

Attila Barta[1]: Manifestations of Para-administration in Hungarian Public Administration[2]

I. Establishment of principles

This topic examines an interesting area of Hungarian administrative law, the area known as para-ethatic administrative models and solutions. But what does this concept mean exactly? The first thing that we should make clear upon explaining the notion is that administrative tasks are typically carried out by administrative organs. This procedure is what we call “direct administration”. In this case the state relies solely on its law enforcement agencies and state administrative and self-governing institutions in acquitting its duty. But the system of institutions that should carry public tasks into effect is much wider and more manifold than it was mentioned above. Although it is undoubted that the dominant organs that enforce public tasks are still the ones that constitute a part of state administration or local authorities, if we were examine the enforcing institutions of public administration in a wider sense, then we would find not only administrative agencies, but also private and non-profit elements as well. This is where the phenomenon of „indirect administration” comes into the picture. This kind of administration basically means that the state does not solve certain administrative tasks through its own organs, but by getting additional non-governmental or half-governmental formations involved in them. This structural phenomenon has been founded on the fact that the administrative tasks (which should be solved by the civil, democratic states) had immensely grown in their number as time progressed. This has caused the endeavour to make the public administration of the aforementioned democratic states capable to handle the ever-widening demands and deepening requirements. But in the course of time, this endeavour has brought about a complicated administrative complex. In this situation, with the purpose of disengaging in mind, the government involves non-state controlled organs in effectuating some of its multiplied administrative assignments.

Consequently, this method is an inevitable answer to the outer influences that effect public administration, and which finds shape in various organizational solutions. The public administration of the modern states of our time is realised in the form of a divided and diversified system of institutions, whose most important (but not sole) part are the professional government offices.[3]

I would like to give a clear idea of the concept I outlined previously by using [Figure 1: The situation of indirect administration within the administrative system of institutions]. In consideration of the outline above, I am now going to examine the following areas in more detail:

There are two ways of carrying out public duties: the direct and indirect administration. The first is administration realized through state-controlled institutions. This is the classic form of administration. In this case every organ can be placed into one of the three main subcategories: law enforcement, state administration and self-governments. Therefore this category is homogeneous.

The other way of realizing public tasks is the so-called paraethatic or indirect way. It is the atypical form of administration - a collective category. It is not homogeneous, but a strongly heterogeneous term. In this case, the methods and solutions can be various, which could mean administration through non-governmental elements too.

II. Indirect administration in the Hungarian public administration

1. Legal background

So we can lay down as a fact, that the term of indirect administration is the kind of administration in which non-administrative organs could also carry out administrative duties.

Usually the reasons could be practical, efficiency, professional and political.[4] The basis of indirect administration is the delegation of public tasks through authorization by law. In Hungarian administrative law, the legal background for indirect administration can be found both in the 2004:CXL enactment about the general regulations of state administration and in the 1990:LXV enactment about self-government.

2. Some manifestations of para-administration

2.1. Public bodies

Although public-law associations just like civil-law societies are also considered as personal associations, they are fundamentally different from those. That is, public bodies are not created as the society of voluntary members, but their foundation is prescribed by law. Therefore, their creation is based on governmental/legislative decision, and not on the voluntarily decision of its members. In this respect, public bodies are also considered as coercive associations.[5]

According to its legal definition, a public body is an autonomous organization which is kept on record by membership, and whose foundation is established through law. Public bodies are also considered to be a civil law personage, carrying out public tasks related to the membership. In the case of public bodies, law can also ordain that a given activity can only be practiced if the expert is a member of a specific public body – good examples are the medical and legal professions. Therefore, the Hungarian Bar Association is the coercive and self-governing association of practising lawyers.

We can lay down as a fact that public bodies (like the aforementioned Hungarian Bar Association) can fulfill various functions. They are the institutions of so-called functional decentralization. Their basic purpose is to carry out public tasks, primarily administrative tasks. The government practises legal supervision over them.

2.2. Empowering private individuals to perform public duties

Empowering a natural person with the licence to perform administrative tasks is a rare and special procedure – which phenomenon nevertheless falls under the category of functional decentralization. In this case, relegation is usually based on the legal status or profession of the natural person. A good example of this is veterinarian activity.

2.3. Mediatory persons and organizations

These persons and organizations are the inevitable elements of modern public administration and as such, they are the consequences of pluralization. They often create a complex, multifold network which establishes the connection between society and public administration. These organizations serve as co-operative channels, as a kind of collaborative framework. Although the group of mediatory organizations primarily include groups like individual foundations, associations and unions, it is possible to assign private persons to fulfill mediatory roles – as it is stated in the valid Enactment about administrative procedures. Originated from their structure, they are often considered as amorphous/hybrid organizations.

2.4. The private sector

Because of their growing importance in carrying out public tasks, actors within the field of the private sector are also represent a possible manifestation of paraadministration. Whenever an actor as such participates in a public task, public administration becomes widened – and nowadays, the government initiates the private sector to solve public tasks to a great extent. This group of indirect solutions consists only of paraadministrative methods which generally came into being through a contract.

The most general alternative service-organization solution (besides the contract conferring and build-operate-transfer contracts) is the concession. In the case of concessions the government partly passes the right to the transferee of the concession for a given time period to collect the tariffs and dues related to the service. The investment is financed completely from the capital of private actors. A good example of concession is the construction of highways.

2.5. The non-profit sector

The non-profit (or charity-based) service organization mostly appears in the field of human services. Our social security system largely supports non-profit organizations in carrying out public tasks. These are mostly person-related professional services, provided by private actors because of their larger expenditure. These private actors are considered to be the elements of the so-called third sector. The structure of this sector is not homogeneous, but strongly heterogeneous.

Usually, their field of activities is special, but concentrated on complementary operations of great importance (a good example for that kind of activity could be the ambulance service). Besides the aforementioned example, self-help, church, and charity organizations are also frequent in this category. Their importance is that because of these non-profit organizations, the fusion of public and private resources come true.

In Hungary the non-profit sector did not really have the chance to strengthen itself yet. Therefore, I think that this third sector is still somewhat undeveloped in Hungary, which means that it is capable to undertake public tasks only to a small degree.

III. Standpoint regarding to the applicability of atypical administrative procedures

Considering the facts mentioned so far, one could raise the question: is there any actual compulsion that would make the adoption of paraethatic solutions in public administration inevitable. The answer I can give to this question is that although there is a definite demand for the application of atypical solutions, their absence would not in the least cause the collapse of public administration. The reason for this is that the paraethatic procedures only improve the efficiency of the already existing administrative system, but do not substitute its classic institutions.

Because of the aforementioned things I agree with István Balázs, who says that: „We are not talking about a cure-all. These procedures can only act as auxiliary-complementary elements of an existing, living and functioning national public administration – but not as substituting or competing solutions.”[6]

Therefore, I think that atypical solutions are only applicable if they are dedicated to a certain goal, bound to a social demand of great importance, and is conveniently verifiable. Service providing activities and organizations should be located outside the sphere of public administration, to ensure the flexibility and efficiency of public tasks.

Consequently, they do not substitute the traditional administrative system, and are not to be considered as alternatives to hierarchically-structured state and local administration – on the contrary, they rather extend their scope of action.[7]

Barta Attila[1]: A közvetett közigazgatás megnyilvánulási formái a magyar közigazgatásban

Az angol nyelven olvasható értekezés alapját a 2007. november 8-án Sninában (Szlovákiában) megrendezett Nemzetközi Konferencián tartott angol nyelvű előadásom képezi. Az írás

középpontjában egy közigazgatási jogi fogalomnak, a közvetett közigazgatás jelenségének és annak egyes megnyilvánulási formáinak bemutatása áll. A paraetatizmus az ún. atipikus közigazgatás részét képezi. Lényegében egy gyűjtőkategória, mely számos megoldást foglal magában. A kérdéskör azonban ezidáig viszonylag kis figyelmet kapott a közigazgatás kutatói részéről.

Az egyszerűség és a könnyebb megértés érdekében az értekezés három nagy szerkezeti egységre tagolódik.

I.

A dolgozat elején azoknak a történelmi folyamatoknak és jellemzőknek a bemutatására kerül sor, melyek végső soron a vizsgált megoldások kialakulásához vezettek. Ennek során fokozatosan eljutunk a direkt (lényegében szűk értelemben vizsgált) közigazgatás fogalmától az indirekt közigazgatás, azaz paraetatizmus jelenségéhez. Nélkülözhetetlen azonban annak a hangsúlyozása, hogy a közvetett közigazgatás egy meglehetősen tág kategória, mely tartalmában erőteljesen heterogén. A paraetatizmus fogalmán belül vizsgált jelenségeknek nincs taxatív felsorolása. Nem is lehet, hiszen a lehetséges megoldások köre koronként és területenként is változhat, és változik is.

II.

A dolgozat második része a magyar szabályozás ismertetésével foglalkozik. Először a hatályos jogi szabályozás bemutatására kerül sor, mely egyúttal rávilágít arra az igen fontos tényre is, hogy a paraetatikus megoldások alkalmazására mind az államigazgatás területén, mind pedig az önkormányzati közigazgatás keretein belül adott a lehetőség. Ezután kerül sor a konkrét megoldások bemutatására, azaz a köztisztviselők, a magánszemélyek felhatalmazása köfeladatok ellátására, a közvetítő szervezetek és személyek, a magánszféra szereplőinek, valamint a non-profit szektor szerepének ismertetésére.

III.

Végezetül a harmadik gondolati egység az, amely összegző jelleggel tartalmazza állásfoglalásomat a bemutatott megoldások közigazgatásban való alkalmazhatóságával kapcsolatban. Ennek a gondolati egységnek a jelentősége abban ragadható meg, hogy rámutat arra a szerepkörre, melyet ezek a megoldások egy már létező, élő, működő közigazgatásban betölthetnek. Ezek a megoldások ugyanis a mindenkori közigazgatás kiegészítésére, a már alkalmazott megoldások kiegészítésére szolgálnak és sohasem azok helyettesítésére, illetve negligálására.

[1] V. évfolyamos joghallgató, DE-ÁJK

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[2] Edited version of the lecture held in Snina (Slovakia) on 8th November 2007. at the conference “2nd International Scientific-Practical Conference of Students, Post-graduates and Young Scientists”

[3] Fazekas Marianna – Ficzer Lajos: Magyar Közigazgatási Jog Általános Rész (Osiris Kiadó, Budapest, 2004, p. 81)

[4] The definition comes from István Balázs, one of the researchers of the topic. Balázs István: Candidate dissertation: Közvetett közigazgatás és autonóm struktúrák a polgári államok közigazgatásában. (Budapest, Á.SZ.I. 1990)

[5] Fazekas Marianna – Ficzer Lajos: Magyar Közigazgatási Jog Általános Rész (Osiris Kiadó, Budapest, 2004, p. 103–110.)

[6] Balázs István: Candidate dissertation: Közvetett közigazgatás és autonóm struktúrák a polgári államok közigazgatásában. (Budapest, Á.SZ.I. 1990)

[7] Balázs István: A XXI. század közigazgatásának kihívásai. (Magyar Közigazgatás, 2000. július, p. 387-390)