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Changes in judicial practice related to the land transaction act after reforms of procedural acts**

1. Introduction

The so-called 'moratorium on purchases of agricultural land', i.e. ban of foreign ownership of agricultural land, of Hungary expired within the European Union on 30 April 2014. At the same time, agricultural land is a source of power with strategic importance that, based on its legal protection, gave grounds for the making of such an implementing act, which provides who and under what circumstances may acquire agricultural land. As a result of that, Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter: Land Transaction Act) was passed.

Since its entry into force, the Land Transaction Act has been modified and specified many times and the connecting judicial practice is far-reaching as well. Therefore, the aim of this paper is, first of all, to clarify the due course of procedures in the case of transactions of agricultural land ownership,[1] with special regard to procedural reforms, i.e. the entry into force of the Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: Code of Civil Procedure) and of the Act I of 2017 on the Code of Administrative Court Proceeding (hereinafter: Code of Administrative Court Proceeding), which entered into force on 1 January 2018. Basically, this paper seeks to find out what kind of essential changes may take place in civil enforcement before courts and whether the enforcement of rights for contracting parties will be harder or easier.

2. Raising of the problem

Under the scope of the Land Transaction Act, both a procedure fallen within the competence of the notary and an administrative proceeding within the competence of the agricultural administration body precede the real estate registration procedure in the case of transaction of agricultural land ownership by sales contract so as to pursue

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[1] The raising of the problem originates from Olajos István: Mezőgazdasági földterületek tulajdonszerzése és hasznosítása, különös tekintettel a formálódó magyar bírósági gyakorlatra, *Agrár- és Környezetjog*, 2017/23, 105, doi: 10.21029/JAEL.2017.23.91.

the right of preemption. The purposes of the right of preemption are the examination of the buyer's ability to obtain and the appointment of the proper buyer among more buyers entitled to the right of preemption under the Land Transaction Act. Sales contracts shall be recorded in a document bearing the safety features provided for in the decree adopted for the implementation of this Act, which shall be provided with an approving clause (with decision) by the agricultural administrative body. After that, during the real estate registration procedure, only the existence of aspects provided in Act CXLI of 1997 on Real Estate Registration needs to be examined.[2]

If an agricultural administrative body refuses to approve a sales contract within the administrative procedure under Section 23 of the Land Transaction Act, an appeal shall not lie within that administrative procedure and only judicial review may be requested, i.e. administrative court proceeding may be initiated.[3] However, the possibility of initiation of an administrative court proceeding shall not exclude the initiation of a proceeding to declare the contract null and void by the court in accordance with the Act V of 2013 on the Civil Code (hereinafter: Civil Code) related to sales contracts.

The possibility of simultaneous initiation of an administrative court proceeding and a civil proceeding by itself would not raise any problem, since the purposes of these two procedures are different: while the object of an administrative court proceeding is to clarify the legality of an administrative activity in accordance with the rules of the Code of Administrative Court Proceeding, a civil proceeding basically aims the judgment of the validity of a contract under the rules of the Code of Civil Procedure. The problem derives from Section 23 (1) a) of the Land Transaction Act, under which the agricultural administrative body shall take it also into consideration when examining sales contracts related to agricultural lands during an administrative procedure, whether the sales contract shall be qualified as an agreement non-existent due to breaches of statutory requirements or an agreement null and void, and in so far as it may be established, the agricultural administrative body shall refuse the approval. Notwithstanding, it may occur during an administrative court proceeding initiated after an administrative proceeding that the plaintiff requests the court, referring to Section 23 (1) a) of the Land Transaction Act, to establish the unlawfulness of the administrative decision and refers to the provisions of the Civil Code related to invalidity at the same time.[4] In this case, is avoiding of a sales contract referring to that contract qualifies as an agreement non-existent or an agreement null and void excluded?

From perspectives of procedural law answering this question may be attempted by analysing two legal institutions: the substantive force and the principle of free deliberation of relevant facts of a case.

[2] Olajos 2015, 105.
[3] Section 30 (5) of Land Transaction Act.
[4] See e.g. Judgment of Curia 'Kpf.' No.III.37.681/2016.

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3. Procedural law reforms: Changes in the review of unlawful administrative activities

Before answering the emerging question, it is inevitable to say a few words about those procedural reforms which have brought about significant changes in the lives of the parties to the proceedings since 1 January 2018. Previously, administrative court proceeding used to be regulated by the Act III of 1952 on the Code of Civil Procedure (hereinafter: Code of Civil Procedure of 1952), while proceedings to declare a contract null and void by the court, used to be conducted under the General Provisions of the Code of Civil Procedure of 1952. Whilst, since 1 January 2018, administrative court proceedings have been regulated under the Code of Administrative Court Proceeding, civil proceedings have been regulated in accordance with the Code of Civil Procedure of 2016. These procedural acts regulate legal proceedings based on different approaches, which are going to be elaborated in further chapters of this paper.

After the Code of Administrative Court Proceeding having come into force, changes have also ensued in initiating and conducting of administrative court proceedings, as well as in appeals against sentences passed in administrative court proceedings in connection with the Land Transaction Act.

Under Section 30 (5) of the Land Transaction Act, no appeal may lie against the decision of an agricultural administrative body within an administrative proceeding, so the only option for a remedy is to initiate an administrative court proceeding.

If an administrative court proceeding was initiated, a correction of infringement shall take place, first of all, within the own system of public administration: If an administrative body establishes, based on a claim,[5] that its decision shall breach a statutory provision, it shall modify or withdraw that decision; if it agrees with the content of a claim and there is no counterparty in the case, the administrative body may withdraw its decision even if it is not unlawful and may also modify it in accordance with the content of the statement of claim.[6]

In so far as an injurious decision was not withdrawn or modified by an administrative body within its own competence, then an administrative court proceeding shall be settled by a court proceeding in the administrative case; in that case, a claim shall be forwarded to an administrative and labour court having competence and jurisdiction in that case. Section 12 of the Code of Administrative Court Proceeding provides that a court with general competence shall mean an administrative and labour court, whereas under Section 13 of the Code of Administrative Court Proceeding, the location of a real estate shall be determining from a jurisdictional the point of view, on one condition, that is, under the provisions of the Code of

[5] According to Section 39 (1) of Code of Administrative Procedure Code by initiating an administrative action plaintiff shall submit his action at the administrative authority, there was no change has taken place in this sence.

[6] Pribula László: Közigazgatási perek, in: Nagy Adrienn – Wopera Zsuzsa (edit.): *Polgári eljárásjog II.,* Budapest, Wolters Kluwer Kiadó, 2018, in press.

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Administrative Court Proceeding, only the eight administrative and labour courts shall proceed in these cases with regional jurisdiction.[7]

Entry into force of the Code of Administrative Court Proceeding did not bring about essential changes in permission of appeals against first instance sentences delivered in administrative court proceedings.

Section 340 (1) of the Code of Civil Procedure of 1952 used to exclude the right to appeal in general against sentences delivered in administrative court proceedings. An appeal against the decision of a court may have only lain, if two conditions provided in Section 340 (2) of the Code of Civil Procedure of 1952 had jointly been carried out, namely: (a) the administrative court proceeding was initiated for judicial review of such a first instance administrative decision, against which no appeal may lie, and (b) the court may modify the administrative decision authorised by law.

Under the Land Transaction Act, an appeal against a first instance sentence of a court used to be also allowed by the provisions of the Code of Civil Procedure of 1952 during a judicial review of a decision of an agricultural administrative body, since the Land Transaction Act excluded the right to appeal in an administrative proceeding and Section 39 of the Act CCXII of 2013 on certain provisions and provisional regulations provided reformative sphere of body for the court related to Act CXXII of 2013 on Transactions in Agricultural and Forestry Land.

Section 99 (1) of the Code of Administrative Court Proceeding has reserved, as a general rule, the exclusion of an appeal against a sentence delivered in an administrative court proceeding, therefore an appeal against the sentence of the court may only lie, if the Code of Administrative Court Proceeding or other act shall make it possible.

Act L of 2017 on Modifications of Certain Acts Related to the Entry into Force of the Act on General Public Administration Procedures and of the Code of Administrative Court Proceeding (a 'mixture' act) has modified Section 39 of the Act CCXII of 2013 according as that an appeal against a first instance sentence of a court may lie, except a first instance sentence delivered in an administrative court proceeding initiated against a statutory certificate of an agricultural administrative body, which may be exclusively settled by the 'Fővárosi Törvényszék', i.e. the capital court in Budapest, the only court having jurisdiction under Section 13 (11) of the Code of Administrative Court Proceeding.

A real change was brought about by the entry into force of the Code of Administrative Court Proceeding in connection with the admissibility of judicial reviews, as in accordance with Section 340/A (1) of the Code of Civil Procedure of 1952 a judicial review used to be admissible against a sentence entered into effect on a first instance. With regard to the above mentioned provision, judicial review used to

[7] In administrative court procedures in most of the cases eigth priority status administrative and labour court shall be hold trials as court of first instance, each court has the jurisdiction of 1 to 3 counties. These priority status administrative and labour courts are the following: Fővárosi, Budapest Környéki, Debreceni, Győri, Miskolci, Pécsi, Szegedi, Veszprémi Közigazgatási és Munkaügyi Bíróság.

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'take over' the function of a general remedy in many cases, and with also regard to that a statutory breach had to be referred in a claim and indication of a statutory breach used to be a mandatory element of a judicial review request as well.

Nonetheless, under Section 118 of the Code of Administrative Court Proceeding, proposal for a judicial review against a sentence delivered in an administrative court proceeding is subject to grave conditions, since in a judicial review request, besides the indication of a statutory breach affecting the merit of a case, even one of the following aspects shall be referred: analysis of a statutory breach affecting the merit of a case is justified due to (a) providing consistency or development of the case-law, (b) special significance and social importance of the raised question of law, respectively, (c) necessity of a preliminary ruling before the Court of Justice of the European Union, or (d) provision of a sentence deviating from the disclosed case-law of the Curia.

After having submitted a judicial review request, a three-member chamber of the Curia shall examine, outside of negotiation within 30 days, first of all, whether that judicial review request shall meet the requirements, i.e. it shall deicide upon the admissibility of that judicial review request. This aggravation of law will have considerable impact on the case-law related to the Land Transaction Act, as it is exceptional that a case reaches the Curia so that the Curia takes that into account substantively. All these also result that administrative and labour courts proceeding on a first instance and the 'Fővárosi Törvényszék' proceeding on a second instance shall have greater responsibility in making the right decision.

4. Answering the question by the examination of substantive force

We may solve the problem pointed out in the second point of this article through the interpretation of the institution of substantive force. The main issue is to answer the question whether the substantive force of judgement made by the administrative court excludes or restricts plaintiff's right to initiate a civil proceeding in the question of invalidity of contract or not.

The definition of substantive force is defined by both the Code of Administrative Court Procedure and the Code of Civil Procedure. According to Section 96 of Code of Administrative Court Proceeding: The substantive force of judgement brought in the question of legality of an administrative activity precludes to have another action brought by the same parties or interested persons for the legality of the same administrative activity, or to dispute the judgment in any other way. So the Code of Administrative Court Proceeding constitutes this definition in connection with administrative court proceedings and to the determination of substantive force the identity of parties and administrative activity subject to the case is necessary.

Section 360 (1) of the Code of Civil Procedure defines substantive force as: *Substantive force of a final judgment rendered in connection with a right enforced by a claim or by way of offsetting adjudicated in substance having regard to a counterclaim precludes to have another action brought by the same parties against one another - including their successors as well - for the same right under the same factual grounds, and it constitutes an absolute bar for such parties to dispute a*

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substantive judgment already adopted in the case. In civil cases, substantive force has basically three conditions: identity of parties, of facts and of law.

Basically, we may point out by answering the problematic question of this article whether identity of law could be established in judgments brought in administrative and civil litigation or not. To solve this issue, we have to start with the interpretation of content of the claim, in connection with there were fundamental changes during procedural reforms.

Section 121 (1) of the Code of Civil Procedure of 1952 – according to its' last effective condition[8] – concludes the mandatory elements of the claim only in five points. Under Section 121 (2) c) of the Code of Civil Procedure of 1952 a claim shall indicate the cause of action, including a description of the circumstances invoked as the basis of the claim and a description of the evidence supporting the claim. This legal provision was developed the dilemma of compulsory legal title or pleading of the claim in court practice and legal literature.[9] According to the legal practice upon the Code of Civil Procedure of 1952 for the determination of cause of an action plaintiff is not necessary to refer to a concrete statutory provision. Plaintiff let the court know what is the right sought to be awarded, on the basis of which he submitted a claim against the other party, and it has a direction towards the court's decision. Plaintiff shall indicate the cause of action with a description of the circumstances invoked as the basis of the claim and a description of the evidence supporting the claim, i.e. he shall present all the legally relevant facts in the particular case in a chronological order, which he proves through the means of evidence offered by him. It is important to indicate fact in an accurate and detailed manner since the judgment of the court shall be based upon the statements of the parties to the litigation only, in fact, the Code of Civil Procedure of 1952 increasingly strengthening the judicial practice that a court shall base its judgement on the facts presented by the plaintiff (and the defendant), and it may differ from legal basis presented by the plaintiff whether it may be inferred from the presented facts.[10] It is also means whether the plaintiff would state an incorrect legal title, it may not result in refusal in the case if there were available all the fact, evidences, data to determine the correct legal title and legal assessment.[11] Upon the Code of Civil Procedure of 1952 there were two main pillars of adjudication of civil cases: statement of facts and pleading. This interpretation was confirmed by provision of Section 212 of the Code of Civil Procedure of 1952 that only requests made by the parties shall be binding upon the court.

[8] The Act CXXX of 2005 extended the mandatory elements of claim with a sixth element, upon the plaintiff has to mention in his claim if there was a mediation procedure between the parties, except those cases where mediation is prohibited. This provision was in force till 31 December 2008, and Repealed under the Act of XXX 2008, effective as of 1 January 2009.

[9] See Pákozdi Zita: *A jogerő tárgyi terjedelme a polgári perben*, PhD Thesis, Szeged, 2015.

[10] Andrea Nagy: Eljárás az elsőfokú bíróság előtt, in: Wopera Zsuzsa (edit.): *Polgári perjog általános rész*, Budapest, CompLex Kiadó, 2008, 301.

[11] EBH2004. 1143.

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The rules of Code of Civil Procedure, entered into force on 1 January 2018, have brought significant tightening: Section 170 of the Civil Procedure Code gives a more detailed list of mandatory elements of statement of claim. The new regulation, putting more emphasize on party autonomy, changes the requirements of the Code of Civil Procedure of 1952, and as a new element, requires the nomination of the right sought to be awarded and submitting legal argument. So adjudication of the case is now based on *three pillars*: statement of facts – pleading – plaintiff's statement of right. Legal argument showing causal relationship between the right sought to be awarded, the factual claims and the claim shall be deducted by the plaintiff.[12]

This tightening could be explained by counting general courts as generally competent courts upon the rules of procedure of first instance of the Code of Civil Procedure, where legal representation is mandatory for all the parties during the procedure of first and second instance and during extraordinary remedy. If the claim was made by a representative having passed the professional law examination, it is highly desirable for him to be given a precise indication of statement of right. The requirement of stating right sought to be awarded is also important, because it is in correlation with lis pendens and substantive force.[13]

In favour of predictability of judgements and fairness of procedures Section 170 of Civil Procedure Code made it compulsory to name the right sought to be awarded in the claim. So the court shall not establish the right sought to be awarded upon the presented facts in the future. According to the Section 342 (3) of Civil Procedure Code court is bound by the right stated by the parties, i.e. statement of rights while making its decision has binding force. The potential tension between binding force of legal statements and finding substantive justice is significantly softened by the new legal institution of substantive conduct of the proceedings.[14]

Section 7 of the Code of Civil Procedure declares within the interpretative provisions the two most important definitions in connection with statement of rights: the right asserted by action and the legal basis. Plaintiff could make his statement of rights basically in two way: giving the concrete statutory provision [e.g. Section 6:535 (1) of Civil Code] on one hand, and acknowledging the content of legal provision underlying that right (e.g. compensation of damages resulting from liability for hazardous operations) on the other.[15] The indication of invalidity of the contested contract in itself does not fulfil the statutory requirements.

The strict rules of Civil Procedure Code were shaded by the provision according to in actions falling within the competence of district courts as court of first instance, legal representation is not compulsory. If the plaintiff in this case he submits his claim without legal counsel, under the subsection (1) of Section 246 of Civil

[12] Cf. Wopera Zsuzsa: Az új polgári perrendtartás karakterét adó egyes megoldások európai összehasonlításban, *ADVOCAT*, 2017/special edition, 6.
[13] Wallacher Lajos: Perindítás, in: Wopera Zsuzsa (edit.): *Kommentár a polgári perrendtartásról szóló 2016. évi CXXX. törvényhez*, Budapest, Magyar Közlöny Lap- és Könyvkiadó Kft., 2017, 351.
[14] Zsitva Ágnes: Perindítás, in: Wopera Zsuzsa (edit.): *A polgári perrendtartásról szóló 2016. évi CXXX. törvény magyarázata*, Budapest, Wolters Kluwer Kiadó, 2017, 255-256.
[15] Zsitva 2017, 256.

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Procedure Code he shall submit it by using a standard printed form according to the 21/2017. (XII.22.) Ministerial decree of Ministry of Justice, with the derogation of Section 247 of the Civil Procedure Code that the party is not obliged to indicate in his claim the legal basis, the legal argument and the specific statutory provision. However, abandoning legal basis does not mean that parties do not have to take legal statement. It just means, in the absence of legal representation, parties do not have to take a professional legal statement. In the case of legal statement of party without legal counsel the difference is that he could also express the right asserted by action by other appropriate means if the legal basis could be identified from it. But this is not the same as the approach and maintaining practice regulated in the Section 121 (1) c) of Code of civil Procedure of 1952.[16] This is why it is practical to take the advantages of opportunity laid down in Section 246 (2), namely the oral presentation of claim on a grievance day, where the court fulfils the standard printed form applied by the Ministry of Justice.[17]

In civil cases invalidity of contracts is a special field of the right asserted by action and related questions. Special in the manner, that principle of officiality, which is far from civil litigation, got an important role, and on the other hand after a while, it also appeared, in certain sense, that the right asserted is binding upon the court.[18]

We can differ two main categories of grounds for invalidity: grounds for nullity and avoidance. Nullity is the stronger case, no special procedure is required for the establishment of nullity, and the court shall observe the grounds for it in its own motion.[19] On the contrary, in cases of avoidance the aggrieved party and persons with a lawful interest in the avoidance of a contract shall be entitled to avoid it, about the ground for avoidance shall be sent a notice to the other party within a period of one year, and if it was unsuccessful, he shall bring a claim to the court, and the court does not have to observe grounds for avoidance of its own motion.

In the point of penalties and legal consequences of grounds for invalidity, however, there is no difference: an invalid contract cannot have legal effect, the legal consequence could be declaration of contract in question valid, restitution, and payment for monetary value for unjust enrichment.[20]

At the time, by adoption of the old Civil Code (Act of IV of 1959) in cases of invalidity overall officiality was prevailed, and this was also the case by applying legal consequences of invalidity. In the stand of Supreme Court no. 32 PK in the question of legal consequences Supreme Court preferred restitution. Upon no. 32 PK statement court not only shall take into account grounds for invalidity ex officio, but it also shall declare the legal consequences ex officio.

[16] Zsitva 2017, 362.
[17] It is important to emhasize if the plaintiff is represented by legal counsel in an action within district court competence, he is not subject to this derogation, so statement of claim have to fulfil the requirements set out in Section 170 of Code of Civil Procedure.
[18] Pákozdi 2015, 73.
[19] Ptk. 6:88. § (1).
[20] Pákozdi 2015, 74.

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The 1/2005. (VI.15.) PK opinion has changed the aforementioned legal practice and stated that court shall apply the legal consequence of invalidity only in case of request was made, never ex officio, not even initiating the ground for nullity. Since the official initiation of court shall not be meant an obligation to the judge he should look for any possible causes of nullity, but it cannot mean either to invoke parties in order to clarify the cause of nullity.

The first point of no. 1/2010. (VI.28.) PK opinion declared outdated no. 32 PK statement, and the Civil Collage of Supreme Court issued a new guideline. In this context, the Supreme Court issued no. 2/2010. (VI.28.) PK opinion on certain procedural issues of invalidity cases, from which we have to point out the followings.

A party shall exactly indicate which legal consequence of invalidity and what kind of content he would like to be applied by the court in his claim for condemnation.

A court shall perceive ex officio only that case of nullity, which is as a fact clearly established and obvious on the basis of the evidence available. A court shall not conduct a procedure to taking an evidence to establish nullity on its own motion. A court also shall perceive officially the case a contract does not exist.

Unless otherwise provided for by an act, the statement of facts and subject of the claim shall be binding upon the court. However termination of the claim does not mean the court is bound by the legal title named by the party. The court may decide in favour of the claim, in the case facts presented by the party establish the claim on another legal title.

The principle of termination of the claim is not entirely applicable in cases of invalidity, because the content of claim of the party is not binding upon the court by resolving the legal consequences of invalidity. However, the court shall not prescribe such a consequence that is protested by all parties.

In the case of a contract being challenged, termination of a claim prevails even with regard to the legal title, because the court shall not examine a kind of ground for avoidance ex officio which was not referred by the party.

Upon the Code of Civil Procedure entered into force, Curia adopted the uniformity decision no. 1/2017 PJE to review the guiding principles of procedural law following the new Code of Civil Procedure entered into force. In the question of invalidity of contracts Curia has continued the relevance of civil department opinion 1/2005 (VI.15.) PK, which shall be applied in accordance with the rules of new Civil Procedure Code in the future. Curia has not continued the relevance of civil department opinion 2/2010. (VI.28.) PK for the purposes of the new Code of Civil Procedure, but Uniformity Panel emphasized that legal arguments, arguments, theoretical findings described in this opinion continued to be taken into account, if they are not contrary to the spirit of rules of the new Civil Procedure Code.

In administrative actions identity rights and content elements of statement of claim also differ from the rules applied in civil matters.

In administrative actions regulated in Charter XX of the Code of Civil Procedure of 1952 the content elements of statement of claim are differ from rules applied in civil actions while these actions in a point of fact purport to be review an administrative proceeding and administrative decision as result of it whether can be considered as an infringement of law or not. According to the Section 330 (2) of Code

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of Civil Procedure of 1952 in administrative activities a claim to review an administrative decision shall be submitted upon alleging infringement. From this provision, as a general rule, came that plaintiff has to name exactly the legal provision he thought to be infringed, and based on which he could claim for abolishing or reversion of administrative decision.

Upon department opinion 2/2011. (V.9.) KK however, the statement above shall be clarified to be correct. A claim for review of an administrative decision shall be based on an infringement of law. As a general rule, infringement of law stated by the plaintiff gives the limits to the court, within it could review the administrative decision. If the court does not found the infringement stated in the claim committed, it shall not abolish or reverse administrative decision based on another infringement of law differ in merit, as stated in the claim. Judicial review of the administrative decision is not exhaustive; its direction is identified by the breach of law stated by the plaintiff. In vain would find the court the defendant's decision an infringement of law by other reason, it shall not base the judgment. Only reasons for nullity could be taken into account ex officio as an exception.

Plaintiff within the infringement of law could name an exact legal provision, but it does not mean, this statement is binding upon the court. In particular, statement of the party is not binding upon the court if it is based on a mistake or it does not cover the true will of the party. It is not an obstacle to the review if the plaintiff submit the claim without indicating a specific legal provision his claim is based on, but breach of law can be clearly established from other circumstances of claim. In administrative activities the principle, according to which the court shall take into consideration the requests and statements made by the parties according to their content, is also applicable.

According to the Section 12 of the Code of Administrative Court Proceeding came into force on the 1 January 2018 the administrative and labour courts has general jurisdiction, upon Section 26 (1) referring to the Code of Civil Procedure, the rules of representation are the same in Code of Civil Procedure, from which it follows that in administrative actions administrative and labour court proceeds as the court of first instance, legal representation is not mandatory. As plaintiff is not obliged to take legal representation, Code of Administrative Court Proceeding also imposes much less stringent requirements on the mandatory contents of the claim, Section 37 (1) concludes the minimum contents in seven points. According to the Section 39 (2) plaintiff is not represented by a legal counsel shall also submit it by using a standard printed form according to the 21/2017. (XII. 22.) Ministerial decree of Ministry of Justice, but unlike in Civil Procedure Code the application of this form is only optional, not mandatory.

It is important to emphasize that at the determination of mandatory contents of the claim named in Section 37 (1) of the Code of Administrative Court Proceeding, legislator basically vindicates the content of opinion 2/2011. (V. 9.) KK, sithence according to point f), plaintiff shall indicate in his claim the infringement of law caused by administrative activity, including a description of the circumstances invoked as the basis of the claim and a description of the evidence supporting the claim. Ignoring it results in rejecting the claim under Section 48 (1) k) of Code of Administrative Court

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Proceeding. The Ministerial Justification of that Code adds: *The Code uses the terminology of injuria instead of breach of law, while it wants to refer to that the exact description of legal situation could substitute the name of specific infringed legal provision. It comes from the principle of evaluation based on content that injuria could be duly exact in case of using inaccurate or missing marking of the legal provision.*

According to Section 37 (1) g) of the Code of Administrative Court Proceeding plaintiff shall indicate in his claim the plea for court decision, which has correspond with the rules of Section 38 of Code of Administrative Court Proceeding, as Section 38 determines all the types of claims may be indicated in administrative activities. Plaintiff shall choose one of the opportunities listed in a)-f) points of Section 38 (1). It complies with the legal provisions if the plaintiff states that the administrative decision breaches law, and with that regard he claim for reversion or abolition of it in line with of Section 38 (1) a) of the Code. Within point a) plaintiff does not have to make any other choice, or rather he claims for abolition of administrative action it does not mean the court is not entitled to reverse it.

The principle of disposition, and within that the principle of binding force of claims has a different content in administrative actions as in the Civil Procedure Code. Section 85 of the Code of Administrative Court Proceeding provides, among the limitations of court decision, that a court shall examine the legality of an administrative activity within the limits of the claim. So administrative litigation essentially based on subjective legal protection. Besides the principle of disposition, however, officiality also plays an important supplementary role to ensure the function of objective legal protection. Thus a court shall take into account of its own motion the provisions of Section 85 (3) of the Code of Administrative Court Proceeding: e.g. nullity or other statutory case of avoidity of administrative activity in question, or if the legal basis of an administrative activity is not applicable. The court shall inform the parties on ordering an ex officio inquiry, and give them the opportunity to submit the comments, evidence, evidentiary motions.

Principle of disposition in administrative activities is specific in the manner, that court is not bound by the claim of plaintiff in the sense, that it reverses or abolishes unlawful administrative action.[21] The Code of Administrative Court Proceeding puts on a new basis the reformatory power of court: It allows the reversion of unlawful administrative action not only upon statutory authorisation, but offers it as a general option of decision in compliance with Section 90 of the Code of Administrative Court Proceeding.

Considering the outcome of procedural law reform, in the claims submitted after 1 January 2018, we could make the conclusion that it is easier to answer the question of identity of rights in comparison of judgements made in administrative actions and civil cases. The court make its judgment in connection with an administrative activity, whether it is lawful or not, on the basis of infringement of law, while in a civil case where the question is the invalidity of a contract, plaintiff have to state the right, which is binding for the court. On the basis of that consideration, we

[21] Kiss Daisy: Közigazgatási perek, in: Németh János – Kiss Daisy (edit.): *A polgári perrendtartás magyarázata*, Budapest, CompLex Kiadó, 2010, 1320.

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could make the conclusion that if somebody initiate an administrative action in connection with a land sales contract, then the force of law of the judgment made in the administrative court proceeding excludes the plaintiff in a later civil procedure to state the sales contract shall be considered null and void on account of the infringement of regulations, since it is based on the same law. The agricultural administration body shall on the basis of Section 23 (1) a) of Land Transaction Act, examine invalidity within the administrative procedure, and the legality of this examination could be debated in the administrative court action.

At the same time, to found substantive force beside identity of rights, it is also required to identify the facts and parties. Identity of the parties cannot be established between administrative court proceeding and civil procedure for the declaration of invalidity of a contract, nor could be excluded the plaintiff of the civil procedure initiates other fact in his claim. The final conclusion could be drawn from this reasoning that from the perspective of legal institution of substantive force there is no procedural obstacle to submit a claim for the declaration of invalidity of a contract in a civil procedure after the administrative court make its own judgement.

5. Principle of free deliberation of relevant facts of a case

Due to parallel entry into force of the Code of Administrative Court Proceeding and of the Code of Civil Procedure, we may run into several provisions regulating the relationship between these two acts. Such a provision may be found under Section 264 of the Code of Civil Procedure on the free establishment of relevant facts of a case.

In connection with the principle of free establishment of relevant facts of a case, Section 263 (2) of the Code of Civil Procedure provides, as a general rule, that the court, in rendering its decision, shall not be bound by the decision of any body or by any disciplinary decision, nor by the facts contained therein. However, there are exceptions from this general rule, i.e. there are limitations in establishing of relevant facts of a case: Section 264 (2) of the Code of Civil Procedure provides that *the final decision of the court of competence for administrative actions concerning the legality of public administration activities shall be binding upon the court hearing a case governed under this Act.* This provision shall limit a civil court related to the legal qualification expressed in the final decision of an administrative court. Therefore, a civil court shall not reach such a conclusion that a court having proceeded in an administrative court proceeding misjudged the examined administrative activity lawful or unlawful.

This relative restriction raises interesting issues in connection with answering the questions emerged by this paper. Notwithstanding, if the court had examined the matter of breaching of statutory provision by a sales contract related to agricultural land in an administrative court proceeding, and it made a conclusion, that this contract shall not breach any statutory provisions, then, based on the same relevant facts of a case, neither a civil court shall not reach a divergent conclusion. Otherwise, this civil court would find, indirectly, that the administrative activity shall breach a statutory provision (that is, the approving clause of the agricultural administrative body).

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On the other hand, the provision under Section 264 (2) of the Code of Civil Procedure may not give a reassuring answer to us neither in the future, as this provision was basically introduced, because, under Section 6:548 (2) of the Civil Code, initiation of a proceeding for compensation of damages caused within the scope of administrative jurisdiction shall have a procedural condition, namely, a court shall declare in a final judgment the unlawfulness of an administrative activity under Section 24 (3) of the Code of Civil Procedure.[22]

In proceedings for compensation of damages caused within the scope of administrative jurisdiction, the legislature divided competence between a civil court and an administrative court, and the civil court shall be bound by the final decision of the administrative court.

6. Concluding remarks

After the introduction of procedural reforms, it may be concluded again that issues emerging from the possibility of initiating parallel proceedings may still not be unambiguously solved. From the point of view of procedural law, there is no objection before an injured party in initiating a civil proceeding to declare the contract null and void by the court, even on the same legal basis, after the settlement of an administrative court proceeding had entered into effect. On the other hand, a civil court may not come to a divergent legal conclusion from that having reached by an administrative court. Nonetheless, it may occur that such new facts emerge during a civil proceeding, which, with attention to the different legal character of the proceedings, were not examined neither by an administrative body in an administrative procedure, nor by the court in an administrative court proceeding, and which may result in a different legal qualification.

[22] Pribula László: Joghatóság, hatáskör, illetékesség; in: Nagy Adrienn – Wopera Zsuzsa (edit.): *Polgári eljárásjog I.*, Budapest, Wolters-Kluwer Kiadó, 2017, 68.

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