Recent 'development' in the Hungarian environmental legislation
The destiny of environmental administration in 2015
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The structure of environmental administration, lived until April 1 2015, had been developed in the last 30 years in a way to set up regional environmental authorities – inspectorates -, having more and more functions, individual authorities and tasks of specific authorities. We may mention the environmental permit at the end of the EIA procedure or the environmental uses permit, meaning the IPPC permitting, etc. This could imply a relatively independent function with modest, but strong powers, mostly in the direction of the protection of environmental interests. The second instance authority had always been in the past three decades a central authority. Water management and water quality protection for a period was a different organisational structure, organized along the same method – regional authorities plus a central office. After a while, we took it as a success story to merge the two into one environmental and water protection authority, within which nature protection also had its own role.

Under the current government, the positions of environmental administration have gradually been lost. In 2010, the independence of environmental ministry was over, most of it became part of the Ministry of Rural Development as an individual state secretariat, while in 2014 even this arrangement could turn to a lower position, only a deputy state secretariat is representing 'environmental' interests with even smaller functions then earlier, while many powers of the former environmental ministry were distributed among the different other ministries. In 2014, after several years of peaceful and relatively effective cooperation, in line with the weakening position of central environmental administration the water management and part of water quality protection has been given to the Minister of Interior, serving as the last major slap on the integration of environmental interests.

During the past 5 years, the independence of environmental administration could always form a part of discussions about the proper management of public administration. The trendy concept in government administration was to emphasize the need to integrate as much administrative powers into the general administrative structures, as it is possible. The reason behind is to develop a more efficient administration and to serve the interests of the clients, parties to the proceedings, to offer them easier and simple pathways. We have to admit that it could also mean a much more centralized and possibly hand-geared system of administration. The problem itself, namely which solution serves the interests of the environment better, has never been taken up during the preparatory discussions, actually there were no such discussions either. It has always been the National Environmental Protection Council, which emphasized the need of providing better guarantees for the environmental interests, which may be balanced with the need to have easy and simple public administration, but it should always be a proportionate solution, having a careful impact assessment beforehand. This has not happened instead the original ideas could prevail over any rational reasoning.

The groundwork of the current centralized system of public administration has been provided by the Act CXXVI of 2010 on the county and capital level government offices, which are taken as the general organizations for public administration,

collecting more and more functions over the past 5 years. The government offices are directed on the one hand by the minister of the Prime Ministers Office as the general head of all the public administration functions (he is also responsible for the distribution of almost all EU financial sources), and on the other hand the specific tasks are directed by those ministers, responsible for the given area – in the field of environmental protection it is the Minister of Agriculture, but also many others. Actually, there are less and less tasks which still fall outside the authority of the government office – water management is still one, within catastrophe protection – these two are combined today -, police, military and taxation, too.

All the authorities belong to the head of the government office, who is the commissioner of the Government, a function which does not need any specific educational background, only a clean police record. Anybody may lead the whole range of specific functions, tasks in public administration who might be elected as MPs, and he/she might take the decisions. It is quite important, knowing that all the authorities belong to the commissioner, thus he/she may overrule any professional proposal.

The current details for government offices are provided for by the Gov. Decree 66/2015. (III. 30.) Korm. rendelet. As former environmental inspectorates – 10 inspectorates were working till April 1, 2015 – had different territorial scope as most of the other fields of public administration usually organized in county level, these specificities had to be dealt with too. Art. 29 of the Decree mentions that the former environmental inspectorates have been merged into the government offices. There is one difference – there were 10 inspectorates plus 2 branch offices and from among the two, one could finally receive an independent position, thus today there are 11 government offices which have specific environmental authorities. These offices have the general environmental authorities, if there are no other regulations. Some government offices have a specific authority in a given field, meaning a nation-wide competence – for example, one of them has the authority to decide in the specific investments, having a wider public importance (at least according to the government).

The details of environmental authorities are provided for by the Gov. Decree 71/2015. (III. 30.) Korm. rendelet. This underlines that the national environmental authority is the same as earlier – National Environmental Protection and Nature Conservation Chief Inspectorate, having the functions of the second instance authority. There are also some specific issues, in connection with which the Chief Inspectorate is the single authority – product fee, climate change, waste management public services, etc. Within this Chief Inspectorate there is a Waste Management Directorate, having specific functions and authorities. The National Environmental Institute still remains within the Chief Inspectorate, having mostly technical functions. There are ten national park directorates, responsible for several nature protection functions, which directly belong to the relevant minister (agriculture) – but the authorities stay within the government offices, together with the general environmental protection functions.

The procedural issues are governed at large by the general act on administrative procedures[1] (Ket.). One important constituent of all administrative procedures, having a particular significance in environmental matters – at least up till now - is the participation of specific authorities (Art. 44-45 and 45/A). The framework is provided in Art. 44: "(1) An act or government decree may require the authority of competence to adopt a decision on the merits of the case to obtain the opinion of another authority (hereinafter referred to as 'specific authority'). The specific authority shall provide an assessment in connection with issues for which it has competence in administrative actions, or failing this it is conferred under its competence by an act or government decree."

The environmental protection and nature conservation authorities from April 1 2015 belong to the government offices. Consequently, the functions of specific authorities in the field of environmental protection are less and less relevant as there are very few administrative authorities which stay outside the scope of authorities of the government offices. As a result, the most delicate question today is how to keep at least some distinct professional powers of the former environmental authorities alive.

The wording has also been changed. From now on there is no use to speak too much about the function of specific authorities, but mostly about specific questions or expertise within the structure of the government offices. As it has already been mentioned, there are very few issues which stay outside these huge office conglomerates, as mining, public health, historical monuments, environment, nature conservation, soil protection, etc. all are covered today by them.

Thus, the only chance to take a special care for the environmental issues is to believe that the national authorities in the background, which might have a second level authority, may interfere and make final decisions if there is any legal dispute. Today it is only the above mentioned Chief Inspectorate in the field of environmental protection, while the National Public Health Authority, the National Mining Authority and the National Food Safety Authority may also have a restricted role to play. Otherwise the whole decision-making, the whole procedure stays within the government offices.

The different drafts – altogether meaning nearly 2000 pages in paper (!) - has been discussed by the National Environmental Protection Council twice. we have to admit that there were not real discussion preceding the changes in April 1, as there were no time given for such a 'minor' administrative issue.

First in February 5, 2015, the Council emphasized that from the point of view of the environmental act, no such draft could be presented legally without a strategic environmental assessment, which did not form a part of the drafting process. Such an impact assessment should have been added also as a requirement of the Act CXXX of 2010 on legislation.

[1] Act CXL of 2004 on the general provision of procedure and service of public administration authorities (2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól – Ket.)

The Council underlined that during the past some years the structure of environmental administration had been changed in a way which could make the work of such administration extremely difficult and could practically make their interest-representing functions at least qustionnable. The Council referred also to the major changes of the administrative procedural act, mostly in connection with specialized authorities.

The Council did not want to be part of the drafting process, and did not want to go in the details. According to the Council, the planned changes might also have a direct impact on the right to environment, provided for by Art. XX and XXI of the Fundamental Law, having a retrogression consequence.

In April 2015, the Council also underlined its disagreement with the proposed changes, referring to the several negative consequences such basis changes might have. The Council mentioned only one example in connection with public participation and its relationship with the specific authority functions, in order to point to the fact that the drafts were not carefully designed, the possible consequences were not touched upon.

The Environmental Act – Act LIII of 1995 - Art. 98 (1) stipulates that environmental associations – if they are not taken as political parties or interest representation organs – in their respective geographical area may act as a client in environmental administrative procedures. From among the above conditions, one has to be clarified and that is the term 'environmental administrative procedure'. Up till 2004, when the Supreme Court issued first a Legal Unity Decision[2], there were different interpretations. According to the narrow understanding only those cases were subject to this opportunity, where the environmental authority was the main decision-making body - for example, the permitting authority. The wider theory always sought after the examination of content on a case-by-case basis, whether were there any environmental implications in the given case – which would make the judgment very complicated in the single case.

The 1/2004 Decision has been repealed and replaced by a new Legal Unity Decision in 2010[3] - this was the 4/2010 Decision, made in order to make the problem clear. The main parts of the new and the old Decision are similar: all those cases shall be taken as environmental administrative cases, within which the environmental authority has a decision-making competence and also within which the participation of the environmental authority as a specific or consent giving authority is prescribed by a legal regulation. This latter does not necessarily mean that the environmental authority is actually participating in the given case, but it is sufficient if this opportunity is prescribed in law, as it would mean that there is a greater chance for an environmental context.

There is one more important statement of the Decision, which opens the door for easier access to justice: the given NGO may intervene in the judicial proceedings even if it did not participate in the administrative procedure.

[2] 1/2004 Legal Unity Decision of the Chamber on Public Administration

[3] 4/2010. (X. 20.) Közigazgatási jogegységi határozat a társadalmi szervezetek jogállásáról környezetvédelmi közigazgatási hatósági ügyekben, valamint perindítási és kereshetőségi jogáról közigazgatási perekben

The Council argued that the changes in the administrative structures and procedures shall have a direct impact on the right of public participation, as in most of the future procedures there is no mention about environmental authority as a specific authority, instead they speak about environmental expertise within the framework of the unified administrative organ. Thus, the exact role and right of public participation in environmental decision-making shall be clarified again or might be limited.