CONSUMER PROTECTION ASPECTS OF E-ADMINISTRATION*

Bernadett Veszprémi[1]

This essay studies the consumer protection aspects of e-Administration, specifically how consumer protection is achieved within the sphere of Hungarian public administration proceedings. The title of this study may be confusing at first sight, as the public administration system does not deal with 'consumers'; typically, legal relations in this field involve a public administration organisation on one end, and the client on the other (Ákr., Article 10., Para. [1]). The scope of Act CLV of 1997 on Consumer Protection (1997. évi CLV. törvény a fogyasztóvédelemről; hereinafter Fgytv.) also does not cover this field. That said, the effects that these two areas have on each other are still worth investigating.

1. The Basic Principles of Public Administration Proceedings

Although the applicable laws have been urging for the application of the principles of client-friendly administration and service-oriented public administration for years, the current administrative proceedings still leave clients in a vulnerable position, due to the unequal and asymmetric nature of the existing legal relations between the administrative organisations and the client. This necessitates the implementation of certain guarantees into the existing administrative procedures, something that legislation has always been striving for when developing the related procedural Acts (*Act IV of 1957 on the General Rules of State Administration Proceedings* [1957. évi IV. törvény az államigazgatási eljárás általános szabályairól; hereinafter Áe.], *Act CXL of 2004 on the General Rules of Administrative Proceedings and Services* [2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól; hereinafter Ket.], *Act CL of 2016 on the Code of General Administrative Procedure* [2016. évi CL. törvény az általános közigazgatási rendtartásról; hereinafter Ákr.]).

These guarantees manifest in basic principles. As the preparatory report of the Ákr.'s concept states, „*[these] basic principles are the manifestations of the Fundamental Law's erga omnes provisions, and specifically are the manifestations of the basic rights in public proceedings*" (Részletes Jelentés, 7). When defining these principles, legislation had to consider the provisions of the European Convention of Human Rights and the EU Charter of Fundamental Rights too, along with the recommendations of the Council of Europe and the case-law of the European Court of Human Rights.

The basic principles can be classified in two ways; however, certain principles are included in both classifications. These include the ones deriving from the Fundamental Law of Hungary, such as the right to fair and speedy proceedings, concluding rulings within a reasonable time, the duty to state reasons, equality before the law, or the

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[1] *Bernadett Veszprémi*, Assistant Professor, Faculty of Law, University of Debrecen. The study was made under the scope of the Ministry of Justice's program on strengthening the quality of legal education.

prevention of discrimination. The first classification is based on the classic three-tier segmentation of administrative duties: according to this, the principles are classified by whether they are based on the principles of general penal, civil and administrative procedural law, or on principles that appear and are enforced via special administrative proceedings. Based on this classification, principles such as the right to transparent information, the acting bodies' obligation to inform clients, decision-making based on facts, or the right of access to the case file are based on common, general principles, while the principles of the expectation to act in good faith, cooperation between the client and the authorities, the authorities having to act on their own motion, and cost-effectiveness are based on special administrative proceedings.

The other method of classification observes only the principles derived from the Fundamental Law of Hungary and the principles aligned with the peculiarities of public administrative proceedings. The Act specifies the latter group as „*basic procedural rights and responsibilities*", thus reinforcing the notion that the defined responsibilities are applicable not just to the authorities (for more information, see Lang 2018), but to the clients as well.

„The Ákr. was meant to follow the [Ket.'s] system of basic principles by putting a greater emphasis on the principles outlined in the Fundamental Law of Hungary" (Árva 2019, 49, also see Fábián & Bencsik 2017), albeit it does not go into detail on them (for more information, see Hajas 2016). The Act also clearly defines the role of these principles (they are meant to facilitate legal interpretation); however, it does so while emphasizing that no ruling can be made solely based on these principles. The principles can be consulted in any stage of the proceedings, they protect and oblige their every participant, and as the preamble of the Ákr. states, „*they can be directly executed as normative provisions*" (T/12233). This proved to be a major step forward from a legislative perspective, as the questions of whether the basic principles should be declared and how they should be referenced were the source of constant debate (for more information, see Turkovics 2013, 60 and Ivancsics 2009, 43). The related case-law also points to this direction (see decision Kfv.IV.35.817/2012/5. of the Hungarian Supreme Court [Kúria], for more details, see Balogh-Békesi 2016, 12).

2. The Basic Stipulations of Ákr.

The Act includes a separate chapter regulating the so-called basic stipulations; these are not standalone principles, but rather means to define and ensure the effectiveness of the Act's principles (such as exclusions or procedural obligations). This chapter also includes stipulations on language usage and the legal protection principles related to minors, adults who are legally considered partly or fully incapacitated, or persons with disabilities.

According to the Fundamental Law, „*Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of […] language*" (The Fundamental Law of Hungary, Article XV., Para. [2]). Moreover, „*[n]ationalities living in Hungary shall have the right to use their mother tongue*" (The Fundamental Law of Hungary, Article XXIX., Para. [1]). When it comes to languages, however, the Ákr. differentiates between the Hungarian citizens belonging to certain nationalities and the non-Hungarian citizens. These rules are also

complemented by provisions related to interpreting and (due to equal opportunity principles) rules to enforce the rights of deaf, mute, and deaf-mute clients.

The Ákr. also devotes a separate legal title for the protection of minors, aiming to ensure their personal rights and the regulation of their personal data. These principles are asserted through various means, such as child support and representation institutions, or priority rules.

3. Enforcing the Right to Information in E-Administration Proceedings

Based on the definition of *Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers* (2008. évi XLVII. törvény a fogyasztókkal szembeni tisztességtelen kereskedelmi gyakorlat tilalmáról; hereinafter Fttv.), a commercial practice is considered unfair if it sensibly decreases the consumer's chance to make an informed decision on a product based on the required and available information (Fttv., Article 3., Para. [2], bullet b). Properly informing consumers is an important aspect of consumer protection, something that fundamentally also exists in public administration, in the form of the aforementioned basic principle of procedural law, defined both as a right and as a set of responsibilities. Clients have the right to be duly informed regarding a public process, including:

- Getting to know the data regarding public administration activities,
- Access to the rules of official procedures,
- Sharing the details of procedural law (as part of the requirements of electronic publication),
- The possibility of requesting information,
- Knowing the prerequisites of initiating proceedings,
- Maintaining communication and sharing information throughout the entire process,
- The right to access files.

The client's right to be duly informed is also a responsibility on the part of the authorities. This obligation is apparent in two cases: on the one hand, by allowing clients to request information on their proceedings or on data of public interest; and on the other hand, through the mandatory automatic electronic disclosure of certain data, in line with the regulations of Act CXII of 2011 on Informational Self-Determination and Freedom of Information (2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról; hereinafter Info tv.).

3.1. Requesting Information on Data of Public Interest

According to the Fundamental Law of Hungary, „*[e]veryone shall have the right to [...] access and disseminate data of public interest*" (The Fundamental Law of Hungary, Article VI., Para. [2]). Additionally, as the related directive of the European Union states, „*[m]aking public all generally available documents held by the public sector – concerning not only the political process but also the legal and administrative process – is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy*" (Directive 2003/98/EC, Recital 16).

As a prerequisite of making data of public interest discoverable, „*Hungary […] ensure[s] the conditions for free dissemination of information necessary for the formation of democratic public opinion*" (The Fundamental Law of Hungary, Article IX., Para. [2]). The *Info tv.* also confirms the related provisions of the Fundamental Law, and provides additional details as well. As it states, „*[b]odies with public service functions shall promote and ensure that the general public is provided with accurate information in a prompt manner concerning the matters under their competence, such as the budgets of the central and municipal governments and the implementation thereof, the management of assets controlled by the central and municipal governments, the appropriation of public funds, and special and exclusive rights conferred upon market actors, private organizations or individuals*" (Info tv., Section 32).

The subject of data of public interest could be a person or organisation performing either a state duty or a local municipal responsibility. The matter of the data of public interest, on the other hand, is defined by the Act as a piece of data, information, or knowledge that is handled by the person or organisation in question, and which contains information on their activities. The Act also contains some examples of such data types (Info tv., Section 3., Bullet 5).

Information may be requested on several data types. It might be requested to get information on a specific case (as described in Chapter 3.3 of this study), on the data management practices concerning the personal data of the applicant (Info tv., Section 14., Bullet a), or to publish and release data of public interest or data accessible on public interest grounds.[2] This study will provide more details on the latter cases.

All data handled by persons or organisations who perform state duties, municipal responsibilities, or other public service functions defined in legislation must make sure that the data they handle is made available either as data of public interest or data accessible on public interest grounds (Info tv., Section 26., Para. [1]). These persons and organisations can publish data as such either through individual requests or by regularly publishing data (as described in Chapter 3.2 of this paper).

The request to access data of public interest may be submitted orally, in writing, or through electronic means. However, the right to access data of public interest may be restricted if it concerns defence and national security interests, or if it contradicts valid EU legal acts. The person or body with public service functions that manages the requested data is then obliged to provide it to the applicant as soon as possible but within a maximum of 15 days from receiving the application.

3.2. Mandatory Electronic Disclosure

„*If certain data affects or interests larger groups of society, then those data must be made available in a way so that it can be accessed without additional requests. This is facilitated by the institution of disclosure, an approach that urges the actors who manage data of public interest to proactively disclose as much of the data they handle as possible for the general public without waiting for any individual requests*" (Szilágyi, Jóri & Szabó 2008, 80).

[2] Every piece of data that is not designated as „*data of public interest",* but is still deemed releasable, researchable, and accessible by the Act due to the public interest is designated as „*data accessible on public interest grounds"*, according to Section 3., Bullet 6. of Info tv.

While the Ket. had originally regulated electronic disclosure under a separate legal title as an electronic information provider service, the Ákr. specified the authorities' obligation to inform only in regards to the types of maintaining communication. The general rules were also carried over to the Info tv. Besides, *Act CCXXII of 2015 on the General Rules for Electronic Administration and Trust Services* (2015. évi CCXXII. törvény az elektronikus ügyintézés és a bizalmi szolgáltatások általános szabályairól; hereinafter: Eüsztv., providing a general definition on the rules of e-Administration) also references the Info tv. regarding the provisions of data management and publication.

In practice, the obligation to inform (or in other words, the authorities' obligation to electronically disclose data) is realised by operating homepages and keeping their respective disclosure lists[21] publicly accessible.

However, *Government Decree 451/2016. (XII.19.) on the Detailed Rules of Electronic Administration* [451/2016. (XII.19.) Korm. rendelet. az elektronikus ügyintézés részletszabályairól; hereinafter e-Administration Decree] also imposes additional content requirements in addition to the provisions of the Info tv., by defining specific rules for electronic means of providing information. These requirements cover:

- The electronic contacts of the organisation offering e-Administration services,
- The availability of the organisation's customer service,
- The substantial facts of data management,
- The policy to follow in case of shutdown or malfunction,
- The available electronic services,
- The available electronic identification services,
- The availability of electronic forms and the proceedings available by filling such forms,
- The available electronic methods of paying the fees of the requested proceedings (E-Administration Decree, Article 37).

Upon request, an electronic legal confirmation must be created for the current or former contents of the disclosed official information. Regarding the electronic disclosure of data, the Act specifies the acceptable means of publishing them depending on the type of actor. Central state administration bodies and county government offices are required to disclose data of public interest on their own websites. Other public administration organisations may choose to fulfil their legal obligations by disclosing the data of public interest they manage on a web page that

- they own, or
- they operate jointly with a public administration association, or
- is maintained by the organisation tasked with their supervision, professional management, or operational coordination (Info tv. Section 33., Para. [2]-[3]).

In the case of jointly operated association web pages, care must be taken to clearly separate the data of the individual municipalities.

The e-Administration Decree specifies the www.magyarorszag.hu, www.kormany.hu, and www.kormanyablak.hu websites as the minimum targets of electronic disclosure locations. However, it also mandates that the data of public interest

be disclosed on the personalised administration interface (https://szuf.magyarorszag.hu), and advocates the termination of duplicate or parallel contents.

In addition, *Government Decree 305/2005 (XII.25.) on the Detailed Rules of the Electronic Publishing of Data of Public Interest, the Single Public Information Retrieval System, Data Containing of the Central Electronic List of Public Information and Data Integration* (305/2005. (XII.25.) Korm. rendelet a közérdekű adatok elektronikus közzétételére, az egységes közadatkereső rendszerre, valamint a központi jegyzék adattartalmára, az adatintegrációra vonatkozó részletes szabályokról; hereinafter: Electronic Data Decree). also specifies further responsibilities; namely, the reporting obligation of the data handler to ensure the constant completeness of the single public information retrieval system and the central electronic list as well. All these online resources (that is, the central web page of www.magyarorszag.hu, the central electronic list of data of public interest at www.kozadat.hu, and the single public information retrieval system on www.kozadattar.hu) are operated by the *National Infocommunications Service Company* (Nemzeti Infokommunikációs Szolgáltató Zrt; hereinafter NISZ) (Electronic Data Decree, Article 12., Para. [1]-[2]). It is important to point out here that the two obligations (that is, the electronic disclosure of data of public interest with the contents, destination, and format aligned with the legal requirements, and the uploading of data to the www.kozadattar.hu public information retrieval system) are separate requirements, independent of each other. Based on the provisions of the Info tv. on the municipalities' obligation to electronically disclose data, Resolution NAIH-419-2/2014/V of the National Authority for Data Protection and Freedom of Information (Nemzeti Adatvédelmi és Információszabadság Hatóság; hereinafter NAIH), and Section 37/B, Paragraph (2) of the Info tv., having a municipality merely being connected to the public information retrieval system is not enough to meet the legal requirements of data disclosure, and they are expected to keep maintaining and updating their public data on both the central electronic list (www.kozadat.hu) and on the public information retrieval system (www.kozadattar.hu) as well (NAIH 2014). However, the related legislation also confirms that it is enough to include only a simple reference to indicate where the disclosed data is available. For example, in case of decrees, a direct link to the data's location on www.njt.hu is sufficient, while in the case of the public information retrieval system, the subpage of the municipality's web site is enough.

According to Section 33, Paragraph (1) of Info tv., data handlers must send data of public interest to the central electronic list (www.kozadat.hu) as well, whose detailed rules are included in the Electronic Data Decree. Bodies with public service functions may use the public information retrieval system (www.kozadattar.hu) as their primary information interface.

Besides the disclosure lists, the Info tv. also specified several *general requirements* that must be observed for electronic disclosure. These are the following:

- Data of public interest must be disclosed in digital form.
- The opening page (i.e. index page) of the website must contain a „*Data of Public Interest*" link (Ministry of Information and Communication Decree No. 18/2005 (XII.27) on the Publication Samples Required for the Publication of Data Included in Publication Lists, Article 2., Para. [2]).

- The opening page must also contain a reference to the public information retrieval system.
- The data must be accessible to anyone without the need for identification.
- The data must also be accessible without any restrictions.
- The disclosure lists must be published separately in accordance with the Act's annex, under their own separate icons. Alternatively, a link may be placed instead, pointing to the exact location of the data.
- The data must be printable.
- The data must also be available for copying without data loss or distortion.
- Access to the data must be provided free of charge (both in regards to copying and to general network data transfer).
- Applicants shall not be required to provide personal information to access the disclosed data (Info tv., Sections 32 and 33, Para. [1], also Section 35., Para. [1]–[2]).[3]
- The site must contain a „*Rules of accessing/requesting access to data of public interest*" icon that describes the rules of how to request access to data in plain language (Info tv., Sections 26–31). This summary must also inform users of the available legal remedies. In addition, the data handler must also prepare a policy that defines how the individual data access applications are fulfilled.
- The site must also contain a disclosure policy, containing the detailed rules of disclosing, correcting, updating, and removing data, along with the related procedures of each of these activities (Electronic Data Decree, Article 3). In addition, the web page must also contain data protection and data security policy (Info tv., Section 24., Para. [3]).
- In case of any change in the disclosed data, the site must indicate the fact and time of the change. The previous version of the data must be kept available until the end of the retention period. In case the body handling the data of public interest ceases to exist, then the page must indicate the fact and legal basis of the termination, along with the successor body of the organisation.

Besides the Info tv., general guidelines for indicating and dividing disclosure lists are also provided by *Decree No 18/2005 (XII.27.) on the Publication Samples Required for the Publication of Data Included in Publication Lists* [18/2005. (XII.27.) IHM rendelet a közzétételi listákon szereplő adatok közzétételéhez szükséges közzétételi mintákról, created by the former Ministry of Information and Communication]. According to this decree, pages must indicate even the disclosure units that are not applicable to the specific body, but for the sake of precise information, it must be indicated that the data is unavailable.

[3] For more information on the technical and layout requirements of municipal portals, see Budai 2014; Budai & Szakolyi 2005; Kópiás & Molnár 2008, 62–69.

3.3. Informing Clients in Public Proceedings

A specific case occurs when the client (or a participant of the proceedings) requests information on the details of the public proceedings in progress or a specific piece of data concerning them. In such cases, the authority shall inform them of any activities relevant to their case and related to their rights. While the Ket. used to specify detailed rules on notifying and informing participants on the various stages of the public proceedings (such as starting the procedure or informing clients on its current state), the Ákr. superseding it does not go into such details. It is worth mentioning though that the current legislation does not oblige authorities to inform clients when the proceedings they requested have been started – however, clients must be informed about the procedure's status during the investigation phase at the latest (akr.kormany.hu).

If the client specified their e-mail address, or the phone number of their mobile phone capable of receiving short text messages, or any other channel for electronic communication in their application that they sent to the authority offering e-Administration services, and made no specific administrative stipulations on their usage, then said the authority is allowed to inform the client on the status of their proceedings through the provided electronic communication means (Eüsztv. Article 15., Para. [5]). The authority may also provide information through the electronic means specified in the Eüsztv., e-mail, or via electronic audio channels (E-Administration Decree, Article 6., Para. [3]).

Authorities must observe the regulations of Eüsztv. regarding the allowed forms of communication. However, the specific form of communication to use during a procedure is selected by the client – for example, through an administrative stipulation – based on the information provided by the authority (Ákr., Article 26., Para. [2]). In case an electronic means of communication is preferred, restrictions from the authority's side may apply in the available channels; however, the authority must inform their clients on its supported means of e-Administration (Eüsztv., Article 10., Bullet b).

The Annex of the E-Administration decree specifies the file formats allowed for use during e-Administration procedures; however, in accordance with the rules on electronic information, the authorities must inform their clients on the file format(s) they accept during electronic public proceedings. Authorities may only impose the usage of electronic forms and file formats that can be filled and created with freeware and freely accessible software. Authorities have the right to consider a submitted form or file as unsubmitted (E-Administration Decree, Article 17., Para. [1]–[2]) and Article 19., Para. [1]) if it is not in the acceptable format, or it is not sent to the contact address specified by the authority, or it is not sent through the secure electronic delivery service specified by the authority.

However, if a client submits their form or file in an incorrect format instead of the format specified by the authority or the rules of electronic communication because the fillable and downloadable version of the form has not been published by the authority (in accordance with the rules of electronic communication), then clients shall face no adverse legal consequences (Eüsztv., Para. 9., Article [4], Bullet c).

Confidence towards e-Administration is also reinforced by legislation, as the current provisions allow clients to request copies of their electronically submitted documents (E-Administration Decree, Article 21).

In the case of electronic proceedings, the procedure does not automatically start with the receipt of the request: the client's proposal is bound to the receipt of the request, while the actual administrative procedure should start on the first working day following the receipt at the latest. The submission of the document(s) may be proven with the authority's confirmation of receipt. Moreover, if the applicant requests so and provides an electronic return address, then the recipient authority can also send an electronic confirmation to the client on the documents' arrival, provided that the documents have been sent electronically and via an unsecured delivery service. The authority's confirmation must contain the feedback of receipt, along with the unique identifier of the document's arrival.

When using a secure delivery service for submitting documents or requests, the recipient authority must prepare and send a secure confirmation to the client, provided that the sender's message has been made available to the recipient authority without changes. In such cases, the confirmation must be an electronic document possessing at least an advanced security electronic signature. The applicant must also receive documentary evidence (an acknowledgment of receipt) if the delivery of the documents/request cannot be performed within a set time. This acknowledgment must contain information on the time (and if possible, also the reason) of failure (Eüsztv., Article 1., Bullet 11).

Conclusions

Based on the above analysis, it can be concluded that similarly to general consumer protection, public administration (and especially e-Administration proceedings) also require proper practices of client orientation and support. This includes ensuring client rights, maintaining the public trust, and constantly providing information on the state of public proceedings to facilitate the transparency of public administration. These aspirations are especially pivotal for automated e-Administration proceedings, as they are typically devoid of any human contact. As a way forward, the related basic principles of client protection must be legally specified and must be properly detailed not just for public administration but for e-Administration as well, in a way that would cover all segments of legislation regulating these administrative areas.

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