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Articles

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Administrative Law in the Time of Corona(virus): Resiliency of the Hungarian Administrative Law?*

Prawo administracyjne w epoce koronawirusa. Jaka jest odporność (skuteczność) węgierskiego prawa administracyjnego?

ABSTRACT

The Hungarian administrative law has been significantly impacted by the COVID-19 pandemic. Several rules – which were introduced during the state of danger based on the epidemic situation – have been incorporated into the Hungarian legal system. The administrative procedural law has been influenced by the epidemic transformation. However, the rules on e-administration have not been reformed

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significantly (due to the digitalisation reforms of the last years), but the rules on administrative licenses and permissions have been amended. The priority of the general code on administrative procedure has been weakened: new, simplified procedure and regime have been introduced. The local self-governance has been impacted by the reforms. The transformation has had two opposite trends. On the one hand, the Hungarian administrative system became more centralised during the last year: municipal revenues and task performance has been partly centralised. The Hungarian municipal system has been concentrated, as well. The role of the second-tier government, the counties (*megye*), has been strengthened by the establishment of the special economic (investment) zones. On the other hand, the municipalities could be interpreted as a "trash can" of the Hungarian public administration: they received new, mainly unpopular competences on the restrictions related to the pandemic. Although these changes have been related to the current epidemic situation, it seems, that the "legislative background" of the pandemic offered an opportunity to the central government to pass significant reforms.

Keywords: Hungarian administrative law; administrative procedure; self-governance; administrative licenses and permission; COVID-19 pandemic; epidemic; state of danger

INTRODUCTION

The first state of danger – which has been declared in Hungary during the first wave of the COVID-19 – ended on June 18, 2020, but it has been expected to leave lasting traces in the Hungarian legal system. The administrative procedural law has been partly transformed by the regulations on the verified notifications: the primacy of the Act CL of 2016 on the Code of General Administrative Procedure (hereinafter: CGAP) has been weakened by these special statutory rules, which appear as a specific underlying rule for (administrative) permitting and licensing procedures.[1] The interpretation of local self-governance has also changed. The financial autonomy of the municipalities has been restricted, first of all, by the centralisation of several local or shared taxes and the amendment of their rates and, secondly, by the establishment of the special economic zones. It could be emphasised, the provisions that remain permanently in Hungarian administrative law are those which were only indirectly related to epidemiological measures. The "legislative background noise" related to the current epidemic situation seems to have served as a kind of backdrop for certain amendments and transformations that would otherwise receive more attention. In addition, a new, specific, quasi-emergency situation used to deal with the second wave of the epidemic, as well as the legislation issued in this regard, raises several dogmatic issues that tension the current system of administrative law.

In our study the emergency operations of the public administration is analysed from a legal point of view, comparing the dogmatic foundations and empirical experience of these actions. The starting point of our research is that the framework

[1] See M. Fazekas, *Az Ákr. hatálya. Az Ákr. tárgyi hatálya: a hatósági ügy*, [in:] *Közigazgatási jog. Általános rész III*, ed. M. Fazekas, Budapest 2020, p. 194.

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of these actions is provided by the conditions and demands based on the rule of law administration. In our paper, the integration of the measures and practices introduced during the emergency is analysed as well as the new, quasi-emergency, epidemiological emergency into the "normal" operation of the legal system.

For reasons of length, this paper should not be intended to provide a comprehensive answer to all the emerging dogmatic problems of administrative law in emergency administrative legislation but is limited to an overview of the most controversial, important administrative law issues. We try to outline a kind of problem map that can serve as a basis for further research in legal dogmatics and empirical methodology.

THE EPIDEMIC AND THE SPECIAL LEGAL ORDER (EMERGENCY): AN OVERVIEW OF THE LEGAL REGULATION IN HUNGARY

The primary research field of the epidemiological situation can be the issues related to the introduction and regulation of the special legal order in Hungary. However, these mainly concern the field of constitutional law, this paper only deals shortly with these questions. If we look at the Hungarian constitutional regulation, it should be emphasised that the Fundamental Law of Hungary (25 April 2011) (hereinafter: Fundamental Law) has closed taxation on the reasons which justify the state of danger. Para. 1 Article 53 of the Fundamental Law states, that the state of danger (*veszélyhelyzet*) can be declared "In the event of a natural disaster or industrial accident endangering life and property". Thus, the epidemic situation has not been among a justifiable reason of the declaration of special legal order. The detailed regulation on the establishment and introduction of the state of danger as a special legal order (emergency) is regulated by the Act CXXVIII of 2011 on Disaster Management (hereinafter: DMA). The rules of the Fundamental Law are interpreted broadly by the point c) Article 44 of the DMA. The regulation states, "human epidemic disease causing mass illness and animal epidemic" is a justifiable reason of the declaration of the state of danger.[2] In the case of a special legal order (emergency), in accordance with the Fundamental Law, most of the measures defined by Chapters 21–24 of the DMA could be introduced by the Government, which may issue decrees with a content contrary to the acts of Parliament for a transitional

[2] According to other views, this regulation of the DMA "goes beyond the provisions of the Fundamental Law, i.e. it is contrary to the text of the Fundamental Law. The provisions of the Fundamental Law could not be overwritten by an Act of Parliament". According to this view, it is not an expanding interpretation, but a covert, statutory amendment to the constitution that can be considered unconstitutional. See Z. Szente, *A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái*, "MTA Law Working Papers" 2020, no. 9.

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period of 15 days. In addition to the emergency government decree regulations, a limited number of ministers, such as the minister responsible for education and vocational training or the minister responsible for national property, may also take decisions that constitute individual acts.

It is shown by the above regulation that the Hungarian public administration – like other European administrations – was unexpectedly affected by the COVID-19 pandemic at the level of constitutional regulation. At the beginning of the pandemic – when Hungary has not been affected by it – the institution of "health crisis" (defined by the Act CLIV of 1997 on Health Care) was used (by which the provision of the health care services can be transformed).[3] The Hungarian system – which has been typically modelled for the treatment of industrial and elemental disasters[4] – did not contain detailed provisions for an emergency situation related to the management of a pandemic.

Within the above-mentioned framework, the state of danger – due to the COVID-19 human epidemic – was declared by the Government Decree no. 40/2020 (11 March 2020). Based on the constitutional regulation and the provisions of the DMA, the Government had the opportunity to suspend the application of acts of Parliament in its (emergency) decrees, to deviate from certain statutory provisions, and to take other (otherwise statutory, parliamentary) extraordinary measures. Based on para. 3 Article 53 of the Fundamental Law, these decrees shall remain in force for 15 days as a general rule, unless the scope of these (emergency) decrees is extended by the Parliament. Because the epidemic risk and its management could take more than 15 days, the Parliament – passing a bill submitted by the Government – decided to extend the scope of the emergency decrees by a general authorisation, which was the Act XII of 2020. However, the law did not enter into force within 15 days of the adoption of the first emergency government decrees, to maintain the measures, the national chief medical officer resorted to a special solution. These restrictions and rules were maintained as a general decision of the national chief medical officer based on the epidemic emergency. The above-mentioned solution was born of coercion, and the challenges of casuistic regulation on emergency can be observed by it. This decision of the national chief medical officer is difficult to interpret in the current Hungarian legal system. The decision – as it is highlighted by the government information page on the coronavirus, but not by the actual text of the

[3] See M.D. Asbóth, M. Fazekas, J. Koncz, *Egészségügyi igazgatás és jog*, Budapest 2020, p. 39.

[4] In Hungary, after the Democratic Transition, state of danger has been declared several times, although typically not the whole territory of the country was covered by this emergency. Thus, for example, the government declared a state of emergency during the flood on the Danube in 2002 (Government Decree no. 176/2002, 15 August 2002) and after the red mud (industrial) disaster in Devecser (Government Decree no. 245/2010, 6 October 2010).

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decision[5] – is a normative one. On the one hand, the chief national medical officer is not authorised by para. 1 Article 23 of the Act CXXX of 2010 on Legislation to pass such a normative decision. On the other hand, the decision does not comply with rules of the Act CLIV of 1997 on Health Care (hereinafter: HCA), however, there were indications that this decision may be interpreted in this context. The national chief medical officer, as a national epidemiological authority, is entitled to make individual decisions and not general rules which scope covers the whole country.[6]

The shortcomings of the regulation of the constitutional regulation were also recognised by the legislation. The legal basis for imposing specific restrictions was created by the Act LVIII of 2020 on transitional rules related to the termination of the emergency and on epidemiological emergency (hereinafter: Transitional Act), by which a new institution, the epidemiological emergency was introduced by the amendment of the HCA. The regulation on health crisis has been reshaped significantly by that Act. Different restrictions – based on the epidemiological emergency, which is defined by the Act as a special type of health crisis – can be introduced by the government. These restrictive measures can be the special rules on the operation and opening hours of shops, travel, transport and freight restrictions, restriction on sale and consumption, special regulation on the public education (public education, vocational training and higher education, e.g. the introduction of digital learning). During epidemiological emergency the Hungarian Armed Forces can be involved in the management of health care institutions and the provision of health care services can be transformed during that special situation. However, the Fundamental Law does not contain regulation on this epidemiological emergency, it is regulated only by the HCA, but it can be interpreted as a new type emergency. This solution fits into the trend in the Hungarian legislation, that several quasi-emergencies have been institutionalised by the Acts of Parliaments, because a similar, quasi-emergency situation is regulated by the DMA during natural and industrial disasters, which are not as serious, that the declaration of the state of danger could be justified.

The first state of danger – which was declared on 11 March 2020 – was terminated by the Government Decree no. 282/2000 (17 June 2020). The Act XII of 2020 – which extended the scope of the emergency government decrees – was repealed by the Act LVII of 2020 on the termination of the state of danger.

The application of the special rules created for the period of the emergency was extended by the Transitional Act, typically until 31 August 2020. Based on the new provisions on epidemiological emergency, this state was declared by the

[5] See *Az országos tisztiföorvos tiltó és kötelezö határozata a járványügyi helyzetre tekintettel*, 26.03.2020, https://koronavirus.gov.hu/cikkek/az-orszagos-tisztifoorvos-tilto-es-kotelezo-hatarozata-jarvanyugyi-helyzetre-tekintettel [access: 10.11.2020].

[6] See Á. Dósa, P. Hanti, Zs. Kovácsy, *Kommentár az egészségügyi törvényhez*, Budapest 2016, pp. 197–198.

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Government Decree no. 283/2020 (17 June 2020) for half a year. Several restrictive regulations were based on that special situation, e.g. rules on obligatory wearing face masks, and some restrictions on foreign travelling (especially travel bans outside the EU). These rules were the basis for even stricter restrictions. At the end of summer, extremely strict travel restrictions and mandatory quarantine were introduced by the Government Decree no. 408/2020 (30 August 2020). However, several legal concerns have been raised about the Decree and other related regulations. Several exceptions were provided, which were difficult to justify. One of the controversial exceptions was the special regulation on the travelling of the citizens of the V4 countries (Czech Republic, Slovakia, and Poland). The citizens of these countries could entry into Hungary without mandatory lockdown. These exceptions were permitted by separate government decrees. The travel ban (and even the exceptions) was extended by other decrees. It should be emphasised that infringement proceedings were envisaged by two commissioners of the European Commission due to the selective (discriminative) nature of the travel ban. Therefore, the regulation has been amended, and other exceptions – especially the exception to mandatory lockdown in the case of business travel – have been institutionalised.

The regulation on epidemiological emergency was a transitional regime between the two waves of COVID-19 in Hungary. During late autumn a second, and a serious wave of infections and illnesses evolved in Hungary. Because of the serious epidemiological situation, the state of danger was declared on 3 November 2011 (the state of danger entered into force on 4 November). The new Act CIX of 2020 has been passed. The scope of the emergency government decrees has been extended by this Act. But opposite to the regime of the Act XII of 2020, the extension has not been indefinite. The Act has declared a 90 days deadline for the authorisation (and for the scope of itself). Thus, the major criticism[7] on the former regulation has been corrected by the Parliament. The Government of Hungary has not received indefinite authorisation for passing emergency decrees. Even the constitutional regulations have been amended at the end of the year 2020. The Fundamental Law was amended by the 9th Amendment by which the legal regulation on the state of emergencies has been transformed. However, the new rules will enter into force in 2023, the detailed constitutional regulation which has been based on the closed taxation of the justifiable reasons and the extraordinary government measures remained, but the expiry of the extraordinary measures became more flexible. The expiry of the extraordinary measures is not defined by the constitutional rules but by the Act of Parliament which can be passed by a qualified (two-third) majority.

[7] See T. Drinóczi, A. Bień-Kacała, *COVID-19 in Hungary and Poland: extraordinary situation and illiberal constitutionalism*, "The Theory and Practice of Legislation" 2020, vol. 8(1–2), p. 184; F. Gárdos-Orosz, *COVID-19 and the Responsiveness of the Hungarian Constitutional System*, [in:] *COVID-19 and Constitutional Law*, ed. J.M. Serna de la Garza, Ciudad de México 2020, pp. 159–161.

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It should be noted that the travel restrictions have remained, and they have been enforced by the new Act CIV of 2020. New sanctions have been introduced by this regulation, which have not been enough clear. It was not specified by the Act whether these sanctions are objective[8] one or they are based on the imputability of the citizens, and therefore, the nature of these sanctions are partly obvious.

ADMINISTRATIVE PROCEDURAL LAW AND THE COVID-19 PANDEMIC

One of the major features of the special legal order (state of emergency, etc.) is that certain fundamental rights can be restricted more widely.[9] Related to that constitutional principle, fundamental (administrative) procedural rights can be restricted during the state of danger in Hungary.[10] These procedural constraints may be particularly acute in an epidemiological situation, because of procedural regulation should be impacted by the reduction of human contacts. This necessarily entails the requirement to amend the rules of administrative procedures. Challenges of modern epidemics include their economic effects. In a globalized world, the travel and trade restrictions can necessarily be linked to a decline in economic production, which should be – at least, partly – treated or compensated by administrative measures.

If we look at the impact of epidemiological measures on the Hungarian administrative procedures, it can be emphasised however, the issues related to the reduction of the number of contacts have appeared in procedural law, the changes related to economic administration have had more significant role.

Administrative proceedings are typically file-based proceedings in which the presence of clients is not as important as in court proceedings (litigation) based on the constitutional principle of public hearing. Therefore, in the administrative procedures – unlike to the court procedures – it has not been issued general and uniform special regulation for the state of danger, an "emergency administrative procedural code" has not been published. The administrative procedures have been based on the regulation of the CGAP, just several additional sectoral regulations have been published by emergency government decrees. The peculiarity of the Hungarian solution was that – unlike other European and American countries (like the United States of America, Canada, Germany and Spain where sectoral – spe-

[8] On objective administrative sanctions in Hungarian administrative law, see M. Nagy, *Interdiszciplináris mozaikok a közigazgatási jogi felelősség dogmatikájához*, Budapest 2010, pp. 39–74.

[9] H. Barnett, *Constitutional and Administrative Law*, London–Sydney 2002, pp. 821–822.

[10] Article 54 para. 1 of the Fundamental Law: "Under a special legal order, the exercise of fundamental rights – with the exception of the fundamental rights provided for in Articles II and III, and Article XXVIII (2) to (6) – may be suspended or may be restricted beyond the extent specified in Article I (3)". A similar regulation has been institutionalised by the 9th Amendment of the Fundamental Law (amended para. 2 Article 52 of the Fundamental Law).

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cial provisions have been introduced by the countries or by their member states)[11] – special rules have been used relatively narrowly by the procedural regulation related to employment policy and social benefits, i.e. these procedures have been regulated primarily by the general (non-pandemic, non-emergency) rules. It has been an "unorthodox" regulation, because the number of registered jobseekers (unemployed people) has been significantly increased by the economic crisis related to the restrictions imposed by the coronavirus epidemic (see Figure 1).

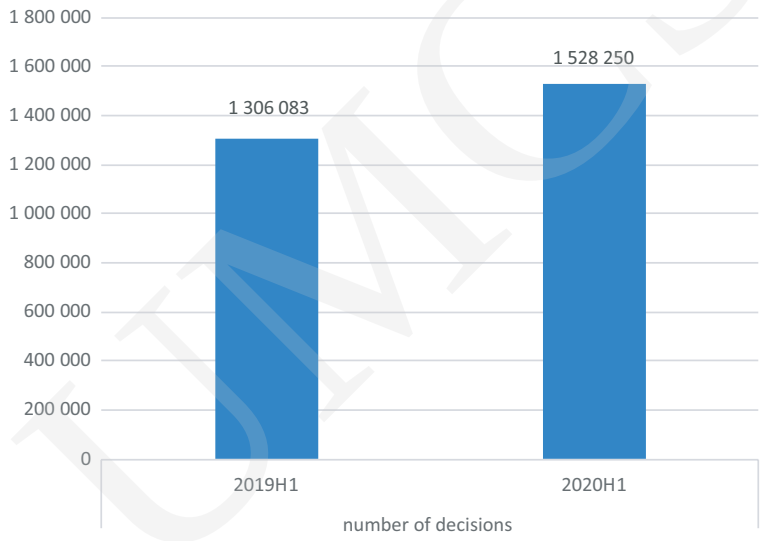

Figure 1. Number of registered jobseekers (unemployed people) (2019–2020) and its linear trendline

Source: Hungarian Central Statistics Office, www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_qlf028c.html [access: 10.11.2020].

Therefore, the number of employment policy cases increased significantly (by 17.01%) in the first half of 2020 (compared to the number of cases in the first half of 2019) (see Figure 2). Because the general rules should be applied by the employment authorities, the average administration time in employment cases increased similarly, by 71.42% (see Figure 3).

[11] See A. Huang, C. Makridis, M. Baker, M. Medeiros, Z. Guo, *Understanding the impact of COVID-19 intervention policies on the hospitality labor market*, "International Journal of Hospitality Management" 2020, vol. 91, p. 8.

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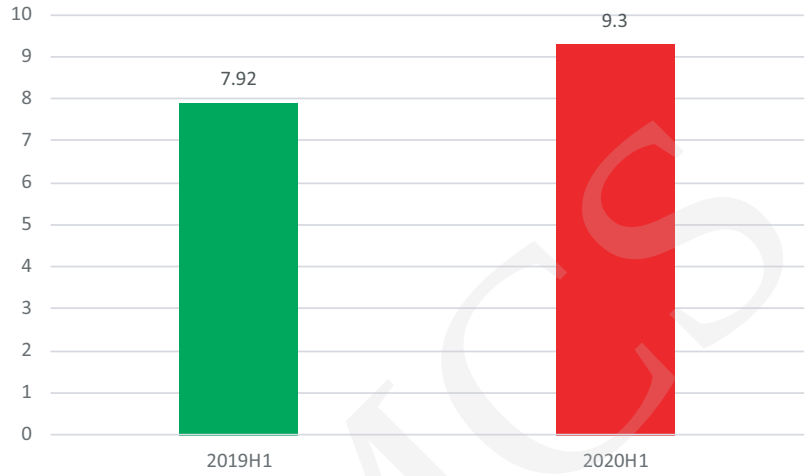

Figure 2. Number of employment decisions (in 2019H1 and 2020H1)

Source: Országos Statisztikai Adatgyűjtési Program (OSAP) 2019 and 2020.

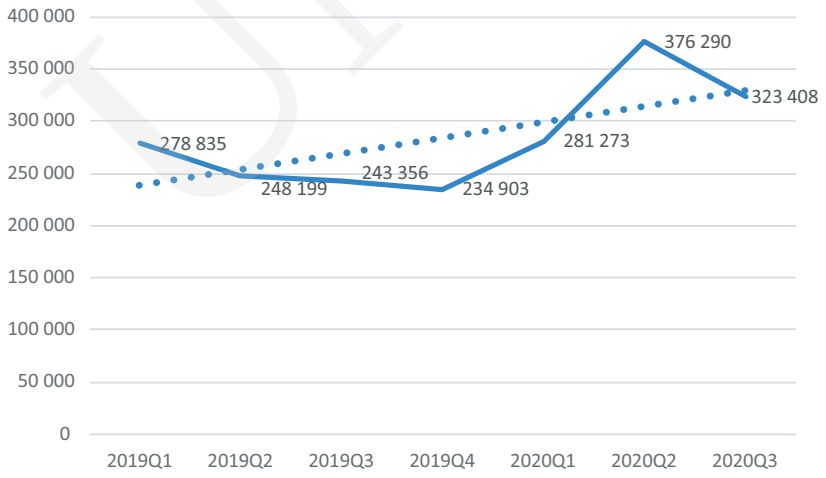

Figure 3. Average administration time of employment cases (in 2019H1 and 2020H1)

Source: Országos Statisztikai Adatgyűjtési Program (OSAP) 2019 and 2020.

However, the regulation on social and employment procedure has not been amended, a new legal institution has been established during the first wave of the pandemic. It is the so-called "controlled notification". This reform was justified by the reduction of bureaucracy, the simplification of the procedures, and thus reducing obstacles to economic activities. The traditional administrative permissions have

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been widespread erased because the majority of the administrative licensing cases are now under the scope of the new rules. A new, separate regulatory regime has been established. The CAGP is just a subsidiary regulation in the "controlled notification" cases, thus the primacy of the CAGP has been weakened by these new rules.[12] Not only the bureaucracy is increased by the institutionalization of administrative permission means, but the protection of the rights of opposing clients are provided by these procedures, as well. However, the legal protection of these clients is provided only moderately by the newly institutionalised controlled notification. It is stated by the Transitional Act – which contains the permanent rules on controlled notification – that the protection of public interest is primarily in this procedure. The rights and interests of other persons or clients adversely affected can be protected by the authority, if appear only to the extent that, in the course of the proceedings, the authority may prohibit the activity of the applicant client if "the notification constitutes an abusive exercise of a right". Thus, the rights of the opposing clients can hardly be enforced by the administrative procedure, they are encouraged to submit much more expensive and cumbersome civil lawsuits (mainly property and tort lawsuits). It is highlighted by the literature, that in addition to the limited enforceability of opposing client rights and the difficulty of protecting the legal interests of opposing clients, there are stronger corruption risks in this type of cases because, in the case of silence, the infringements of the authorities (based on corruption) are less conspicuous than in a formal decision of a permission (licensing) case.[13]

It should be emphasised, that special procedural rules have been established for administrative court procedures – which is part of the broad administrative procedural law – in contrast to the administrative procedures of the authorities. The main aim of the pandemic emergency regulation of the administrative court procedure has been the reduction of personal contacts.

LOCAL SELF-GOVERNANCE IN THE TIME OF CORONA(VIRUS)

The issue of self-government is important in administrative legal research related to the coronavirus epidemic. The epidemiological situation and the socio-economic crisis, which has been partly caused by the epidemic restrictions, are a situation that is clearly pointing in the direction of strengthening centralization

[12] See L. Potěšil, K. Rozsnyai, J. Olszanowski, M. Horvat, *Simplification of Administrative Procedure on the Example of the Czech Republic, Poland, Slovakia, and Hungary (V4 Countries)*, "Administrative Sciences" 2021, vol. 11(1), p. 15.

[13] V. Alaimo, P. Fajnzylber, J.L. Guasch, J.H. López, A.M. Oviedo, *Behind the Investment Climate: Back to Basics – Determinants of Corruption*, [in:] *Does the Investment Climate Matter? Microeconomic Foundations of Growth in Latin America*, eds. P. Fajnzylber, J.L. Guasch, J.H. López, Washington – Basingstoke – New York 2009, pp. 141–142.

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trends. In crisis situations, centralization steps and these administrative reforms have traditionally taken precedence over decentralization.[14] The Hungarian municipal system and regulation have been significantly influenced by the COVID-19 pandemic. Therefore, the municipal administration and organisation issues have been transformed based on the emergency (state of danger) situation. Secondly, the municipal tasks have been changed during the time of the pandemic. Thirdly, alternative, local solutions of the communities have been evolved during the time of the pandemic. We would like to analyse these amendments and transformations.

A special regime of the municipal decision making has been introduced by the emergency regulations in Hungarian public law. Because of the extraordinary situation which requires quick answers and decisions, the council-based municipal decision making is suspended by the DMA. It is stated by para. 4 Article 46 of the DMA, that the competences of the representative body (*képviselö-testület*) of the municipality is performed by the mayor when the state of danger is declared by the Government of Hungary. There are several exceptions, thus the major decisions on the local public service structure cannot be amended and restructured by the mayors. Therefore, the mayors have the local law-making competences, as well. The mayors can pass local decrees, which remain in force after the end of the state of danger. The mayor can pass and amend the local budget and they can partly transform the organisation of the municipal administration, as well. The mayors can decide the individual cases. The scope of the competences (of the mayors) – set out in the previous sentences – is not fully clear but based on the legal interpretation of the supervising authorities (the county government offices and the Prime Minister's Office), the competences of the committees of the representative bodies shall be performed by the mayors, as well. The position of the mayor is similar to the "dictators" of the Roman Republic: because of the extraordinary situation, the rapid decision making is supported by personal leadership.

This regulation resulted from different solutions in the Hungarian large municipalities. It shall be emphasised, that the mayor has a greater power, but his or her responsibilities are increased by this regulation. For example, in the largest Hungarian municipality, in the Capital Municipality of Budapest, a special decision-making regulation has been introduced during the period of the state of danger. The decisions of the Capital Municipality are made by the Mayor of Budapest, but there is a normative instruction issued by the Mayor (no. 6/2020 [13 March] Instruction of the Mayor of Budapest), that before the decision-making the Mayor shall consult the leaders of the political groups (fractions) of the Capital Assembly. After the 1st state of danger, the decrees issued by the Mayor were confirmed by a normative

[14] See J. Kostrubiec, *The Role of Public Order Regulations as Acts of Local Law in the Performance of Tasks in the Field of Public Security by Local Self-government in Poland*, "Lex Localis – Journal of Local Self-government" 2021, vol. 19(1), pp. 112–113.

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decision of the Capital Assembly (no. 740/2020 [24 June] Assembly Decision). However, this decision can be interpreted as a political declaration, but it shows, that the Mayor of Budapest tried to share his power and even his responsibility. There are different patterns among the Hungarian large municipalities, as well. For example, in the County Town[15] Győr several unpopular decisions and land planning regulation were passed by the mayor, who fully exercised his emergency power.

As a second issue, the centralisation of the municipal tasks and revenues should be analysed. As we have mentioned earlier, centralisation is encouraged by crises, especially the centralisation of the economic (budget) resources. These tendencies can be observed in Hungary, especially in the field of local taxation. The (emergency) Government Decree no. 140/2020 (published on 21 April) stated that tourism taxation has been suspended for the year 2020. The (emergency) Government Decree no. 92/2020. (published on 6 April) centralised the revenues of the municipalities from the shared vehicle tax, and later the vehicle tax became a national tax (before the COVID-19, the revenues from vehicle tax were shared between the municipalities and the central government, but the taxation was the responsibility of the municipal offices). The most significant centralisation of the taxation was the (emergency) Government Decree no. 639/2020 (published on 22 December) by which the local business tax rate has been maximalised at 1% (instead of the former 2%) for the small and medium enterprises which have less than yearly HUF4 billion (approx. EUR10.8 million) balance sheet total. It has been a significant intervention into the local autonomy, and especially into the autonomy of the larger municipalities, because the local business tax is one of their most important revenues (see Table 1).[16]

Table 1. Business tax revenues in Hungary

Year	2015	2016	2017	2018	2019
All revenues at regional and local level (in million HUF)	2,745,138	2,240,787	2,437,439	2,508,116	2,774,200
All tax revenues at regional and local level (in million HUF)	770,375	805,446	845,975	923,664	1,006,066
Business tax revenue (in billion HUF)	523,125	584,380	638,731	711,276	788,308

[15] County towns (*megyei jogú város*) are large Hungarian municipalities (the county seat municipalities and those municipalities which were declared as county towns before 2013) which are not part of the county municipalities. These municipalities have similar status like the German *kreisfreie Städte* and the Polish *miasta na prawach powiatu*. See M. Karpiuk, J. Kostrubiec, *Rechtsstatus der territorialen Selbstverwaltung in Polen*, Olsztyn 2017, pp. 42–43.

[16] This tax reduction, as a state aid for small and medium enterprises has been approved by the European Commission based on the Temporary Framework for the coronavirus-related state aids. See *State aid: Commission approves €478 million Hungarian scheme to support small and medium-sized enterprises affected by coronavirus outbreak*, 1.02.2021, www.pubaffairsbruxelles.eu/state-aid-commission-approves-e478-million-hungarian-scheme-to-support-small-and-medium-sized-enterprises-affected-by-coronavirus-outbreak-eu-commission-press [access: 10.02.2021].

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Year	2015	2016	2017	2018	2019
Business tax revenue as % of all local revenues	19.05	26.08	26.20	28.36	28.42
Business tax revenue as % of tax revenues at local level	67.90	72.55	72.50	77.01	78.36

Source: Hungarian Central Statistical Office (www.ksh.hu).

Similarly, the government declared that the municipalities could not charge parking fees, by which decision the urban municipalities have been impacted, because parking is a typical urban issue, and these municipalities introduced differentiated parking charge regulations.

As a part of the concentration, a new regulation evolved. A new institution, the special investment area was introduced – originally by the (emergency) Government Decree no. 135/2020 (published on 17 April), later, as a permanent regulation by the Act LIX of 2020. It is stated by the Act LIX of 2020 that the Government of Hungary can establish a special investment area for those job-creating investments whose value is more than HUF5 billion (approx. EUR13.5 million). If a special investment area has been established, the municipal property of the area and the right to local taxation are transferred to the county government from the 1st tier municipality. The justification of the regulation was to ensure a more balanced revenue system for the environment of these investments, by which the benefits of the investments can be shared with other municipalities. *Prima facie*, it seems a justifiable transformation, but there are different open questions. First of all, the county government did not get service provision competences, therefore the local public services shall be performed by the 1st tier municipalities. The county governments cannot aid the performance of these services, they can give them just development aids. Secondly, this model is not widespread. Till early 2021 only one special investment area has been established, in town Göd based on the Samsung investment. Therefore, this seemingly fair concentration of the municipal tasks seems to be an individual measure, driven by extrajudicial considerations.

However, the centralisation trend has been dominant during the legislation of the last year, different tendencies can be observed, as well.[17] As we have mentioned, the municipalities can be the "trash cans" of the public administration. This "trash can" role can be observed in Hungary, as well. During the first wave of the pandemic, the municipalities were empowered to pass decrees on the opening hours and shopping time for elderly people for the local markets, and they were empowered to pass strict regulations on local curfew. These measures were restrictive; therefore, they can be interpreted as unpopular decisions. Similarly, after the second wave of the pandemic,

[17] See J. Fazekas, *Central administration*, [in:] *Hungarian Public Administration and Administrative Law*, eds. A. Patyi, Á. Rixer, Passau 2014, p. 292

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it has been stated that there is mandatory face masks on the streets and other public spaces if the municipality has more than 10,000 inhabitants. The detailed regulation on these measures shall be passed by the municipality. Therefore, the unpopular measures on public space mask wearing became municipal tasks, as well.

Last, but not least, the municipalities as grassroot administrative bodies can solve locally several problems, therefore alternative policies and solutions are evolved by their activities, especially in the time of crises.

Especially, the large municipalities – which have significant revenues – have enough economic power to provide additional services for their citizens. Those large municipalities, which are led by opposition leaders, can use this opportunity to offer and to show alternative solutions for the national policies, therefore the (national) opposition-led municipalities are traditionally active in the field of facultative tasks.[18] If we look at the decision-making of the large Hungarian municipalities, it can be highlighted, that not only the opposition-led municipalities, but even the government-led local governments tried to introduce several voluntary services and benefits related to the health and socio-economic crises caused by the COVID-19. The major fields of these municipal non-mandatory (voluntary) tasks have been the institutionalisation of new social benefits, by which the moderate central benefits could be supplemented (in Hungary, the increase of the social benefits related to the COVID-19 crisis has been very limited, e.g. the sum and the period of the unemployment benefit has not been amended). Similarly, several municipalities established special aid for the local small enterprises. Different public services – especially social care and health care services – have been performed (e.g. mass testing of SARS-CoV-2, aid for flu vaccination and provision of free face masks for the local citizens). The fate of this municipal activity is ambiguous this year because the coverage of these measures has been the local tax revenues. As we have mentioned, the major tax revenue of the municipalities is the local business tax, which rate has been radically reduced by the latest legislation.

CONCLUSIONS

It is clear now, that the COVID-19 pandemic leaves lasting traces on the Hungarian legal (and administrative) system. Several important regulations will remain after the COVID-19 pandemic, such as the health emergency (which has been

[18] I. Hoffman, D. Papp, *Fakultatív feladatvégzés mint az Önkormányzati innováció eszköze / Voluntary (non-mandatory) task performance as an instrument of local government innovation*, [in:] *A helyi önkormányzatok fejlődési perspektívái Közép-Kelet-Európában. Közös tanulás és innovációk / Perspectives of local governments in Central-Eastern Europe. Common Learning and Innovation*, Budapest 2019, pp. 47–48.

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institutionalised by a sectoral act of Parliament and not by the constitutional rules or bay an act which should be passed by a qualified majority of two-third of the Parliament), the special statutory rules weakening the primacy of the CAGP (especially the controlled notification), and the provisions for special economic zones. Precisely those regulations were only indirectly linked to the epidemiological measures. Thus, the "legislative background noise" due to the threat of an epidemic seems to have served as a kind of backdrop for certain changes and transformations that would otherwise receive more (public and political) attention. However, this may mean the Hungarian legal system resilience, as well, which would be also justified by further research.

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ABSTRAKT

Pandemia COVID-19 istotnie wpłynęła na węgierskie prawo administracyjne. Do węgierskiego porządku prawnego włączono szereg przepisów wprowadzonych w czasie stanu zagrożenia w związku z sytuacją epidemiologiczną. Przekształcenia wywołane epidemią wpłynęły też na prawo postępowania administracyjnego. Przepisy dotyczące e-administracji nie zostały jednak znacząco zmienione (ze względu na reformy z ostatnich lat dotyczące cyfryzacji), ale zmieniono przepisy dotyczące koncesji i zezwoleń administracyjnych. Pierwszeństwo ogólnego kodeksu postępowania administracyjnego zostało osłabione – wprowadzono nową, uproszczoną procedurę i tryb postępowania. Reformy te wy-

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warły wpływ na samorząd lokalny. Transformacja obejmuje dwie przeciwne tendencje. Z jednej strony węgierski ustrój administracji stał się w zeszłym roku bardziej scentralizowany – dochody komunalne i realizacja zadań uległy częściowej centralizacji; węgierski ustrój samorządu terytorialnego również uległ koncentracji; rola samorządu drugiego szczebla, czyli powiatów (*megye*), została wzmocniona poprzez ustanowienie specjalnych stref ekonomicznych (inwestycyjnych). Z drugiej strony gminy można określić jako „śmietnik" węgierskiej administracji publicznej. Otrzymały one nowe, głównie te niepopularne, kompetencje w zakresie ograniczeń związanych z pandemią. Wprawdzie owe zmiany wiązały się z aktualną sytuacją epidemiologiczną, lecz wydaje się, że „tło legislacyjne" pandemii stało się dla rządu okazją do uchwalenia istotnych reform.

Słowa kluczowe: węgierskie prawo administracyjne; postępowanie administracyjne; samorząd; koncesje i zezwolenia administracyjne; pandemia COVID-19; epidemia; stan zagrożenia

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