LOCAL GOVERNMENTS AND THE CONCEPT OF GOOD GOVERNANCE

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ABSTRACT: *Changes in the role of the state and the definition of the concept of good governance have represented important achievements in public administration in the era following the millennium. The local governments appear in several segments of the report. Another important element of the concept of good governance besides the operation of public administration involves ensuring public safety and on the local level local governments may also be a part of this. The issue of the regulation of peaceful public coexistence might be associated most with democracy due to the disputed nature of the legal stipulations also affecting fundamental rights. At the same time, this subject area represents a field of initiatives by the ombudsman, and it is almost certain that ex post normative review and constitutional complaints can also be expected in this case type. Norms regulating peaceful public coexistence represent a separate subject area as in many cases they wish to regulate legal relationships pertaining to privacy. This paper introduces and examines those local government regulations which typically cause problems, with special emphasis on the practice of the Constitutional Court and the Curia.*

KEYWORDS: *local governments, good governance, peaceful public coexistence, administrative criminal law, administrative sanctions*
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1. INTRODUCTION

Changes in the role of the state and the definition of the concept of good governance have represented important achievements in public administration in the era following the millennium; the latter was defined by the Magyary-program 11.0 as follows: "the state may be deemed good if it serves the needs of individuals, communities, and businesses in the most appropriate way in consideration and within the framework of the public good." (Ministry of Public Administration and Justice, 2011, p. 5.). This program has already foreshadowed that in order to implement the concept the Government needs to take important steps, one of which involved the local government reform besides the Magyary Program and judicial reform. Even though the objectives of the two programs seem to be opposing each other due to simultaneous centralization and decentralization

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in line with local government reform, the two aims complemented each other well by means of implementing closer cooperation between the given bodies (legal supervision).

In line with this, it was also a key objective of the Magyary Program 11.0 that local governments should become one of the acknowledged subsystems of public administration and thus local government responsibilities should also be qualified as public services. (Ministry of Public Administration and Justice, 2011, p. 12.) At the same time, such a sharing of responsibilities also confirms that local governments represent acting members of the state, the tasks and rights of which both derive from the state. The Magyary Program, in harmony with scholarly publications, emphasized the historical antecedents of the local government system created in 1990. Of these, the division of responsibilities and power represented a major part, which forced the legislator to change the most and the anomalies of which were not denied by practicing professionals either. Act CLXXXIX of 2011 on Local Governments has brought major changes in this respect also. Most contemporary experts of public administration have argued that it has transformed local government administration to a great extent. The Magyary Program 12.0 also stated about the reform that of the three main elements this has brought about the most profound change (Ministry of Public Administration and Justice, 2012, p. 12.).

2. LOCAL GOVERNMENTS IN THE GOOD GOVERNANCE REPORTS AND BEYOND

The implementation of the entire concept is evaluated by the Good Governance Reports prepared by the National University of Public Service (NKE) annually. The reports have been published since 2015 and at the beginning of each the concept governing their creation can be found. Based on this a complex work is created, the first level of which is made up by the phenomenon of good governance itself, within which six impact areas were specified for the purposes of measurability. These are the following: safety and confidence in government; community well-being; financial stability and economic competitiveness; sustainability; democracy; effective public administration. The third level is represented by the dimensions, which describe specific phenomena, while the fourth level is made up by the indicators of the respective dimensions; during the specification of the latter, NKE aimed at defining the most objective indicators to which data may be connected from authentic and official sources that are suitable for continuous measurement. The latter criterion, however, does not exclude the possibility of correction, neither within the particular indicators, nor beyond them. The 2017 report already devoted a separate unit to the directions of further development to which two key considerations were added: one of them involved the results of the Good Governance Opinion Survey and the other included the international dimensions of the indicators (Kaiser, 2017, p. 8.).

The local governments appear in several segments of the report. Thus in connection with community well-being in relation to the health and social safety net (Báger, 2017, p. 51.), sustainability (Besenyei, 2017, p. 109.), as well as democracy (interim elections and the promotion of social relations) and effective public administration, the latter of which deals with local governments using the services of local government application service center (ASP). At the same time, the area of municipal legislation affecting fundamental rights the most involves the regulation of peaceful public coexistence by means of local

government decrees, which is an issue related to several dimensions of good governance. It is obvious that in the case of good governance reports the selection of indicators and metrics requires strong selection, thus it would strain the framework of the report, endanger the logical order of metrics and this way the authenticity of the measurement and measurability itself if not those criteria would be considered strictly that are also supported by scholarly reports (Kaiser and Kis, 2014, pp. 8-10), however, this is exactly why this segment is worth studying in more detail. The issue of the regulation of peaceful public coexistence (besides being associated with several indicators) might be associated most with democracy due to the disputed nature of the legal stipulations also affecting fundamental rights. At the same time, this subject area represents a field of initiatives by the ombudsman, and it is almost certain that ex post normative review and constitutional complaints can also be expected in this case type.

3. DEVELOPMENTS IN THE REGULATION OF PEACEFUL PUBLIC COEXISTENCE

First of all, it should be noted that the regulation of peaceful public coexistence is such an area as part of which local government decrees could be adopted only after 2012 based on Constitutional Court Resolution no. 38/2012 (XI. 14.). If we do not insist on strict legal terminology, antecedents lead back a long time, all the way to the roots of misdemeanors. It used to be the disputed (but very much existing and diverse) area of police misdemeanors as part of which local government bodies also had the opportunity to establish such forms of behavior by means of open decrees that could be sanctioned later in case of non-compliance. Although in a classical sense due to the trichotomy, misdemeanors (even though with severe theoretical disputes) (Angyal, 1931 or Molnár, 1990) were linked to criminal law also, it was at this time that the theory of public administration criminal law was also developed, which applied to actions of a public administrative nature, specified by public administration, and sanctioned by public administration bodies (Goldschmidt, 1902, p. 577.).

Transformations in the 1950s, however, wiped out misdemeanors, instead of which they created the category of offenses that included not only a major part of former small crimes but also anti-administration acts. While prior to 1990 due to the special state administration arrangements besides the central bodies only the council bodies could adopt decrees on offenses, after 1990 and the creation of local governments, the opportunity emerged again for local bodies to establish such rules by means of decrees. If we look at the definitions and authorizing provisions of either Act I of 1968 or Act LXIX of 1999, within their scope numerous local governments adopted decrees on offenses regarding several situations of life.

Act II of 2012 has brought about major changes in this respect. It was also confirmed by Constitutional Court resolution no. 38/2012. (XI. 14.) that the new law took a step towards criminal law, which, besides several rules, may also be seen in the fact that an offense can now only be established by law, this way also enforcing the principle of *nullum crimen sine lege*. The emptying of the category of offenses has been taking place practically continuously since the change of regime, one element of the process involving a trend of growing insignificance besides substantial fines (Nagy, 2000), the widening of objective responsibility as the next step (Nagy, 2008, pp. 2-14.) partly by extending the

scope of actions with former offenses, and this was followed by a specific numerical decrease which left only offenses established by law standing.

As part of the above process and in exchange for the opportunity of sanctioning offenses taken away (let me add, along with taking away revenues) local governments first received the authorization specified by Article 51 of the Act on Local Governments which granted them power to establish categories of anti-social behavior. This authorization, however, provided the opportunity for such sanctions only for a few months as the Constitutional Court in its already mentioned resolution no. 38/2012. (XI. 14.) qualified such authorization as limitless and ended this opportunity by nullifying it. Some local governments quickly found the opportunity for regulation and at the same time sanctioning in terms of peaceful public coexistence according to the Act on Local Governments and for the sanctioning of non-compliance with the rules thus established, this way opening a new chapter in public administration criminal law in Hungary. The situation that was at the beginning considered to be *praeter legem* was clarified by the Constitutional Court in its resolution no. 29/2015. (X.2.), which was adopted partly based on the motion of the Curia and partly by that of the ombudsman. In its decision the Constitutional Court opened the way for the regulation of peaceful public coexistence by local governments stating the legality of the authorization and at the same time also declaring that there was no opportunity to end legislation due to the threat of abusive practice. The decision is especially noteworthy because in 2012 the body that argued that the authorization was too broad and indefinite considered a more obscure, and I also argue certainly existing authorization, as a legal option, to be less dangerous.

As opposed to this, in its motion the Curia[1] quite clearly represented the view that the authorization is not less obscure than the already nullified Article 51, section (4) of the Act on Local Governments and the authorization included in Point e) of Article 143, Section (4), thus initiating its nullification (Curia resolution Köf. 5053/2013/9) primarily due to the prejudice to the hierarchy of the source of law, the legislative requirements related to the authorization, and this way to that of legal certainty. The Curia also indicated that due to the authorization the local government may receive such a legislative area within its regulatory scope which would require legislation by law due to its association with fundamental rights; this in itself already violates Article I), Section (3) of the Fundamental Law, while the deficient nature of the subject and framework of the authorization may cause problems in review procedures as in the absence of a specific standard the exceeding of the authorization cannot be understood either, which according to the Curia also carries in itself the violation of the entire legal system. The above-mentioned standard should be specified by the legislator, similarly to certain founding stones, with special regard to the forum system, the level of fines or other legal consequences and the enforcement of responsibility, in connection with which the Curia has found it especially problematic that these may be specified by local governments practically freely.

In the same case, the Commissioner for Fundamental Rights also submitted a motion, also regarding the nullification of the indicated stipulations of the Act on Local Governments and also due to the violation of legal certainty. According to the

[1]It is especially interesting in connection with the motion that it also included the description and legal justification of the initiation of constitutional proceedings.

commissioner, since Constitutional Court resolution no. 38/2012. (XI. 14.) the legislative options of local governments are narrower than before and he is concerned about the interpretation gaining ground among local governments which has the exact opposite understanding. The commissioner indicated in relation with this issue that in January 2013 he already asked the current Minister of Public Administration and Justice to specify the authorization included in the Act on Local Governments, which did not take place, along with the existing regional government practice that prevailed in relation to the review of regulations stipulating peaceful public coexistence and which was defined by the Metropolitan Government Office. It stated that "due to such a level of uncertainty in the legal standard it cannot fulfill its legal control responsibilities in this area, not even with regard to the rules of the act on general administrative proceedings. There is no such a statutory restriction or framework that could be called upon clearly when establishing rules for peaceful public coexistence and in terms of applying the sanctions despite the fact that it is inherently a peculiar, special field of offenses-public administration" (Commissioner for Fundamental Rights, 2013, p. 5.)."

Although the motion also records that it considers it possible that local governments would define the rules for peaceful public coexistence and thus lay the foundations for the "peaceful coexistence of voters" but this does not apply to the related excesses due to which the decrees take a certain direction towards "defending public morality", "public peace" or for that matter "public taste", as this may entail a severe violation of fundamental rights granted by the constitution.

Fortunately, the Constitutional Court did not share this opinion and in its majority opinion emphasized that due to the framework nature of the authorization it does not violate the principle of subordination to the public administration law, nor that of legal certainty or the division of power; at the same time, it stated that due to the potential opportunity for abusive practice this cannot be presumed in general and the authorization cannot be annulled. According to the Constitutional Court, the subordination to public administration law is also realized if the authorization to enact decrees has a framework nature and it leaves the filling in of the regulation entirely to the local governments. The body, as opposed to the motions, emphasized that it would go against the stipulations of the Fundamental Law if the authorization in line with Article 32, Section (2) of the Fundamental Law would be limited by the Act on Local Governments as the opportunity to fill in the authorization freely within the scope of local public matters also derives from the principle of subsidiarity, which also includes the norms related to peaceful public coexistence. It also found it to be in harmony with the principle of the division of power and the historical constitution that different local governments would interpret the same behavior differently. In terms of the idea that the authorization also carries in itself the possibility for abusive practice it stated that even though erroneous or even deliberate infringement is really possible, the existence of other constitutional bodies like the Curia or Constitutional Court guarantees that this condition would not stay in effect (29/2015 (X. 2.) CC resolution).

Let us add that such violations occurred not only within the scope of peaceful public coexistence but at the dawn of the existence of local governments after the change of regime in connection with the operation of local governments, and since then continuously in relation to the social decrees basically working based on the same principle and leaving a lot to the fantasy of local governments, whereby they regularly

bind the provision of certain forms of support to a variety of conditions; the similarly "open" issue of municipal taxes may also emerge as a similar area. This segment of the enactment of decrees by local governments has thus gained a real foundation so much so that in the section of the National Database of Hungarian Law containing local government decrees the norms regulating peaceful public coexistence appear under a separate title.

This opened the way for local governments to become shapers of modern Hungarian public administration criminal law, while the Curia has the opportunity to monitor and guide this process, also stating that the constitutionally significant situations affecting fundamental rights are still reviewed by the Constitutional Court. However, in the absence of established practice and standards, it is truly not easy to decide, not even for regional government offices, in which cases a motion should be made and when the exclusive prejudice of a fundamental right emerges without violating another stipulation of law.

4. PEACEFUL PUBLIC COEXISTENCE AND THE CONSTITUTIONAL COURT

During the past three years the Constitutional Court accepted only 2 cases for review. One of these involved Kaposvár, a local government with so to say recurring cases in this regard, and the other was the decree enacted in Ásotthalom. The body acted based on the initiative of the Commissioner for Fundamental Rights in both cases, which is a direct consequence of the termination of the *actio popularis* nature of ex-post normative review. At the same time, it is noteworthy that the Constitutional Court deals with the review of local government decrees typically in this subject following the changes of the division of competence in 2012.[2]

4.1. Local governments and the homelessness

The first of the two decisions, the one involving Kaposvár leads us back to the issue of homelessness as the local government prohibited for its entire territory the storage or placement of movable property used for habitual housing in public areas and such behavior was deemed to violate the basic rules of peaceful public coexistence. The body, therefore, based on the initiative of the ombudsman also examined the possibility of dual sanctioning in relation to the prohibition of habitual residence in public areas as an offense. As part of this they considered the reasons for the enactment of the decree, the intentions of the legislator, which was also addressed by the Somogy County Government Office in reaction to the recommendation of the Commissioner and they reported in detail that in the settlement it caused severe problems that certain groups of people lived their daily lives in front of their houses, occupying the pavement and other public areas, also placing their furniture there. With their behavior they obstructed pedestrian traffic and thus the adequate use of the public area. Overall, this also had a negative impact on the sense of wellbeing and security of the population. In consideration of the fact, however, that such a behavior cannot be sanctioned as an

[2]Besides those mentioned above, two other cases reached the Constitutional Court due to a constitutional complaint, however, the body rejected these. See Constitutional Court resolutions no. 3126/2015. (VII. 9.) and 3232/2016. (XI. 18.)

offense, the local government included it in its regulatory scope, which according to the appointed government official does not violate the opportunity of dual sanctioning as the local government regulation in question also excludes fines for any behavior violating the rules of peaceful public coexistence if that behavior would represent an offense at the same time, thus the prohibition of homelessness cannot be considered. The Constitutional Court accepted the interpretation of the decree and the reasoning also and rejected the motion that way. At the same time, it reinforced its view that it cannot be presumed from the broad opportunity for enacting decrees granted by law that the local governments would practice their rights in an abusive manner (Constitutional Court resolution no. 3/2016. (II. 22.).

4.2. Local governments and the fundamental rights

Obviously, the case in Ásotthalom required a different approach (Constitutional Court resolution no. 7/2017. (IV. 18.), in connection with which the Constitutional Court could not avoid the fundamental rights review of the local government decree. In this case the local government prohibited the activities of the Muezzin, the wearing of the burqa, niqab and chador covering the entire body and the head, and also banned all propaganda activities that do not present marriage as the union of a man and a woman and if they do not recognize marriage and the parent-child relationship as the basis of family relationships. The severity of the issue is well indicated by the fact that the Constitutional Court made a decision in an extraordinary procedure and it it annulled the regulation ex tunc.

The decision is significant and has theoretical implications as well also because the Constitutional Court attempted to demarcate what kind of regulations can be adopted within the rules of peaceful public coexistence. It set out from the notion of local public affairs, besides which, the court argued, the public services that can be provided locally should also be considered, which are listed by the Act on Local Governments only by way of example[3]. Based on these, the body drew the conclusion in its majority opinion that a local government regulation can be enacted among local public affairs for the provision of tasks or public services of a typically local government scale. These regulations, however, may affect certain fundamental rights only indirectly, as Article I, Section (3) of the Fundamental Law states that rules related to fundamental rights and obligations shall be laid down in an Act, thus the decree cannot apply direct limitations.

At the same time, the concurring opinions call attention to a more subtle approach. In their joint opinion Constitutional Court Judges Béla Pokol, Imre Juhász and András Zs. Varga added to this approach that the statutory regulation related to fundamental rights pertains only to the fundamental, thus most significant rules, thus other pieces of legislation, i.e., even local government decrees may also include rules concerning fundamental rights. In this regard the key role of legislation beyond the law is to fill in the areas left unaffected by statutory regulations. Based on this, however, the concurring opinion highlighted that the body so to say avoided substantive justification, as in reality it did not examine the regulation of freedom of conscience and religion, while there was an opportunity for this based on the decree. Constitutional Court Judge Ágnes Czine in her opinion stated that she shared the concern of the petitioning commissioner according to which the statutory authorization related to peaceful public coexistence was deficient

[3]Act on Local Governments Art. 13, Section (1)

and provided the opportunity for the adoption of 'absurd' rules, threatening with rather high fines in many cases driven purely by the intention of gaining revenue (Constitutional Court resolution no. 7/2017. (IV. 18.)).

4.3. Practice of the Constitutional Court

If we look at the practice of the Constitutional Court to date, we may see that the body, I believe correctly, opened the way for the regulation of peaceful public coexistence, however, in terms of substantive legislation it has not provided too much support for the local governments and the regional government offices responsible for legal supervision. In this regard there is a uniform practice that the Curia has to assume this role and judge not only cases related to fundamental rights; however, the body might have believed, presuming the self-restraint of local governments, that there would be only a few extreme cases where an opinion has to be expressed in terms of where the boundaries of fundamental rights legislation are and where the opportunities of local governments emerge to enact regulations. The specification of peaceful public coexistence as a social relation to be regulated is not free of problems in itself, although we may agree that local public issues and responsibilities may represent the starting point, as the latter also derives from the text of the Fundamental Law, while the former is obviously due to the fact that the local government acts within its own scope of responsibilities. All this, however, offers little help in terms of what kind of fundamental right limitations are possible.

5. PEACEFUL PUBLIC COEXISTENCE AND THE CURIA

Based on the Constitutional Court decision of 2015, the Curia could not avoid the examination of the specific cases and issuing a resolution. In this regard, of course, the problem could be perceived in advance: without a standard, diverse and in many cases incomparable rules are made, which at the same time mirror the heterogeneity of public administration criminal law of 150 years ago. The number of decisions of the Municipal Council in this area has increased continuously since 2015 as a result of which we can already talk about the specification of certain cornerstones even if there is no uniform practice yet. During its review, for the judicial forum the key consideration was whether the local government regulation violated any higher form of law.

It can be established in general that according to the decisions made to date, formal legal certainty is ahead of issues regarding the content, thus the review first extends to this aspect and a part of annulments is made up by the use of definitions associated with legal certainty, including indeterminate legal concepts (improper handling) (Belváros-Lipótváros Inc., 2015) or incorrect in-text references (Dömös Inc., 2015). Obviously, the importance of compliance with the rules of formalized procedures and the correctness of legislative drafting is undisputed, however, one of these decisions was made exactly in the case of Lipótváros, which also induced the body to turn to the Constitutional Court, thus the substantive nature of the decision is also unquestionable. The practice of bodies responsible for review, however, is constant in the sense that in case of formal or obvious errors they ignore the substantive or further examination of the issue.

With the exception of the above, based on the decisions made so far real substantive control took place only a few times. One of these involved the legislation of other tasks referred to as a formal error but in my opinion actually emerging as a substantive

question, when in the Dunavarsány case (Dunavarsány Inc., 2017) the local government enacted a building regulation for people violating the safety distance. According to the Curia, in this case legal certainty was prejudiced as the body adopted a rule partly related to livestock and partly to construction, while calling it the regulation of peaceful public coexistence. If, however, we consider the above-mentioned starting points of the Constitutional Court, it is not clear at all how these should be evaluated as the local government is entitled to enact building rules even though it should have done so in its decree on building rules. I believe that it has still remained a question whether any sanctions may be established for the latter besides the classic construction sanctions. Presumably not according to the Curia but if we also take into consideration that the enactment of the decree takes place partly based on authorization and partly acting within the scope of activities specified in Article 32, Section (1), point a) of the Fundamental Law, and that according to the concurring opinion of the Constitutional Court it is also possible in cases related to fundamental rights to adopt complementary rules, I think it is not excluded either that other types of sanctions could be added to the obligation.

A larger part of substantive matters that have emerged so far was also related to the development of the townscape. Thus, for example, in Bük the body reviewed the weed control obligation in public areas stating that keeping the public area clean is not a duty to be observed by the local government exclusively (Bük Inc., 2016) while in connection with the city of Miskolc, the complex regulation that included issues related to private law also was not that straightforward at all (Miskolc Inc., 2016). Based on the decree, on the one hand, they prohibited the picking or damaging of flowers, ornamental plants in public areas, and on the other, the legal relations within condominiums were also regulated; thus it became prohibited if someone caused noise, smell, smoke, dust or any other forms of disturbing effects to others; if waste was not placed in its own container, if they did not provide for their transportation; if carpets, mattresses were cleaned, dusted, swept on the balcony, in the window, if garbage, tobacco butts or other objects were thrown out, etc. It was an additional element of the regulation that the local government also specified the criteria for properties suitable for habitual housing by stating that an apartment section per person should reach at least six square meters. Those in violence of this rule were threatened by fines, actually setting these at a rather high level.

In terms of the obligations related to townscapes the Curia referred to its consistent practice (Belváros-Lipótváros Inc., 2015) which enables the imposition of a fine acknowledging this objective of the legislator. At the same time, in terms of other elements it did not undertake to express an opinion and turned to the Constitutional Court again that has not made a resolution in this regard until the time of writing this article; however, a constitutional complaint submitted by a private individual in the same case has already been rejected by the body (Constitutional Court resolution no. 3229/2014. IX. 22.)). It remains a question in this case as well if the Constitutional Court makes any observations in connection with the authorization or it remains consistent with its position so far. From the perspective of public law it is an interesting development that the question of housing has also been examined by the Curia and it was established that property may be restricted in the public interest, however, in the absence of a legitimate objective, the given stipulation was annulled in the specific case also due to discrimination regarding social status.

Besides the prejudice to legal certainty, the case of Belváros-Lipótváros also added to the line of acknowledged local government efforts to protect the townscape (Curia Resolution no. Köf.5052/2015/2). In this case the prohibited forms of behavior included the contamination of public areas, the improper handling, careless damaging, destroying of plants in public areas, as well as the feeding of stray animals in a way that contaminates the environment or disturbs others, or getting birds used to staying in buildings. Of these forms of behavior, practically only "improper handling" as an unclarified legal term failed on the test of the Curia, while in connection with the other forms of behavior the court accepted the point of view of the local government in question.

The decision made in connection with the local government of Hódmezővásárhely is significant for many reasons; in connection with the placement of election posters the conclusion was made that the local government sanctions related to peaceful public coexistence might also be extended to legal personalities (Hódmezővásárhely Inc., 2015),[4] which decision is in harmony with historical traditions in theory as well (the subject of misdemeanors could also be a legal personality) and also with the idea that peaceful public coexistence is a financial legal fine of a non-subjective liability basis. The same direction was underlined by the decision made in the case of the local government of Penc (Penc Inc., 2014) related to domain name registration, whereby the Commissioner for Fundamental Rights in his motion argued that sanctioning was not possible in the regulation of domain registration even with reference to peaceful public coexistence (Commissioner for Fundamental Rights, 2014). The Curia, however, did not express an opinion on this matter in the explanation of its (otherwise annulling) decision.

The idea of diverse legal stipulations is enriched by the decree enacted in Budaörs, which restricted the duration of shooting practices within the scope of peaceful public coexistence. The Municipal Council of the Curia based its decision on the practice established by Constitutional Court resolution no. 17/1998. (V.13.) and examined if the complementary regulation violated any higher form of law. The Curia thought it was possible that the regulation would restrict the time of shooting practices due to the noise exposure disturbing the general population and in line with the principles of the Constitutional Court it also argued that with its practice the protection of the autonomy of local governments as specified by the Fundamental Law should be protected (Budaörs Inc., 2014). This is noteworthy mainly due to the subsequent and continuous attacks on the authorization related to peaceful public coexistence as in this 2014 case the body supported this idea, while due to the increasingly problematic cases later it still considered the annulment of the authorization to be more expedient. The regulations affecting the Hungaroring in Mogyoród or parking in Tihany may be deemed similar in theory, in which the local government adopted rules of a complementary nature under the guise of peaceful public coexistence but in a commercial area (Mogyoród Inc., 2014).

Providing an overview of the practices of the Curia, three directions may be outlined. One of these involves those decrees with legal drafting errors that may be deemed formal, in which besides the annulment due to these reasons there is no other theoretical conclusion. The second direction includes the enactment of complementary rules related

[4] At the same time, in a former procedure of the same local government the decision had been suspended. (Hódmezővásárhely Inc., 2015)

to commercial, economic activities and partly the townscape, which affect fundamental rights only indirectly. Several decisions have been made in connection with the latter, whereby the Curia readily interpreted the related rules and the question of violation of higher forms of law. The third direction has posed the most questions; in these cases the local governments have regulated novel but sensitive areas in terms of fundamental rights, in which an opinion has to be expressed whether the restriction may be allowed or not. In connection with the latter, the Curia is noticeably reluctant to assume a decision-making role and rather turns to the Constitutional Court and/or tries to annul the authorization again, calling attention to the problems caused by the lack of standards. As opposed to this, the Constitutional Court has so far consistently represented the opinion that the authorization may also be used in its current form and there is no need to annul it due to the potential presence of abuses.

6. DE LEGE FERENDA RECOMMENDATIONS, SUMMARY

After reviewing the current decrees regulating peaceful public coexistence, one may argue that the local governments were primarily driven by the objective of protecting public peace and public hygiene but in certain cases for the purposes of this noble cause they enacted rules that may be deemed absurd even if not on a mass scale. In case the regional government office acquires the opinion of the given local government it is usually revealed that the adoption of the particular decree was always induced by an existing social, community problem and to a lesser extent by the intention of the local government to generate revenue. At the same time, it can also be established beyond doubt that the given fine contributes to the own revenues of the local government. I believe that this latter consideration is rather mirrored partly by the scale of assumed and realized sanctions and the fact that the given local government shows little willingness to release or reduce the fine that may be imposed.

Based on the above, the problem should be separated into two parts in the sense that the regulation of behaviors to be sanctioned is primarily not conducted with the aim of generating revenue, while in terms of application we may also encounter such an attitude. In this sense I also share the opinion of the Constitutional Court to the degree that local governments should have space to enact public administration criminal law, while the creation of certain general rules should be considered, for example, in terms of setting the maximum fine or the grounds of exemption. This, however, would not provide any assistance to the Curia as the legislator may not prescribe possible living conditions in general, as these may vary from one local government to the other, as also noted by the Constitutional Court. It is also difficult to establish such a fundamental rights standard that could serve as a general reference point in connection with all fundamental rights in a more specific sense than what is already provided by the Fundamental Law; namely that the restriction of fundamental rights is possible by means of acts that extend to basic rules.

In this sense, therefore, the Curia and the Constitutional Court need to assume the role of shapers of law and express an opinion on a case to case basis regarding the restrictions of fundamental rights. Based on the current practice it may be seen that a remote prejudice to a fundamental right and the application of a stipulation of a complementary nature in view of the national rule is possible in view of public interest.

In case the decree results in a direct violation of fundamental rights, the Curia is typically more cautious and with the exception of clearly and excessively restrictive cases refers the case to the Constitutional Court, which body has not yet expressed its opinion.

Another important element of the concept of good governance besides the operation of public administration involves ensuring public safety and on the local level local governments may also be a part of this. It may also be established that although the regulation of peaceful public coexistence contains several problems and anomalies, it is also an opportunity for local governments to continue and implement the tradition of public administration criminal law with a history of one and a half century. All this provides a new option among public administration sanctions as in their present form the offenses are rather pushed back and have assumed a criminal law nature, while the sectoral financial sanctions obviously do not react to legal social problems. Thus based on the above, due to the potentially abusive application and the resulting case load it is not justified to annul the authorization. In view of the legal system as a whole, the legislator has opened the gate wider and wider for local governments, which grants the opportunity for a self-supporting local government together with the already mentioned municipal taxes, which was not possible either in the past 20 years. Thus as a result the annulment of the authorization is not justified, while its clarification, specification is not possible due to the issues mentioned above (living conditions varying from case to case and the impossibility of the general creation of fundamental right regulations). Which might be considered is the standardization of procedural rules, the generalization of the form of liability or the definition of general considerations to be used in terms of the maximum fine and its imposition, the place of which is not necessarily in the Act on Local Governments but a public administration code of sanctions.

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