



*Torják, Norbert lawyer,  
Government Office for Győr-Moson-Sopron County*

## **Legislative process in establishing the administrative district system**

### **I. Introduction**

The Government has opened a new chapter in its strategy documents by devising the Zoltán Magyar Public Administration Development Program along with the Good Government concept. For the strategy framework to adequately reflect and fulfill the authors' intention, it is essential for the legal framework to evolve and be amended. The cornerstones of the amendment were laid in the opposite direction than that of the strategy framework because Ministry of Policing and Justice Decree No. 61/2009 (XII.14.) of 2009 on codification (hereinafter Jszer.) and (partly) as a result of a Constitutional Court decision<sup>1</sup> on legislation Act CXXX of 2010 redefined the requirements of legislation. The tip of the legislative iceberg was the implementation of the new Constitution on April 25<sup>th</sup>, 2011.

The first significant intersection of the parallel paths of the strategy and legal framework in the public administration area came about in January 1<sup>st</sup>, 2011, with the establishment of the metropolitan and county government offices by passing Act CXXVI of 2010 on the metropolitan and county government offices, the amendment of territorial integrity, and the establishment of the metropolitan and county government offices<sup>2</sup>.

### **II. Roadmap to the “Agreement (template)”**

The political decision to begin the legislative preparations to establish the administrative districts was made in the autumn of 2011. The fifteen principles governing the establishment of the districts were put down in Government Decree No. 1299/2011 (XI. 1)<sup>3</sup>. The guidelines declared by the Government include but are not limited to: the individual settlement structures shall be taken into account, districts shall align to county borders; the district seat shall have proper infrastructure; the district offices shall be the local branches of the metropolitan and county government offices.

---

<sup>1</sup>Constitutional Court decision No. 121/2009 effective from December 31<sup>st</sup>, 2010, annulled Act XI. of 1987 on legislation on the grounds that it was outdated, was not in accordance with the Constitution and that it contained provisions in need of constitutional regulation

<sup>2</sup>According to Article 17, paragraph 3, of the Constitution the metropolitan and county government offices are the local administrative organizations for the Government

<sup>3</sup> The declared aim of the Government with the establishment of the administrative district system is to create a more convenient, efficient and cost-effective public administration

The next step of the legislative process was to compose Act 2012 XCIII on the formation of the districts and on the necessary amendments of related acts (hereinafter Jártv.). The new act was published in the 86<sup>th</sup> issue of the Official Hungarian Journal (Magyar Közlöny) in July 5<sup>th</sup>, 2012, and according to the article the act was to come into effect gradually. The provisions of the act coming into effect on the following day of the publication included a takeover of certain functions<sup>4</sup> and staff members and associated assets from the local governments beginning on January 1<sup>st</sup>, 2013. The right of use of the assets falls onto the State of Hungary (sharing the right of asset management with the metropolitan and local government office). The provisions of Jártv. settle the appointment of district officers along with the organization of the district offices<sup>5</sup>, and according to said provisions, office employees were employed by the metropolitan and local government offices. The Jártv. settles the terms and the employment status of the assignation; however, the details of the transfer should be agreed on by the government offices and the local governments<sup>6</sup>. The handover and acceptance agreement between the local government and the government office was to be concluded by October 31<sup>st</sup>, 2012. The transfer of the right of use was to go ahead regardless whether an agreement was reached or not. Had there been no decision between the parties concerned by the deadline or only a partial one, then a commissioner appointed by the government was to make a decision with an administrative decree by November 15<sup>th</sup>, 2012.<sup>7</sup>

Besides the aforementioned declarations, the Jártv. involves the amendment of 80 acts that settle roles and jurisdictions as well<sup>8</sup>.

Government Decree no. 174/2012 (VII. 26.) published in the 101<sup>st</sup> issue of the Official Hungarian Journal on the amendments of government decrees related to the establishment of the (metropolitan) district offices amends 92 (!) acts to meet the duties of Jártv.

Government Decree no. 218/2012 (VIII. 13.) (hereinafter Korm. rend.) published in the 107<sup>th</sup> issue of the Official Hungarian Journal wraps up the legislative process of the establishment of the district system<sup>9</sup>. This decree gives a detailed overview of the district office's department structure and jurisdiction as well as describes the rules of the handover and acceptance taking into account its second addendum. According to further provisions of the decree, once an agreement has been reached the transfer of assets shall take place on 1<sup>st</sup> January, 2013, with minutes recorded<sup>10</sup>.

### **III. The main provisions of the “Agreement Template”**

The second addendum of the decree is an “agreement template<sup>11</sup>” that contains the specific rights and obligations of the local governments as the benefactor and the government office as

---

<sup>4</sup> It has not (yet) been specified by the lawmaker what competences will be transferred to the district offices; a section that reads “competences defined by the statute” allows for a later decision

<sup>5</sup> According to Article 1, paragraph 3, of Act CXXVI of 2010 on the amendment of related acts on the metropolitan and county government offices, the territorial integrity and establishment of the metropolitan and county government offices, beginning on January 1<sup>st</sup>, 2013, the district offices are part of the government office organization

<sup>6</sup> Article 2, paragraph 2, of Jártv.

<sup>7</sup> Article 5, paragraph 5, of Jártv.

<sup>8</sup> BARTA, ATTILA: The development of the lower-mid level public administration in 2012. Main observations on the duties and organization of the district offices. in *Codification and Public Administration*, Issue 2012/2, pp. 32-35

<sup>9</sup> The intention behind the Ministry of Public Administration and Justice Decree no. 50/2012 (XII. 4) is to amend decrees and thus create legal harmony around the establishment of the district offices

<sup>10</sup> Article 11, paragraph 3 of Korm.rend.

<sup>11</sup> Article 11 paragraph 5 of Korm.rend.

the beneficent, settles the transferring of assets and personnel and specifies further provisions related to the handover. As the name “agreement template” suggests and based on the legal situation set by the general practice, we may conclude that the wording of the agreement can be modified by both parties on a case by case basis. We should bear in mind Article 3, paragraph of Jszt. that states that “*the normative provisions of the statute can be found within the sections and addenda of the statute.*” Consequently, the “agreement template” of the second addendum of Korm.rend. may no longer be considered a template, which means it cannot be modified on a case by case basis.<sup>12</sup>

Enlisting each and every provision of the “agreement template” would be beyond the scope of this study; nevertheless, highlighting a few essential provisions would be sufficient to illustrate my point.

The first regulation settles real estate affairs, more precisely the handing over of the exclusive right of use of some local government property; right after the transfer of property the right of mutual use is established. As part of the second step, the parties concerned settle the circumstances of the transfer of local government property rented or in any other way contracted. The third part of the template is dedicated solely to the transferring of local government property that has mortgage on it. In the followings, the legislator set down provisions concerning movable assets and employees, to establish the aforementioned property administration law that regulates property management conditions of a contract to be signed by July 30<sup>th</sup>, 2013. At the end of the “agreement template” are miscellaneous provisions concerning the handover and acceptance process such as the right of use shall be registered by the parties together (the registration permit must be declared by the benefactor in writing), and throughout the execution both parties will act in accordance with the provisions of the statute and in good faith.

The “agreement template” – in the light of the aforementioned Jszt. provision – gives the impression that every local government will surrender certain property; moreover, that every local government is possessing properties with the aforementioned different legal standings.

### **III.1. The non-existing forms of the agreement**

In fact, however, local governments fall into three categories based on the content and the actual execution of the agreements<sup>13</sup>:

#### **1. Agreement between the district seat and local branch**

Settlements under this category have the most comprehensive agreement because besides the personnel and movable assets (computer hardware and software included) these settlements hand over real property as well.

#### **2. Agreement between the Regional Clerk’s Office and an individual settlement (the ones that would not qualify for the previous category)**

Under this agreement only personnel and moveable assets are handed over.

#### **3. District office associate agreement<sup>14</sup>**

The district office associate is a person who calls on different settlements for a few hours or days to register residential requests and relay them to the district offices to be processed. In

---

<sup>12</sup>The “agreement template” was to be applied to over 2000 local governments nationwide

<sup>13</sup> The categorization is not meant to be taxative; naturally, other perspectives can be applied

<sup>14</sup>Article 1, paragraph 1 of Korm.rend.

this case, the local government allocates office space and equipment for a specific period of time for the associate.

### **III.2. Obstacles in implementing the “Agreement Template”**

Based on what I have established so far, I am summing up the circumstances in eight points that complicate the implementation of the “agreement template” as statutory law:

#### 1. Normativity

The agreement cannot be tailored to properly reflect the will of the parties concerned.

#### 2. The “violation” of norm-clarity<sup>15</sup>

It is mainly a practical issue as it is unclear why the government office is the signatory party on behalf of the Hungarian State when obtaining the rights of use and how the two entities are logically connected<sup>16</sup>.

#### 3. Statute redundancy

According to paragraph 3 of the new Jat., “*a statute shall not repeat provisions of the Constitution or of another statute that according to the Constitution a statute cannot contradict.*” Nevertheless, on many occasions the “agreement template” disregards this prohibition especially in the introductory provisions.

#### 4. Inconclusive handover and acceptance process

According to the rules in force, the possession is to be transferred with minutes recorded followed by the signing of the asset management contract.

#### 5. Unenforceable statute

Had there been no agreement by the deadline<sup>17</sup>, a government representative would have produced and extended one under administrative resolution.

#### 6. Ill-conceived content

I am referring to the false impression implied by the “agreement template” that every local government will hand over real property of its own, rented, or otherwise contracted, etc.

#### 7. Confliction

According to the “agreement template”, both parties will act according to provisions of relevant statutes throughout the execution of the agreement. In my opinion, this applies for the provisions of Act CXLI. of 1997 on land registration (hereinafter Inyvtv.) because according to the “agreement template” a property registration permit is required even though the legislators

---

<sup>15</sup>According to Article 2, paragraph 1, of new Jat. it should be a basic principle in legislation (see also Constitutional Court Decision no. 26/1992 (III.5))

<sup>16</sup> It is owing to this situation that a local government as benefactor (who had a right of use on a property for which another agency had asset management rights) requested the trustee to register the right of use. The peculiarity of the case is that the owner of property was the State of Hungary, for whom it is unnecessary to register the right of use (the local government attempted to register the right of use based on the “agreement template” instead of Jártv.)

<sup>17</sup> Not one agreement was signed by October 30th, 2012 (see: <http://jarasok.com/jarasi-hirek/a-kormanyhivatal-dontott-a-szegedi-jarasi-hivatal-kialakitasa-ugyeben.html> December 14<sup>th</sup>, 2012)

should have omitted this prerequisite<sup>18</sup>. The “agreement template”, however, is lacking provisions necessary for land registration<sup>19</sup>

#### 8. Occasional wording errors

Does not compromise the enforceability of the “agreement template” per se, but it does compromise qualitycodification.

It is the district office associate agreement that is the least covered by the second addendum of Korm. rend. In my opinion, this is the case where the biggest contradiction lies between the intention of the legislator and the practical realization of the agreement.<sup>20</sup>

Based on what we have discussed above, we can outline two areas where the “agreement template” and the practical realization contradict each other:

#### 1. Codification process

- a) if we strictly define codification as the technical implementation of the titles, chapters, and sections in their relations to each other than the root of the contradictions lies somewhere else
- b) if we define codification as the manifestation of the will of the legislator we may encounter the Gordian knot of whether the “agreement template” is promulgated as an addendum or appendix from a legislative perspective.

#### 2. Legislation

Let me demonstrate what I mean by legislative error:

*“Two codificators are walking down the street when they notice a sign in a fish shop: “Today fresh fish to be had here.”*

*They stop to contemplate and after interpreting the message from a legislative perspective they come up with the following observations:*

1. *“Today” is absolutely redundant because the shop is open for customers to take advantage of the commercial services of the shop*
2. *“Here” is also redundant because fish is available in this particular store and not in a neighboring, let’s say, bike shop.*
3. *The word “fresh” implies that other times, during the rest of the year customers may not have the good luck of purchasing fresh products here. Obviously, this not what the sign meant to suggest.*
4. *As with the previous instances the word fish might also have been omitted because it is clear for everyone that it is fish that you can buy in a fish shop.*

*The only phrase in the sentence that is justifiable is “to be had” but without context it is not interpretable so it is useless.”*

The point of this parable is to show that with the second addendum of Korm. rend. as an “agreement template” the legislator strayed onto a path of over control. This over control caused the aforementioned contradictions and errors.

<sup>18</sup> Since the right of use and the property management rights are already parts of Jártv. in Korm. rend. the legislator’s intention of not requesting a “registry permit” as part of the “agreement template” should have been declared (a permit required by Inyvtv.) A similar ordinance can be found in paragraph 4, of Jártv. that clearly states that the right of use *“should be registered in the land registry free of charge.”*

<sup>19</sup> See Article 32, paragraph 1, point (b) and paragraph 4 as well as the Ministry of Rural Development Decree no. 109/1999 (XII.29) 70§ on the execution of Act CXLI. of 1997 on land registration

<sup>20</sup> What I have in mind is the centerpiece of my enquiry, the “agreement template”

With all this said, my opinion is that codification faults are secondary to faults around the legislative procedures. To prove my point, had the legislator abandoned the intention to create the “agreement template”, the question of the codification would never have occurred in the first place.

In case the legislator had insisted on settling the handover with an agreement, this agreement to serve as a template to meet unique situations would have made a much greater service for the government offices as an appendix for the Korm. rend., considering that only sections of a statutory law or addenda have normative authority<sup>21</sup>—meaning appendices do not.<sup>22</sup>

#### IV. The legislator’s finding

According to the amendment effective from January 1<sup>st</sup>, 2013, it will be the metropolitan and local government offices possessing the rights of use over the transferred assets and not the State of Hungary, and at the same time, statutes on the asset management rights will be annulled. This scenario would have simplified the three-step-process of establishing the administrative district offices, namely the agreements, the minutes, and asset management contracts; it would also have posed (because of the “agreement template”) another problem by creating a conflict between the regulations and the thousands of agreements.

This bill was eventually shelved because it carried a serious problem. Instead, on December 27<sup>th</sup>, 2012, Act CCX. of 2012 was published in the Official Hungarian Journal amending acts on the operations of metropolitan and local government offices as well as amending Act CXL. of 2004 on the general rules of service and procedures of the administrative authorities and related acts (hereinafter amendment). In my opinion, the legislative intention behind this act is to transfer assets to the district offices by means of a statutory law instead of individual agreements between the (metropolitan and county) government offices and local governments. According to Article 50, paragraph 1, of the amendment, the assets necessary for state administration functions will remain to be used by the State of Hungary for free of charge, but the rights of use will be with the metropolitan and county government offices<sup>23</sup>. As per Article 52 of the amendment “*the Land Title Office enters a free rights of use –taking Article 89, paragraph 5 into consideration- in the land registry for the metropolitan and county government offices.*” The incorporated Article 89, paragraph 5, contains the technical differences between the bill and the amendment. This section amends the contradictions in the bill. According to Article 89, paragraph 5, of Járty. “*instead of registering the property management rights, the free right of use shall be registered regardless of standard procedures in land registration.*” The amendment, besides omitting the establishment of an asset management right<sup>24</sup> (and land registry entry), confirms my assumption that the current codification trends, the kind we saw with the “agreement template” is over-regulated. I believe that taking the aforementioned minutes alone during the transfer process would have saved a lot of effort for both parties.

---

<sup>21</sup> Article 3, paragraph 1 of Jszt.

<sup>22</sup> I believe the apprehensiveness for not being able to produce a standardized, controllable agreement and handover and acceptance procedure was unjustified because technical directives and advisory correspondences by the Ministry of Public Administration and Justice have always been followed properly

<sup>23</sup> With this amendment a logical connection I was missing in point 3.2 has been created between the State of Hungary and the metropolitan and county government offices

<sup>24</sup> The establishment of asset management rights is only prescribed by the amendment when a local government offers a property that adequately caters for administrative needs for the State of Hungary

It is satisfying to see from the legislator's part to have amended the provisions of Jártv. before January 1<sup>st</sup>, 2013, that simplified procedures of the (metropolitan) district offices' jobs imposed by law.

## Works cited

Barta, Attila: *The development of the lower-mid level public administration.* in 2012. *Main observations on the duties and organization of the district offices.* in Codification and Public Administration, Issue 2012/2,

*The Constitution of Hungary (25 April, 2011)*

*The Constitution of Hungary*

*Const. Court decision 121/2009 (XII.17)*

*Const. Court decision 26/1992 (III.5)*

*Act CCX. of 2012 amending acts on the operations of metropolitan and local government offices as well as amending Act CXL. of 2004 on the general rules of service and procedures of the administrative authorities and related acts*

*Act 2012 XCIII. on the formation of the districts and on the necessary amendments of related acts*

*CXXX. of 2010 on legislation*

*Act CXXVI of 2010 on the metropolitan and county government offices, the amendment of territorial integrity, and the establishment of the metropolitan and county government offices*

*Act CXLI. of 1997 on land registration*

*Act XI. of 1987 on legislation*

*Ministry of Public Administration and Justice Decree no. 50/2012 (XII. 4) by the amending decrees on the establishment of (metropolitan) districts within the jurisdiction of the minister*

*Government Decree no. 218/2012 (VIII. 13.) on the (metropolitan) district offices*

*Government Decree no. 174/2012 (VII. 26.) on the amendment of government decrees related to the establishment of the (metropolitan) district offices*

*Ministry of Policing and Justice Decree No. 61/2009 (XII.14.) of 2009 on codification*

*Ministry of Rural Development Decree no. 109/1999 (XII.29) on the execution of Act CXLI. of 1997 on land registration*

*Government Decree No. 1299/2011 (XI. 1) on the establishment of the district system*