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Articles

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The *Sui Generis* Nature of Legal Protection in the Case of Regional Development Aids in the Hungarian Legislation and Legal Practice – Focused on Irregularity Issues*

Swoisty charakter ochrony prawnej w przypadku pomocy w zakresie rozwoju regionalnego w węgierskim prawie i praktyce prawnej, ze szczególnym uwzględnieniem problemów kolizyjnych

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ABSTRACT

The regional development aids have a significant role in Hungarian economic life, therefore, the legal regulation on them and the remedies against the decisions of the state agencies can be considered as an important issue. The article analyses the dogmatic background of state aid and regional development contracts. It is emphasized, that there is a tension between the EU and national-level legislation. These contracts and the liability for these contracts are interpreted as an administrative one by the EU regulation, however, the private law nature of these contracts is mainly highlighted by the Hungarian legislation and partly by the judicial practice. The article examines judicial practice, and it can be emphasized, that the above-mentioned tension can be observed in it. This tension has significant effects, especially since the effectiveness of these remedies can be questioned.

Keywords: administrative law; Hungary; administrative liability; state aid; judicial practice

INTRODUCTION

Regional development plays an increasingly important role in the economy and society. First of all, it is important to emphasize that Hungary has been integrated into the European Union's cohesion policy and regional development system. Therefore, European principles and legislation are applied, and the state has access to EU funds. But the question may arise: Why is spatial development important today? As a participant of the regional development system of the European Union, Hungary is obliged to adapt to the EU's standards, to follow a fixed development path to achieve and implement its objectives, and to widen the range of opportunities. The laws on the Hungarian budget also set out the appropriations for regional development objectives, thus expressing their importance.

It should be noted that in everyday life we are almost constantly confronted with the law on regional development and the related subsidies. Just think of the "Széchenyi 2020" posters, or even of the tenders that can lead to hundreds of thousands or even millions of euros in grants. The European Structural and Investment Funds (the ESIF) play an important role in the Hungarian economy.[1] Based on the national budget data of the Eurostat, Hungary received yearly around 3.06% of its GDP from the ESIF, which is a highest share of the EU funds among the V4 countries (Czechia, Hungary, Poland, and Slovakia; see Figure 1).

[1] See G. Nyikos, N. Ermasova, *Public Capital Infrastructure Management: Cases of Germany, Hungary and the USA*, "International Journal of Public Administration" 2021, vol. 45(12), pp. 1–2.

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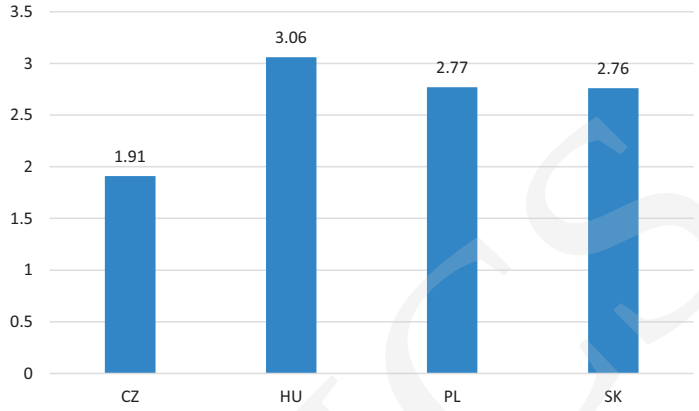


Figure 1. Yearly ESIF funds from EU (2014–2020) in the share of the average of 2014–2020 GDP (current market prices; %)

Source: Authors' own elaboration.

As a result of this constant "encounter", questions arose: What legal remedy is available to the beneficiary? How effective can this remedy be? What are the rules of law that apply to any procedure? In our paper, we try to answer these questions.

METHODS

Our article is based on mixed methods. First of all, on a jurisprudential method, i.e. dogmatic analysis of the regulation on remedies in regional development cases. Secondly, we analysed the importance of these regional development cases, therefore the role of the EU funds in the Hungarian economy was analysed. This part of our analysis has been based on Eurostat data.

There is a detailed regulation on this topic, but we wanted to analyse the (judicial) practice of these cases. Our research has been based on the analysis of the Collection of Court Decisions (Bírósági Határozatok Gyűjteménye, BHGY).[2] The anonymised judgments published in the BHGY were reviewed in spring 2021 (April–May). The data of the research was determined by the EU funding periods. However, the funds of the period 2014–2020 can be spent years later, because

[2] The Collection of Court Decision is an open online database. It is available at: https://eakta.birosag.hu/anonimizalt-hatarozatok.

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the so-called "*n* + 3" spending rule allows to start projects from the funds of this period till 2023,[3] the majority of the funds from this period was spent in Hungary.[4]

To understand the limitations of our research, the structure and content of the BHGY should be analysed. First of all, the BHGY has been established on 1 January 2006 by the Act XC of 2005 on the Freedom of Electronic Information. The establishment of this database was part of the transparency reforms related to Hungarian access to the European Union. The main aim of this database was to increase the transparency of Hungarian judicial practice. However, Hungary has a continental (civil law) legal system,[5] and the judgments of the Hungarian courts have a significant role in the legal practice, especially in those fields of law where general clauses are applied by the legislation.[6] The database provides access to the judgments of the (high) courts for everybody, therefore the interpretation of legislation could be transparent to the citizens.

The BHGY could not be interpreted as a complete collection of court decisions. The database focuses on the judicial practice of the Hungarian high courts.[7] The final decisions of the (regional) courts of appeal and decisions of the Curia are available it the BHGY. In addition, final judgments in actions relating to the review of administrative decisions that become final at first instance (administrative actions) are also publicised. The BHGY contains only those decisions of the district and county courts which have been reviewed by the Hungarian high courts (by the Curia and the courts of appeal). The cases which started at the district courts (because the value of the lawsuit was less than HUF 30 million) can be found in

[3] See L. Dellmuth, *Is Europe Good for You? EU Spending and Well-Being*, Bristol 2021, p. 109.

[4] See V. Varjú, *The Policy Transfer of Environmental Policy Integration: Path Dependency, Route Flexibility, or the Hungarian Way?*, "Policy Studies" 2021, vol. 43(5), p. 9.

[5] See A. Harmathy, *Comparative Law in Hungary*, "Revue internationale de droit comparé" 1999, vol. 51(4), pp. 945–946.

[6] See N. Chronowski, *The Post-2010 'Democratic Rule of Law' Practice of the Hungarian Constitutional Court under a Rule by Law Governance*, "Hungarian Journal of Legal Studies" 2020, vol. 61(2), p. 148.

[7] Hungary has a four-tier judicial system. The minor court cases are decided at first instance by 133 district courts (*járásbíróság*), the major court cases (in civil cases if the value of the claim exceeds HUF 30 million – approx. EUR 75,000, in criminal cases those crimes which are defined by the Criminal Procedure Act), and the judicial review of administrative decisions are decided at first instance by 20 county courts (*törvényszék*). The county courts have second instance competences and are also responsible for the appeal procedures of the first instance judgments of the district courts. The third tiers are five regional courts of appeal (*ítélőtábla*), which have only second instance competences: they are responsible for the appeal procedures of the county courts. The Hungarian Supreme Court is the Curia (*Kúria*), which is responsible for certain extraordinary remedies and thus the legal unity of the judiciary. See E. Bodnár, *Igazságszolgáltatás*, [in:] *Alkotmányos tanok I. Második kiadás*, eds. E. Bodnár, Z. Pozsár-Szentmiklósy, Budapest 2021, pp. 173–175.

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the BHGY, if the Curia (or the Supreme Court,[8] prior to 1 January 2012) makes a decision in a review procedure, which is a relatively narrow group of judgments. If a development contract is defined as an administrative case, the judgments can be found in the BHGY.[9] However, only a limited numbers of district court cases are available in the BHGY, first instances practice of the county courts is relatively better available, because of the relatively significant share of the appeals against county court decisions (in 2021 the county courts have 10,499 first instance judgments in economic and civil cases, and the courts of appeal have 2,094 second instance judgments in these cases according to the court statistics).[10]

Therefore, analysis of the BHGY essentially does not show the entirety of Hungarian case law, rather only those cases leading to an appeal or review procedure. Those cases are overrepresented by the BHGY in which the subject value of the action was relatively high (more than EUR 75,000), therefore the cases in which small and medium enterprises (SMEs) were mainly affected cannot be analysed by this method. We needed to consider all these factors when analysing and evaluating judgments.

The focus of our research has been on the co-financed – Hungarian national budget and EU funds – regional development aids. We tried to answer the question of the effectiveness of the legal protection afforded to the beneficiaries of the funding, and the extent to which they have the possibility of legal redress in the case of any possible legal consequences. During our analysis of the decisions available in the BHGY, we chose the so-called legislation-based search method. The BHGY allows to search the cited legislative acts. Therefore, we searched for those judgments which cited the Government Decrees on the procedures of co-financed development grants: Government Decree No. 255/2006 (XII.8.; for the programming period 2007–2013 till 2011), Government Decree 4/2011 (I.28.; for the programming period 2007–2013 after 2011), and Government Decree 272/2014 (XI.5.; for the programming period 2014–2020, so-called "Széchenyi 2020" programme). As a result of the searching method 99 judgments have been found, of which 3 were based on Government Decree 255/2006 (XII.8.), 89 on Government Decree 4/2011 (I.28.), and 7 on Government Decree 272/2014 (XI.5.). We also looked at how many of the judgments examined dealt with the "aid relationship", because these decrees have been mentioned in different cases (mainly in criminal – especially budgetary fraud – cases; see Figure 2).

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[8] On 31 December 2011 the name of the Supreme Hungarian court was Supreme Court of the Republic of Hungary, shortly Supreme Court. See *ibidem*, pp. 172–173.

[9] The methods of the judgment analysis are similar to the examination in the article: V. Kiss, A. Maléth, B. Tőkey, I. Hoffman, *An Empirical Study of Actions on Custodianship in Hungary*, "International Journal of Law and Psychiatry" 2021, vol. 78, pp. 2–3.

[10] Source of data: Magyarország bíróságai, Ügyforgalmi adatok, 2021, https://birosag.hu/birosagokrol/statisztikai-adatok/ugyforgalmi-adatok (access: 15.3.2023).

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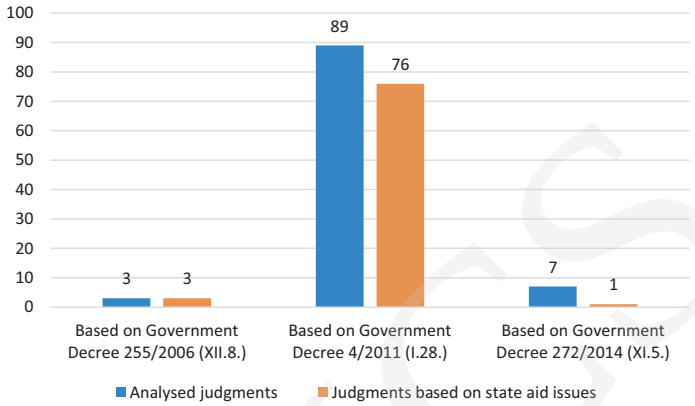


Figure 2. Number of the analysed judgments and the number of cases based on state aid issues

Source: Authors' own elaboration based on BHGY data.

Our main aim is to show the tension between the legislation on state aid issues and the judicial practice, which is partly based on the dogmatic background of the regulations on state aid issues.

ANALYSIS

1. Dogmatical background – state aid (subsidy) relationships in Hungarian legislation

First of all, it should be emphasized, that the Hungarian legal regulation does not contain a definition of "state aid (subsidy) relationship" in a direct and principled manner, in a way that is binding on case law. The Act CXCV of 2011 on Public Finance (hereinafter: the APF) speaks of subsidies as a financing title; the Civil Code is silent on the concept of a subsidy relationship and subsidy contracts.[11] As we have mentioned, our research has been based on the co-financed regional development aids. In our opinion, those aids could be interpreted as co-funded which are under the scope of the above-mentioned Hungarian government decrees (based on the EU regulations on cohesion policy).

The purpose of a state subsidy is to provide financial assistance for achieving the social and economic objectives which it considers to be its priorities, which may include various types of investment, development or even the promotion of economic activity. The APF and its implementing government decree lay down

[11] See M. Nagy, *Az állami ellenõrzés kérdõjelei, szabályos és szabálytalan a közigazgatásban*, "Pénzügyi Szemle" 2012, no. 1, pp. 88–89.

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a framework for aid granted by the central government and by the municipalities. These rules are complemented or, in some cases, completely derogated from by sectoral legislation, thus constituting an exception to this framework. In all cases, the aid is earmarked for a specific purpose and may be used only for the purpose for which it was made available by the donor, as stipulated in the "decision" granting the aid, the types of which are explained below, or by law. The aid is nothing more than a grant from the central or local government sub-system of the general government budget in any form whatsoever, without any payment being made in return.[12]

Two forms of aid granted from the subsystems of the general government are defined by Section 48 (1) APF. Firstly, a public authority may grant aid by means of a decision (governed by public law) following a call for tenders or, as provided for in the APF, by means of a public-law contract instead of a decision. In this case, we are talking about a legal relationship governed by the administrative law. The other option is the conclusion of a state aid contract by means of a call for tenders or the issuing of a grant award document, which creates a private law relationship between the grantor and the beneficiary.

Aid can be granted in two main ways: (1) on the basis of an application by the applicant, where the applicant initiates the aid relationship by submitting a request (application), and (2) by means of a normative decision, where a unilateral decision to grant aid or the condition for granting aid is taken by means of legislation. Aid based on an individual decision is usually based on an application for aid, which may be either an application or a request regulated by the APF. Applications for aid are assessed according to the criteria laid down. The assessment and acceptance of such a grant application results in the establishment of a state aid relationship.[13]

Therefore, in our view, a state aid (subsidy) relationship is a relationship governed by public law if it is established by an official decision or an official contract. The decision by a public authority is very unique in the field of regional development aid, as it differs from the "traditional" unilateral decision, as the acceptance of the aid requires the consent of both parties, given that it is public money. This consent takes on the characteristics of a public contract as defined by the APF, creating a latent consensual bilateral act.[14] A public contract is a specific form of decision on a matter of public authority. It enables a consensus to be reached between the public authority and the client on the basis of a reconciliation of mutual benefit, the public interest, and the client's interests in the specific case. A public authority contract is an administrative contract under the Civil Code, a special legal

[12] See *ibidem*; judgment of the European Court of Justice, case C-380/98, point 21 of the justification.

[13] See judgment of the Curia (Supreme Court of Hungary) No. Kfv.IV.35.017/2014/9.

[14] See L. Gönczi, *A területfejlesztési támogatások esetén igénybe vehető jogvédelem sui generis jellege – nemzetközi kitekintés*, "Közjogi Szemle" 2022, vol. 15(1), pp. 61–62.

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instrument which has the general characteristics of both a public authority decision and a contract, so that the general rules of the Civil Code on contracts apply accordingly. According to Section 6 (58) of the Civil Code, a contract is a mutual and concordant declaration of the parties, i.e. a public contract cannot be concluded without the consent of the client. This is one of the elements of the legal instrument which fundamentally distinguishes it from a decision.[15]

The state aid (subsidy) relationship can be established not only by the means mentioned above, by a relationship governed by the public law, but also by the conclusion of a (state) aid contract or by the issue of a grant deed. In these two cases, the relationship is governed by private law according to the APF. In the case of state aid agreements, the APF also stipulates that the form in which the subsidy is awarded is a tender. The (state) aid contract is an atypical private law contract, so the Book Six on Obligations of the Civil Code and the (Hungarian) Civil Procedure Rules (Act CXXX of 2016 on Civil Procedure Rules, hereinafter: ACPR) applies to it.[16] The aid is granted and accepted by a contract, which is a bilateral act and gives rise to enforceable rights and obligations.[17] In our opinion, the deed of state aid (subsidy, or "grant deed") could be considered as a bilateral act, like the (state) aid contract. The deed of state aid is theoretically a unilateral act, but it becomes bilateral with the signature of the grantee and thus behaves as a quasi-contract. This obligatory formality of the deed of support is not discussed in the literature, but all the specimen deeds of support we have examined have indicated the place where the signatures of the sponsor and the grantee are affixed. The conditions and procedure for issuing a deed of state aid are the same as for the state aid agreement outlined above, but only in specific cases. The APF stipulates that, where the law does not provide for a method of granting the aid, a deed of state aid must be issued in the case of budget aid granted under the chapter of APF referred to in Section 14 (3). A deed of state aid should be issued in other cases where the budget support does not exceed HUF 5 billion (about EUR 12,5 million).

Our opinion is (which is according to the view of the Hungarian jurisprudence) that the state aid contract – however, it is defined by the APF as a private law contract – can be considered dogmatically as an administrative contract. An administrative contract is a contract or agreement concluded between Hungarian administrative bodies for the performance of a public task and a contract which is classified as such by law. The Hungarian legislation also stipulates that an ad-

[15] See K. Rozsnyai, *The Procedural Autonomy of Hungarian Administrative Justice as a Precondition of Effective Judicial Protection*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), pp. 496–499.

[16] T. Papp, *Rövid értékelés a támogatási szerződésről*, [in:] *Ünnepi tanulmányok Szabó Imre 65. születésnapjára*, eds. K. Gellén, M. Görög, Szeged 2016, pp. 462–468.

[17] G. Barabás, *Állami támogatások joga*, [in:] *Közigazgatási jog. Fejezetek szakigazgatásaink köréből*, ed. A. Lapsánszky, Budapest 2013, pp. 666–672.

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ministrative contract is also an administrative act.[18] The legal basis for the state aid relationship, and hence the grant contract, is the financial support from the EU and the national central budget funds. However, the mere fact that money is provided does not transform a legal relationship into a civil law relationship, since the essential element of a legal relationship would be that the beneficiary of the relationship should be the owner of the money. In a state aid relationship, however, the donor body is not the owner of the money but is entitled to dispose of it in accordance with the purposes and within the limits of the powers conferred on it by the law. In addition, the public authority is only entitled to award the grant within the limits and for the purposes laid down by law. The Civil Code stipulates that this law regulates the fundamental property and personal relations of persons on the basis of the principles of subsidiarity and equality and, in this context, that the enforcement of the rights granted by this law is subject to judicial review. The state aid contract does not therefore, in doctrine, confer jurisdiction on the court having jurisdiction to hear civil disputes. In order for considering a contract as an administrative contract, it must meet essential criteria.[19] First and foremost, at least one of the parties to the contract must be a body with a public service task. The state aid contract fully meets this conceptual element, since in the vast majority of co-financed territorial development aid, the body responsible for awarding the aid is the public authority. The second condition is linked to the subject matter of the contract, which must be a public task falling within the remit of a body or person with a public service task. This criterion can also be met by this civil act, since in the case of grants financed from the central budget, and the APF should be applied, by means of the appropriations for the performance of professional tasks, already specifies the tasks which the donor may undertake. The activity of the beneficiary may therefore be a public task or duty, an activity in the public interest, an activity of general interest, the implementation of a development project by the beneficiary, or any other task or activity deemed worthwhile by the beneficiary. The third characteristic of an administrative contract can be formulated as the fact that the objective for which the feasibility of the task is intended must have been originally achievable by administrative means, but that the original feasibility is not sufficiently effective to be sustainable as a method. This element of the administrative contract can also be equated with the grant contract, as described above. The next and, in our view, the last criterion is the role of the State in the legal relationship. The parties' rights of disposal are determined by the law and, within this framework, the parties' contractual freedom is unconditional. Another argument in favour of

[18] See idem, *A közigazgatási szerződések egyes eljárás- és perjogi kérdései a magyar (közigazgatási és polgári) bírói joggyakorlatban*, "Közbeszerzési Szemle" 2014, no. 11, pp. 41–60.

[19] See M. Várhomoki-Nagy, *A közigazgatás szerződései és a koncessziók Európában*, Budapest 2021, pp. 34–60.

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the administrative nature of a subsidy contract is that an administrative contract has many elements of private law and can therefore easily be confused with contracts known from private law. As a contract, it naturally has the general characteristics of a contract, such as bilateralism, consensus between the parties and the possibility of freedom of contract. Just as an administrative contract cannot be unilaterally modified by the parties, by the public authorities, so a state aid contract cannot be unilaterally modified by the parties. There is no causal link between this statement and the unilateral amendment of a grant contract, which is simply not permitted by law, given the subject-matter of the contract, which is a contract from central budgetary resources.

It should be emphasized, there are diverging opinions in the judicial practice on the assessment of the state aid (subsidy) relationship. The Budapest Court of Appeal takes a position in favour of the public law nature of state aid contracts in some of its case law decisions, and therefore does not recognize the competence of those courts which are entitled to decide in private law cases.[20] In other decisions, the Budapest Court of Appeal gives similar reasoning irrespective of the form the aid takes, since the decisions concern both budgetary and agricultural aid. According to the Budapest Court of Appeal, the court in civil proceedings has no jurisdiction to rule on these state aid disputes. The lack of competence is because the state aid contract is not considered to be a private law contract. Only those contracts which are concluded by the parties to the contract, acting in concurrence, freely disposing of their rights and obligations, whether pecuniary or personal, are private contracts. It considers a public subsidy contract to be an administrative contract with the characteristics defined by the theories, as explained above.

The case law analysis group of the Curia has had another opinion: the private law nature of the state aid relationships has been emphasized by their report. It has been emphasized although public law elements may appear in the law on state subsidies, they do not affect the civil law nature of this legal relationship.[21] The Constitutional Court also argued in favour of the civil law contract, stating that a grant contract is a specific contract which mixes elements of civil law and public law. In that decision, the AB argued in favour of a civil law relationship based on the use of public funds and, in its view, it therefore constitutes a civil law contract.[22]

[20] See Z. Nagy, *A közpénzügyi támogatási jogviszony a közjogi és magánjogi szabályozás metszetében*, "Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica" 2012, vol. 30(2), p. 348. The following judgments of the Budapest Court of Appeal cited in the article: 9. Pf. 21.501/2010/5; 9. Pf. 20.303/2011/3; 9.Pf.21.762/2011/4; 9. Pf. 21.257/2009/4; 9. Pf. 20.815/2009/3; 9. Pf. 21.590/2010/6; 9. Pf. 21.286/2010/4; 9. Pf. 21.197/2011/4.

[21] Kúria, Joggyakorlat-elemző Csoportja, *A pénzügyi támogatásokkal kapcsolatos polgári és közigazgatási ügyek joggyakorlata*, Budapest 2012, https://kuria-birosag.hu/sites/default/files/Penzugyi_tamogatasok_osszefoglalo_velemeny.pdf (access: 18.5.2023), p. 49.

[22] See decision no. 3385/2018 (XII.14) of the Hungarian Constitutional Court.

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In 2012, the Curia sought to resolve this tension by clearly stating in its joint opinion no. 1/2012 (10.12.2012) of the Private Law Branch and Administrative and Labour Law Branch of the Curia that in the legal relationship relating to state aid, the donor is only considered to be a person exercising the powers of an administrative authority if the law – by defining the authority of first instance – clearly so provides. Not only did the Curia fail to recognize that the state aid contract is not a private law contract but an administrative contract, but it also stated that the administrative activities and the application of public authority activity are one and the same, thereby reducing administrative activities to the application of public authority activities and excluding a large – if not the largest – part of the toolbox for the performance of administrative tasks, especially the public service provision.

2. Irregularity in the Hungarian legal system

Irregularity is a Janus-faced legal concept, since it is not only defined domestically, but its legal basis is Regulation (EC) No. 2988/95, which is directly and horizontally applicable at the European level. Irregularity is the basis for the sanctions for unlawfulness in relation to grants from the EU budget. The most serious legal consequence of a breach of development policy rules is the finding of irregularity, i.e. irregularity is a separate form of administrative liability. The irregularity procedure raises many issues in the law on regional development aid, one of the main elements of which is that in Hungary the EU face of the legal instrument is not recognized, despite its direct scope. The Regulation stipulates that the legal consequences of irregularity can be considered as a form of administrative liability. However, the decision on irregularity is preceded by a quasi-administrative procedure, the irregularity procedure. One of its special features is that, although it essentially has elements of the administrative procedure regulated by the Act CL of 2016 on the General Administrative Procedures Code, it is not covered by this Act, because neither the legislator nor the practitioner has recognized the consequences of Regulation (EC) No. 2988/95 as an administrative liability.[23] Once the irregularity has been stated by the given authorities, the beneficiary has a specific remedy based on the constitutionally guaranteed right to complain, which takes over the procedural guarantees of administrative procedures.[24]

This tension between the different tiers of legislation, especially between the EU legislation and the national legislation, the diverging judicial practice, and the dogmatic background is mirrored by the Hungarian judicial practice which has been analysed by our research.

[23] See A. Nagy, *Az állami ellenõrzés kérdőjelei…*, pp. 91–94.

[24] See I. Hoffman, *Bevezetés a területfejlesztési jogba*, Budapest 2018, p. 100.

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3. Analysis of the Hungarian judicial practice on regional development cases

Based on the adopted methodology and the dogmatic analysis, our first hypothesis was that there are many more judgments in civil law than in administrative law. The research question within this area was the relationship and ratio of the areas of litigation to each other. In our opinion, this object of study really illustrates what we have written, because there are far more civil law relationships than administrative law ones (see Figure 3).

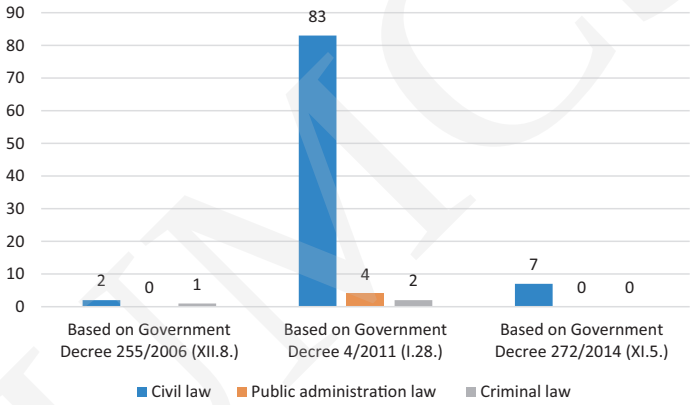


Figure 3. Jurisdiction of the dispute: civil, administrative, and criminal law

Source: Authors' own elaboration based on BHGY data.

This proved our first hypothesis, since the majority of the judgments examined are civil law judgments, which are governed by the rules of the ACPR. In our opinion, it is important to note that economic law is also a segment of civil law, so we have aggregated the economic civil-law aspect after the data found in the BHGY, which shows a drastic difference from the number of administrative law disputes. There is no uniform jurisprudence as to whether unilateral or bilateral legal transactions provide the beneficiary with the amount of funding, which creates huge loopholes and puts a huge burden on practitioners, as it is not always the same whether a bilateral or a unilateral decision should be challenged.

However, in administrative legal disputes, the issue of legal procedure and measures is the peculiarity and the main issue of conviction lawsuits. The civil action – which concerns the establishment of contractual liability for damages – is thus, both on the basis of the doctrine and the judgments examined, a purely administrative action for damages in the guise of a civil action, since the procedure for the management of irregularities by the intervening body, the control of financial aid from the central budget, gives rise to an administrative relationship. We also examined the ratio of litigation in the capital to litigation in the countryside.

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It should be emphasized that the majority of the cases concerned were decided by courts in the capital city – Budapest. The reason for this was also pointed out by J. Rechnitzer, who explained that although the majority of the subsidies go to rural towns[25], the defendant is an administrative body with its seat in Budapest, and therefore, according to the general rules of the ACPR, the jurisdiction of the court is also based on the seat of the defendant. It should also be mentioned and is supported by a large number of judgments in the capital, that beneficiaries may bring an action for the enforcement of their contractual claim at the place of conclusion of the transaction or performance of the service instead of the court having general jurisdiction over the defendant. Although the law stipulates that the latter rule can be applied only in the absence of exclusive jurisdiction, no exclusive jurisdiction rule can be established for disputes relating to regional development aid. In our view, this issue cannot be examined from a legal point of view, as it is rather a custom that is not subject to legal regulation. In our opinion, it is likely that transactions in the capital may give the parties a greater sense of security, as they can easily and quickly access the relevant intermediate body, the ministries, and any court, as opposed to rural beneficiaries, who may have more limited access.

Our second hypothesis was that the practice is not favourable to the beneficiary, it is difficult to challenge the aid decisions, thus contradicting the requirement of effective legal protection. The first investigative question concerned the courts in charge, i.e. which court handed down the judgments.

The Civil Code stipulates that the district courts shall have competence in actions relating to property, where the amount in dispute does not exceed HUF 30 million, or where the value of the claim based on property rights cannot be determined, as well as in civil status and enforcement cases. Among the interpretative provisions, the law defines "action relating to property", which means actions where the claim enforced is based on the party's property rights or whose value can be expressed in money. In disputes concerning regional development aid, the subject matter of the dispute the value can be expressed in money, since the claim also arises from the funding itself and its recovery. As the general court ruled in 88% of the judgments examined, the amount in dispute exceeds HUF 30 million.

It is clear that of the 99 judgments, only 60 were based on the application of an unlawful sanction by the defendant authority, 59 of which were based on Government Decree 4/2011 (I.28.) and one on Government Decree 255/2006 (XII.8.). In all the disputes concerning the legality of the legal consequence applied by the intervening bodies, the court dismissed 48 actions: one under Government Decree 255/2006 (XII.8.) and 47 under Government Decree 4/2011 (I.28.). It is interesting that both regulations cover the same programming period, but the majority of the

[25] See J. Rechnitzer, *Nagyvárosok a magyar területi politikában és területfejlesztésben a rendszerváltsától napjainkig*, "Tér és Társadalom" 2019, vol. 33(1), pp. 10–11.

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judgments on legality/illegality relate to the 2007–2013 period. In our opinion, this could also be seen as a developing trend, although it is difficult, as there has been no case dealing with the legality of the administrative body acting in the case, which would have been related to Government Decree 272/2014 (XI.5.).

We also looked at the number of actions that were upheld by the court. There were only 11 judgments in which the court "found in favour" of the plaintiff, either at first instance or on appeal. Four out of 11 judgments were handed down by an administrative court, of these four disputes only one dealt with a lawful/illegal measure by an administrative body, and in this case the court upheld the claimant's action. The administrative court can therefore meet the requirements of effective judicial protection. It is also clear that it is the appellate forums that have been able to resolve disputes, upholding the plaintiff's claim. In our view, however, this is far from being in line with the principle of the protection of rights mentioned above. There is no possibility for the recipient to have recourse to a national court which could actually remedy the harm suffered, since, as we have already demonstrated in our first hypothesis, the rules of civil law apply to this legal relationship of an administrative nature. In our view, this is not at all appropriate and makes the whole procedure unpredictable (see Figure 4).

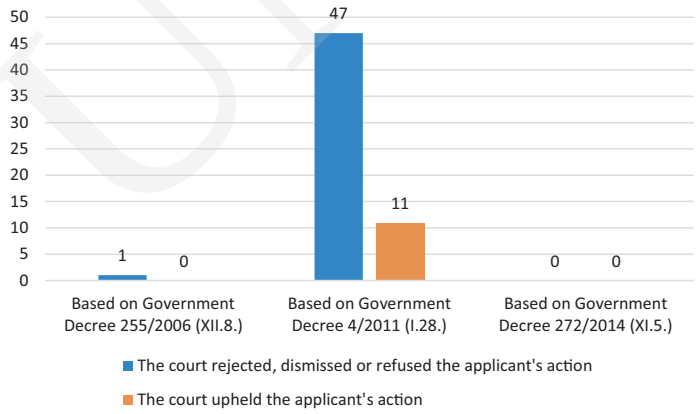


Figure 4. Court decisions

Source: Authors' own elaboration based on BHGY data.

CONCLUSIONS

It can be seen that there is a tension between the legislation and the dogmatic-jurisprudential interpretation of the state aid contracts. The results of this tension can be observed by the analysis of the jurisprudence. As we have mentioned above, state aid contracts can be primarily interpreted as administrative contracts and therefore as administrative acts. It is clear, that the Hungarian legislation, which prefers the

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private law approach defines a "Procrustes bed" for the Hungarian courts: they should decide mainly administrative type disputes in private law proceedings, which form can be interpreted as an inadequate one. The inadequateness of this form is mirrored by the judicial practice: the number of cases is relatively law, and the effectiveness of the remedies can be questioned.

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ABSTRAKT

Środki pomocy w zakresie rozwoju regionalnego odgrywają istotną rolę w węgierskim obrocie gospodarczym, dlatego jego prawne uregulowanie oraz środki odwoławcze od decyzji agencji państwowych można uznać za ważną kwestię. W niniejszym artykule przeanalizowano dogmatyczne tło umów dotyczących pomocy publicznej i rozwoju regionalnego. Szczególnym zagadnieniem badawczym stało się przedstawienie różnic związanych ze stosowaniem norm prawa unijnego i prawa krajowego. Umowy o udzielenie pomocy publicznej w zakresie rozwoju regionalnego oraz odpowiedzialność z nimi związana są w świetle norm prawa unijnego traktowane jako umowy administracyjne. Jednak w prawie węgierskim i w judykaturze sądów krajowych podkreśla się prywatnoprawny charakter wspomnianych umów. W artykule na podstawie analizy orzecznictwa sądów węgierskich udowodniono, że problemy związane ze stosowaniem norm prawa unijnego i krajowego może prowadzić do zakwestionowania skuteczności środków odwoławczych.

Słowa kluczowe: prawo administracyjne; Węgry; odpowiedzialność administracyjna; pomoc publiczna; praktyka orzecznicza