ensures the possibility of inspecting the compliance with the seven principles and the contractual provisions, and that the consumer may take remedy against the financial institution.

The Curia considered the practice of financial institutions to be unfair as the amount paid was calculated on the basis of their own purchase and repayment details based on their own selling price, because it constitutes an unjustified and unilateral disadvantage to the consumer with the breach of the requirement of good faith and fairness. The selling rate is always bigger than buying, which means that on the side of the financial institutions this practice generates profit while on the debtor's side it creates expense. This is an unreasonable cost against which there is no direct financial service by the financial institution. In case of foreign currency loans, when determining the repayment instalment, no real exchange of money is made, but only the amount of the debt is calculated at the exchange rate at the time of completion. "Thus, the exchange rates in foreign currency loans don't represent a real, and direct currency exchange service for the customer." This mechanism of pricing is also unfair because it does not meet the requirement of clear and comprehensible wording, because even in case of a grammatically clear wording, the consumer cannot anticipate the amount of debt they have to pay to fulfil their obligations, as the economic reasons behind the different exchange rates are not clear and transparent to the average consumer. According to the decision of the Court of Justice of the European Union, the unfair terms of contract shall be replaced with the dispositive provision of the Civil Code,[3] according to which "the amount specified in other currencies shall be converted at the exchange rate prevailing at the time and place of payment".[4] The Curia therefore requires that the purchase and sale rates in the contracts be replaced by the Hungarian Central Bank's official exchange rate.[5]

4. Uniformity Decision No. 1/2016 PJE of the Curia

According to Act CXII of 1996 a consumer loan agreement is invalid if (among other reasons) it does not include the subject of the contract, the number of instalments, the amount of the repayment instalments, and the repayment dates. The Curia has found that according to the Hpt., the foreign currency loan contract does not qualify as null and void, if it contains the amount of the loan to be disbursed in HUF, and the contract also states

that the financial institution keeps a record about the amount of loan in a foreign currency, furthermore it specifies in a predictable manner the numbers, amounts and payment dates of the instalments to be paid. Thus, the contract is valid if it is clearly established that the parties have concluded a foreign exchange contract, and their intention was therefore to register and determine the loan, its interest and its contributions in foreign currency, but it was intended to pay in HUF. The Curia also states that "if the amount of the loan is given in both currencies on the date of the conclusion of the contract, one of the two amounts is only informative, depending on whether the given contract considers the foreign currency or HUF as the starting point".

An important condition in each case is that the contract includes the method by which the loan amount in the payment currency (i.e. in HUF) can be derived from the calculation currency (i.e. in foreign currency). However, it does not impact the validity of the contract whether it precisely states the date of conversion, because unless otherwise provided by the parties, the conversion date is by ipso iure the day of disbursement. If the contract or the general terms and conditions of the contract together meet these criteria, then the financial institution's unilateral legal declaration (e.g. reimbursement notification, loan repayment plan, loan repayment schedule) is to be considered as information provided to the consumer by the financial institution. "This information is not considered as unilateral declaration of intent that intends to produce legal effects, therefore it cannot be evaluated as a shaping right resulting either in the creation of a contract or for modifying or terminating it. Therefore, the non-delivery of the notice or its content contrary to the contract does not affect the creation or validity of the contract." The ineffectiveness of the contract cannot be established either because of the absence of a reference currency conversion rate, because the legislator stated that the relevant exchange rate is the official exchange rate of the Hungarian Central Bank.[6]

5. Summary and Comments on the Uniformity Decisions of the Curia

First, I would like to point out the reasons of an individual case, the so-called Kásler-case, according to which the financial institutions gain additional revenue by using the spread between buying and selling rates in their contract. However, with this the financial institution does not provide real money exchange service, but only the amount of the debt is calculated at the exchange rate at the time of completion. So the financial institution does not provide any service for the customer, and yet they gain additional profit because of this method. Therefore, these contract terms are unfair and void. This is in line with 2/2014 PJE, according to which the selling price is always higher than the purchase price. On the side of financial institutions this practice generates revenue while on the debtor's side it creates expenses.[7] However, this reasoning contrasts with the decision of the Uniformity Decision No. 6/2013 of the Curia, which stated that the risk of exchange rate change is borne by the consumer while the position of the creditor is not affected by this. Even though the debtors have to repay more in HUF compared to the amount that was disbursed to them, but as the amount of loan is registered in a foreign currency according

to these contracts, the foreign currency equivalent of that amount of HUF the debtors repaid remains the same. So the amount of money the financial institution lends and the amount the debtors repay is the same in the foreign currency. That is why the financial institution does not gain any additional revenue because of this method.[8]

The other contradiction I would like to draw attention to is also in connection with the exchange rate spread. In relation to the exchange rate spread, the Curia states in the Uniformity Decision No 2/2014 PJE that: "This mechanism of pricing does not meet the requirement of clear and comprehensible wording, because even in the case of a grammatically clear wording, the consumer cannot anticipate the amount of debt they have to pay to fulfil their obligations."[9] This is contrary to Uniformity Decision No. 6/2013 PJE, which stated that in any foreign currency loan the amount of the debt can be clearly determined at the time of the conclusion of the contract: it is the amount determined in the calculation currencies. "The fact that, at the time of the conclusion of the contract, it is not possible to tell how much payment currency is to be paid by the debtor to fulfil their contractual obligation, necessarily arises from the difference between calculation currency (foreign currency) and the payment currency (HUF). However, this does not affect the clear definition of the obligation." In addition, the unforeseeable unilateral shift in contractual burdens after the conclusion of the contract cannot be considered invalidity reasons, because in order to establish invalidity, the reason for invalidity must exist at the time of the conclusion of the contract.[10]

The problem of the exchange spreads applied by financial institutions was finally settled by the legislator by establishing an irrefutable presumption, that the application of different purchase and sale rates provided by an individually non-discussed, or general contract term is unfair, therefore void and null. Due to their invalidity, the buying and selling rates are *dropped out* of the contract and are replaced by the Hungarian Central Bank's official exchange rate.[11] The financial institutions are subject to clearing obligations, with regard to overpayments caused by the application of the exchange rate spreads.[12] With these statutory provisions referenced in the Uniformity Decision No. 1/2016 PJE the Curia stated that the invalidity of the contract cannot be established because of the absence of an exchange rate.

All in all, it can be concluded that the Uniformity decisions of the Curia were not completely consistent. Finally, however, the legislator has arranged – for the past and the future alike – the applicable exchange rate, and the amount of interest rates, costs and fees. "Because these calculations are based on a legal act, these conditions necessarily constitute a fair individually non-discussed general contract term, and contractual content. In addition, they cannot be considered to be in conflict with the legislation."[13] These contracts should also be measured in the light of these legal acts, when the courts decide whether the content of contracts meet the obligations required by the Hpt. as the validity requirements of foreign currency loan.

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Book reviews

Challenges of Good Governance in the European Union

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The reviewed book, *Challenges of Good Governance in the European Union,* was issued under the scientific edition of Robert Grzeszczak, Professor at the University of Warsaw, Faculty of Law and Administration. It constitutes an outcome of cooperation of many authors who have prepared respective chapters of the book. It deals with a particularly important subject which is good governance and its today's challenges.

Currently, the issue of good governance at the European Union level is especially worth analysing, taking into account that the EU finds itself in a period of difficult reforms which shall allow to answer questions on its future shape and a chosen level of integration of the EU Member States. These reforms are also supposed to address the current economic and political crises which the EU is facing due to the lack of vision of integration and incapability to reconcile the interests of the Member States, which seem diverse and heterogeneous as never before. It is worth noticing that the EU's capacity to fulfil the needs of its citizens decreases and, at the same time, the democratic deficit within the European Union seems to increase.

The EU system at the time of the crisis also faces the problem of lack of stable long-term governance policy and emerging ad hoc decisions, which results inter alia from the already mentioned insufficiencies in the integration scheme. Such situation requires not only defining or redefining the goals of the European Union, but also a deep and balanced reflection, including the academic one, on the values the system should be based on and on a possible path of the EU development. The research on potential directions of the political and legal system's reforms led to the development of a concept of good governance, which, according to some scholars, including the authors of the reviewed book, may contribute to healing the EU order and therefore the principles of good governance should be introduced therein. According to the European Commission, *good governance* in the European Union shall be based on 5 principles: openness and transparency of the European institutions; participation of citizens in drafting and implementation of policies; accountability of each party involved in the decision-making process; effectiveness of the EU policies and coherence between them.

It must be noted that good governance may be seen as a value itself, but its full meaning and possible implications may become more clearly visible when we examine it in a particular context, from a perspective of other values and interests. Such operation may

be done *inter alia* through its thorough analysis carried out in juxtaposition with democratic principles and the rule of law, human and civil rights, in particular the right to good administration, effectiveness of public administration or of judicial protection of individuals. The reviewed book is devoted to the above-mentioned concept of good governance and related challenges emerging at the European Union level. Good governance is analysed therein from different points of view using diverse approaches. The authors examine good governance as such and juxtapose it with other concepts and elements of the system of public administration.

The book was issued in 2016 by the publishing house Nomos, Baden–Baden. It consists of 3 parts, each of them divided into chapters (from 5 to 7). The book starts with a scientific editor's introduction to the subject tackled. The author presents and explains therein the origin of the concept of good governance, points out and elaborates on its persistence, but also on the ambiguities related to this notion and the development of the concept of good governance itself. The introductory part defines the objectives of the book which are to verify the hypothesis that the 21st century is a time of transition from government to governance; to analyse issues which constitute the concept of good governance in the EU; to evaluate a hypothesis that an element of good governance is the ability to fulfil social needs of EU citizens; to determine optimal measures for wielding power and to formulate a coherent concept of good governance and methods of its realisation in practice. In the first part of the book the authors analyse the problematics of a change of the paradigms that is said to be taking place in the European Union system, which is defined as a transformation from government to good governance. Reflections presented therein discuss issues regarding *inter alia* different approaches to good governance in the European Union or links and relations between good governance and public administration as well as between good governance and human rights, with a special emphasis on the right to good administration. The second part is devoted to different questions concerning public participation and government effectiveness and relations between them. It includes chapters referring to the issues such as the concept of EU citizenship, rights and interests of EU citizens, their security level assured by the EU legal system, as well as access to e-justice. The third part of the book deals with problematics of the practice of good governance and it includes diverse case studies of such practice at both – EU and national level.

The subject addressed and reflections presented in the reviewed book are interesting from both – theoretical and practical point of view. Taking into account the first aspect, the book develops a survey of past debates concerning the concept of good governance and adds new thoughtfully developed insights therein. Secondly, it answers to practical needs associated with two phenomena i.e. the emergence of new legal regulations on the one hand and new needs of modern society on the other, which together leads to the appearance of new challenges for administration – after the formulation of a concept of good governance and methods of its realisation in practice the authors propose to introduce an approach based on a principle of good governance into the EU system. It shall be clearly underlined, as it is explained by the book's scientific editor himself in the introductory part, that the book focuses not on a question as to who governs, but rather how the

governing is done. Such a view is undoubtedly valuable and deserves to be familiarised with.

Some of the issues undertaken in the study are of a general nature and may constitute the basis for more advanced research, while others are characterised by a fairly profound level of detail. Most considerations, though not all, are devoted to the concept of good governance in the EU context. However, many of them, even if they do not directly discuss national systems, are also depicted through examples of the impact the EU norms and practice have on them. Another advantage of the book are numerous references to literature and normative acts, which allows the reader to deepen the knowledge about such a complicated issue as good governance and problems related thereto.

The book *Challenges of Good Governance in the European Union* will be valuable and enriching to all readers interested in issues related to the functioning of the administrative apparatus, but also to the state and its structures as well as to the European Union in general. Given the issues raised by the authors, the book can be recommended to theoreticians and practitioners dealing with the problems of all legal and political systems – from national, through European to international level. It offers insights for researchers, academic teachers, practitioners, as well as opens a path to generate new discussions.

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