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The Realisation of the Principle of a Fair Procedure in Hungary¹

Abstract

The paper aims to present the realisation of one of the most important procedural principle – the principle of a fair procedure – regulated in the Fundamental Law of Hungary, which entered into force on 1st January 2012. The principle of fair procedure can be considered the basis of all procedural rights. In its nature it resembles more the principle of human dignity. In its kind it is an absolute right, but the rights derived from it – such as the right to legal remedy – are rights which can be restricted in case of the conditions specified by the Fundamental Law of Hungary.

The principle of fair procedure is regulated as the right to good administration in paragraph 1 of Article XXIV. of the Fundamental Law of Hungary as follows: “Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions, as provided for by an Act.” The other one is regarding court proceedings, where the principle of fair procedure is named as the right to a fair trial and regulated in paragraph 1 of XXVIII. of the Fundamental Law of Hungary as follows: “Everyone shall have the right to have any charge against him or her; or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.” We should note that the quoted paragraphs of the Fundamental Law of Hungary mention the requirement of a decision within a reasonable time and several other requirements as the part of the principle of fair procedure. The two aspects of the principle of fair procedure can be understood in connection with each other too; for example, the duty to justify decisions can be found in administrative procedures as well as in judicial proceedings.

¹ The extended version of the paper will be finalised until the 15th June 2019.

Therefore the paper firstly present the different aspects of the principle of a fair procedure and examines them in detail. These parts are the right to legal remedy, the requirement of a decision within a reasonable time, the duty to justify decisions, the obligation for cooperation between the administrative bodies and the clients, etc. In the second part of the paper, we analyze the latest and most relevant decisions of the Constitutional Court of Hungary and the Curia of Hungary about the practice of the direct enforcement of the principle of a fair procedure regarding administrative justice and administrative decisions. This analysis is even more actual, because from 1st January 2018 the new Code of Administrative Procedures called Act CL. of 2016 on General Public Administration Procedures entered into force. It includes all general regulations regarding administrative procedures.

Points for Practitioners

The paper presents several cases of the realisation of the principle of a fair procedure and examines the latest decisions of the Constitutional Court of Hungary and the Curia of Hungary about the practice of the direct enforcement of the principle of a fair procedure regarding administrative decisions, therefore it is very useful for practitioners.

Key words

principle of a Fair Procedure, Fundamental Law of Hungary

INTRODUCTION

In April 2011, the new constitution of Hungary, the Fundamental Law of Hungary was adopted and it entered into force on 1 January 2012.² The Fundamental Law of Hungary consists of the following parts: National Avowal, Foundation, Freedom and Responsibility, The State, Special Legal Order and closing and miscellaneous provisions. The Fundamental Law of Hungary brought several new elements into the Hungarian constitutional rules. One of this novelty is that it creates the highest standard of reference for the The principle of procedural fairness. In two of the above mentioned parts of the Fundamental Law of Hungary, the requirement of fair administration is explicitly written. The National Avowal states that: “[w]e hold that democracy is only possible where the State serves its citizens and handles their affairs in an equitable manner, without abuse and impartially.”³

In the section Freedom and Responsibility of the Fundamental Law of Hungary the fundamental rights, including procedural rights can be founded. The above-mentioned statement of the Preamble, the National Avowal is concretized in the section Freedom and Responsibility of the Fundamental Law of Hungary as the following: “Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions, as provided for by an Act.” (paragraph 1 of Article XXIV. of the Fundamental Law of Hungary). The principle of fair procedure is regulated as the right to good administration. We should emphasize also that the principle of procedural fairness regarding court proceedings is named as the right to a fair trial and paragraph 1 of Article XXVIII. of the Fundamental Law of Hungary expresses that: “Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.” Meanwhile paragraph 7 of Article XXVIII. of the Fundamental Law of Hungary ensure the right to legal remedy by stating: “Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interest.”

In the light of the above-mentioned statements of the Fundamental Law of Hungary, the paper seeks to answer the following questions: How is the right to a fair trial related to principle of fair procedure in Hungarian public law following’89? What are the elements of the right to good administration? What are the constitutionally accepted methods of restriction of these rights? Finally, the paper gives a brief overview of the realisation of the right to a fair trial and the principle of fair procedure in public law disputes in front of courts.

1. THE PRINCIPLE OF PROCEDURAL FAIRNESS

Firstly, we should highlight that as we already mentioned in the Introduction, the principle of procedural fairness in two aspects: one is regarding administrative procedures (as part of the right to good administration) and the other one is regarding court proceedings (named as the right to a fair trial). However, both rights consist of a number of different elements, which are directly defined by a constitutional rule or by a procedural law (or possibly a decree) or in concreto defined by a decision of the Constitutional Court of Hungary/judicial practice. The Fundamental Law of Hungary also expresses regarding administration the duty to justify decisions, impartiality of public authorities and the obligation for the cooperation between the administrative bodies and the clients.

² VARGA ZS. Andras – PATYI András – SCHANDA Balázs (eds.): *The Basic (Fundamental) Law of Hungary A Commentary of the New Hungarian Constitution*, Clarus Press 2015.

³ See: HÖRCHER Ferenc: National Avowal: An Interpretation of the Preamble, from the Perspective of the History of Political Thought in: VARGA ZS. Andras – PATYI András – SCHANDA Balázs (eds.): *The Basic (Fundamental) Law of Hungary A Commentary of the New Hungarian Constitution*, Clarus Press 2015. 35-57

Moreover, the requirement of a decision within a reasonable time is both mentioned as an element of the right to good administration and of the right to a fair trial.⁴

In addition, of course, several other components of the principle of procedural fairness can be defined from the protection of bona fide rights to the right to legal remedy. We also emphasize that fair administration, on the one hand appears as a procedural right of the party concerned, and on the other hand it is also a requirement for public authorities. In summary, the application of the requirement of fairness do not stop in the requirements mentioned in the constitutional rules, but the whole system of procedural rights is included. In this way, we can name the right to a fair trial.

Obviously, in relation to the requirement of fairness, the right to good administration and the right to a fair trial have a separate dogmatic approach, each of which has its own set of requirements for individual rights. At the same time, their unity is indisputable⁵ as they formulate similar procedural requirements at several points like the duty to justify decisions or the requirement of a decision within a reasonable time.

Article XXIV and Article XXVIII of the Fundamental Law of Hungary recognize fundamental procedural rights, which has a common fundamental basis but the difference between the above-mentioned two fundamental procedural rights is that it creates obligation to two different state bodies: in the first case, to the public authority, and in the second case, to the court.

In the last years, according to the jurisprudence of the Constitutional Court of Hungary, it is clear that the decision of the court reviewing the administrative procedure violates Article XXVIII of the Fundamental Law of Hungary, if it ignores unfair administrative practices.⁶

2. FAIRNESS, AS AN ABSOLUTE REQUIREMENT AND ITS ELEMENTS

The principle of fair procedure can be considered the basis of all procedural rights. In its nature it resembles more the principle of human dignity. In its kind it is an absolute right,⁷ but the rights derived from it – such as the right to legal remedy – are rights which can be restricted in case of the conditions specified by the Fundamental Law of Hungary. Paragraph 3 of Article I of the Fundamental Law of Hungary states that the rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right. While human dignity is based on the legal status of a human being, the fair procedure is a legal abstraction of the functioning of state bodies. To understand this legal abstraction we should analyze the sub-rights deducted from it.

First, we would like to refer to the right to legal remedy, which is specifically mentioned in the Fundamental Law of Hungary. We should emphasize regarding this right that all of procedural laws in Hungary has been recodified in recent years. The new Code of Administrative Procedures called Act CL. of 2016 on General Public Administration Procedures entered into force the 1st January 2018. Moreover in the field of administrative procedural law, not only the general rules of the administrative procedures have been recodified, but also the regulation administrative justice by Act I of 2017 on the Code of Administrative Court Procedure. We should also refer to the fact that in '89 the review of the legality of administrative decisions by courts already has been regulated in constitutional level. However, the rules on court proceedings were regulated in Acts by the legislator.

The following sub-right of the principle of procedural fairness which needs to be mentioned is the requirement of a decision within a reasonable time, which has already been referred to as a constitutional rule. On the basis of the court practice, we should state as sub-right of the principle of procedural fairness the duty to justify decisions and the obligation for the cooperation between the administrative bodies and the clients too.

⁴CHRONOWSKI Nóra: Mikor megfelelő az ügyintézés? Uniós és magyar alapjogvédelmi megfontolások, *Magyar Jog* 2014/3. 137-145.

⁵VARGA Zs. András: Az alkotmányosság követelménye és az eljárás alapelvei In: PATYI András (szerk.): *Hatósági eljárásjog a közigazgatásban* Dialóg Campus Budapest – Pécs 2012 120-121.

⁶5/2017. (III.10) Decision of the Constitutional Court [63-65]

⁷CSINK Lóránt – MAROSI Ildikó: Eljárásjogok In: SCHANDA Balázs – BALOGH Zsolt (szerk.) *Alkotmányjog – Alapjogok* Pázmány Press Budapest 2014 271., 273-274.

The right to good administration and the right to a fair trial can also be directly assisted but also its sub-rights are applicable and directly referred in cases, in the decision of the Constitutional Court of Hungary and in courts decisions as we will discuss it in the next part of the paper.

3. CASE- LAW: REALISATION OF THE PRINCIPLE OF PROCEDURAL FAIRNESS

As mentioned previously, the right to good administration contains several rights, requirements and obligations. We would like to present Hungarian Courts case in which the Court referred to the principle of procedural fairness.

According to the Decision of the Constitutional Court of Hungary,⁸ the Curia of Hungary - the highest judicial authority in Hungary - declared in its Decision Kfv.I.35.760/2016/6., that the tax authority does not have the right to impose tax penalty after a deadline defined in the law. The background of this case is the following: the applicant received on the 17th October 2014 a report of the tax inspection of the VAT returns carried out a posteriori by the Hungarian Tax Authority. After more than a half year later of this report's reception, the Hungarian Tax Authority decided on the report and in its decision the Hungarian Tax Authority ruled that the applicant should pay tax difference, tax penalty and late payment surcharge. After the 1st instance Court's dismissal of the applicant's claims regarding this decision of the Hungarian Tax Authority, the applicant made a review request of its claims to the Curia of Hungary. The Curia examined the case and found that on the one hand, the Hungarian Tax Authority was right and its decision is lawful regarding the notification of a tax difference; because the declaration of a tax difference is not a sanction, but it is a correction of the taxpayer's unlawful behaviour. On the other hand, the Curia of Hungary detailed that the Hungarian Tax Authority imposed the tax penalty and the late payment surcharge as a sanction. Meanwhile regarding the late payment surcharge, the Curia of Hungary specified that it can not be considered as a disadvantage. The late payment surcharge can be identified as a general principle regarding financial delays. The Curia of Hungary also highlighted that the tax penalty is a sanction, thus a disadvantage within the meaning of the previously mentioned Decision of Constitutional Court; because it is not a general principle, but it is based on the decision of the legislator to punish the cases of VAT debt. The Curia of Hungary also expressed that it is part of the right to good administration and from this right it can be deduced as a constitutional requirement that no sanction can be imposed after the time-limit established in the law. In view of that, the Curia of Hungary concluded that the imposed tax penalty is unlawful. The Hungarian Tax Authority has only the right to impose tax penalty in the time-limit indicated in the law. It is part of the right to good administration that all administrative authorities – therefore the Hungarian Tax Authority too – respect the time-limits indicated in the law. If an administrative authority does not respect the time limit indicated in the law – as it was in this case –, it can not cause disadvantage for the taxable person.

We should state that the enforcement of the principle of the requirement of a decision within a reasonable time seems to be even stricter in the latest practice of the Curia of Hungary.⁹

4. CONCLUSION

In conclusion, we could note that in terms of references to right to good administration and the right to a fair trial, compared to the processing of the case law of the Constitutional Court, the processing of the case law of the Curia of Hungary is less. Meanwhile, it should be stated that in the last years the practice of administrative courts in Hungary has also decided on important theoretical issues with a high standard of argument as we could see in our case. The paper also briefly examines the principle of procedural fairness and its elements.

We should also point out that in the last years the principle of procedural fairness is referred more and more in decisions, and it can be applied to judge the lawfulness of the whole administrative procedures, therefore it serves the realisation of rule of law.

⁸ See: Decision 5/2017. (III.10.) of the Constitutional Court of Hungary

⁹ See: BALOGH-BÉKESI, Nóra - POLLÁK, Kitti: The realisation of the constitutional principles – the right to good administration and the right to legal remedy in Hungary, Bratislava Law Review, 2018 : 1 46-56.

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- *Act I of 2017 on the Code of Administrative Court Procedure*