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Authority proceedings on water rights**

Abstract

Typically, strong relations between the different specialised areas can be present, which has been formed as a result of overlaps taking place in the course of fulfilling different area-related tasks. It can be observed that even the administrative area the subject of which is water, i.e. a natural resource, will exist as a mixture of several administrative areas. It is because water-related administrative tasks can be considered as specific issues related to other administrative areas. Accordingly, it can be stated that water rights in terms of viewing it from the perspective of administrative law is the complete set of legislations, the administrative subject of which is focused on water as a public natural treasure. However, this caused a new regulatory area to be evolved, the rules of which have to be enforced through special proceedings.

Keywords: water law, water rights, water management, administrative law

In the course of the operations of public administration, different management areas, so-called specialised administrative areas are formed in accordance with economic and social demands.¹ Such specialised administrative areas require specific and characteristic management and regulation the reason of which is that each of such areas typically means to serve the fulfilment of different functions requiring particular specific knowledge further to legal and administrative know-how. Nevertheless, one of the paradigms of administrative operations is that despite its specification, a given area is rather rarely separated from the other areas in an organised manner. Typically, strong relations between the different specialised areas can be present, which has been formed as a result of overlaps taking place in the course of fulfilling different area-related tasks. It can be observed that even the administrative area the subject of which is water, i.e. a natural resource, will exist as a mixture of several administrative areas. It is because water-related administrative tasks can be considered as specific issues related to other administrative areas. If one examines the tasks occurring in the field of water administration, it can be seen that they usually have nature protection, transport, healthcare or construction features, sharing one common issue, which, in the present case, is water.² Accordingly, it can be stated that water rights in terms of viewing it from

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¹ Specialised administrative areas are formed based on administrative subjects. Such a subject can be water as a natural resource.

² In the effective legislations, the intersecting points of different administrative areas are quite apparent. According to the justification of Act CCIX of 2011 on Water Utility Services, it is

the perspective of administrative law is the complete set of legislations, the administrative subject of which is focused on water as a public natural treasure.³ From regulatory and administrative perspectives, water rights can be divided into a number of different fields, such as water as national treasure management, water related utility services, as well as the protection of water as natural treasure. Naturally, water rights can be broken down to further, more specific areas, for example for the protection of above surface and subsurface waters, etc., although this issue is not significant in terms of this study.

In the course of administrative operations, the goal of public administration – i.e. the execution of the contents of the respective laws and regulations – is accomplished by means of legislation, operative execution, as well as the application of law in individual cases. Legislative activities are also present in water-related administration as well, because – further to the contents of legislations – such general regulations must also be adopted without which the specified administrative area could not be efficiently operated.⁴ Another typical characteristic feature in water administration is the exercising of operative execution. The managing and supervising activities logically arise from the structure of the organisational system. There are also such additional activities occurring as, among others, mass management activities during flood protection actions, which aim to coordinate the cooperation of civilians. Furthermore, material type activities such as the so-called dam keeper activities carried out by the employees of the organisation can also be classified in this field. Nevertheless, water rights administration also manages several individual cases where the respective laws are applied, practically meaning the decisions made and the respective decision executing measures taken in relation to individual cases, i.e. authority law enforcement. Practically, authority law enforcement can be considered as the determination of individual rights and/or obligations in the form of decisions. From a practical perspective, one can talk about authority proceedings if a decision is made in the given case. Accordingly, the central element of the proceeding is the decision, as basically all the rules of proceedings are built around and can only be interpreted in relation to the decision.⁵ Regarding its subject, the decision can, firstly,

quite clear that its main function is health-related administration, or more particularly, the right to healthy drinking water and it is also a regulatory area of trade and consumer protection. Act LVII of 1995 on Water Management regulates construction and (water) transport-related matters as well. Also, for example, the water resource levy or the institution of agricultural water supply fee set out in the same act clearly has economic regulatory roles.

³ That is why it is rather impossible to reduce the subject of water to one particular law and its respective decrees. Another Act to be considered as a legislation on the subject is Act LIII of 1995 on the General Rules of Environmental Protection, which contains a separate chapter on the protection of waters (Paras. 18 to 21), but nevertheless, its scope is much broader.

⁴ Water rights administration activities also require, among others, the specification of bodies fulfilling the administrative tasks – Gov. Decree No. 72/1996 (V.22.) or Gov. Decree No. 366/2015. (XI.2.). Certain partial tasks within water rights administration need government level regulation, e.g. Gov. Decree No. 220/2004 (VII.21.) on the rules of protecting surface waters.

⁵ The success of authority proceedings is indicated by the fact whether the given authority has been able to make a decision enforcing the required legal effect, and can be practically

declare a right – typically permits issued by authorities fall into this case. Secondly, decisions can determine obligations, typical examples of which are authority orders. Thirdly, there are decisions imposing sanctions, for example the authority decisions imposing administrative fines in the course of proceedings. Decisions settling disputes between two parties are not common in the field of water rights administration. Accordingly, in the following, I wish to present the authority proceedings occurring within the frame of water rights administrations in the system of decisions made over proceedings.

Prior to introducing the authority proceedings applied in water rights administration, I find it indispensable to examine a particularity of administrative proceedings through providing information on the applied legislations. In terms of their subjects, administrative proceedings can be really diverse. This has a very simple explanation: the government is involved in different society-related affairs, which are in constant change. There will always be phenomena affecting the economics and the society that require government intervention. Such intervention is up to change in space and time, therefore it can be stated that public administration is subject to constant change. This statement can be very well demonstrated through an example that is directly related to water rights. An essential need for people is the access to clear drinking water. Practically, the government implemented access to water in a systematic manner only in the 20th century. Before that time, administrative actions (of a rather primitive kind) could only be found only in large cities. As a result of social development, we have now reached the point of achieving the right to clear drinking water to become a basic right.⁶ Consequently, it is a basic requirement today that such basic right should be regulated in legislation. However, this caused a new regulatory area to be evolved, the rules of which have to be enforced through special proceedings. Social, economic and technical innovation led to similar developments in several different fields of life, thus increasing the extent of administrative legislations. In Hungarian administrative law, this phenomenon became rather significant in the last third of the 19th century. Accordingly, legislations on proceedings increased significantly as well. By the end of the 19th century, there was a growing demand on simplifying the operations of public administration and making them more efficient, which was embodied in attempts made for simplifying public administration. A potential way for making administrative law simpler can be found in forming general authority proceeding rules.⁷ Could general procedural rules be prepared that can be applicable to any administrative case? In the history of administrative procedural law, this question

interpreted as the goal of the proceeding. If this provision is not met, the authority is to declare this fact in a decision taking the form of an order discontinuing the proceeding.

⁶ Fundamental Law of Hungary, Article XX, Section 1) “Everyone has the right to physical and mental health. Section (2) The implementation of the right specified in Section (1) shall be facilitated by Hungary by means of its agriculture being free from genetically modified organisms, by ensuring access to health food and drinking water, by managing labour safety and healthcare services, by supporting sports and regular physical exercise activities as well as a ensuring the protection of the environment.”

⁷ See Némethy 1903.

has had serious merit in the course of each and every reforming period. It was apparent in the relations between general and specific rules. The evolution of administrative procedural law indicates that so far no such general administrative procedural act has been adopted, which, in terms of the whole area of public administration, could be applicable extensively. Nevertheless, according to usual practices, it is proven that the application of a general proceeding law is still practical. It has now been found that there are quite a few legal institutions and rules with the proceedings that can be applied with the same level of efficiency in the majority of different proceeding types. A simple example can be found if you examine the rules on limiting the periods of proceedings; you can conclude that the regulations on the starting and closing dates of proceedings can be applied practically in every proceeding based on a theoretical principle. However, it is impossible to determine a unified limit period for conducting proceedings.⁸ Consequently, there is a dual characteristic in the branches of public administration according to which legislations on material law must also settle procedural law issues as well. In more fortunate cases, such regulations in procedural law aspects only contain necessary deviations from general procedural rules. Accordingly, at each and every specialised administrative area, the primary law enforcement task is to clarify which legislative regulations are applicable in the given proceeding, and in what procedural law aspects they should be considered. The legislative background applicable in terms of proceedings on water rights administration is structured the following way: Similarly to most other administrative proceedings, water rights administration proceedings require the application of the provisions of Act CL of 2016 on General Public Administration Procedures (GPAP Act). This practice is due to the fact that water rights administration proceedings (permits, orders, etc.) generally show similar characteristics to other authority proceedings. Accordingly, these proceedings do not require the application of legal institutions not regulated in the GPAP Act. However, the need for efficient proceedings also makes the application of area-specific rules necessary. Such rules appear in specialised administrative legislations that basically do not regulate issues on procedural law; you can find such regulations in the act on water management on a legislative level. In the act on water management, legislators express the preference of written forms in the course of the water rights implementation permit acquisition procedure, or they order disregarding the application of decisions with suspended effect.⁹ During certain authority proceedings, a more detailed determination of the

⁸ An example: According to Act CCIX of 2011, (2) The limit period for proceedings is (a) 30 days regarding Authority proceedings set out in Paras. 16 and 9(5), and (b) 6 months regarding proceedings set out in Para. 35. In terms of cases specified in Para. 11/C of Government Decree No. 72/1996 (V.22.), “the limit period for water rights implementation permits is fifteen days”.

⁹ Para. 28/B of Act LVII of 1995 “During water right administrative proceedings *a*) requests, *b*) supplementation and correction requests, *c*) declarations made by affected parties can only be submitted in written form.” Para. 28/C “During water right administrative proceedings, regarding decisions with suspended effects as defined in the the law on general administrative proceedings, the exercising of the requested rights not needed to be expressed.”

sphere of subjects may also become necessary. Such a case can be found in the field of water management as well.¹⁰ Rules on administrative proceedings cannot only be found in laws. Several procedural law issues are regulated in decrees as well. Such regulations contain, on one hand, deviations from, or more detailed specifications of general rules.¹¹ On the other hand, in the authority proceeding subject of public administration, there are certain issues that cannot be regulated in a general manner. Typically, such cases are the specification of the competent party of a power, which is a significant issue from the perspective of procedural law.¹² The reason for this issue is that tasks to be managed by public administration have now increased to an immense extent. These tasks can, both in terms of quantity and professional concerns, only be carried out effectively by a larger apparatus, which currently needs a system of bodies. The concern of fulfilling the tasks is further complicated by the fact that public administration is constantly changing in terms of task performance. Public administration tasks are induced by several, typically external factors. An example also related to water rights administration is the case of cancelling compulsory military service, which can be traced back to different economic and social reasons. This decision entailed not anticipated consequences, e.g. in the field of water right administration, regarding flood protection, among others. Young men serving their compulsory military services ensured a large pool of organised available human resources that had a fundamental role in efficient protection against floods. Floods taking place after the cancellation of compulsory military service have demonstrated that organising human resources has become a new type of item on the list of administrative tasks.¹³ Accordingly, as it can be seen, competence cannot be determined in general procedural law rules, therefore such

¹⁰ Act LIII of 1995, Para. 90 (2) “In case of an environmental hazard or environmental damage, the responsible party will be the owner, rightful user and registered land right holder of the property affected by the environmental hazard or environmental damage.” Para. 98 (1) “Associations formed by the citizens for the representation of their environmental interests and other social organizations not qualifying as political parties or interest representations - and active in the impact area - (hereinafter: organizations) shall be entitled in their area to the legal status of being a party to the case in environmental protection state administration procedures.”

¹¹ Government Decree No. 72/1996 (V.22.) contains special responsible party-related rules in Para 1/A (1) “In water rights administration proceedings, without consideration of Para. 10 (1) of the GPAP Act, an affected party will be (a) the constructor, (b) if the water works, water use or water facility affects waters, beds or water structures in state ownership, the respective competent water authority (hereunder: water directorate), (c) the related agricultural water utility supplier, (d) in case of affected agricultural land, the registered land user of the land affected in water works, water use or water facility, (e) except for the provisions in Subpara. d) the owner, property manager or registered land right holder of the land affected in water works, water use or water facility.”

¹² Unlike in administrative procedural law, in judicial procedural law’s narrower scope and, respectively, smaller apparatus, competence can be more generally regulated. Act CXXX of 2016 on Civil Procedures, Para. 8, Act XC of 2017 on Criminal Proceedings, Para. 12.

¹³ Police forces were required to be used, although flood protection is not necessarily in the scope of police tasks. The involvement of the civil society also became needed, but the organising tasks of this aspect are new challenges among administrative duties.

competences are regulated in the special area rules.¹⁴ This study does not aim to provide comprehensive information on all the legislations related to water rights administration. If one considers only special authority designations, this would not be a minor task already. Based on the above examples, it is quite apparent that multi-level regulation is also a characteristic of water rights administration. Consequently, it can be well seen in a water-related authority proceeding that the basis for decisions made is typically made up of several legislations, which requires higher, more precise attention from law enforcement bodies.

1. Decisions made on entitlements and the respective proceedings

In the course of law enforcement activities, members of the society and the government get into direct relations via authority proceedings. The rights and obligations stipulated in legislations are only present in the everyday lives of society members in a background, 'lurking' manner. Typically, such actual relations can only be felt in the course of authority proceedings during which decisions affecting our rights and obligations are made, and which practically serve to enforce the legal effects set out in the legislations. In a significant part of administrative decisions, the competent authority makes decisions in the subject of exercising dome rights. The necessity for such proceedings is based on the fact that legislations set out specific provisions regarding the exercising of certain rights. Everyone has the rights to carry out construction activities. However, this right can only be exercised upon meeting the conditions set out by the given authority. Due to the fact that water is a public natural resource, everyone has the right to use it, but the extent of use is not unlimited, and, in given cases, is subject to specific conditions.¹⁵ In the background of limitations on such exercising of rights, there usually is/are certain protected interest or interests having a certain kind of priority. In the present case, such priority interest is the protection of water as a natural treasure, or its responsible management. Apparently, limitations on the exercising of rights happen for a reason. Accordingly, it is essential to determine upon what condition and in what cases the exercising of rights can be realised. In authority proceedings, a typical tool for determination is the respective permit. A permit as an authority decision will contain the framework for the rightful exercising of rights. Further to having a primary role as the enforcement of the legal effects included in it, a permit can actually be considered as a mean of control. Essentially,

¹⁴ Government Decree No. 72/1996 (V.22.) on implementation of authority powers in water management, Government Decree No. 223/2014 (IX.4.) on the appointment of public administration offices and authorities of water management and protection against damages caused by water, Government Decree No. 366/2015 (XII.2.) appointing the authorities in charge of water protection and amending certain governmental decrees concerning water management. The regulation of competences in Government decrees make quick adaptation to potential changes possible, as law-based regulations allow only much slower responses.

¹⁵ See also the legislative requirements on wells providing drinking or irrigation water supply, Paras. 8/A to 8/E of Government Decree No. 72/1996 (V.22.) on implementation of authority powers in water management.

the fact whether an act is subject to a need for permit determines whether it is a public administration issue or not. If a permit is required, the act is a public administration issue. If an activity requires a permit, the permitting procedure can be actually considered as a preliminary authority inspection. The intention of the license applicant aims to learn about the conditions and limitations of their exercising of rights. Accordingly, a permit is a response given to the applicant from a public authority. This way, the authority has carried out the controlling activity prior to the exercising of rights, as it determined the rightful scope of such exercise based on the assessment of the license application, and then a respective decision is made in the subject. The actual exercising of rights can only take place subsequently, and in line with the provisions of the permit. However, permitted activities have forms where preliminary authority control is not sufficient. In such cases, the inspection of the implementation of the permit provisions has special significance. In such types of cases, permitting is actually carried out in a multi-phase process. The requesting party is subject to several obligations in relation to implementation further to the need to submit a permit application. The party will be responsible to notify the given authority on the implementation of the actions set out in the permit, as well as on the form of implementation. This phase of the process can be actually considered as a kind of posterior control over the exercising of rights. This may be required for a number of reasons. Quite obviously, the law enforcing party, on the one hand, clearly wishes to eliminate the possibility that the other party would potentially exercise their rights in a form or extent differing from the provisions of the permit. If you think about it, in lack of such concerns, there would be a hazard that the license holder would seemingly accept the decision, but would actually deviate from the license provisions and would exercise their rights in a more favourable way for them. It is rather obvious that nobody would make efforts to claim legal remedies on unfavourable decisions if they could 'quietly' exercise their rights in a way of their preference, knowing that possibly, no party would control their activities any more. On the other hand, the awareness of the fact that the implemented activities of such parties will surely be inspected is a sufficient incentive for such parties to exercise their rights in a compliant way. Furthermore, it is not only the potential bad faith of the applicant party that justifies the multi-phase regulation of permitting processes. Regarding certain activities, such circumstances may occur in the course of the implementation activities that could not be foreseeable even with careful consideration. In such cases, there is a reasonable demand for examining the potential form of the exercising of rights in consideration of the deviation taking place, or whether such right can be exercised at all. Many times, even multi-phase authority proceedings cannot guarantee sufficient compliance with the provisions of the respective legislations. There certain types of cases in which the activities taking place between the two permitting processes can only be partly controlled. Typically, such a problem occurs in cases where the outcome – a constructed building, for example – seemingly complies with the provisions of the permit. However, the actual materials used for construction, and whether construction has taken place in line with the required level of quality, can be very hard, or even impossible to verify. Authorities cannot be expected to be present at each of the implementation phases of the actions set out in the permit. That is why a method providing sufficient guarantee for proper,

comprehensive supervision between the two permitting phases, i.e. the two authority inspections needs to be sought. Regarding authority proceedings, the most efficient solution for this concern is the involvement of external parties. There are several potential solutions for such involvement. One solution is when an external party is conferred a kind of authority power, a typical example of which is the title of Chief Technical Engineer documenting each construction activity in a specified document, e.g. a construction logbook, thus practically supervising such acts. Upon the end of the process the engineer makes a statement on the rightfulness of the works conducted, and this statement has a special significance during the second permitting phase. The second option is when the party carrying out the construction activities is obligated by law to record the construction activities as regulated in the given legislation, thus actually claiming the rightfulness of the construction works.¹⁶ In both cases, only people specified in the legislation are entitled to carry out such tasks, and practically it is the undertaking of responsibilities that may represent and warrant the legislation to be followed and have them followed.¹⁷ In light of the above, the following can be concluded with respect to water rights implementation permitting procedures: Typically, activities related to water as a natural resource treasure require reports or permits. The scope of activities requiring permits is rather broadly stipulated in the legislation, as it states the implementation of water-related works, the construction or reconstruction, commissioning, operation or closing of water facilities as well as water use to be all subject to permits. In the subject of water management, the legislation uses the collective term of water rights implementation permits for all issuable permit types.¹⁸ A water rights implementation permit can be of several different types, given its subject on one hand, and, on the other hand, based on its function. In procedures related to water structures, the above described two-phase permitting procedure is applied. A water rights establishment permit is required for the construction or reconstruction of water structures. The law stipulates the acquisition of a water rights operation permit for the commissioning and operation of completed water structures. In other subjects, e.g. regarding the decommissioning of a water structure, a termination permit is required. Permitting processes are initiated upon the submission of applications, which generate a procedural obligation on the side of the competent authority. This may be an interesting issue, because a potential legal consequence of an

¹⁶ Ministerial Decree No. 101/2007 (XII.23.) KvVM on the Professional and technical requirements of the intervention into subsurface water supply and of water well drilling, Para. 7 (2) “During the complete period of implementation, the constructor must lead records documenting all the key work data and work conditions. Such records must include notes on tests set out in the water rights implementation permit or the building plan, or, in the case of drilled wells, the daily drill reports. Furthermore, a part of the documentation shall be – except for wells in the sphere of the permitting authority of local municipalities – the construction logbook kept according to the government decree on implemented construction activities.”

¹⁷ Para. 13 Subparas. (2) to (4) of Ministerial Decree No. 101/2007 (XII.23.) KvVM on the Professional and technical requirements of the intervention into subsurface water supply and of water well drilling contain the professional tasks the existence of which are required for executing the activities included in the decree’s title.

¹⁸ Act LVII of 1995 on Water management, Para. 28/A. §.

activity carried out without a permit is an order. Furthermore, the legislation may also allow the request of posterior permits, along with the legal consequences. If the other party does not use this opportunity, an order will be issued even if a permit could still be issued. There are also cases when parties submit applications for acts that do not require permits. However, the authority is still obligated to carry out the proceeding and it has to inform the requesting party that the activity wished to be conducted does not require a licence. Regarding the application, the law in this case stipulates a written form, unlike in the general regulations. Inevitably, this can be traced back to the fact that a water rights permit application typically requires the submission of a professional and technical documentation that cannot be presented orally.¹⁹ In general, water related authority proceedings do not need to apply the principle of the rules of decisions with suspended effect. Such decisions may be significant in cases where the requesting party is a layperson. In such cases, a decision with suspended effect practically serves to provide information on the rights of such parties in case the authority committed misconduct. In the course of water rights administrative proceedings, it is rather rare that an absolutely non-professional party submits an application. The technical documentation specified in the application is prepared by professionals having expertise in the permitting procedures. The notification of known affected parties is also a requirement in the course of water rights administrative proceedings. The determination of the affected party status is stipulated by the general rules in a rather vague manner. In function of the level of involvement of the rights or the lawful interests, such determination is subject to careful evaluation in many cases, which can lead to disputes or occasionally to the delay of the proceedings. In order to avoid such cases, the legislator uses its right to determine objective affected party statuses.²⁰ Naturally, this does not mean that the general rules cannot be applied in relation to the determination of the party's status, but rather that the existent of involvement is irrelevant regarding the affected party types specified in the legislations. Persons

¹⁹ Government Decree No. 72/1996 (V.22.) on implementation of authority powers in water management, Para. 1/B (1) "The water rights implementation permit contains – further to Para. 36 (1) of the GPAP Act, (if relevant) to ministerial decrees on intervention with subsurface waters and on the service fees of water rights administrative proceedings, as well as the contents of Paras. (3) to (5) herein – the licence documentation set out in the ministerial decree on the documentation required for the water rights implementation permitting procedure (hereunder: Min. Decree), or the documentation containing the technical details in cases of procedures for conceptual water right permits."

²⁰ See: Government Decree No. 72/1996 (V.22.) on implementation of authority powers in water management, Para. 1/A. (1) "In water rights administration proceedings, without consideration of Para. 10(1) of the GPAP Act, an affected party will be (a) the constructor, (b) if the water works, water use or water facility affects waters, beds or water structures in state ownership, the respective competent water authority (hereunder: water directorate), (c) the related agricultural water utility supplier, (d) in case of affected agricultural land, the registered land user of the land affected in water works, water use or water facility, (e) except for the provisions in Subpara. d) the owner, property manager or registered land right holder of the land affected in water works, water use or water facility."

specified by names shall be considered as affected parties regardless of their involvement.

2. Proceedings related to obligation-imposing decisions

Another large group of water rights administrative proceedings is the group of procedures conducted for imposing obligations, from the perspective of the content side of decisions. As presented in the above section, such decisions serve the function to make sure that no party would carry out undesirable activities regarding a given regulatory subject. In cases where the affected party demonstrates lawful conduct and communicates with the authority, the permitting process may be a good tool to guarantee such lawfulness. However, sometimes the affected party ignores the legal requirements to such extent that it does not even seek information about the mere necessity of permits for its activities. Another possibility is that the party wilfully avoids the permitting procedure. The investigation of such cases and the measures to be taken in relation to them are the responsibilities of the authorities, which takes the form of own-initiative proceedings. Regarding the form of their commencement, own-initiative proceedings differ from proceedings upon requests. In such cases, the authority learns about a fact – here, for example, about a water structure operated without permit – inducing the initiation of an authority proceeding. There is no legislation stipulating the form of such information to be acquired. Accordingly, such indirect information can be acquired by any means.²¹ Theoretically, the authority may consider in such cases whether the procedure is well grounded or not based on the information. Typically, the authority only makes a decision first whether or not it would carry out an inspection. However, in reality, there is little room for judgment in the subject of initiating a procedure. Actually, the authority can only consider whether the subject of the acquired information is an authority case or not. If it is, the conduct of the procedure can only be avoided if the subject of the case is too marginal, which, however, is seldom the case regarding water administration, because if something requires a permit and is bound by regulations, i.e. generates an authority proceeding, it is unlikely to be of marginal extent. After the receipt of information, the authority first carries out an inspection, which aims to highlight the given circumstances. Based on the results of the inspection, the authority makes a decision on the initiation of the procedure. Another direct method of getting information is when the authority carries out a targeted inspection, generally based on a preliminary plan.²² Apparently, own-initiative authority proceedings are characteristically preceded by inspection activities. Inspections are characteristic elements of proceedings, as they are not classified as authority cases, i.e. as individual sections of proceedings. Nevertheless, an inspection is a significant element of a

²¹ Perhaps the most common case is incoming reports. The form of receiving information practically has no restriction. The authority may also acquire information from a photo, recital or a film.

²² Rules of the planned controlling activities are regulated in Paras. 7 and 8 of Government Decree No. 66/2015 (III.30.) on capital and county government offices and district (capital's district) offices, their professional control and the seat and competence area of district offices.

procedure, as the initiation of the procedure, and often the result of it as well, depends on inspection findings, i.e. the conclusion of misconduct taking place. The reason for it is that inspections are related to the clarification of the facts, as the findings during the inspections verify the factuality of the given case.²³ If, during an inspection, the authority does not reveal circumstances – so to say, evidence – justifying the initiation of a procedure and the potential decision making later on, the proceeding will not be started. If the circumstances of initiating the procedure are presented, the justification process, even if only in part, is thus done. The content of authority decisions typically depends on the success the justification process. Accordingly, if the inspection is not done properly, it may result in the failure of making an effective decision. Consequently, proceeding-related rules must also be applied in the course of inspections as well. Inspections are closely related to the basic procedures. Regarding the administrative limit period, this relation may be problematic. It raises the concern that if an authority reveals misconduct during the inspection, how much time it has to make a decision on the initiation of the proceeding? The law does not have specific regulations on it, as it only makes a stipulation among the rules of own-initiative procedures that the first act of proceeding is the commencing date for the procedural limit period.²⁴ However, what can be considered as the first act of proceeding in that case? In my view, the first act of proceeding is when the infringement of a law has been revealed, because if this act does not take place, the procedural limit period has no relevance. Nevertheless, there are cases, when, for example, samples are taken in the course of the inspection, the analyses of which requires more extensive time. In such cases, the fact of infringement can only be revealed when the results have been known, therefore that will be the time for the starting point. However, if the infringement has been stated, the immediate initiation of the administrative process has no further obstacles.²⁵ The most characteristic difference between own-initiative proceedings and proceedings upon requests can be found in the contents of decisions. In own-initiative proceedings, the content of the decision can be of two types – either setting out a liability or imposing sanctions. A decision setting out an obligation specifies the conduct to be followed by the affected party. The form of such conduct can be an active act, usually aiming to carry out a certain kind of work, or it can be passive one, in case the law enforcing body requires abstaining from a kind of activity.²⁶ If, during the authority proceeding, a misconduct of the affected party is revealed violating the operations of public administration, sanctions will be imposed as legal consequences.²⁷

²³ For more information on justifications in administrative proceedings, see Boros 2010.

²⁴ GPAP Act, Para. 104 (3)

²⁵ Although Para. 50(6) of the GPAP Act states that generally the performance deadline for a procedural action can be maximum 8 days, I believe that the application of this rule is unjustified in terms of own-initiative proceedings, and only results in the unnecessary extension of the proceeding period.

²⁶ Decisions stipulating liabilities are called in a comprehensive manner in water management as water rights obligations. See Government Decree No. 72/1996 (V.22.) on implementation of authority powers in water management, Para. 18.

²⁷ The typical sanction of authority proceedings is the imposing of fines. In water rights administration, fines can be imposed in different forms, e.g. as a water management fine

There is also a special type of decision within authority proceedings, when the authority both declares an entitlement and imposes sanctions as well. This type is applied in cases when a facility has been constructed without a permit, or not in line with the provisions of the existing permit, but its operations may be permitted. In such cases, the implementation complies with the legislations, but it was carried out without a permit, or not in line with the provisions of the permit, yet the deviation from the permit provisions does not justify ordering the decommissioning of the given item. Accordingly, although the structure can be spared, it is a result of an infringing conduct, which must entrain consequences, typically the imposing of fines.

3. Registries

An essential provision of a successful administrative proceeding is the possession of sufficient information with respect to the given case. The pieces of information needed are often acquired in the course of the proceeding, via witness reports or affected party statements. In order to make the future proceedings easier, it is a reasonable idea for the authorities to collect and store the data in an organised manner, as their future use may be needed. It is enough to think about the fact that the preliminary planning of authority inspections could be actually impossible in lack of data containing the whereabouts of activities or structures to be inspected. This role is filled by registries. Naturally, registries do not only stand for the storage of data usable for authority proceedings, they also often serve as a basis for strategic branch planning.²⁸ Such registries are not only related to the subject of this study because they are actually integral parts of certain authority proceedings, but also because entering something in or deleting something from a registry are both considered as authority proceedings. Entering or deleting entries in water-books registries is the obligation of the given authority. The grounds for such activities can be found in the order setting out the generation or cancellation of the right or obligation to be registered. Its date is 8 days upon the finalisation of the order. Data supply from registries also classifies as authority proceedings, therefore the stipulation of respective rules is also needed to be put down. The data of water-book registries can be known to parties validating their relevance, i.e. who are classified as affected parties. Practically, this regulation actually results in a right for consideration on the side of the authority whether involvement exists or not. This rule had been formed before the GPAP Act entered into force.²⁹ GPAP Act takes direct involvement as the basis for the title of affected party, therefore this aspect needs to be considered in relation to water registries as well. In proceedings related to registries, the application of general procedural rules is needed.

stipulated in Government Decree No. 438/2015 (XII. 28.), or as a water protection fine stipulated in Para. 35 of Government Decree No. 438/2015 (XII. 28.).

²⁸ A sufficient basis for such act could be records of water management structures, which is part of the water management records, practically containing the list and major data of waters and water constructions of national and local significance.

²⁹ Government Decree No. 72/1996 (V.22.) on implementation of authority powers in water management, Para. 22 (3) was adopted in line with Government Decree No. 182/2009 (IX.10.)

In conclusion, we can state that one cannot find such special characteristics in water rights administration proceedings that would require the need for establishing an own set of procedural regulations. Outside the minor rules partly described in this study, proceedings are governed by provisions described in the general procedural regulations.

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