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**Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

**WHAT DO EU INSTITUTIONS EXPECT FROM ADMINISTRATIONS  
OF COUNTRIES WANTING TO JOIN THE EU?**

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The great social, political and economic transformation of the 90s dramatically changed the role and functions of the state in the Central and Eastern European countries. One-party dictatorship has been replaced with multi-party democracy, instead of a state-owned economy a market economy has been gradually developing, and the rule of law has become a general requirement in every field of social life. New constitutions were adopted, new state organs were formed (e.g. constitutional court), and the relationship among the state organs changed as well. These changes put significant demands on public administration regarding its power, competences, structure, as well as its operation.

It is important to point out that fulfilment of these demands is independent from the question as to whether countries want to join the EU or not. In other words: if the people of a country want to build democracy, the preconditions of democracy must be established for the benefit of the nation and not on demand of a foreign power. Of course, the intention to join the EU significantly accelerated these developments. First, the written and unwritten requirements of the EU served as a guideline in this process, and secondly, many experts arrived from the EU, the OECD and other international and national institutions to support efforts of the accession countries.

I worked in the Ministry of Interior of Hungary during this period and therefore was an active participant in the modernization of the Hungarian public administration. We could learn a lot from foreign experts (some of the most professional and cooperative arrived from Sigma) and we also could learn, together with our foreign friends, that experts arriving from outside could only give advice: They could tell us how they had solved problems and overcome difficulties, they could offer options on how to tackle our tasks, and criticize our plans and ideas in a positive way. However, implementation is to be done by local experts, they have to harmonize international requirements and expectations with national traditions and peculiarities.

### **Most Important Expectations**

- Although the main topic of the current workshop is administrative procedure and administrative justice, I would like to mention other expectations, which influence the entire structure and activities of the public administration. The most important expectations are as follows:
  - Clear structure of the public administration and clearly regulated relationship with other organs of the state power.
  - The scope of authorities and competences of the public administration authorities must be determined by law. On the one hand, this is a safeguard for authorities (their competences cannot be curtailed by a superior authority) and on the other hand, it hinders arbitrary or incompetent decisions. Of course, regulation is not enough; an efficient control and legal remedy system is also needed (e.g. judicial control over the decisions of the administration).
  - Professional civil service acting in a politically neutral way.
  - Transparent budgetary (financial) management of public administration. This requirement includes openness regarding incomes and expenditures, an efficient control mechanism (e.g. the operation of a State Audit Office), a verifiable public procurement system, and the controllable activities of politicians and civil servants.
  - The operation and activities of public administration must be open to the public. Documents and data of public interest must be accessible for the public.
  - Efficient legal and procedural means in order to protect individual constitutional rights with special regard to personal data.
  - Fully regulated administrative procedures, which guarantee the protection of individual rights and interests as well as the safeguard of the common interest.
  - The rights of citizens to initiate actions with authorities other than public administrative bodies in case the latter make unlawful decisions or violate constitutional rights. (Constitutional Court, ordinary courts, ombudsman, data protection commissioner, commissioner of national minorities etc.).

As there is no time to introduce these expectations and requirements in detail, I will concentrate on four of them.

## Professional Public Service

- A basic condition for effective and lawful operations of public administration is a professional civil service composed of politically neutral and loyal officials. In order to achieve this in Hungary, one of the most important tasks of the Hungarian legislature was to enact the status, rights and obligations of civil servants. Earlier the status of civil servants was regulated in the Labour Code, just like that of workers or employees of service institutions. The act on the status of civil servants was adopted in 1992 and revised and amended in 2001. In terms of its objectives and fundamental measures, it is worth citing the preambles of these two laws:

“It is a fundamental condition for the existence of a democratic public administration, generally esteemed by members of the society, that the administration of public matters be entrusted to civil servants not influenced by party politics, operating on legal grounds, possessing up-to-date professional expertise and are neutral and unbiased in standing.”

“The Parliament acknowledges the significant role played by civil servants in the operation of state organization so far. In order to achieve a more complete compliance with constitutionality, however, it has become necessary to further enhance and increase the education of civil servants as well as the professional and ethical requirements for them. To that end it shall be ensured that the accountability of civil servants, the public nature of decision-making, the honesty of conduct of civil servants, the exemplary conduct of leaders as well as the unselfishness and unbiased nature of those in public service, as well as the objectivity of handling public matters, are realised to their fullest. At the same time it is also essential that these added requirements result in — proportionately — added compensation. The Parliament sees it necessary that living conditions of civil servants substantially improve. As part of that effort, it is justified that the civil servant profession becomes one of a clear and calculable career path.”

- In compliance with the cited principles, the Act — *inter alia* — regulates in detail:
  - Conditions for commencement of civil service employment (e.g. the position of head of department in the ministries may only be filled by open announcement and competition);
  - Ways and conditions for terminating such employment, in order to prevent arbitrary decisions (the decision on the dismissal of a civil servant may be contested in court);
  - Incompatibility (e.g. a civil servant may not assume a position in a political party and may not appear in public on behalf of or in the interest of a party);
  - Promotion and remuneration system.
- It is important to point out that additional acts were adopted by the Parliament on the status of other groups of state and local government employees, namely:
  - Judges.
  - Public prosecutors and attorneys.
  - Officials of the judiciary.
  - Employees of law enforcement bodies (police, border guard etc.).
  - Soldiers.
  - Employees of public service institutions (school, hospital, etc.).
- The basic principles of these laws are alike but detailed regulations and measures differ regarding characteristics of these professions (e.g. a civil servant is bound to obey the orders of his/her superior but a judge is independent in his/her judging activities).

## Transparent Public Administration, Protection of Personal Data

In dictatorships, the internal workings of public administration are unknowable to outsiders. Internal procedures are often regulated by secret orders, and it depends on political goals and decisions what

documents are made open to public. Of course, there are exceptions (e.g. the Act on the General Measures of Administrative Procedure was adopted in 1957 in Hungary), but while the implementation of laws might be formally correct, the rule of law is always overruled by the “rule of politics”. Also, authorities may control and observe the life of citizens without any legal limitation collecting data and using them in an uncontrolled way.

All of these behaviours are inadmissible in a democracy. For this reason the parliament adopted an act on the protection of personal data and the openness of data of public interest in 1992 (personal data comprises all information, which relates to a person or may be connected to him/her). According to this act, personal data can only be processed as authorized by law (data processing includes the gathering, recording, modifying, deleting, connecting, and forwarding of these data). Such data shall be used only for purposes provided under the law and be forwarded to organizations or persons that are authorized to receive them by law or persons allowed to process them.

A person concerned has the right to check his/her personal data processed by an authority and ask for information to whom, why, and when this data was forwarded (only an act may determine exceptions — i.e. an authority could deny the information — especially on grounds of safety or national security). A person may protest against illegal or irregular data processing and ask for correcting (or deleting) his/ her data. In case the authority refuses, he/she may contest this decision in court or by appealing to the data protection commissioner.

On the other hand, organizations fulfilling public duties are bound to make public or available the most important data related to their activities. The range is determined by law as well as those data that are prohibited to be made public such as secret data and documents. However, an authority cannot declare a document secret in an arbitrary way because the range of such data is also prescribed by law. In case an authority does not make public or available the requested data the person concerned may sue it and the court will force the authority to make the data public.

### **Fair and Transparent Public Procurement; Transparency of Public Life**

Corruption and abuse of power are most dangerous undermining trust in the administration and the rule of law. It is sad to say, but corruption may occur in any country, but in a democracy everything must be done in order to prevent it as well as to reveal these cases and to punish the perpetrators. The most important means in the fight against corruption are criminal law and the criminal and judicial authorities.

Although criminal law and procedures have a significant role in the general prevention, they typically deal with cases that have already happened. For this reason, public administration regulations and procedures serving prevention are at least as important as criminal procedures. One of these administrative means is the precise regulation of public procurement and control over implementation of such a law. The Hungarian law in force on public procurement regulates these procedures in harmony with EU requirements. This law is binding for the organizations of public administration, local governments, and institutions managing their finances within the state or a local government budget, as well as for state owned enterprises.

According to the general rule, procurement process shall begin with an open invitation to tender — exceptions (when openness is not required) are laid down by law. The implementation is controlled by an independent body (the Public Procurement Council) and legal disputes are judged by a similarly independent body, the Public Procurement Arbitration Committee. The latter body is authorized to check the procurement processes and may initiate a procedure “ex officio” in case irregularities occur in the controlled processes.

Transparency of public life is also served by the so-called “glass-pocket” act adopted by parliament two years ago. According to this act, among others, central administration bodies (ministries and other national bodies) have to publish on their home pages all procurements and commissions with a transaction value exceeding 5 million forints (about 20 000 EUR). They also have to make public all subsidies given to companies, institutions and NGOs financed by the state budget. I think it does not require any further explanation what a strong deterrent force these measures have.

I would also like to mention the duty of property declaration. Politicians (members of the Parliament and the Government) have to declare their property every year and these declarations are open to the public. Civil servant department heads and those who take part in the decision-making processes of the body are also bound to declare their property. These declarations are not open, however; instead, they are stored in the Public Service Office of the Ministry of Interior.

## Rule of Law in Administrative Procedures

The regulation of administrative procedures by an act is not a new institution in Hungary. The act on the general norms of administrative procedures has been in force since 1957 and was revised and amended in 1981 and 1991. These modifications — especially the one after the great changes in 1991 — strive to keep up with the changes originating from the development of the state. However, in the meantime it had become an urgent task to prepare a new act that would completely meet the requirements of the rule of law and international obligations resulting from EU membership and Hungary's other international commitments. This new act was adopted by the Parliament in December 2004 and came into force on 1 November 2005.

An almost one-year-long period between the adoption and coming into force of this act was necessary for two reasons. First, civil servants had to be prepared and trained for the implementation of the law, and secondly, all existing legal norms in connection with the administrative procedures had to be revised and amended so that they would harmonize with the new act.

The training affected about 100.000 civil servants in state authorities and local government offices. They all received the printed and electronic version of the text of the law, a manual containing practical explanations, legal case studies (examples) for its application, as well as an exercise book. The basic documents were/are also available on the home page of the Hungarian Institute of Public Administration. All civil servants had to attend a 2- or 5-day-long training courses (depending on their spheres of activity) where presentations and consultations were held, and where they could practice how to solve cases and filling in new templates.

The revision of legal norms was necessary because the new act includes “only” the general rules of an administrative procedure. However, there are several hundred kinds of administrative procedures and it is impossible to prescribe common regulations for every element of these procedures. For this reason the legislator has chosen such a solution that a part of the norms of the act (about 60 per cent of the 189 articles) is compulsory in each procedure and the rest of the norms are substitutive ones. It means that they must be applied in case the specific norms referring to a specific procedure do not prescribe a different solution.

For example, it is a compulsory norm that all substantive decisions of public administration authorities can be reviewed in court. However, it is a substitutive norm that the court must not change (modify) the decision of the administrative body. In case the decision is unlawful the court shall declare it null and void and — if necessary — oblige the authority to repeat the procedure. Specific norms may authorize the court to modify the decision of the administrative body in case it is unlawful (for example the court may modify the decisions of the tax offices).

In accordance with this system, in a concrete administrative procedure, three legal norm are to be applied: (1) the act on the general regulations (2) the act or decree involving the specific regulations and (3) the substantive norms determining the content of the decision.

Given the lack of time I only want to refer to the most important norms of the act, especially those that determine the requirements of fair procedure and the rule of law:

- The client has the right to a fair procedure.
- The client has the right to use his/her native language during the procedure both orally and in written correspondence.
- The clients are equal before the law; their cases shall be managed without discrimination and bias.
- An authority must process the cases of its scope of authority and competence, and accomplish the procedure by the deadline prescribed by law. (Procedures may begin ex officio and upon the request of the client depending on the regulation of the specific law. The obligation of proceeding refers to both cases).
- The client has the right to legal remedies. In most cases the client has the right to apply against the substantive decision (resolution) of first instance to the superior authority and he/she may apply to the court against the decision of the latter authority. There is no ordinary legal remedy against the decision of the court, so we have a three-level procedure. In case there is no way to apply to the superior authority (e.g. a ministry made the decision of first instance) the client may directly apply to the court and the decision of the court may be challenged at the superior court (in this way, the three-level procedure is guaranteed in these

cases as well). The interim orders (e.g. the suspension of the procedure) do generally not apply directly; they can be challenged via legal remedy submitted against the substantive decision. Of course, there are exceptions; for example the interim orders imposing a fine (e.g. a witness neglected the summoning) may be challenged directly.

- The authority shall guarantee that the clients and other parties to the procedure (witness, expert etc.) be familiar with their rights and obligations and promote the application of these rights. For example, if the procedure started ex officio the client must be informed of it within five days; he/she has the right to be present at each event of the procedure (e.g. local survey, hearing of the witness) to make a proposal or initiate an evidence.
- The client shall proceed bona fide during the administrative procedure.