

## The Administrative Supervision

### I. INTRODUCTION

The public administration tasks are diverse, and therefore the public administration activity is a differentiated one. The supervision is one type of public administration activities. The administrative supervision is also a differentiated activity, and several types are distinguished.

Purpose of the study: characterisation of the supervision activity, systematisation of types of supervision, and analysis, evaluation and comparison of the individual types of supervision.

### II. CHARACTERISATION AND SYSTEMATISATION OF SUPERVISION ACTIVITY

The supervision activity can be classified, systematised and analysed on the basis of several aspects (entity displaying the activity, object, direction, instruments of the activity and the relationship between the entity displaying the activity (performing entity) and the supervised (administered) one etc.) in the following way:

[A] The supervision activity can be systematised according to the entity displaying the activity. The entity performing the activity is the public administrative organ (organ of state administration, organ of a local government) as well as the organ belonging to the public administrative organization or system of organisations (the latter is not qualified as a public administrative organ according to the literature), which displays the supervision activity, and to whose competence the supervision right is assigned by the law.<sup>[1]</sup>

[B] The supervision activity can be systematised also according to the supervised (administered) entity. The supervised party is the person or organ, who/which is affected by the supervision activity. On the one hand, the supervision may involve another organ within the public administrative organization: a state administration organ (hierarchical supervision), or an autonomous entity, typically a local government (supervision of legality). On the other hand, the supervision may involve a natural person or organ (legal entity or another organ not having a

[1] Patyi, 2017, 34-37.

legal personality), i.e. a client (official supervision, exceptionally supervision of legality).<sup>[2]</sup>

[C] The supervision activity may be systematised also according to its direction as an inner activity within the public administrative organization (hierarchical supervision, supervision of legality) or as an external activity outside the public administrative organization (typically, official supervision).<sup>[3]</sup> Even if it is supervision outside the public administrative organization, the supervised entity may be a public administrative organ or another organ belonging to the public administrative organization, but it becomes a supervised entity not because it belongs to the public administrative organization, but because of its activity (behaviour), which is covered by the supervision. In this case, the supervision activity is generally not of an organ nature.<sup>[4]</sup>

[D] The supervision activity may be systematised on the basis of the relationship between the supervising organ and the supervised entity. In connection with this activity, it is found the supervision is an activity displayed in a power position, as the supervising organ display the activity in possession of power, and the activity may be an activity displayed in possession of public power (supervision of legality and official supervision) or an activity displayed in possession of administrative power (hierarchical supervision).<sup>[5]</sup> “Exercising public power means that the public administrative organs may make decisions binding all entities within their areas of territorial and material competence specified in the law, and may enforce these decisions with a public power of coercion.”<sup>[6]</sup> During supervision, the supervising organ has extra authorities as compared to the supervised entity.

[E] The supervision activity can be systematised also according to the instruments and acts used during the activity: acts with legal effects (imposition of fines, replacement of acts etc.), and acts without legal effects (control etc.). Supervision is a legally regulated activity, its instruments (instruments with legal effects and those without legal effects) are specified in the law, and these instruments partially deviate from each other by type of supervision.<sup>[7]</sup> The supervising entity may use only instruments specified in the law during the administrative supervision performed by it.

Control is a common instrument of the types of supervision (it appears at all types of supervision), and the supervision activity generally starts with control, and then, if necessary, any measure, intervention or interference takes place on the basis of the control results. A measure is taken only if it is necessary on the basis of an infringement revealed during the control (inexpediency or inefficacy

[2] Szalai, 2014, 59-61.

[3] Szalai, 2014, 59-61.

[4] Patyi, 2017, 69-70.

[5] Szalai, 2014, 61.

[6] Szalai, 2014, 61.

[7] Szalai, 2014, 59-61.

in the case of hierarchical supervision).<sup>[8]</sup> Instruments applied during the measure may partially deviate from each other, and there are also instruments characteristic only of certain types of supervision (replacement of acts etc.). The following instruments may be typically used – depending on the type of supervision – according to the laws in order to remedy an infringement (restoration of legality) and to enforce accountability:

- call for legality,
- initiation of a procedure before the supervised organ, or before another organ (Constitutional Court, court, State Audit Office etc.),
- sanctions application (economic disadvantage (e.g. fine), organisational sanction (e.g. dissolution) etc.),
- enforcement or prohibition.<sup>[9]</sup>

The supervision instruments may be classified on the basis of several aspects, for example András Torma distinguishes two groups of the supervision instruments: preventive, helpful, and subsequent, correctional instruments.<sup>[10]</sup> According to Jenő Kaltenbach, the supervision instruments may be remedial instruments (annulment of an act, enforcement etc.), or replacement (replacement of acts) instruments.<sup>[11]</sup>

Based on the above detailed classifications made according to various aspects, the following types of supervision activities are distinguished by analysing the effective laws:

- hierarchical supervision,
- supervision of legality,
- official supervision (by administrative authority).<sup>[12]</sup>

### III. TYPES OF SUPERVISION

#### 1. Hierarchical Supervision

##### a) Supervision of Organs of State Administration

The hierarchical supervision is an activity based on the administrative power, an activity displayed within the public administrative organization, and the organisational dependence between the supervising entity and the supervised organ is not a precondition.<sup>[13]</sup> The legislator does not use adjective “hierarchical”,

[8] Torma, 2004, 455-456.

[9] Fazekas, 2014, 133-137.

[10] Torma, 2004, 455-456.

[11] Kaltenbach, 1991, 173-174.

[12] Fazekas, 2014, 134.

[13] Lapsánszky - Patyi - Takács, 2017, 61-62.

this adjective is used in the literature for the distinction of the types of supervision. In connection with the regulation, it is found that the hierarchical supervision is regulated not in one law. Act LVII of 2006 on the central state administrative organs and on the legal status of Government members and state secretaries (hereinafter referred to as LSA1) was the first to regulate the relationships between the state administration organs generally and in detail (the supervision legal relationships between the state administration organs as well as the instruments of the supervising state administration organs). In connection with the supervision instruments regulated by the LSA1, it is found that a different rule could be laid down only in a law, they allowed the supervising entity to make a relatively strong influence on and intervention in the organisational and professional operating conditions of the supervised entity, some of the instruments provided for the supervising organ were and are considered by the literature rather as hierarchical direction ones. In connection with the LSA1, Imre Ivancsics stated that: “(...) the hierarchical direction and supervision have come very close to each other”.<sup>[14]</sup>

The hierarchical supervision has been re-regulated, and currently the (hierarchical) supervision relationships between the state administration organs, and the instruments available to the (hierarchical) supervising state administration organs are regulated by Act XLIII of 2010 on central state administrative organs and on the legal status of Government members and state secretaries (hereinafter referred to as LSA2) on term that different rules may still be established only in a law.<sup>[15]</sup>

As regard hierarchical supervision, the supervising entity is an organ of state administration and the supervised one is also an organ of state administration. In the strict sense, the state administration organisation is one of the subsystem of the public administrative organization. The organs of the state administration organisation may be classified, among others:

- on the basis of the field of operation (on the basis of territorial competence): central or territorial (regional, county and inter-regional) organs, and
- on the basis of the nature of material competence: organs of state administration with general or special material competence.<sup>[16]</sup>

A hierarchical supervision legal relationship may exist between a central organ of state administration or its head and another central organ of state administration (minister-chief government office) on the one hand, and between a central organ of state administration or its head and a territorial organ of state administration (central office /Hungarian State Treasury, Educational Authority etc./ - capital and county government offices etc.) on the other hand.

[14] Ivancsics, 2015, 238.

[15] Act XLIII of 2010 on central state administrative organs and on the legal status of Government members and state secretaries (hereinafter referred to as LSA2) Section 4.

[16] Lapsánszky – Patyi – Takács, 2017, 56-59.

As regards the subject of the hierarchical supervision, it may cover both organisational and professional operations of the supervised organ of state administration (its organisation and activities), or only its professional operation, the latter being qualified as professional supervision.<sup>[17]</sup>

The following instruments of the organ of state administration performing the hierarchical supervision are specified in the LSA2:

- staff powers: appointment of the head of the organ of state administration, dismissal of the head of the organ of state administration, withdrawal of the appointment of the head, and – unless otherwise provided in the law or a government decree – exercise of other employer rights related to the head of the organ of state administration,
- control: control of the activity of the organ of state administration for legality, professionalism, efficiency and finance,
- approval of the organisation and operational rules of an organ of state administration,
- obligation to make reports or accounts only in connection with the staff powers, the control as well as the approval of the organisational and operational rules, and data management.<sup>[18]</sup>

The LSA2 provides less instruments and influence than those provided in the LSA1 for the supervising entity, which is no longer allowed to found, reorganise or dissolve an organ of state administration or to review an act.

The hierarchical supervision always implies less influence than hierarchical direction, and therefore has less instruments in comparison to hierarchical direction.<sup>[19]</sup>

Marianna Fazekas points out in connection with the regulation of the hierarchical supervision: “Among these authorities, the employer’s right to appoint, dismiss and other rights related to a head is one of the strongest authorities of the hierarchical direction right, i.e. this set of instruments reaches far beyond the theoretically accepted range of supervision.”<sup>[20]</sup>

In connection with the first effective<sup>[21]</sup> provisions of the LSA1 and the LSA2 related to the supervision of an organ of state administration, András Patyi explained that it is rather a partial hierarchical direction activity: “(...) it is, in fact, a partial hierarchical direction competence”.<sup>[22]</sup> The provisions of the LSA2 related to the supervision of organs of state administration have been modified,<sup>[23]</sup> there

[17] Lapsánszky – Patyi – Takács, 2017, 61-62.; Fazekas, 2014, 125.; See also: II.1.b.

[18] LSA2 Section 4.

[19] Lapsánszky – Patyi – Takács, 2017, 61-62.

[20] Fazekas, 2014, 135.

[21] The content and text of LSA2 Section 4 were the same as the content and text of an LSA1 Section 4 from 05/29/2010 to 12/31/2011.

[22] Patyi, 2011, 76.

[23] LSA2 Section 4 has been modified since 01/01/2012.

are less supervision instruments, and thereby the influence has also reduced. In connection with this, András Patyi explains: “Originally (...) the supervision of organs of state administration was analysed not at the supervision, but at the hierarchical direction activity (...). However, the act has been modified, and due to the reduction of hierarchical direction partial competence, this activity has been harmonised with its designation by now.”<sup>[24]</sup>

In connection with the provisions of LSA1 and LSA2, Imre Ivancsics states: “(...) the supervision competence is defined on the basis of the hierarchical direction rights. However, the change of the content is significant, it is “clearer” due to the modifications, it is theoretically well-founded, and clearly separated from the hierarchical direction activity.”<sup>[25]</sup>

## b) Supervision of Public Administrative Authorities

Professional supervision over the activities of the public administrative authorities is qualified as hierarchical supervision.<sup>[26]</sup> Act CL of 2016 on the Cod of General Administrative Procedure (hereinafter referred to as GAP) provides for the supervision instruments of the supervisory organs supervising official procedures conducted by public administrative authorities and decisions made during the procedure. The previous code of procedure contained, in subsidiary terms, also the system of supervisory organs,<sup>[27]</sup> the sectoral laws contain the supervisory organs after the GAP law’s entry into force.

The supervising entity is an organ provided with a supervision power in the sectoral law (supervising organ). The supervised organ is a public administrative authority displaying an official activity. The official activity of the supervised organs (public administrative authorities) is supervised in the following way (in the affairs of public administrative authorities):

- organs of state administration: the central organs of state administration: chief government offices and central offices: the supervision power is exercised by the minister; the territorial organs of state administration: territorial organs of state administration with general (capital and county government offices) and special scopes (water management orates etc.): the supervision power is exercised by the minister or the central office; the district (capital district) office is supervised by the capital and county government offices (hereinafter referred to as government office), unless another authority is designated by a law or government decree;<sup>[28]</sup>

[24] Patyi, 2017, 82.

[25] Ivancsics, 2015, 238.

[26] Fazekas, 2014, 134-135.; Madarász, 1975, 178-179.

[27] Act CXL of 2004 on general rules on administrative law procedure and services Section 106-107, 116.

[28] Act CXXV of 2018 on the Government Administration (hereinafter referred to as GAA) Section 34 (2), 36 (1), 40; LSA2 Section 2, 4; GAA Section 44.

- local governments: organs of local governments exercising a state administration official powers (mayor, lord mayor, chairman of the general assembly, clerk as well as the mayor's office and the official of the joint local government office) are supervised by the government office, unless another authority is appointed by a law or a government decree; organs of local governments exercising a local government official powers (mayor, clear, a committee of the representative body of the local government, association) are supervised by the representative body of the local government;<sup>[29]</sup>
- the territorial statutory professional bodies (chambers) are supervised by the national statutory professional body (chamber), the national statutory professional body is supervised by the minister;<sup>[30]</sup>
- persons and organisations having other public administrative powers are supervised by the organ to which a supervision power is assigned in the sectoral law (act or government decree).

If there is no organ authorised in the law to exercise the supervision power, then the control of legality is exercised by the court - at request - in the case of acts (decisions etc.) of the public administrative authority specified, or its failure.

The supervision activity covers the official activities of the supervised organ (official law application and official supervision activities) as well as official procedures and decisions and failure by the authority to perform obligations specified in the law.

The GAP regulates the instruments of the supervision organ in general, and the sectoral laws may contain the supplementary and special procedural rules on the basis of authorisation provided. The supervision instruments specified in the GAP:

- review of the procedure and the decision (at request or *ex officio*), modification or annulment of the decision, ordering the decision-making authority to conduct a new procedure;
- ordering the authority to conduct a procedure, to make a decision in order to remedy a failure, and taking other necessary measures to eliminate an infringement;
- appointment of an acting authority (another authority with the same scope) if there is a reason for exclusion.<sup>[31]</sup>

András Torma - unlike Mariann Fazekas - qualifies the supervision of the official activities of a public administrative organ as an "official supervision": "In my interpretation, official supervision is a specific power relationship between two public administrative organs, namely two authorities with special scopes, which

[29] GAA Section 44, Act CLXXXIX of 2011 on the Local Governments in Hungary (hereinafter referred to as LGA) Section 18, 142/A (1), (2).

[30] Act LVIII of 1996 on professional chambers of design and expert engineers as well as architects Section 38 (2).

[31] GAP Section 119 (4)-(7), 121, 15 (2), 24 (4).

exists permanently and continuously, and which is filled with content by the rights and obligations of the public administrative organ (of first instance) acting in the official case and of its supervisory organ.”<sup>[32]</sup> According to the study, supervision exercised by the designated supervisory organ over the official activity is assigned not to official supervision.

## 2. Supervision of Legality

The supervision of legality is an activity displayed within the public administrative organization, in exceptional cases outside the public administrative organization. The latter activity has reduced, but might occur (e.g. the clerk exercises supervision of legality over the multi-apartment buildings). The supervision of legality is an activity displayed outside the hierarchy.

The supervision of legality is regulated by the Fundamental Law of Hungary (in the case of local governments) and typically by acts.

The supervision of legality is performed by public administrative organs (central and territorial organs of state administration, clerk). The supervised organs are autonomous entities, legal persons, typically local governments. Jenő Kaltenbach points out at the followings in connection with the entity supervising the local governments: “(...) another entity involved in the public administration supervision legal relationship is a legal person, whose independent legal personality is guaranteed basically by the Constitution, but at least by an act, it is connected to public administration, as its activity is of public administration nature in the context concerning us, however, it is not part of the public administration hierarchy, which is controlled by the court.”<sup>[33]</sup>

Within the public administrative organization, the supervised organs may be classified into the following groups:

- local governments,
- national minority self-governments,
- statutory professional bodies,
- regional development councils.

The self-governments are decentralised organs, the local governments are organised on the basis of the principle of territorial decentralisation, while statutory professional bodies on the basis of the principle of functional decentralisation. Territorial decentralisation means: “(...) part of the public tasks are performed by organs established by communities of natural persons living at various territorial levels of the state.”<sup>[34]</sup> While functional decentralisation means: “(...) during

[32] Torma, 2004, 459.

[33] Kaltenbach, 1991, 126-127.

[34] Patyi, 2012, 264.

the division of the tasks/administrative powers, the addressees are legal persons organised on personal or legal transaction basis.”<sup>[35]</sup>

Supervision of legality is only legality control, efficiency, effectiveness or other aspects may not be examined.

The object of the supervision of legality and the instruments of the organ performing the supervision activity may differ by supervised organ. Typically, the supervision of legality covers the legality of the organisation, operation, and the decision-making procedure and the decisions (normative and special acts), as well as the performance of the obligation. The legality supervising organ first makes a control, then takes a measure in case of any infringement, and uses a supervision instrument.

#### a) Supervision of the Legality of Local Governments

The supervision of the legality of local governments is regulated basically by the Fundamental Law of Hungary (hereinafter referred to as Fundamental Law) and by the LGA (performing entities, subjects, instruments).<sup>[36]</sup>

The supervision of legality is performed by the government office exercising the right of supervision of legality (territorial organ of state administration, organ of government administration).<sup>[37]</sup> The supervised organs are local governments: municipal local governments, territorial local governments as well as capital local government of Budapest.<sup>[38]</sup>

The purpose of the supervision of legality is to ensure objective legal protection, protection of the legal order, and the legality of the operation of the local governments, the representative body, committee, partial local government, mayor, lord mayor, as well as the chairman, association and clerk of the County Council (hereinafter referred to as party concerned).<sup>[39]</sup>

The LGA exhaustively specifies the scope and subject of the supervision of legality. By virtue of the powers of supervision of legality, the government offices examine for the party concerned:

- legality of its operation and decision-making procedure;
- legality of its decisions;
- performance of its legislation obligation as well as its statutory decision-making obligation and obligation to perform its duties.<sup>[40]</sup>

[35] Patyi, 2012, 264.

[36] Fundamental Law Article 34 (4), 32 (4)-(5); LGA Section 132-142.

[37] Fundamental Law Article 34 (4); GAA Section 2 (4).

[38] LGA Section 3 (1)-(3).

[39] LGA Section 132 (2).

[40] LGA Section 132 (3).

In connection with the subjects of the supervision of legality, the LGA specifies also exceptions. The procedure of supervision of legality does not cover such decisions made by the party concerned

- based on which a labour dispute or a public service-related dispute (appointment, dismissal, disciplinary sanctions, etc.) may be initiated,
- based on which judicial or public administration official proceedings as specified by the law is in place may be initiated (special decisions made within the authority's competence, etc.), or
- that were made by the representative body of a local government in the exercise of its discretionary powers, except for the examination of the legality of the decision-making procedure.<sup>[41]</sup>

The Fundamental Law and the LGA regulate and share the supervisory instruments, and assigns them to the government office (public administration organ) appointed to exercise the right of supervision of legality and other public organs, non-public administration organs (Constitutional Court, court, National Assembly), and the typically, instruments allowing direct interventions (review of decisions, dissolution) are available to the latter organs.

The following main types of supervisory instruments (hereinafter referred to as instruments) as provided for in the Fundamental Law and the LGA for the government office, as legality supervisory organ, are distinguished:

- call for legality,
- initiation of a procedure
  - initiation of the convocation of the representative body of a local government or of the association council,
  - initiation of the review of a local government decree before the Curia,
  - initiation of the review of a local government resolution before the court,
  - initiation of the establishment of failure of complying with the legislation obligation before the Curia,
  - initiation of the establishment of failure to make decisions and perform duties before the court,
  - initiation of the review of supports granted from the central budget at the Hungarian State Treasury or the sponsoring entity,
  - initiation of the examination of the economic management of the local government before the State Audit Office,
  - initiation of a procedure against the mayor or against the clerk before the mayor,
  - initiation of legal proceedings for the dismissal of the mayor repeatedly infringing the law,

[41] LGA Section 132 (4)-(5).

- recommendation
  - recommendation to the minister liable for the supervision of the legality of local governments (hereinafter referred to as minister) to request the Government to propose to the Constitutional Court to review compliance of a local government decree with the Fundamental Law,
  - recommendation to the minister to request the Government to propose the dissolution of the representative body of a local government operating in breach of the Fundamental Law,
- convocation of the representative body of a local government or of the association council,
- replacement of acts,
- imposition of legality supervision fines.<sup>[42]</sup>

As regards the nature of the instruments, there are supporting, correctional (call for legality, annulment of acts etc.), replacement (replacement of acts)<sup>[43]</sup> and sanctioning instruments, however, the supporting, correctional instruments are predominant.

The majority of the instruments available to government offices, as a legality supervisory organ, still does not ensure to direct interventions (call for legality, initiation of a procedure, recommendation). András Patyi explains in connection with the instruments provided for the government office: “Only a minor part of the supervisory instruments of the government agent is indeed supervisory in nature, they mostly allow only control.”<sup>[44]</sup>

The Hungarian system of supervision of legality is characterised by the elements of a cooperating-helping supervision, and fundamentally, the use of the instruments is intended to protect the local government functions and to ensure the performance of the duties by the local governments.<sup>[45]</sup>

As regards the use of instruments, some sort of sequencing and graduation are enforced, and in principle the call for legality is the first and mandatorily used instrument, and if the call for legality fails, a repeated call for legality or another instrument is applicable, and more than one instruments can be simultaneously used.

The call for legality is a supportive (correctional) and reparative instrument. As regards its subject, the call for legality is a written warning related to the infringement and the self-correction, and as regards its content, it is not an instrument of direct intervention. The call for legality does not cause the annulment or modification of the challenged decision, remedy of the default, and it has no suspensory effect on the implementation of the decision or measures involved in the call for legality.

[42] LGA Section 132 (1); Fundamental Law Article 32 (4)-(5).

[43] Kaltenbach, 1991, 173-174.

[44] Patyi, 2017, 90.

[45] Hoffman, 2014, 341-343.

The terms “initiation” and “recommendation” are not synonymous. If a procedure is initiated, the government office directly proposes the competent organ (court, State Audit Office etc.) to initiate and conduct the procedure, and to make a decision or to take other measures (intervention) in order to restore the lawful operation and to objectively protect the law. The minister’s consent or approval is not necessary for the government office to exercise its right of initiation.

Contrary to the initiation, in the case of a recommendation the government office may not directly initiate a procedure before the competent organ, but makes a recommendation to the minister to initiate the procedure. The minister does not automatically submit a motion on the basis of the recommendation, first he/she examines the recommendation, and then proposes the initiation by the Government (for the dissolution of the representative body of a local government and the review of the compliance of the local government decree with the Fundamental Law), if the relevant conditions are met.

The replacement of acts is a substitution instrument, and the will enforcement and the right of decision-making are transferred from the supervised organ to the government office. The replacement of acts (replacement of decisions) ensures an intervention in the local government’s decision-making autonomy. The replacement of acts may take place only after a failed call for legality sent by the government office, two-stage legal proceedings and the issue of a court warrant.

The imposition of legality supervision fines is a sanctioning, repressive legality supervision instrument. The government office imposes a sanction (fine) as the legal consequence of the infringement. The legality supervision fine is a fine based on objective liability.<sup>[46]</sup>

## b) Supervision of the Legality of National Minority Self-Governments

In connection with the regulation, it can be stated that Act CLXXIX of 2011 on the rights of nationalities (hereinafter referred to as RNA) provides for the supervision of legality of national minority self-governments. On the one hand, the RNA stipulates that the supervision of the legality of national minority self-governments belongs to the scope of the government office. On the other hand, the RNA provides that the supervision of the legality of national minority self-governments takes place with the content and method similar to those used in the supervision of the legality of local governments, except for the replacement of acts (replacement of a decision that a national minority self-government failed to make).<sup>[47]</sup>

The supervision of legality is performed by the government office. The supervised national minority self-government is a municipal, a territorial and a nationwide national minority self-government.

[46] Nagy - Hoffman, 2012, 495.

[47] Act CLXXIX of 2011 on the rights of nationalities Section 146-147.

The supervision of legality is an organisational supervision, and therefore it covers:

- the organisation, operation, decision-making procedure, and
- legality of decisions (resolutions), and
- the performance of obligations to perform duties specified in the RNA.

The subjects of the supervision of the legality of national minority self-governments are identical to those of the supervision of the legality of local governments, with one exception (legality of regulations), since the national minority self-governments have no legislative powers, and therefore they do not make regulations.

The instruments of supervision of legality are also identical to those used during the supervision of the legality of local governments, except for the replacement of acts.

### c) Supervision of Legality of Statutory Professional Bodies

In general, the statutory professional bodies belong to the public administrative organization due to the public tasks performed by them, and therefore this type of supervision is made within the public administrative organization, but outside the hierarchy.

In connection with the regulation, it can be stated that the supervision of legality or control of legality of statutory professional bodies is regulated in the act establishing and regulating the statutory professional body, therefore there are no general (uniform) rules, except for an administrative litigation initiated after a failed call for legality, which is regulated by Act I of 2017 on the Code of Administrative Court Procedures (hereinafter referred to as ACP) in a separate chapter among the special administrative litigations.<sup>[48]</sup>

The supervision of legality is performed by a public administrative organization designated in the law (typically the sectoral minister), and an influence less severe than supervision, i.e. control of legality is performed over certain statutory professional bodies. The power of supervision of legality may be exercised not only by a public administrative organ, but also by another state organ (e.g. the control of legality of chambers of economy belongs to the scope of the prosecutor's office).<sup>[49]</sup>

The supervised organ is a statutory professional body, which is an organisation having a local government and registered membership, and performs public tasks related to the activity performed by its membership.<sup>[50]</sup> Today, the system of

[48] Act I of 2017 on the code of administrative court procedures (hereinafter referred to as ACP) Section 136-138.

[49] Act CXXI of 1999 on the chambers of commerce Section 28.

[50] Act LXV of 2006 on Act XXXVIII of 1992 on the Public Finances Act and amending certain related laws Section 8/A (1).

the statutory professional bodies is diverse, and the statutory professional bodies have various types: the statutory professional bodies of chamber type (professional chambers and chambers of economy), non-chamber professional statutory professional bodies (Hungarian Chamber of Government Officials etc.), Hungarian Academy of Sciences, Hungarian Academy of Arts etc.<sup>[51]</sup>

The supervision (control) of legality of statutory professional bodies is an organisational supervision, the organ performing the supervision of legality controls if the statutory professional body's:

- statutes, rules (normative decisions), guidelines and their modifications, and
- resolutions meet the laws, and
- operation does not injure the laws, the statutes or other inner rules,
- if it failed to meet its obligations specified in the laws, statutes or other rules.

The supervision power does not cover cases (cases removed from the power of the supervision of legality), when

- judicial proceedings or
- other official procedures are in place.

The acts specify the actual instruments of the public administrative organ performing the supervision activity by statutory professional body, there is no uniform regulation for the instruments of public administrative organs supervising legality, and the scope (instruments) of the supervision power may partially deviate by statutory professional body. The typical instruments of public administrative organs performing the supervision of legality can be classified in to the following groups:

- control,
- call for legality,
- initiation of a procedure (initiation of an administrative litigation).<sup>[52]</sup>

The control is usually a subsequent one, and preliminary controls are performed only in a few cases. The preliminary control may be mandatory (preliminary control is mandatory in the case of priority rules of the bar association)<sup>[53]</sup> or optional (the Chamber of Official Experts may send the draft rules to the minister for preliminary opinion giving).<sup>[54]</sup> If the supervising organ finds any infringement during the control, then it applies additional instruments of supervision of legality, and typically issues a call for legality.

[51] Lapsánszky – Patyi – Takács, 2017, 289-291.; Petrik, 2017, 382-383.

[52] Fazekas, 2008, 88.

[53] Act LXXVIII of 2017 on the activity of lawyers Section 201.

[54] Act XXIX of 2016 on the forensic experts Section 134 (2).

The organ performing the supervision activity calls the supervised statutory professional body in a call for legality to eliminate the infringement by setting a proper deadline. The statutory professional body must examine the call for legality. If the call for legality fails (the statutory professional body does not agree with the content of the call for legality, does not eliminate the infringement), then the organ supervising the legality (or the prosecutor's office controlling the legality) initiates an administrative litigation at the court. It should be emphasised that the instruments are shared between the public administrative organ supervising the legality and the court, similarly to the supervision of the legality of local governments. The ACP regulates the instruments that may be applied by the court,<sup>[55]</sup> and these instruments allow already interventions (annulment of acts, suspension of the operation of a statutory professional body etc.).

If the supervision of the legality of statutory professional bodies and local governments is compared, then it can be stated that their subjects and instruments are identical, but there are differences, from which the followings should be highlighted.

In connection with the regulation, it can be stated that the Fundamental Law does not regulate the power of supervision of legality of the statutory professional bodies or the instruments of supervision of legality. The Fundamental Law specifies the power of supervision of the legality of local governments, and regulates certain supervision instruments.

In connection with the entity performing the supervision of legality, it can be stated that typically the sectoral minister supervises the legality of statutory professional bodies, and the government office (territorial organ of state administration) supervises the legality of local governments. In connection with the instruments that can be applied during the supervision of legality, it can be stated that in the case of statutory professional bodies, the organ supervising them has less instruments (may not impose fines, may not initiate the dissolution of the statutory professional body) than the organ supervising the legality of local governments. As regards its content, the minister exercises, in fact, a power of control of legality, as when he or she detects any infringement, then he/she issues a notice for remedial purposes, and if it fails, he/she may initiate an administrative litigation. During the supervision of legality of statutory professional bodies, the minister may not directly intervene, and may only initiate the intervention in the case of a failed call for legality (review of decision, suspension of operation etc.). While the government office may directly intervene during the supervision of the legality of local governments (replacement of acts), and has a wider range of initiation and recommendation rights.

[55] ACP Section 89, 137.

#### d) Supervision of Legality of the Regional Development Council

Government Decree 86/2019 (23 April) on the capital and county government offices and district (capital district) offices regulates the power of supervision of legality of the regional development council.<sup>[56]</sup> Government Decree 51/2005 (24 March) on the detailed rules of the supervision of legality of the regional development institutions contains detailed rules related to the supervision of legality, and – among others – the subjects and instruments of the supervision of legality.

The supervision of legality is performed by the government office. The supervised entity is the regional development council. The county local governments (general assemblies) may establish a regional development council by accepting the organisational and operational rules for the performance of tasks reaching beyond the regional borders or the county borders and of certain priority regional development tasks.<sup>[57]</sup>

The supervision of legality covers the following subjects:

- compliance of the organisational and operational rules and other rules (general regulations) with the laws,
- the decisions, and
- compliance of the organisation and the operation with the laws and the internal rules,
- any infringement is made via an omission.

If during the control the government office detects any infringement, then the following instruments are available to it:

- call for legality (by setting a 30-day period) for the elimination of the infringement,
- initiation of the convocation of the development council for the elimination of the infringement, and for making the official of the council accountable,
- assignment of a supervisory commissioner,
- submission of a statement of claim (initiation of a judicial procedure) in the case of an infringing decision or an omission, and
- suspension of the implementation of the resolution or other decision,
- initiation of an investigation at the State Audit Office in connection with the economic management of the development council
- participation in the meeting of the council with a right of discussion.<sup>[58]</sup>

[56] Government Decree 86/2019 (23 April) on the capital and county government offices and district (capital district) offices Section 2 (3).

[57] Act XXI of 1996 on Act on the Spatial Development and Spatial Planning Section 15 (1).

[58] Government Decree 51/2005 (24 March) on the detailed rules of the supervision of legality of the regional development institutions 1, 4-7, 10.

The instruments of supervision of legality of the regional development councils are shared between the government office and the court.

### 3. Official Supervision

Contrary to the hierarchical supervision and the supervision of legality, the official supervision is always an activity outside the public administrative organization. The official supervision by administrative authority is an activity displayed in possession of public power.

The official supervision is a type of authority activities, two types of authority activities may be distinguished official law application and official supervision by administrative authority.

The official supervision: the administration authority controls the supervised, and if it detects any infringement, then it takes measures, intervenes to remedy the infringement: it shall commence the procedure *ex officio* (obliges, sanctions application), or shall initiate the procedure at the competence of another organ.<sup>[59]</sup> As regards its content, the official supervision is partly an official control (administrative audit), and partly an official law application or the initiation of a procedure at the competent organ.

In connection with the regulation of the official supervision, it can be stated that the official supervision power, the subject of the supervision (the supervised activities and behaviours) as well as the instruments of the authority are regulated by the sectoral laws by sector (building supervision, consumer protection, environment protection, safety and health at work etc.). In connection with the procedural legal rules related to the official supervision and the official control, it can be stated that the general procedural rules<sup>[60]</sup> are specified in the GAP, the supplementary and special procedural rules are contained in the sectoral laws.

Only organs, organisations or persons with public authority may perform official activities, including official controls. "Public authority is an authorisation provided in the law for the administration of official affairs and exercise of public authority, which allows the public administrative organ to issue special public authority acts towards clients independent from it."<sup>[61]</sup>

The GAP does not specify the types of organs which may act as authorities, exercise official supervisory powers, and it provides only in what types of laws the official power may be regulated and integrated. According to the GAP, an authority means an organ, organisation or person which (who) has been authorised to exercise public authority by an Act, government decree or, in an administrative case of a local government, by a local government decree, or has been designated

[59] Madarász, 1989, 420-422.; Szalai, 2013, 118-119.

[60] GAP Section 98-102.

[61] Szalai, 2014, 63-64.

by law to exercise public authority.<sup>[62]</sup> The supervised client is a natural person (Hungarian citizen, foreigner, stateless person) and an organ/organisation (legal person, other organisation not having a legal personality).

The supervision covers the legality of the activity (behaviour) of the client. Contrary to the supervision of legality, the official supervision is not an organisational supervision, but is a supervision covering an activity (behaviour), a so-called professional supervision.

First, the authority controls if the client (supervised organ) observes the laws applicable to its activity (behaviour) and the special official decisions during its activity performed by it (and its behaviour). The necessity of additional measures or an intervention depends on the result of the control. The GAP regulates two types of supervision instruments – in general – to remedy the infringement and to enforce accountability. If the office detects any infringement during the control:

- it initiates a procedure *ex officio* (official procedure of law application) (obliging, sanctioning), if it has a competence in connection with the infringement,
- it initiates a procedure at the organ having a competence, if it has not own competent in connection with the infringement.

The sectoral laws contain the supplementary (e.g. call for legality) and special procedural rules related to the instruments in addition to the general rules. Typical instruments of the authorities exercising an official supervision power according to the sectoral laws:

- an official measure,
- a call for legality,
- obligation (official law application),
- sanctioning (official law application),
- initiation of a procedure (official procedure before the organ having a power and competence, and disciplinary, infringement, criminal, civil and other procedures).<sup>[63]</sup>

If the authority detects any infringement during the control, then it takes a measure *ex officio* in order to remedy the infringement and to enforce accountability, and, if necessary, it initiates a procedure of law application *ex officio*, or for lack of a power, it initiates a procedure before the competent organ having a power.

If the office detects any infringement during the control, then first a call for legality must be used by it in general, and in the case of a failed call for legality, the additional instruments may be used. The call for legality is a written warning sent by the authority, if the infringement can be remedied by eliminating the unlawful

[62] GAP Section 9.; See also II.1.a).

[63] Szalai, 2013, 124-125.

activity (behaviour) and/or restoring the lawful condition, then it is not qualified as a substantive official decision.

The official measure, obliging and sanctioning are instruments that can be also jointly applied depending on the type and severity of the infringement, i.e. more than two instruments may be simultaneously applied. The official measure may be typically taken already during the control, and is not considered as a substantive official decision,<sup>[64]</sup> it may be issued either orally or in writing, and must be implemented with an immediate effect. The authority may take official measures only in cases and under conditions regulated in the law (with its simultaneous entries in the electronic building log, the building surveillance authority prohibits continuation of the construction activity, or stops the construction activity performed without a permit or a simple notification on the site etc.).<sup>[65]</sup>

The authority initiates a procedure *ex officio*, and obliges the client to eliminate the unlawful activity (behaviour) and to restore the lawful condition, or prohibits the continuation of the activity (or behaviour) in its substantive official decision for the purpose of the remedy of the infringement.

Sanctioning is also an official law application, and the sanction must be documented in a decision. Sanctioning is the law application of prejudice against the person or organisation displaying the infringing activity (behaving in an unlawful way). The public administration sanction is, in general, an economic disadvantage (imposition of a fine etc.), or other sanction (limitation of the activity for a definite period, withdrawal of a permit etc.), prejudice affecting a natural person.<sup>[66]</sup>

The initiation of a procedure is not a (substantive) intervention by the supervising authority. The supervising authority initiates an official, disciplinary, infringement, criminal, civil or other procedure before another organ/organs in order to remedy the infringement and to enforce accountability.

Finally, we should mention in brief, that if during the official control the authority reveals that the obligation specified in the official decision is not met, then it initiates an enforcement procedure, if the enforcement procedure may be initiated *ex officio*.

In theory, several types of official supervision are distinguished (Tibor Madarász, Sándor Berényi, András Lapsánszky), the laws do not use these identifiers (except for “market surveillance”) to distinguish the types of official supervision. In theory, today the types of official supervision may be classified into the following groups:

- official supervision of general nature (each authority is entitled to control the performance and effectiveness of the official decision made by it, and to

[64] Madarász, 1989, 431.

[65] Government Decree 312/2012. (8 November) on Construction and Building Supervision Authority Procedures and Audits and Construction Authority Section 65 (1), 67 (3) a).

[66] Szalai, 2013, 122-123.

- intervene in the case of any infringement (to enforce the decision or to initiate the enforcement of the decision or to use other supervision instruments)),
- official supervision of special nature (not all authorities are entitled, only authorities having a supervision power according to the law are entitled to control the effectiveness of a set of norms protected by it (building surveillance, consumer protection, health and safety at work, environment protection, rules etc.) via voluntary legal compliance, and to take measures, to intervene and to use a supervision instrument in the case of an infringement),
  - market surveillance (a specific type of official supervision of special nature).<sup>[67]</sup>

It should be emphasised, that the authorities exercising official supervision of special nature are entitled to exercise also official supervision power of general nature in relation to the decisions issued by them.

The official supervision and the supervision of legality are supervisions made in possession of public power outside the hierarchy, but the two types of supervision are partly different. In the case of official supervision, the supervised entity is a natural person or organ/organisation, and in the case of supervision of legality, the supervised entity is always an organ/organisation. The official supervision covers the activity or behaviour of the supervised entity (professional supervision), while the supervision of legality covers the organisation and operation of the supervised entity (organisational supervision). The instruments of the two types of supervision significantly differ. In the case of any infringement, the typical instrument of the official supervision is the issue of official enforcement acts (obliging, prohibition, sanctioning) *ex officio*. A procedure is initiated if the supervising organ does not have a power or is not competent in connection with the remedy of the infringement. In the case of supervision of legality, call for legality is the first and mandatorily applicable instrument in general, and additional instruments may be used only in the case of a failed notice. In connection with the call for legality, it should be noted that it may be used in connection with official supervision if it is regulated as an instrument in the sectoral law.

#### IV. SUMMARY

The public administration tasks are diverse, and therefore the public administration activity and its certain types are also differentiated. As a result, the public administration supervision as a type of public administration activities is not a uniform activity either. In the study, the supervision activity is classified by supervising entity, its subject, direction, instrument as well as the relationship between the supervising entity and the supervised (managed) entity. Today, the types of

[67] Lapsánszky, 2012, 425-433.; Madarász, 1989, 427-432.

public administration supervision are diverse, and on the basis of their analysis, they are all characterised by the fact that:

- they are activities regulated in the law,
- they are directed at legality, in general (except for the supervision of organs of state administration),
- they are constituted by powers to control and to take measures if an infringement is revealed,
- the control and the measure (potential intervention) are generally subsequent, and exceptionally preliminary ones,
- the measure involves law application (imposition of fines, obliging etc.) or initiation of a procedure before another organ.

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