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COMPARATIVE ANALYSIS OF THE HUNGARIAN AND FRENCH CODIFICATION OF ADMINISTRATIVE PROCEDURAL LAW

PhD Dissertation

THESIS BOOKLET

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1. TOPICALITY OF THE ISSUE, HYPOTHESES AND RESEARCH QUESTIONS AND GOALS

France is one of the “model” states of public administration, meanwhile in the recent Hungarian legal publications the French codification of administrative procedural law has been only analysed per tangent. Bearing this in mind, the purpose of this dissertation is to fill this gap by comparing the codification of French and Hungarian administrative procedural law: from basic administrative notions, historical backgrounds, regulations of the administrative procedural law to a comprehensive analysis of the French and Hungarian legal remedy system of administrative decisions with de lege ferenda suggestions. The topicality of this analysis is also that in the winter of 2016 the Hungarian Parliament adopted a new Act on Administrative Procedures, Act CL. of 2016 entitled as the Code of General Administrative Procedure (hereinafter referred as Ákr.), whereas in France the *Code des relations entre le public et l'administration* (hereinafter referred as CRPA) entered into force on 1 January 2016. The CRPA regulates the non-contentious administrative proceedings, *la procédure administrative non contentieuse.*[1] The legislative provisions of the CRPA were codified by the Ordonnance n° 2015-1341 du 23 octobre 2015 and the Décret n° 2015-1342 du 23 octobre 2015 dealt with the related regulatory provisions.

The dissertation is based on the hypothesis that during the historical codification of the general rules of French administrative procedures several issues, legal institutions and institutions have arisen, and the detailed examination of these topics is necessary because their adoption or a creation of a similar Hungarian regulation could be considered by the Hungarian legislator to improve the competitiveness of the Hungarian public administration. We agree with LŐRINCZ, Lajos that “[t]he greatest profit we can make by comparison in our view is that the knowledge of the foreign models is essential for the development and for the modernization of the Hungarian public administration."[2]

One of the basic assumptions of the dissertation is that the examination of the French legal system is necessary. During the first phase of the development of public administration, the rule of law was very strong in the continental Europe. Two powerful models of this tradition have developed: the German and the French model. In countries following the French model, public administration is hierarchical, centralized, accountable and civil officers are highly qualified. [3] However, the development of French administrative law differs from the German law and the reason behind this fact can be traced back - according to TOMCSÁNYI, Móric – to the French national spirit.[4] It should be noted that certain characteristics of the French public administration (in particular the centralization of the public administration,[5] the semi-presidential system,[6] the special role of the French Council of State, the less formalized level of French administrative

[1] The translation of the „*Code des relations entre le public et l’administration*” is Code of the relations between the public and the administration. In the dissertation, we use the word “client” instead of public, because in Hungary we use this legal term.
[2] LŐRINCZ Lajos*: Összehasonlítás a közigazgatásban* in: LŐRINCZ Lajos (ed.): *Közigazgatás az Európai Unió tagállamaiban,* Unió Kiadó, Budapest, 2006. 19.
[3] *Bevezető* in: SZAMEL Katalin – BALÁZS István – GAJDUSCHEK György - KOI Gyula (ed.): *Az Európai Unió tagállamainak közigazgatása*, Complex Kiadó, Budapest, 2011. 26-27.
[4] TOMCSÁNYI Móric:*A közigazgatási jogviszony*, Politzer Zsigmond és Fia Könyvkereskedése, Budapest,1912. 85.
[5] LINGNIÉRES, Paul*: La procédure administratives non contentieuse en France: un droit pour établir la confience entre les citoyens et l’administration* in: AUBY, Jean-Bernard (dir.) - PERROUD, Thomas (collaboration): *Droit comparé de la procédure administrative,* Bruylant, Bruxelles, 2016. 917.
[6] See: ÁDÁM Péter: *Franciaország alkotmányos rendje és politikai intézményei*, Corvina Kiadó, Budapest, 2007.

law,[7] the territorial characteristics of France) played an important role in that the adoption of the CRPA had to wait until the XXI. century.[8]

France is indisputably the birthplace of the administrative law (*droit administratif*). AUBY, Jean-Bernard and CLUZEL-MÉTAYER, Lucie note, that there is no consensus among the French scholars on the starting point of the development of administrative law. It is generally accepted that the historical roots of French administrative law date back to the 18th century, to the establishment of the French Council of State.[9] In the 19th century, French administrative law was constantly developing.[10] The French *Tribunal des Conflits* in its Blanco judgment (1873) stated that the law applicable in the context of public administration is a specific law. This decision established the autonomy of administrative law in relation to other fields of law.[11] The development of the French administrative law also had a major impact on the administrative law of the Mediterranean countries (especially on Spain and on Italy).[12] Moreover, France is also the cradle of the codification, where already in the beginning of the 19th century important codes – like the Code Civil – have been adopted, which influenced the development of all European countries law.[13] As regards of the codification, it should be also mentioned that from the end of the 1990s, the *ordonnance* became a very popular codification instrument in France, with which finally the CRPA was adopted too.

On the other hand, it should be also emphasized that the analysis of the French public administration in the Hungarian and foreign comparative administrative works already came to the fore in the end of the 19th century, beginning of the 20th century. GOODNOW, Frank J. in his first comparative administrative law work entitled as *Comparative Administrative Law* published in 1893, after the Anglo-American regulation, the legal scholar examined in detail the French administrative provisions.[14] Often the American comparative administrative law publications present the French public administration directly after examining the public administration of the Anglo-Saxon legal systems (United Kingdom and United States).[15] From the French scientific literature, we should highlight that one of the most important comparative administrative law work of the research topic was edited in 2016 by AUBY, Jean-Bernard and PERROUD, Thomas under the title *Droit comparé de la procédure administrative*, and it also describes in detail, separately the non-contentious administrative proceedings and administrative justice.[16]

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[7] SAUNIER, Sébastien: *Caractéres essentielles du droit français de la procédure administrative* in: AUBY – PERROUD (2016) 71-73.

[8] GAUDEMET, Yves: *Droit Administratif*, (21e édition), L.G.D.J., Issy-les Moulineaux, 2015. 23-48.

[9] AUBY, Jean-Bernard – CLUZEL- MÉTAYER, Lucie: *Administrative Law in France* in: SEERDEN, J.G.H. René: *Administrative Law of the European Union, its Member States and the United States, A Comparative Analysis*, 3e Édition, Intersentia, Cambridge, 2012. 5.

[10] TRUCHET, Didier: *Droit Administratif*, Presses Universitaires de France, Paris, 2017. 11.

[11] *Arrêt du 8 février 1873, Blanco;* See: CHRÉTIEN, Patrice – CHIFFLOT, Nicolas - TOURBE, Maxime: *Droit administratif*, (15e édition), Sirey, Dalloz, Paris, 2016. 17-18.

[12] *Bevezető* in: SZAMEL – BALÁZS – GAJDUSCHEK – KOI (2011) 26.

[13] ROBINEAU, Yves: Droit administratif et codification (1), *Actualité juridique droit administratif,* 1995. 110-116.

[14] GOODNOW, Frank J.: *Comparative Administrative Law: An Analysis of the Administrative Systems, National and Local, of the United States, England, France and Germany.* 2 vols., Putnam, New York, 1893.

[15] For example: JACOBINI, H.B.: *An Introduction to Comparative Administrative Law*, Oceana Publications Inc, New York, London, Rome, 1991.; AUBY, Jean-Bernard – CLUZEL- MÉTAYER, Lucie: Administrative Law in France in: SEERDEN (2012) 5-39.; MASSOT, Jean: *The powers and duties of the French administrative judge* in: ROSE – ACKERMAN, Susan – L. LINDSETH, Peter (éd.): *Comparative Administartive Law*, Edward Elgar Publishing, Cheltenham (UK)-Northamptom (MA,USA), 2013. 415-425.

[16] SAUNIER, Sébastien: *Caractéres essentielles du droit français de la procédure administrative* in: AUBY – PERROUD (2016) 71-85.

In the first half of the 20th century, also a lot of Hungarian comparative administrative works examined the French administrative law in detail.[17] Thereafter, in the second half of the 20th century, Hungarian publications only peripherally analysed the French public administration, especially the codification of administrative procedural law.[18] After the 1990s – after the studies of TRÓCSÁNYI, László[19] – the detailed and comprehensive analysis of the French administrative law, [20] especially the French administrative procedural law has disappeared from Hungarian scientific legal literature. After 2010, in the Hungarian comparative administrative works the French administrative procedural law is examined only tangentially, in few pages.[21] This hiatus of the current Hungarian legal publications and the adoption of the new French Code of Administrative Procedure, the CRPA encouraged me to analyse the process of codifying the French administrative procedural law and the adopted Codes (hereinafter referred to as "codification").

However, it should be noted that there were many challenges in writing this dissertation. One was the interpretation of French legal terminology (mainly the legal terms used 30-40 years ago), of the French state and of French legal culture. Translating French legal terms and finding their Hungarian equivalents was a real challenge, given that French administrative law and the organization of the French state are very different from Hungary. In cases where we did not agree with the earlier Hungarian translations, we proposed to use a new expression. It should be also remarked that regarding the French administrative law my research is based on French legal publications.

Finally we should state also that during the writing of the dissertation the examination of several issues (like the French hierarchy of norms, the role of the *ordonnance* in the process of codification, the importance of the High Commission for Codification) seemed to be essential, because on the one hand it is closely related to understand the French codification of administrative procedural law and on the other hand these topics have not yet been analysed in detail in Hungarian legal works.

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[17] For example GRUBER Lajos *A közigazgatási bíráskodás eszméje, kellékei és alakzatai Európában, különös tekintettel Magyarországra és e kérdés parliamentáris sorsának történetére hazánkban,* Athenaeum, Budapest. 1877. 141-180.; CONCHA Győző: *Politika I.*, Grill Károly Könyvk., Budapest, 1905. 112 -126.; MARTONYI János: *A Közigazgatási bíráskodás mai rendszere Franciaországban*, Kecskemét Első Kecskeméti Hírlapkiadó & Ny. 1935.; MENCZER Károly: *A francia és olasz Államtanács szervezete és működése*, Magyar Közigazgatástudományi Intézet. Magyar Közigazgatástudományi Intézet Kiadványai 23. kötet., Budapest 1937.; VALLÓ József: *A service public eszméje a mai francia közigazgatási jogban*, Magyar Közigazgatástudományi Intézet, Budapest, 1940. 7-157.; MAGYARY Zoltán: *Magyar közigazgatás. A közigazgatás szerepe a XX. század államában*, Egyetemi Nyomda, Budapest, 1942. 86-89. A külföldi hatások értékelését lásd: KOI Gyula: *A közigazgatás-tudományi nézetek fejlődése,* Nemzeti Közszolgálati és Tankönyv Kiadó, Budapest 2014. 269-335.

[18] In the 1980s, the structure of the French public administration was analysed in a descriptive rather than a comparative way. See: FERENCZY Endre: A francia közigazgatás strukturájáról, *Állam- és Jogtudomány* 1982. 2. sz. 250-269.; BALÁZS István: A közszolgálat francia rendszeréről, *Állam és Igazgatás*, 1988 1. sz. 36-47.

[19] See: TRÓCSÁNYI László: A közigazgatási bíráskodás Franciaországban, *Állam- és Igazgatás*, 1988. 8. sz. 755-765., TRÓCSÁNYI László: *Milyen közigazgatási bíráskodást?*, Közgazdasági és Jogi Könyvkiadó, Budapest, 1992. 44-53.

[20] See: LŐRINCZ Lajos: *Franciaország közigazgatása* in: LŐRINCZ Lajos (ed.) *Közigazgatás az Európai Unió tagállamaiban. Összehasonlító közigazgatás, Unió Kiadó*, Budapest, 2006. 139-170., BALÁZS István: A francia helyi önkormányzati rendszer átalakulása napjainkban, *Állam- és Jogtudomány*, 2016. 2. sz. 16-39.

[21] LŐRINCZ Lajos: *Franciaország közigazgatása* in: SZAMEL Katalin – BALÁZS István – GAJDUSCHEK György - KOI Gyula (ed.): *Az Európai Unió tagállamainak közigazgatása,* Complex Kiadó, Budapest, 2011. 139-170.; SABJANICS István: *A közigazgatási eljárás Franciaországban* in: GERENCSÉR Balázs Szabolcs (ed.): *Összehasonlító és európai uniós közigazgatási jog. Közigazgatási jog IV*. Pázmány Press, Budapest. 2015. 86-87.

2. RESEARCH METHODOLOGY

This research works with the tools of comparative law, comparative administrative law[22] and analyses the chosen research topic with the main steps of the comparative law research program.[23] LŐRINCZ, Lajos defined two dimensions of comparisons in public administration: territorial comparison and temporal comparison.[24] The present dissertation applies both methods together and can be identified as a micro-comparative work[25] focusing on the codification of the Hungarian and French administrative procedural law. The thesis does not concentrate on country analysis, but periodically highlights and compares the status of codification of administrative procedural law in Hungary and in France. Thereby on the one hand, it fills the gap of the Hungarian scientific legal literature by the analysis of the codification of French administrative procedural law. On the other hand, it also examines in detail legal institutions and codification instruments, which adoption in Hungary and the adoption of a similar Hungarian regulation could be a subject to consider by the Hungarian legislator. However in some cases, following the analysis we can conclude that despite the effectiveness of a codification tool (like the ordonnance) in the current Hungarian constitutional framework it can not be adopted. This result also proves that the dissertation is a non-conceptual comparative work, which attempted to examine the chosen topic at the fourth level of comparative work,[26] consciously wished to analyse the substance of the issue and to promote its understanding. [27]

Furthermore, some parts of the dissertation – in particular the second chapter – can be also partially identified as a legal dogmatic work. [28] The second, third, fourth and fifth chapters of the dissertation also present a historical approach to the subject. We agree with the following statement of KÜPPER, Herbert: "[t]he assessment of the present situation also involves the knowledge of the past. We will only be able to understand the true nature of the present status if we know how it was created."[29] The first period from which the comparison of the codification of the general rules of the French and Hungarian administrative procedures can be made is the 1980s. The development of Hungarian administrative procedural law until the 1980s has been described in detail by several authors, while in France there was a very little ambition in this regard of codification until the 1980s. The Decree n° 83-1025 of 28 November 1983 of the Ministerial Council (hereinafter referred as 1983 Decree) is the first French regulation which attempted to regulate administrative procedures. Thus it provides an excellent basis for carrying out a comparative work, as in Hungary in 1981 a new act on the general rules of administrative procedures was adopted. This act is Act I. of 1981 (hereinafter referred as Áe.).

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[22] PÉTERI Zoltán: *Jogösszehasonlítás, Történeti, rendszertani és módszertani problémák*, Pázmány Péter Katolikus Egyetem, Jog – és Államtudományi Kara, Budapest, 2010. 154-168.

[23] FEKETE Balázs: *A jogösszehasonlítás magyar történetének és alkalmazásának alapkérdései* in: JAKAB András – MENYHÁRD Attila (ed.): *A jog tudománya,* HVG-Orac Lap- és Könyvkiadó, Budapest, 2015. 419-451.; FEKETE Balázs: A *modern jogösszehasonlítás paradigmái, Kísérlet a jogösszehasonlítás történetének új értelmezésére,* Gondolat Kiadó, Budapest, 2011.

[24] LŐRINCZ Lajos*: Összehasonlítás a közigazgatásban* in: LŐRINCZ (2006) 7-8.

[25] GERENCSÉR Balázs Szabolcs (ed.): *Összehasonlító és európai uniós közigazgatási jog. Közigazgatási jog IV*. Pázmány Press, Budapest. 2015. 23.

[26] GERENCSÉR (2015) 27-29.

[27] PÉTERI (2010) 132-133.

[28] SZABÓ Miklós – JAKAB András: *A jogdogmatikai kutatás* in: JAKAB – MENYHÁRD (2015) 51-79.

[29] KÜPPER, Herbert*: Magyarország átalakuló közigazgatási bíráskodása*, MTA Working Papers, 2014. 3. http://jog.tk.mta.hu/uploads/files/mtalwp/2014_59_Kupper.pdf (30.04. 2018.)

Subsequently, the research is divided into ten-year periods making the codification more transparent and more understandable and providing the logical basis for the systematic conduct of the comparative work.

Finally in connection with the research methodology, it should be also noted that at the end of each chapter – where it is interpretable – de lege ferenda suggestions are made. In the dissertation as an empirical research the decisions of the French Council of State and the French Constitutional Council are also examined in view of the fact that the French administrative procedure rules were determined for long by the judgments of the administrative courts, in particular of the Council of State.[30]

3. STRUCTURE OF THE DISSERTATION

The dissertation consists of eight chapters. Following the *Introduction* (Chapter I), Chapter II. is entitled *Conceptual Fundamentals*. This part defines the basic notions – like administrative procedure and codification – used in the dissertation. In addition this chapter examines in detail the purpose, the difficulties, the advantages, the possible outcomes and the level of the codification of administrative procedural law. The codification efforts of the European Union in this field are also briefly outlined. Finally, the main results of the codification of the general rules of administrative procedures until the 1980s are also analysed to illustrate the different starting point between Hungary and France for the codification of administrative procedural law.

In Chapter III., entitled as *The 1980s: Increasing efforts to codify administrative procedural law*, the subjects of our examination are the legal acts regulating the administrative procedures adopted in the 1980s: the Hungarian Áe. and the French 1983 Decree. Hungarian scientific works did not present this Decree, therefore the dissertation examines it in detail. In addition, it seemed necessaire to analyse the status of the French High Commission for Codification, which has always been the engine of the codification, including the codification of administrative procedural law. It also actively contributed to the realisation of the new French Code of Administrative Procedure, the CRPA.

Chapter IV. of the dissertation is named as *The 1990s: a period of missed opportunities*. Although both in France and in Hungary the legislator had the opportunity to adopt a new act on administrative procedures, which was urged by scholars, unfortunately neither in Hungary nor in France this was not realized in the 1990s. This era is more like a period of great dreams and even greater hopes. However, in this period in France, the *ordonnance* (government decrees) became a very popular legislative and codification tool. This source of law still raises a number of dilemmas which cannot be understood without the knowledge of the hierarchy of norms. Given that the current Hungarian publications do not describe in detail the French hierarchy of norms, this subchapter is intended to fill this gap as well. The analysis of the *ordannance* is necessary for two reasons: firstly, the new French Code of Administrative Procedure, the CRPA was finally codified by this legal source too. Secondly, the question arises if this source of law can be integrated into the Hungarian hierarchy of norms.

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[30] See: BALÁZS István (ed.): *Közigazgatási eljárások*, Debreceni Egyetemi Kiadó, Debrecen, 2017. 47.

The 2000s seems to be more successful in codifying the general rules of administrative procedures in Hungary and in France than the previous decades, as in each of the two examined countries important acts were adopted. On November 1, 2005 Act CXL. of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred as Ket.) entered into force in Hungary. Whereas in France the Act on Citizens' rights regarding their relations with administration (hereinafter referred as Loi DCRA) was adopted on 12 April 2000.[31] In the second half of the 2000s, however, the defects of these administrative procedure acts became obvious. These issues are discussed in Chapter V. *The 2000s: Effective (?) French and Hungarian codifications of the administrative procedures.*

In Chapter VI. *The 2010s: Different level of the codification*, we analyse the general rules of administrative procedures in view of the fact that not so long ago, for similar purposes, both in France and in Hungary legal acts were adopted: the Hungarian Ákr. and the French CRPA. This Chapter examines the circumstances of the adoption, the scope and the content of new administrative procedure acts. In this chapter, the French CRPA is discussed more comprehensively than the Ákr., as the current Hungarian works has not yet examined the CRPA in detail, thus this chapter intends to complement this as well. Finally, after comparing the content of the new administrative procedure codes, this chapter also highlights some of the fundamental, still existing dilemmas and insufficiencies of these legal acts.

Chapter VII. is entitled as the *Future challenges: improvement of the legal remedy system of the administrative decisions in France and in Hungary*. First, this chapter describes the constitutional background of administrative procedures, administrative justice and the right to legal remedy. Then, we focus on the Hungarian and French legal remedy systems of administrative decisions and on the basic issues of administrative justice. We share the view that the regulation of the administrative procedures and of the administrative justice only makes sense together.[32] A good, customer-friendly administrative procedure cannot be realised without an efficient, specialized administrative court system. We welcome the fact that the Hungarian legislature after several decades, in 2017 adopted the Act I. of 2017. on the Code of Administrative Court Procedure (hereinafter referred to Kp.), which contains the rules of the proceedings in front of the administrative courts. Finally, this chapter concludes de lege ferenda suggestions regarding the legal remedy system of the administrative decisions.

The Chapter VIII. *Conclusions* contains the de lege ferenda suggestions, the new scientific results and recommendations of the dissertation.

[31] *Loi n° 2000-321 du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations*

[32] This can be justified by the legislator's ambition too, as these two subjects were simultaneously regulated in 2016. Also in the Hugarian legal works these two topics are analyed together. See: ROZSNYAI Krisztina: *Közigazgatási bíráskodás Prokrusztész-ágyban*, ELTE Kiadó, Budapest, 2010., ROZSNYAI F. Krisztina, F.: *Külön, de mégis együtt: a közigazgatási perjog és a közigazgatási eljárásjog*. In: GERENCSÉR Balázs – BERKES Lilla – VARGA ZS. András (ed.): *A hazai és az uniós közigazgatási eljárásjog aktuális kérdései: Current Issues of the National and EU Administrative Procedures (the ReNEUAL Model Rules),* Pázmány Press, Budapest, 2015. 149-167., DARÁK Péter: Új közigazgatási perrendi elképzelések, *Új Magyar Közigazgatás*, 2016. 4. sz. 48-49.

4. CONCLUSIONS, NEW SCIENTIFIC RESULTS, RECOMMENDATIONS

In the comparative study of the codification, development and basic legal institutions of the Hungarian and the French administrative procedural law, first it seemed to be essential to define the most frequently used notions of the dissertation (the administrative procedure and the codification). The definition of administrative procedure is not the same in Hungary and in France: the Hungarian description focuses on the issue and the enforcement of a unilateral administrative act. In the French concept the relationship between public administration and the public (especially clients) is emphasized.

In France, the notion of administrative procedure (*procédure administrative*) includes both the administrative court proceedings (*procédure administrative contentieuse*) and the non-contentious administrative proceedings (*procédure administrative non contentieuse*). This conceptual complexity is due to the fact that administrative justice is a part of the public administration in France. The judgments of the administrative courts regarding the public administration are also considered to be part of the administration (*juger l'administration, c'est encore administrer*). [33] If we are looking for the equivalent of the Hungarian definition[34] of administrative procedure it is the part of the French non-contentious administrative proceedings.
We should also mention that Hungarian publications repeatedly define administrative procedures as proceedings between the clients (public) and the administrative authorities however, the notion of administrative procedures is broader than this definition.[35] Meanwhile the French legal works often identifies administrative procedures as administrative court proceedings.[36]
We should remark that the French legal works did not used the term non-contentious administrative proceedings (*procédure administrative non contentieuse*)[37] for long and only defined the non-contentious administrative proceedings from the point of view of administrative court proceedings. However, as a result of the codification works regarding administrative procedures in the 2010s, there is a precise and detailed definition of the non-contentious administrative proceedings, which includes all the rules governing the creation of a unilateral administrative act or an administrative contract. [38] In France, unlike to Hungary, the enforcement of administrative decisions is not part of the administrative procedures therefore it is not included in the definition of administrative procedure.

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[33] *Juger l'administration, c'est encore une fois administrer* in*:* DE PANSEY Henrion: *De l'autorité judiciaire en France*, t. II., Barrois, 1827, 311. See: *Tribunal des conflits,8 février 1873, N° 00012, L'arrêt Blanco*
[34] See: PATYI András: *I. fejezet Az eljárás és az eljárásjog fogalma, a hatósági eljárás szabályozásának története* in: PATYI András (ed.): *Hatósági eljárásjog a közigazgatásban*, Dialóg Campus Kiadó, Budapest-Pécs, 2012. 21-34.
[35] SZAMEL Lajos: *Az államigazgatási eljárás* in: BERÉNYI Sándor – MARTONYI János – SZAMEL Lajos: *Magyar államigazgatási jog*, *Általános rész*, Második kiadás, Tankönyvkiadó, Budapest, 1980. 356.
[36] See: BAILLEUL, David: *Le procés administratif*, L.G.D.J., Issy-les-Moulineaux, 2014.; CHAPUS, René: La justice administrative: evolution et codification, Lecture du code de justice administrative*, Revue française de droit administratif,* 2000. 929 - 939.
[37] For example: HAURIOU, Maurice: *Principes de Droit Public*, (1. édition), L.Larose 1910. 697.; VEDEL, Georges: *Droit Administratif*, (2. édition), Presses universitaires de France, Paris, 1961.
[38] GONDOUIN, Genevieve – INSERGUET-BRISSET, Veronique –VAN LANG, Agathe: *Dictionnaire de droit administratif* (6e édition), Sirey – Dictionnaires, Dalloz, Paris, 2011. 341-342., WALINE, Jean: *Droit Administratif* (24e édition), Dalloz, Paris, 2012. 422-424.

We can find another difference regarding the definitions. The definition of the codification in Hungary is described as the preparation and the adoption of legal norms in all level,[39] which allows to create a new legal norm and carry out important reforms. The French legal works distinguishes between codification of existing legal norms (*codification à droit constant*), and the codification creating new rules (*codification à droit non-constant*). In France, mainly the first kind of codification can be observed.[40] The CRPA is also a special code, because it also codifies new provisions and judicial practice next to the existing rules.

The aim, the challenges, the benefits and the potential outcomes of the codification of the general rules of administrative procedures are comprehensively discussed in Chapter II.2. of the dissertation. We should remark that the codification of administrative procedural law always presupposes general rules of administrative proceedings. Different objectives (among others, promoting the legality of public administration, safeguarding public interest, promoting good administration, ensuring legal certainty, facilitating the access to legislation, promoting the transparency of the legal regulations and protecting personal interest within the limitations imposed by the public interest)[41] should be kept in mind during the codification of the general rules of administrative procedures. The codification of the general rules of the administrative procedures faces a lot of difficulties too, in particular the fact that the French and the Hungarian legal publications have long neglected this issue; furthermore, the necessary political support and staff for this kind of codification; the fact that there are a lot of different kind of administrative procedures, etc.[42] In France also defining the personal and territorial scope (provisions regarding the French overseas territories) of the Code posed a challenge. Although there have been many opponents of the codification of the general rules of administrative procedures both in Hungary and in France,[43] the benefits of this Code are indisputable (like allowing the clarification of certain notions; protecting clients' rights, increasing transparency in the process of drafting administrative acts and promoting rationalization of administrative procedures).[44]

The first – currently a purely theoretical – dilemma regarding the level of codification of the general rules of administrative procedures is if it is possible and necessaire to create a code which contains the general rules of administrative procedures. In Hungary, the real turning point in solving this dilemma was in the 1940s, the School of MAGYARY, Zoltán.[45] In France, the analysis of general rules on administrative procedures came to the fore relatively late, only after the 1960s.[46] In parallel, the French legislature began codifying certain aspects of the

[39] KAMPIS György: *Kodifikáció – elmélet és gyakorlat*, Unió, Budapest, 1995. 15.
[40] BRAIBANT, Guy: Codification, Entretien avec le Président Braibant, *Revue française de droit administratif*, 2000.493-510., GAUDEMET (2015) 34-36.
[41] See: CHRÉTIEN – CHIFFLOT – TOURBE (2016) 32-33., MÁRFFY Ede: Magyar közigazgatási és pénzügyi jog, Athenaeum Irodalmi és Nyomdai R.-T., Budapest, 1926. 24-26.
[42] See: VICZIÁN István: *A magyar közigazgatási eljárás alapvonalai*, Pallas Részvénytársaság Nyomdája, Budapest 1912. 1., BRAIBANT, Guy – ZARADNY, Aude: L'action de la Commission supérieure de codification, *Actualité juridique droit administratif*, 2004. 1856 - 1859.
[43] See: CONCHA (1905) 105.; EREKY István: *Közigazgatási jogi jegyzet*, Szent István Társulat szegedi fiókja, Szeged, 1931. 185.; ESZLÁRY Károly: *A magyar közigazgatási jog alapismeretei*, Ranschburg Gusztáv Bizománya, Budapest, 1936. 450.
[44] See: MÁRFFY (1926) 250-251.; FRANC, Michel: Le rayonnement de la codification, *Actualité juridique droit administratif*, 2004. 1841.
[45] VALLÓ József: *Törvénytervezet az általános közigazgatási rendtartásról indoklással*, Magyar Közigazgatástudományi Intézet, Budapest, 1942.
[46] See: GUY, Isaac: *La procedure administrative non contentieuse,* L.G.D.J., Paris.1968., WIENER Céline: *Vers une codification de la procédure administrative: étude de science administrative comparée*, Presses universitaires de France, Paris, 1975.

administrative procedures like the obligation to state reasons for administrative decisions.[47] Since the 1980s, French legal studies always pointed out that France is one of the few exceptions among the Member States of the European Union that does not have a code on administrative procedures, but it is necessary to adopt this legal norm.[48]

It is important to note that the level of codification of administrative procedural law can be grouped in several ways, which is described in detail in Chapter II. 2. 2. of the dissertation. We should mention that currently we are witnessing a real change of model regarding France: from the minimalist model (French administrative procedural law before the CRPA) to the maximalist model (the CRPA, which is similar to the codes of the countries, which follow this model).[49] If we examine not only the administrative procedural law and its' codification in the Member States of the European Union but also the administrative law of each EU Member State, its historical roots and the different social and legal factors, we can find a different grouping in the latest French[50] and Hungarian[51] legal scientific works. Whereas the French studies tries to integrate the post-socialist countries into the groups that have already been created, the Hungarian legal studies forms a separate group for the post-socialist countries.
The Chapter II. 2. 2. further details the European Union's codification efforts in the area of administrative procedures (like the right to good administration stated in Article 41 of the Charter of Fundamental Rights of the European Union; the European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration and the Model Rules on EU Administrative Procedure). In addition to the European Union, the Council of Europe has also a significant influence on shaping the administrative law and administrative procedure law of the European states.[52] However, it must be pointed out that European states are autonomous to regulate their administrative law and administrative justice, but in the last few years we can observe more and more convergence in these fields too notably to ensure EU requirement of the effective and equivalent legal protection.

In our view, the codification of administrative procedural law is a never-ending process. The first period from which the comparison between France and Hungary can be carried out is the 1980s, because until this period French attempts to codify the general rules of administrative procedures are negligible. There is no consensus neither in the Hungarian[53] nor in the French[54] legal studies on the period from which the creation of the general rules of administrative procedures can be dated. Therefore the Chapter II.3. of the dissertation highlights the most

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[47] *Loi n° 79-587 du 11 juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public*

[48] GONOD, Pascale: Codification de la procédure administrative. La fin de « l'exception française » ?, *Actualité juridique droit administratif,* 2014. 395 - 400.

[49] See: PEREIRA DA SILVA, Vasco: *Functions and Purposes of the Administrative Procedure: new problems and new solutions* in: Lisbon Meeting on Administrative Procedures, Functions and purposes of the administrative procedure: new problems and new solutions, Institute for Legal and Political Sciences (ICJP), Lisbon University Faculty of Law (FDUL), Lisbon, 2011. 69-80. https://www.icjp.pt/sites/default/files/media/e-book_international_isbn.pdf (30. 04. 2018.)

[50] See: FROMONT, Michel: *Droit administratif des États européens,* Presses Universitaires de France, Coll. Thémis, Paris, 2007.; ZILLER, Jacques: *Les droit administratifs nationaux: caractéristiques générales* in: AUBY, Jean-Bernard – DUTHEIL DE LA ROCHÈRE, Jacqueline: *Traité de droit administratif européen*, Bruylant, Bruxelles, 2014. 743-745.

[51] SZAMEL – BALÁZS– GAJDUSCHEK – KOI (2011)

[52] See: European Convention for the Protection of Human Rights and Fundamental freedoms, Recommendation CM/Rec(2007)7of the Committee of Ministers to member states on good administration and Recommendation Rec(2004)20 on judicial review of administrative acts

[53] PATYI (2012) 40.

[54] AUBY – CLUZEL- MÉTAYER (2012) 5.

important steps of the French and Hungarian codification of administrative procedural law before the 1980s. We should state that before the 1980s the regulation of administrative procedural law and its analysis by legal studies were more detailed and in this way in a higher level in Hungary than in France. However we should also emphasize that the level of legal protection – due to the centuries-old existence of administrative justice in France – was far higher in France than in Hungary. In the 1980s, in Hungary the Act on Administrative Procedures (abbreviation of this Act is Et. and it contained the general rules of the non-contentious administrative proceedings adopted in 1957) was changed significantly; meanwhile in France the codification efforts in this regard were negligible. The significance, the structure, the characteristics, the most important rules and the dilemmas regarding the application of the Et. are also presented in the second part of the Chapter II.3. of the dissertation.

In the 1980s, Hungary but also France adopted a legal norm regarding the general rules of administrative procedures. These are the Hungarian Áe. and the French 1983 Decree.[55] The Hungarian Áe. incorporated the Et. and aimed to correct the shortcomings of this legislation, but the most serious defect – the narrow scope of judicial review – was not modified. Meanwhile, the aim of the French legislation was to adopt a charter on the relations between the public administration and its users. Unfortunately, although this aim was noble, the result did not achieved the purpose: the French 1983 Decree contained only a few provisions regarding the basic institutions of the non-contentious administrative proceedings. In the Chapter II. of the French 1983 Decree only six articles concerned administrative procedures, in which the basic rules (like the institution of referral and the possibility of rectification the deficiencies) governing the relationship between administration authorities and the public were laid down. Despite the defects of the 1983 Decree, it can be considered as the first French effort to codify the general rules of the administrative procedures. Most part of the Chapter II. of the French 1983 Decree (4-8. §) was repealed by the Decree n°2001-492. of 6 June 2001.[56]

We can conclude that the codification of the administrative procedural law is in a quite different level in Hungary and in France in the 1980s. In our opinion, if we consider the codification of the administrative procedural law as a process, its development in Hungary in the 1980s was technically more advanced than in France. In Hungary, the general rules of administrative procedures were comprehensively detailed in an Act (in the Áe.). Contrary in France, certain legal institutions of the administrative procedures were partially regulated by a Decree issued by the President of the Republic. This legal norm is not an Act, not a parliamentary statute, but a regulation and it can be found in this level in the hierarchy of norms in France. [57] However, while technically indeed Hungary has advanced in the process of codification of administrative procedural law, the essence of administrative procedural law (that administrative procedures are governed by legal rules and that the violations of these rules can be effectively remedied) was clearly in a higher level in France even without the existence of the code on administrative procedures, than in Hungary in the 1980s.

[55] *Décret n°83-1025 du 28 novembre 1983 concernant les relations entre l'administration et les usagers*

[56] *Décret n° 2001-492 du 6 juin 2001 pris pour l'application du chapitre II du titre II de la loi n° 2000-321 du 12 avril 2000 et relatif à l'accusé de réception des demandes présentées aux autorités administratives*

[57] The hierarchy of norms in French law is like a pyramid: each group of legal norms at the same level forms separate levels so-called "blocs". The following blocks can be distinguished from top to bottom: a constitutional bloc (*bloc de constitutionnalité*); international and European Union legal acts (*bloc de conventionnalité*), the bloc of parliamentary statutes (*bloc de légalité*), the general principles of law (*principes généraux de droit,* PGD), the regulations and finally other administrative acts (*actes administratifs*). In the bloc of parliamentary statutes we can find the acts, the ratified *ordonnance,* and the *réglement autonome*.

We should also underline the role of the High Commission for Codification (*Commission Supérieure de Codification)* in the codification process of administrative procedural law. This Commission was established in the late 1980s by the Decree n°89-647 of 12 September 1989 to promote the effectiveness of the codification. It is the successor of the High Commission charged with the study of the codification and the simplification of statutory and regulatory texts. [58] The High Commission for Codification still today plays a central role in France in the process of drafting codes (like the CRPA).[59] This fact justified its presentation in the dissertation: a detailed description of its composition, its membership and its functions. During our analysis, the benefits of having a High Commission for Codification have become apparent. Bearing this in mind, we recommend to create also in Hungary an institution similar to the French High Commission for Codification: an administrative body which is separated from the ministries, works permanently and constantly focuses on improving legislation. It could promote the codification in all areas of law and it could also hold, collect, regularly and systematically update the status of legislation. It could make concrete proposals for the necessary codifications and amendments and it could coordinate the process of codification. The existence of this institution would have been very useful in the past, in the codification of the Áe., of the Ket. and also of the Ákr. The amendments adopted before the acts entering into force could be reduced also by this institution.[60]

In the 1990s, the codification of administrative procedural law was not a top priority neither in Hungary nor in France. After the change of regime in 1989, the Hungarian Government had to solve many other issues. The only unfortunate fact is that, although it would have been an excellent opportunity to introduce special rules regarding administrative court proceedings in a Code on Administrative Justice; and create an administrative court system separated from ordinary courts, this does not happened in Hungary in this decade.
The shortcomings of the Hungarian Áe. [61] became more and more apparent by the mid-1990s, and in parallel the Hungarian legal works urged the legislator to create a new law on administrative procedures. In France, the efforts to codify the general rules of administrative procedures in the 1990s were part of a very large plan, the drafting of the Code on Administration. Based on the original concept of this Code: Book I. would have contained general rules at legislative level. Part I. of the Book I. would have focused on the relationship between administrative authorities and the public (the client). Part 2 of the Book I. would have regulated the organizational structure of public administration. The Book II of this Code would have dealt with the related regulatory provisions.
In the 1990s, in French legal publications a change of the name can be also observed regarding the codification of the general rules of the non-contentious administrative proceedings. In the 1980s, we can find it under the name: the charter on the relations between the public

[58] The Decree of May 10, 1948 established the High Commission charged withthe study of the codification and the simplification of statutory and regulatory texts (*Commission supérieure chargée d'étudier la codification et la simplification des textes législatifs et règlementaires*). This Commision at first was doing very important and useful work but its activity decreased during the time. See: ALLAND, Denis – RIALS, Stéphane (dir.): *Dictionnaire de la culture juridique*, Presses Universitaires de France, Paris, 2003. 222.
[59] In the years 1990-2000, the codification of several codes was guided by the High Commission for Codification. See: KOUBI, Geneviève: Retour á la programmation des codes, *La Semaine Juridique Administrations et Collectivités territoriales*, n° 17, 22 Avril, 2013. 2115.
[60] We may be wondering to what extent it is in the interest of the citizen to amend the law before it enters into force and how do this act meet with the requirement of legal certainty. See: Decision 8/2003. (III. 14.) of the Constitutional Court of Hungary
[61]See: KILÉNYI Géza: A közigazgatási eljárásjog átfogó tudományos elemzése, *Magyar Közigazgatás* 2000. 3.sz. 132-133.

administration and its users, in the 1990s and in the 2000s this appeared as part of the Code on Administration.

The Code on Administration in the original concept was never adopted. In France, the codification of the general rules of the non-contentious administrative proceedings was unsuccessful until the CRPA. In the 1990s, the use of the *ordonnance* (government decrees which are part of the bloc of parliamentary statutes) became a very popular codification tool in France. The detailed analysis of the *ordonnance* in the dissertation was necessary because the new French Code of Administrative Procedure, the CRPA was codified also by this legal norm. However, the place of the *ordonnance* in the hierarchy of norms raises several questions. A good knowledge of the French hierarchy of norms is required to understand these dilemmas. As this topic was not yet discussed in detail in the latest Hungarian legal publications therefore the Chapter IV. 2. also analyses it and makes the following suggestions regarding the translations of these norms:[62] ordonnace should be translated into Hungarian as a statutory government decree,[63] because in Hungary it is not very fortunate to name ordonnance as legislative decree, as there would be a nominal similarity between it and the decrees issued by the Presidential Council of the Hungarian People's Republic. However translating ordonnace as a government decree, it would not adequately reflect to its role in the hierarchy of norms. In addition, under decree (*réglement*), in France, we understand on the one hand, the *décret*, which is issued by the President of the Republic or the Prime Minister; on the other hand, an *arrêté,* which is issued by a minister, a prefect or a mayor. It is necessary therefore to name the author of the French legal sources in the Hungarian translations, because without this the hierarchy between the decrees cannot be interpreted.[64] Based on the detailed analysis of the French hierarchy of norms, we consider the *ordonnance* as a simply adopted, very effective codification tool; however we do not believe that its adoption in Hungary is feasible within the present constitutional framework. It might be worth to consider although the adoption of the grouping of the decisive, unilateral administrative acts regulated in the CRPA: individual acts, regulatory acts and neither regulatory nor individual decisions. Neither regulatory nor individual decisions are unilateral administrative acts which apply an existing rule in a specific situation without defining the addressees, such as the declaration of public utility (*déclaration d'utilité publique*).[65]

At the beginning of the 2000s, administrative procedures acts were adopted for similar purposes but with different codification level in France and in Hungary. The Hungarian Ket. entered into force on 1 November 2005 and contained detailed rules governing the non-contentious administrative proceedings. The difficulties of the codification of the Ket. can be illustrated by the fact that during the period of vacatio legis the Ket. was modified by the Act LXXXIII. of 2005 in order to correct its' most serious errors. The Ket. codified a number of new legal institutions, in which already the influences of the European Union are perceptible.[66] Following its entry into force, its Codification Committee was replaced by the Committee of Experts on Administrative Procedures, which, inter alia, intended to review the Ket. after few years of its entry into force. This Committee, however, was abolished when the reviewing of the Ket.

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[62] See: The French Constitution in: HEKA László (ed.): *Nemzeti alkotmányok az Európai Unióban,* Complex Wolters Kluwer, Budapest, 2016. 343.
[63] ÁDÁM (2007) 216.
[64] STIRN, Bernard : Le droit administratif vu par le juge administratif, *Actualité juridique droit administratif*, 2013. 93-103.
[65] CHRÉTIEN – CHIFFLOT –TOURBE (2016) 200.
[66] Like the international legal assistance, the liaison officier, the administrative contracts, the extension of judicial control, the reopening procedure, the extension of the nullity cases.

became the responsibility of the Ministry of Justice. Within five years of its entry into force Act CXI. of 2008 comprehensively amended the Ket.
In France, the Loi DCRA entered into force at the beginning of the 2000s, containing certain legal institutions regarding the non-contentious administrative proceedings. In the Hungarian legal studies the Loi DCRA is generally already referred as a more general act governing the French administrative procedures. [67] We only partly share this view: it is a fact that the Loi DCRA does indeed have rules regarding administrative procedures and these rules have a general nature; but these provisions are only nine articles of the Loi DCRA. The Loi DCRA codified important legal institutions of the administrative procedures like the rules on the requests and provisions on the silence of public administration.
By the end of the 2000s, the shortcomings of the laws adopted in the early 2000s had become increasingly apparent in France and also in Hungary. [68] However, we should state that from the 2000s, in France the rules governing the administrative procedures are codified at the legislative level, in an Act (Loi DCRA).

In 2010s, we can witness a wave of codifications both in France and in Hungary. In Hungary, the Ket. was modified over a hundred times to correct its deficits and it was time for a new codification, for a new administrative procedure act (the Ákr.). Meanwhile in France, legal scholars, the Council of State and also the Council of Ministers supported the idea of a comprehensive regulation on the non-contentious administrative proceedings. In Chapter VI.1. of the dissertation the circumstances of the French CRPA and the Hungarian Ákr. are described. The Chapter VI. also contains a detailed analysis of the title, of the scope, of the content, of the similarities and of the shortcomings of the new Hungarian and French administrative procedure acts. It should be noted that the title of the CRPA already contains its scope, meanwhile the title of the Hungarian Ákr. raises many questions.[69] We should also mention that the scope of the CRPA extends not only to the relationship between the public and the administrative authorities, but also to the relationship between the administrative authorities and those working in the administrative authorities. In the Ákr. we can also find rules regarding the procedural steps between the administrative authorities like the request for administrative assistance. We therefore feel it is not entirely justified to regulate these legal institutions in the administrative procedure acts.

The content and the structure of the French CRPA is described more detail than the Hungarian Ákr. in Chapter VI.3. of the dissertation, because this Code has not yet been fully analysed by Hungarian legal publications. The CRPA consists of Introductory Provisions and five books. The Introductory Provisions define the scope of the Code and some key principles that must be respected in the relation between the public and the administrative authorities. Book I, under the name 'Relations with the Administration' regulates all acts which precede the administrative decision-making procedures like the notion of request, certain provisions concerning time limits, the rules regarding the cooperation between the public in decision-making process, etc. Book II. contains the rules regarding the adoption of unilateral acts by administrative authorities, under different title regulating the provisions about the duty to state reasons, and signing the decisions, the entry into force of the administrative acts, the decision made by the

[67] SZAMEL – BALÁZS – GAJDUSCHEK – KOI (2011) 261.
[68] Only a few of the shortcomings of the Ket were highlighted in the dissertation like that the Ket. began to lose its primary and general character; using the Ket. became difficult, in some places there was a lack of logical coherence in its structure for example regarding the request.
By the end of the 2000s, also in France we found several dilemmas regarding the application of the Loi DCRA, such as uncertainty of its personal scope, heterogeneity of the subject, lack of unified jurisprudence, lack of regulation on evidence, etc. See: Chapter V. 2. of the dissertation
[69] See: Chapter VI. 2. of the dissertation

silence of the public administration and the repeal of the administrative acts. The French administrative procedures, like the Hungarians, can be initiated by the client's request or ex officio, but this regulation is not expressis verbis in the CRPA, but it can be deduced from the detailed rules of this Book. The Book II. of the CRPA – like the Hungarian Ákr. – regulates the different steps of the administrative procedures in a chronological order. The CRPA states, as a general rule, that if the administrative authority does not decide in two months (silence of the administration), it is a consent (Article L. 231-1). Thus, the CRPA codified the principle silence means consent, breaking the rules of the Loi DCRA. The Book III. of the CRPA defines the rules regarding the access to administrative documents and the re-use of publicly available information, as well as the most important provisions on the Committee of Access to Administrative Documents (CADA). The Book IV. of the CRPA entitled "Resolutions of disputes with the administration" lists the legal remedy possibilities available against the administrative decision. In the Title I. of the Book IV. we can find the provisions regarding administrative remedies (*recours administratifs*) like the internal appeal procedures and preventive, compulsory administrative redress procedures (RAPO). The Title II. of the Book IV. regulates the alternative remedy possibilities like the mediation and the recourse to the Ombudsman (*Défenseur des droits*). Title III. of the Book IV. names the administrative justice: judicial review and arbitration. Book V. of the CRPA is entitled as "Overseas provisions."

We should also state that although the French CRPA and the Hungarian Ákr. both intended to codify the general rules of the administrative procedures, in their content there is very significant difference. While the CRPA is a collection of few legal institutions, provisions regulating administrative relations also between administrative authorities and the clients ("public"), the Ákr. focuses on the administrative case and on the administrative decision, and tries to regulate all steps of the administrative procedures. Unlike the Hungarian Ákr., the French CRPA is applied secondary, unless there is not a specific provision for the particular administrative relationship. It is true that both legal norms contain a number of similar legal regulations, legal institutions, which in some cases are codified in similar ways for example the rules on request, on referrals, on the modification of a decision by the administrative authority. We can describe as the biggest shortcoming of the CRPA that it is not a real administrative procedure act, it does not define the steps of the administrative procedure, but only highlights certain aspects of it. The CRPA does not contain provision regarding the enforcement of an administrative decision, because for this action a court decision is needed in France.

The Chapter VI. of the dissertation – without aiming to give an exhaustive list – proposes a revision of few cardinal issues regarding the regulation of administrative procedures. Therefore, we suggest to consider that the provisions in the Ákr. considering the enforcement of administrative decisions could be regulated as part of the Judicial Enforcement Act, because the Ákr. defines a general enforcement authority (the State Tax Authority) in which procedures the Ákr. does not apply.
Moreover, the real novelty of the French CRPA – which is completely missing from the Hungarian Ákr. – is that at the beginning of each Book of the Code a precise definition is given of the most important notions used in that Book, thus this helps those who apply the CRPA. It would also be useful to define or to supplement certain definitions in the Hungarian Ákr. such as the definition of administrative procedures or for example supplementing the definition of request with request for appeals. However, standardization of the notions would be necessary in the French CRPA, particularly regarding the notions of administrative acts and administrative decisions.
It should also be noted that the CRPA regulates the institution of silence of the administration very simply: silence in principle means consent, and the exceptions are listed in the CRPA [Title

3 of the Book II. of the CRPA]. The Hungarian Ákr. distinguishes between lawful and unlawful silence, which is regulated in different parts in the Ákr. It could be considered to modify the cases of unlawful silence, and in these cases the complaint could be brought directly to court instead of the supervisory administrative body. In this context, we should note that there are three fundamental problems with the regulation of the conditional decisions in the Ákr.: firstly, we do not consider it appropriate for the clients, because it is generally difficult for clients to understand this administrative decision. Secondly, from the point of view of the officers of the administrative authorities, if they decide in the procedural time limit, this conditional decision is practically an extra work for them. Thirdly, there is a further problem with conditional procedural decisions as the basic purpose of the conditional decision is to take over the role of a decision. However, in the conditional procedural decision the administrative authority does not decide on the requested right, even though this decision has a legal effect: the conditional decision may replace the substantive decision without the decision on the exercise of the requested right. We suggest therefore to re-regulate under one title the two cases of silence of the administration with the correction of the conditional decisions.
The dissertation further details another issue, the regulation of the duty to give reasons. The French CRPA lists the decisions which must contain a detailed statement of reasons (mostly the decisions rejecting the request of the client [CRPA L. 211-2]). The Hungarian Ákr. defines the conditions of decisions where the information on the remedy possibility may be omitted and only the simplified decision stating the grounds on which the decision is based may be taken in the statement of reasons [Ákr. 81. § (2)]. It would also be useful to include to these cases the decisions taken in summary procedures, as these decisions are subject of internal administrative appeal procedures or if not, within five days of the notification of the decision, the client may request that the administrative authority re-examine its request in full procedure. [Ákr. 42. §]. Thus, the detailed statement of reasons can be given or in the internal administrative appeal procedures or in the full procedure.
In the light of the CRPA, one of the biggest shortcomings of the Hungarian Ákr. is that it remains a first-generation administrative procedural act in which the focus is not on the relationship between public administration and the clients (public).

In summary, we can state that in the 2010s, both of the examined counties (France and Hungary) achieved significant results in the codification of the general rules of administrative procedures: the Hungarian Ákr. and after thirty years, for the first time in France, a legal norm (the CRPA) codifies the non-contentious administrative proceedings. It is also evident from the above-mentioned suggestions that a number of issues should be discussed, one of which is perhaps the most urgent one, the development of an effective legal remedy system of the administrative decisions.

In our view, the rules regarding administrative procedures and administrative justice should be regulated together and at the same time. It should be emphasized that the constitutional background of the Hungarian and French administrative procedures, administrative justice and the right to legal remedy is quite different: the Hungarian Fundamental Law expressis verbis states the bases of administrative justice, the requirement of fair administration and the right to legal remedy. However, the French Constitution does not literally include these fundamental rights, but they can be deduced from the French Constitution and their content has been defined in detail by the French Constitutional Council. We should also note that the French legal system has almost fully implemented the duality of the legal system: a distinction can be made between the administrative judicial system and the ordinary judicial system.[70]

[70] See: DELVOLVÉ, Pierre: Le Conseil d'État, cour suprême de l'ordre administratif, *Pouvoirs,* 2007. 4. sz. 51-60.

Following the comparison of the rules regarding the Hungarian and the French legal remedy system of the administrative decisions, we wish to highlight the followings:
In the Hungarian legal remedy system of the administrative decisions, the right to legal remedy is only ensured by the legal remedy procedures commenced upon application. In our opinion, the terms used in Ket. was clearer. Therefore, the term used in the Ákr. "Legal remedy"[71] should be considered as a term which refers to the correction of an erroneous decision, whether it was commenced upon application (of the client or of another participants of the administrative proceedings) or ex officio.
We should note that the regulation of the ex officio legal remedy procedures in the Hungarian Ákr. do not differ significantly from the previous legislation. Book IV. of the French CRPA does not include the ex officio legal remedy procedures, but it is regulated in Book II. of the CRPA.

Meanwhile regarding the legal remedy procedures commenced upon application the Ákr. contains very important innovations and changes compared to the previous legislation. The Ákr. identifies two types of legal remedy procedures commenced upon application: the administrative court actions and the appeal procedures. In the Ákr.'s new legal remedy system the primary tool for reviewing administrative decisions is the administrative court actions. In the Ákr.'s explanatory memorandum we can find another remedy tool, the reopening procedure.[72] However, the Ákr.'s explanatory memorandum is not legally binding legal norm. Therefore in our view, it would have been better to name all legal remedy possibilities in the Ákr., because in this way the question arises if there are other legal remedy procedures, not only those named in the Ákr.
It is important to note that the Hungarian Ákr. and the French CRPA also contain detailed rules for the administrative appeal procedures. The rules of the Hungarian appeal procedures are similar to the French provisions of the preventive, compulsory administrative redress procedures (*recours administratifs préalables obligatoires*). In connection with the administrative appeal procedures, two suggestions were made in the dissertation: Article 116. § (5) of the Ákr. provides an exception to an exception. We find more logic to name precisely these procedures which are the exceptions to ensure transparency and clarity. In addition, we find it very misleading for clients, who do not have a legal degree that in the Ákr. administrative appeal procedures are named appeals and this term is also used in the administrative court actions, as the legal remedy against the decision of the administrative courts. It would be useful to have a name difference, like an administrative appeal and court appeal procedures.
Regarding the alternative dispute resolutions, it should be highlighted that these possibilities are listed in the CRPA.[73] Considering the growing need for alternative dispute resolutions in the recent years, it would make sense to develop these resolutions comprehensively, also referring to these opportunities in the Hungarian Ákr.
We should note that both legal norms (the CRPA and the Ákr.) refer to the possibility of administrative court actions. In Hungary, the rules of the administrative court actions are detailed in the recently adopted Code of Administrative Court Procedure, the Kp. The structure of the French Code of Administrative Justice (*Code de Justice Administrative*) and the Hungarian Code of Administrative Court Procedure (Kp.) is very similar, the biggest difference between the two codes is that the French Code contains the organization of administrative courts system. The practice of the Kp. is still emerging, but already it appeared several dilemmas regarding its' application like the use of e-applications, the rejection of the statement of claim,

[71] RÁCZ Attila: *A törvényesség és a közigazgatás*, Akadémiai Kiadó, Budapest, 1990.163-169.
[72] *Általános közigazgatási rendtartásról szóló 2016. évi CL. törvény indokolása* 103-104.
[73] See: SZENTE Zoltán: Az „alternatív eljárások" szabályozásának lehetőségei az új közigazgatási eljárási törvénykönyvben (I. rész), Magyar közigazgatás, 2002. 2. sz. 87-95.

the procedures to review the conflict of local government decree with other laws and procedures due to the local government's failure to fulfill its duty to legislate. We strongly believe that the review of the rules of the Kp. will be necessary in two-three years when its shortcomings are shown by its practice. Therefore the dissertation is not focusing on this Code's analysis but another relevant question the organization of the administrative court system. This issue was pushed into the background for decades. Despite the fact that many authors refer to this topic as a secondary issue,[74] in our view, without a comprehensive reform of the organization of administrative court system, we cannot speak of the realisation of a real administrative justice. In this regard, the Hungarian legislator unfortunately remains a debtor.

After a detailed analysis of the French administrative court system, we should state that a Hungarian proposal (by Ferenc, TOLDI[75]) was already presented to create a similar system to the French model. Even though theoretically it would be possible to realize in Hungary an administrative court system similar to the French administrative court system – in this case the Fundamental Law, the judiciary and the constitutional structure of the country should be comprehensively modified – historically this model is very different and unprecedented in Hungary. Thus we do not recommend the full adoption of the French administrative court system.

In view of this, we propose the following de lege ferenda suggestions in the light of the French law and with the knowledge of the present Hungarian situation: the establishment of a multi-level administrative court system, which is separated from ordinary court system. We suggest also like as the French Council of State's opinion is asked, the Hungarian Administrative High Court's opinion should be asked also regarding acts on the public administration, but the Administrative High Court's suggestions – as the French Council of State's opinion – should not bind the legislature. We recommend two ways to resolve the conflict between the ordinary courts and the administrative courts: a) by the Constitutional Court, b) by the establishment of a Court of Conflicts, whose members could be the members from the Administrative High Court and the Supreme Court of Hungary, the Curia of Hungary. In our view, the first solution is more economical, more efficient and is followed by other European countries like Austria. We also suggest to create a special administrative judicial training program like in France by the Ecole National d'Administration. We believe it is also worth to consider the specialization of administrative judges, and this could appear during the pre-training program too.

Finally, we should state that on December 12, 2018 the Hungarian Parliament adopted the Act CXXX. of 2018 on Administrative Courts and Act CXXXI. of 2018 on certain transitional rules before this Act enters into force. These acts contained several above-mentioned de lege ferenda suggestions. However, following a number of international and national criticisms the Government, in its T/6295 proposal of 30 May 2019 suggested to postpone the introduction of the new independent administrative court system. The Act. LXI of 2019 on the postponement of the entry into force of the Act on Administrative Courts was adopted by the Parliament on July 2, 2019. At present, it seems that the reorganization of the administrative court system in Hungary is "falling again to sleep, but hopefully not forever."

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[74] PETRIK Ferenc: A közigazgatási bíráskodás aktuális kérdései, *Bírák Lapja*, 1993. 2.sz. 81-92., PATYI András: *Közigazgatási bíráskodás de constitutione ferenda* in: VARGA ZS. András – FRÖHLICH Johanna (ed.): *Közérdekvédelem – A közigazgatási bíráskodás múltja és jövője*, PPKE JÁK – KIM, Budapest, 2011. 52-55.; IVANCSICS Imre – FÁBIÁN Adrián:*Hatósági jogalkalmazás a közigazgatásban*,Dialóg Campus, Budapest-Pécs 2013. 178-180.; IMRE Miklós (ed.):*Közigazgatási bíráskodás*,HVG-Orac Lap- és Könyvkiadó,Budapest 2007. 29-30.;ROZSNYAI (2010) 211-265.

[75] TOLDI Ferenc: *A közigazgatási határozatok bírói felülvizsgálata*, Akadémiai Kiadó, Budapest, 1988. 148. and PATYI (2002) 242-244.

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