Closely Watched Servants. Establishment and Early Development of Administrative Disciplinary Law in Hungary, With Special Regard to the Liability of Municipal Officials[1]

BALÁZS SALLAI[2]
Ph.D. student, University of Debrecen,
Géza Marton Doctoral School of Legal Studies
E-mail: sallaibalazs1998@gmail.com

ABSTRACT
The paper aims to provide a general and comprehensive image of Hungarian administrative disciplinary law with respect to its nature as a legal field, its normative sources and its specific regulations, with special regard to the disciplinary liability of municipal officials. This, of course, requires a comparison with the legal development of foreign countries (mainly France, Germany, Austria) under some aspects. The division of administrative disciplinary law can be found in this essay on the basis of two aspects: one is based on the hierarchical structure of the administrative organizational system, and the other is determined according to the legal sources regulating the given area. The presentation of the legislation governing this kind of liability of municipal officials in chronological order makes it possible to briefly describe the development of this legal institution. Some characteristically controversial aspects of the regulation are also presented here, such as political influence, legal representation (by a lawyer), or adversarial proceedings.
KEYWORDS
history of Hungarian public service, disciplinary liability, disciplinary power, municipality, disciplinary procedure.

1 Supported by the ÚNKP-20-2 New National Exellence Program of the Ministry for Innovation and Technology from the soure of the National Research, Development and Innovation Fund.
2 ORCID-ID: 0000-0002-6897-2872.

Servitori atent supravegheați. Instituirea și dezvoltarea timpurie a dreptului administrativ-disciplinar în Ungaria, în special în ceea ce privește răspunderea funcționarilor municipali

REZUMAT
Articolul își propune să ofere o imagine generală și cuprinzătoare a dreptului administrativ-disciplinar maghiar în ceea ce privește natura sa juridică și ca domeniu juridic, izvoarele sale juridice și reglementările sale specifice, cu o privire specială asupra răspunderii disciplinare a funcționarilor municipali. Acest lucru necesită, desigur, compararea evoluției juridice a țărilor străine (în principal cea din Franța, Germania, Austria) sub anumite aspecte. Divizarea dreptului administrativ-disciplinar se regăsește în acest eseu pe baza a două aspecte: unul se bazează pe structura ierarhică a sistemului organizatoric administrativ, iar celălalt este determinat în funcție de sursele juridice care reglementează domeniul respectiv. Prezentarea în ordine cronologică a legislației care reglementează acest tip de răspundere a funcționarilor municipalității face posibilă descrierea succintă a dezvoltării acestei instituții juridice. De asemenea, sunt prezentate aici unele aspecte controversate caracteristice reglementării, cum ar fi influența politică, reprezentarea juridică (de către un avocat) sau procedurile contradictorii.
CUVINTE CHEIE
istoria serviciului public maghiar, răspundere disciplinară, autoritate disciplinară, municipalitate, procedură disciplinară.

I. INTRODUCTION

After the Austro-Hungarian Compromise of 1867, the process of establishing the Hungarian civil state began. An important stage in this was Act 4 of 1869, which separated the judiciary and the executive branches of power. As a result, the issues of liability of the persons operating the system of public administration[3]—also by filling in the shortcomings of the administration under the estate system[4]—had to be settled within a short time.

In the context of liability, three areas shall be distinguished up to the present time: criminal, civil and disciplinary liability.[5]

3 Separate disciplinary regulations for judicial and judicial administrative staff is not included. See also Kinga Beliznai Bódi: Die disziplinäre Verantwortlichkeit von Richtern in Ungarn in der zweiten Hälfte des 19. Jahrhunders, mit einem Überblick über die öterreichische Regelung, *Beträge zur Rechtsgeschichte Österreichs*, 2020/1. p. 1–15. (DOI: 10.1553/BRGOE2020-1s5); László Széplaki (2019): A bírás fegyelmi felelőssége a XIX. és a XX. század fordulóján, a Győri Királyi Ítélőtábla mint elsőfokú fegyelmi bíróság döntéseinek tükrében, in Andrea Molnár- László Széplaki (ed.): *Tanulmányok a győri felsőbíráskodás történetéből a XIX–XX. század fordulóján*, Palatia Nyomda, Győr, p. 67–88.

4 See also Julianna E. Héjja: „Hűtlenségi és visszaélési botrányos tények" Vármegyei tisztviselői kihágások, felelősségre vonás, fegyelmi eljárás a 19. század első felében. *Századok,* 2015/5, p. 1069–1077.

5 Lajos Sávoly (1934): *Felelősség a közszolgálatban*, Egri Nyomda Rt, Eger, p. 10.

Among them, the institution of disciplinary liability had the most extensive regulation in the civil era. That is why it is adequate to use the term disciplinary law in relation to this period, since, at that time, we can only speak of disciplinary law as a sub-branch of administrative law (which was a separate field of law).[6] It can be broken down further according to the levels of public administration: the disciplinary liability of the servants employed in the state service (central level), the municipalities[7] (middle level) and townships[8] (local level) was regulated separately.[9] It is an interesting fact that in Hungary the liability of municipal officials was regulated first (in 1870), and this element of the state service legal relationship came under uniform regulation only later (in 1874). This tendency is contrary to the solutions of some European states which can be regarded as examples for the Hungarian legislator. In Austria, for example, where this legal institution was established very early on, disciplinary liability was regulated in the central administration for a long time, as it was instituted there for the first time.[10] The same was true in Prussia, where disciplinary liability was a means of cleansing in the post-revolutionary state administration (introduced by ordonnance in 1849).[11] Also in Bavaria this solution would have been the model, but there the legislature was an obstacle to the introduction of disciplinary law.[12] In Hungarian law, therefore, first, the middle level, then the central level, and finally the local level regulations (1886) were introduced.

We can also differentiate in terms of the sources of law, as far as the state service relationship is concerned, the Financial Services Regulation issued in 1874 was extended to the entire public administration in the absence of uniform regulations on the state service employment relationships.[13] This would have originally applied only to the employment of employees in the Ministry of Finance. The creation of uniform state service regulations, although many drafts were made,[14] did not succeed until later[15]—unlike the examples of

6 István Ereky (1939): *Közigazgatás és önkormányzat*, Magyar Tudományos Akadémia, Budapest, p. 29.
7 Budapest, as the capital, the old counties and the free royal cities constituted municipalities.
8 Towns with a settled council, large and small villages were considered as townships.
9 Máté Pétervári: Az Osztrák–Magyar Monarchia alsó középszintű közigazgatása a kiegyezést követően. *FORVM. Acta Juridica et Politica*, 2019/1, p. 122.
10 Waltraud Heindl (1991): *Gehorsame Rebellen. Bürokratie und Beamte in Österreich 1780–1848*, Böhlau Verlag, Wien, p. 60.
11 Martina Krauss (1997): *Herrschaftspraxis in Bayern und Preußen im 19. Jahrhundert*, Campus Verlag, Frankfurt am Main, p. 210.
12 Krauss (1997): p. 211–212.
13 Bernadett Veszprémi (2011): *A köztisztviselők felelősségi rendszere*, PhD dissertation, Miskolc, p. 57. (with english language summary p. 312–315.), (http://midra.uni-miskolc.hu/document/6216/1654.pdf); Viktória Linder (2010): *Személyzeti politika – humán stratégia a közigazgatásban*, PhD dissertation, Debrecen, p. 35. (with english language summary p. 249–251.), (https://dea.lib.unideb.hu/dea/bitstream/handle/2437/105200/linder%20vikt%C3%B3ria%20phd_titkositott.pdf?sequence=1&isAllowed=y)
14 Máté Pétervári: The History of Hungarian Civil Service from the Austro-Hungarian Compromise of 1867 to the First World War, *Journal on European History of Law*, 2017/1, p. 117.
15 Gábor Mélypataki: A közszolgálati jog történetének állomásai – a hivatásos közszolgálat megjelenésétől a XX. század első feléig, *Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica, Tomus XXXIII*, 2015, p. 178.

the *Beamtengesetz* of 1873[16] or the *Dienstpragmatik* of 1914[17]—so in 1896 a revised Code was issued[18] that no longer contained disciplinary rules, as they were intended to be settled in a separate regulation at a later date. However, this never happened.[19] Judicial practice, however, used the Code as a source of law, it having a supplementary status in regard to the regulations in force.[20] Other examples of similar regulation of disciplinary law can also be found on the continent. Such are the aforementioned Prussian Royal Ordonnance of 1849[21] or the Austrian Royal Ordonnance of 1860,[22] which remained in force until 1914. In French law, although it originally laid the foundations for disciplinary liability in statutes,[23] later, regulations (*règlement*) prevailed, in particular as far as the continuous extension of procedural guarantees were concerned (*juridictionnalisation*).[24]

In contrast, the rules of the Hungarian law on municipality and township administration were regulated primarily by statutes (acts), and decrees were issued only on particular and complementary issues, such as the typical examination of witnesses.[25] Similarly, some official positions could be regulated by some complementary regulations supplementing the general disciplinary rules (e.g. teachers, midwives, staff of the financial management and subordinates, accountant officers) or, less frequently, a fully independent code of ethics with disciplinary clauses (e.g. registrars, servants in forest management). The latter was also usually regulated by decrees. The disciplinary liability of local authority officials was first established in Act 22 of 1886 and was regulated there until the reform in 1929. This form of responsibility of municipality officials has been regulated by acts since 1870. The main aspects of the development of these acts will be discussed below.

16 Gesetz, betreffend die Rechtsverhältnisse der Reichsbeamten (1873. III. 31.) In: *Deutsches Reichsgesetzblatt X*. 1873, p. 61–90.
17 15. Gesetz vom 25. Jänner 1914, betreffend das Dienstverhältnis fer Staatsbeamten und der Staatsdienerschaft. *Reichsgesetzblatt XV*. 1914, p. 87–116.
18 Decree of 1896/1196 PM. Issued: *A Magyar Királyi Pénzügyminisztérium ügykörére vonatkozó szolgálati szabályok gyűjteménye*, M. Kir. Államnyomda, Budapest, 1896.
19 Sándor Püski (1939): *Közigazgatási jog*, Kartáts, Budapest, p. 29–30.
20 Decision of Aministrative Court No. 8478/1929.
21 However, this was in force only for 3 years; in 1852 it was enacted in an act without major amendments. Krauss (1997): p. 210–211.
22 Kaiserliche Verordnung vom 10. März 1860, über die Disciplinarbehandlung der k. k. Beamten und Diener. *Reichsgesetzblatt LXIV*. 1860, p. 119–122.
23 Loi du 19. V. 1834. sur l'état des officiers. In. Jean- Baptiste Duvergier (1834): *Collection compléte des lois, décrets, ordonnances, réglements et avis du conseil d'état*, Paris, p. 91–101.
24 Gaston Jéze (1913): *Das Verwaltungsrecht der Französischen Republik*, Mohr Siebeck, Tübingen, p. 164.
25 Decree of 1886/37690 BM.; Decree of 1929/44 BM.

II. RULES APPLICABLE TO MUNICIPALITY OFFICIALS

1. 1870–1876

Disciplinary liability was first introduced in Act 42 of 1870 on Municipalities. This Act introduced rather rudimentary regulations on the municipality officials of the counties (*vármegye*) and free royal cities.[26] On the one hand, with regard to substantive disciplinary law, it used the then immature concept of disciplinary misdemeanour, thus making only breaches of obligations related to official activities punishable. On the other hand, it introduced a very specific solution in disciplinary procedural law: the disciplinary proceedings ordered by the general assembly of the legislature had to be conducted before ordinary courts of law (at first instance, the competent royal court ruled). This solution was unique and was applied elsewhere only by the English legal system.[27] It soon proved to be inoperable, as even the smallest cases dragged on for years.[28] This caused significant disruptions in the functioning of the administrative system, as the official had to be automatically suspended for the duration of the procedure. This resulted in loss of wages and insecurity on the part of the official, while on the part of the organization it meant a change of work schedule, replacement of the lost labour force, and thus additional expenses. Therefore, turning a blind eye to the misdemeanours committed by officials, who would have been more difficult to be replaced, started to become a general tendency.[29] For these reasons, in 1876, as part of a major reform, the government saw the time had come to radically change disciplinary law.

2. 1876–1929

Act 7 of 1876 marked another milestone in the development of disciplinary norms. This Act involved far-reaching changes in both substantive and procedural law. It greatly expanded the range of conducts that could be sanctioned as a disciplinary misdemeanours, and hereon after officials could be prosecuted not only for their work, but also for their scandalous, immoral acts related to their private lives. Practically speaking, such acts included, for example, drunkenness during working hours,[30] unreasonable and negligent use of weapons,[31] and during the Hungarian Soviet Republic,

26 Until 1876, the Act 36 of 1872 applied to the officials of the municipality of the Budapest, as the capital.
27 Rudolf Gneist (1872): *Der Rechtstaat*, Springer Verlag, Berlin, p. 22–23; Andor Csizmadia: Fegyelmi jog a közigazgatásban a két világháború között, Állam és Igazgatás, 1983/9, p. 827.
28 The Journal of National Assembly summonded for 24. January 1876. Vol. IV, p. 192.
29 The Journal of National Assembly summonded for 24. January 1876. Vol. IV, p. 196.
30 Hungarian National Archives Hajdú-Bihar Country Archives [= HNA-HBCA] IV. B. 1414/ b. 81. box. 1442/1928.
31 HNA-HBCA IV. B. 1414/ b. 81. box. 37/1928, 558/1928.

the cooperation with the then power elite[32] (due to the latter conduct, the number of disciplinary proceedings skyrocketed to multiple times of the average volume).[33] Of course, the classical breach of duty conducts were also regulated in the Act.

The disciplinary proceedings underwent an even greater change, probably following the Austrian pattern.[34] The right to conduct proceedings was removed from the courts, and disciplinary matters were now adjudicated only by administrative bodies at all instances, depending on the rank of the officials. The right to be heard by an ordinary court was excluded.[35] Strong disciplinary power that is manifested only within the organizational system of public administration typically presupposes a strong branch of executive power (such as contemporary Austrian or French regulation) and a high degree of centralization.[36] In Hungary, the latter could be detected: the Chief Ispáns that were in charge of the counties and were appointed by the central government, gained strong powers in disciplinary proceedings, including in cities with municipal rights.[37] For example, by being an officer of the Board of the Disciplinary Committee acting at first or second instance or having the right to refer the procedure to the Minister of the Interior. The Minister of the Interior, as the disciplinary authority of last resort, was another guarantee of strong centralization. The principle of automatic suspension was discarded by this legislation, learning from mistakes of the past, this becoming only an optional measure.

The Act presented above was replaced by Act 23 of 1886. Actually, this Act did not introduce any novelty, it incorporated only a few clarifying provisions into the text of the previous regulation. The new Act entered into force in parallel with the old regulation. It was the first norm which declared the disciplinary liability of municipal officials.

3. 1929–1944

The duality persisted both in central and local administration until 1929. The profession often raised the idea of unifying the disciplinary liability of municipal and local officials. The first draft on such a uniform disciplinary act was completed as early as

32 HNA-HBCA IV. B. 1414/ b. 79. box. 102/921, 114/921, 392/921, 1599/1921, 2183/920, 4874/1920, 351/921, 553/1919, 4668/1919, 4840/1920, 1160/921, IV. B. 1414/ b. 80. d. 1116/1920.

33 Csizmadia (1983): p. 829.

34 Mélypataki (2015) p. 183; István Kajtár: *A 19. századi modern magyar állam- és jogtörténet alapjai*, Dialóg- Campus, Pécs, 2003, p. 160; Judit Balogh: Az osztrák magánjog hatása a Magyarországi kodifikációra a XIX. században, *Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica, Tomus XIV,* 1997, p. 59.

35 István Stipta (2020): *A magyar történelmi alkotmány és a haza közjogi-közigazgatási jogvédelem*. Gondolat Kiadó, Budapest, p. 98.

36 Frank Goodnow (1893): *Comparative Administrative Law. An Analisys of the Administrative Systems, national, and local of the United States, England, France and Germany II*, Putnam's Son, London-New York, p. 86.

37 László Papp: The Concept of Autonomus Local Governments and their Different Forms of Appearances in the Traditions of our National Public Law, *Journal on European History of Law,* 2012/1, p. 114.

1895.[38] In the end, uniform regulations were included only in the most significant administrative law reform of the Horthy era, which took place by way of Act 30 of 1929.

A third type of misdemeanour was included among the disciplinary misdemeanours. An official who was no longer able to perform his duties due to his physical or mental disability could be dismissed for a disciplinary misdemeanour. This solution could be seriously unfair, as in addition to being humiliating, it could lead to a reduction in the official's pension or the loss of entitlement to it. As an innovation, an ambiguous solution was introduced in the procedure. Even in the era of Dualism, it was a new idea, that the adjudication of disciplinary cases in the final instance should be referred to the jurisdiction of the administrative court (after the Prussian model).[39] However, this would have run counter to the centralization efforts, so the County Act of 1929 established the Disciplinary Court as the final forum for cases, with two administrative judges as members of the panel, but a predominance of ministerial officials prevailed, as the panel was chaired by the Minister of the Interior. Thus, judicial independence as a procedural guarantee existed only nominally. The regulation from 1929 layed down the foundations for disciplinary liability until the dissolution of the Hungarian civil state in 1944. Its regulation was applied until the 1950s, even during the dictatorial regime that was unfolding at that time.[40]

III. SUMMARY

In order to be able to evaluate the developmental trend and some phenomena of disciplinary law, it is also necessary to put it into a larger context.

The pursuit of centralization regarding public administration was the legal reflection of the political conditions during Dualism and the Horthy regime. This meant that the right to self-government at a local level did not fully prevail in its classical sense. Municipalities had to manage the state administration in addition to their local government operations. Another strong tool for centralization was the continued expansion of the powers of the Chief Ispán.[41] The Chief Ispán, appointed by the Emperor,[42] therefore primarily a political official, was (one of) the keys to exercising the power of the central government.[43] The institution of the Administrative Committee, which was chaired by

38 Károly Hieronymi: A fegyelmi törvény tervezete, *Magyar Közigazgatás,* 1895/4, p. 3–6.

39 Ferenc Keleti (1897): *Törvényjavaslat tervezet az állami tisztviselők, altisztek és szolgák jogviszonyainak szabályozásáról. (Államszolgálati pragmatika)*, Budapest, p. 181.

40 Csizmadia (1983): p. 830.

41 Andor Csizmadia (1976): *A magyar közigazgatás fejlődése a XVIII. századtól a tanácsrendszer létrejöttéig*, Akadémiai Kiadó, Budapest, p. 119–120.

42 László Papp: Az önkormányzatiság vázlatos áttekintése, különös tekintettel a hosszú 19. század alkotmányos megoldásaira. *De iurisprudentia et iure publico: jog- és politikatudományi folyóirat* 2012/2, p. 6.

43 Norbert Varga: A főispán és a városi közigazgatás reformja a polgári korban, *Pro Publico Bono-Magyar Közigazgatás,* 2018/1, p. 193.; Zsuzsanna Kovács: A törvényhatóság mint az alkotmány őre a dualista korszak Magyarországán, *Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica, Tomus XXXIII*, 2015, p. 34–35.

the Chief Ispán, one of the sub-bodies of which was the aforementioned Disciplinary Committee, has also served these purposes since its creation in 1876.

Changes in the procedural side of disciplinary law reflected accurately the increasing centralization. The right to initiate disciplinary proceedings was originally vested in the general assembly of the municipality, and the proceedings took place in a court. From 1876—as a means of eroding municipal autonomy—the right to initiate proceedings was taken away from the aforementioned body; another change was the exclusion of courts from disciplinary cases.[44] In addition, the Chief Ispán could appeal any matter *ex officio* to the Minister of the Interior. The political influence of the highest level of state administration—with reference to the wording of *István Stipta*—was "*the omnipotent disciplinary power of the Minister of the Interior.*"[45] Any disciplinary case of any official could be brought to the Minister of the Interior from any level in the last instance, i.e., the decision on the outcome of the proceedings was concentrated with him. In this way, disciplinary law, the original function of which was precisely to make it more difficult for officials to be dismissed and to provide procedural guarantees,[46] could also be used as a simple weapon of a political nature. Examples of this can be found in many other countries during the era,[47] but it is also important to see that this character, although it may have made the institution of disciplinary liability dysfunctional, did not have an impact on every case, so it was more of an option in the hands of the central government.

The other feature of disciplinary procedural law can be best illustrated by comparing it with the *juridictionnalisation* already described above. This French solution gave rise to a *permanent elasticity* with regard to disciplinary law: it has incorporated more and more guaranteeing provisions into the legislation, mostly from criminal procedural law. The goal was to develop a set of procedures that would protect an official subjected to disciplinary proceedings in the same way as a person accused in a criminal case.[48] The two cornerstones of this were legal representation and adversarial procedure.[49]

Hungarian disciplinary law was widely criticized for its lack of legal representation, as the law did not mention this possibility *expressis verbis* until 1929. Nevertheless, judicial practice has filled this unregulated area: in many cases, defence statements were written not by the officials themselves, but by their attorneys on retainer.[50] Thus, albeit in a latent way, legal representation was present. The law was also silent on the adversarial procedure until 1929. Act 30 of 1929 provided the right for initiating an

44 Stipta (2020): p. 98.
45 Stipta (2020): p. 73.
46 Heindl (1991): p. 60–61.
47 Krauss (1997): p. 210; Ignaz Beidtel (1898): *Geschichte der österreichischen Staatsverwaltung 1740–1848 II*. Verlag der Wagnerschen Univertität-Buchhandlung, Innsbruck, p. 42–43; Heindl (1991): p. 61.
48 Jéze (1913): p. 163–164.
49 Jéze (1913): p. 163.
50 Balázs Sallai (2020): Törvény egy Straf-colonia részére? Az 1876. évi VII. törvénycikk a jogalkotás és a debreceni joggyakorlat tükrében, in Nikolett Lukács (ed.), *A jog tudománya, a mindennapok joga IV*, Debrecen, p. 252–263.

oral procedure only at first instances and prescribed written procedure as obligatory before the Boards of Appeal. Nevertheless, a similar phenomenon can be observed as in the case of legal representation: disciplinary proceedings (at first and second instances) always contained elements of adversarial procedure.[51]

The regulation of disciplinary liability, especially with regard to the officials of the municipalities, was a cardinal issue of Hungarian public administration since the 1870s. According to some opinions, until the formation of the Administrative Court in 1896, the importance of disciplinary law was great, because it replaced the lack of administrative legal protection. However, this was a fundamental misconception.[52] The efforts of the legislation of 1929 to unify and to "catch-up" could somewhat offset the opacity of the extremely diverse mass of legal regulations, alleviating at the same time the uncertainties that had previously existed in practice. This was mainly due to the detailed elaboration of the regulation. But this Act could not break with the guiding principle of centralization. Later, this regulation, with some temporary provisions, was transferred into the socialist legal system of the 1950s,[53] before the first labour legislation put disciplinary liability beyond the framework of administrative law.

51 Stipta (2020): p. 63.
52 Tamás Vasas (2020): Concha Győző közigazgatási bíráskodási elmélete, in Béla P. Szabó (ed.): *Profectus in Litteris XI.*, Lícium Art, Debrecen, p. 189.
53 Csizmadia (1983): p. 830.