Szilárd PÁLFAY[1]

On Certain Procedural Aspects of Agricultural Subsidy Law

Abstract

As a judge assigned to the Public Administration Chamber of the Győr Regional Court, I adjudicate in administrative cases, and in addition to my work, as a fourth-year student of the Doctoral School of Law and Political Sciences of the Széchenyi István University, I research the system of agricultural subsidies and judicial case law. The aim of my doctoral thesis is to provide a comprehensive overview of the Hungarian system of agricultural subsidies and the jurisprudence of agricultural subsidy law by examining the agricultural law literature, national and EU legislation, the practice of farmers' organisations, agricultural and rural development support bodies and case law collected in courts.

The questions examined in the research concern the normative clarity of legislation on agricultural subsidies, the equivalence of the functions assigned to agricultural subsidies and the precedent practice available in this specific field.

My research in this area focuses not only on the history, functions and substantive law of agricultural subsidy law, but also on its procedural law. In this study, I address the jurisdictional problems that arise in agricultural law disputes and the issues arising from the relationship between general and special administrative procedural law.

Keywords: Agricultural Subsidy, Procedural Law, Common Agricultural Policy, Court Practice

Introduction

In the course of my work on agricultural subsidy cases, I have developed the impression that, compared to the usual administrative procedures and the direct subject matter of agricultural subsidy law, the background to the cases is more extensive,

1 | Judge, Public Administration Chamber of the Győr Regional Court; fourth-year doctoral student of the Doctoral School of Law and Political Sciences, Széchenyi István University.

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deeper and more complex than usual. Over the years, as I have dealt with more and more disputes arising from the granting authorities, it has become clearer and clearer how this area of agricultural law, which receives less attention, has a fundamental influence on food security, rural policy and the fight against climate change, in addition to improving the ability of farmers to generate income.

Although it is not possible to draw overall conclusions about the functioning of agricultural subsidy law as a whole from the disputes that end up in court, it is clear to judges hearing public administration cases that the area of law, which is a common set of agricultural law, financial law, European public economic law, competition law and civil law, only appears to constitute a regulatory environment for an easily graspable legal subject. With the extension of the functions assigned to agricultural subsidies, the regulatory technique of the sources of law relating to subsidies, the complexity of the indirect subject matter of the regulation, has not only made life more difficult for producers, but has also caused problems of law enforcement for the organisations involved in the subsidy chain, the authorities and courts involved in subsidy disputes, and even the Supreme Court of Hungary (Curia), which is responsible for the unification of case-law.

Not only is the substantive legal framework for agricultural subsidies, which draws on European law and domestic sources of law, difficult and complex, but also the procedural law of agricultural subsidy law. In the area of the law covered by this article, sometimes even the most basic questions of application of the law are difficult to resolve. As will be seen below, the separation of the civil and public administration aspects of subsidy disputes and the relationship between general and special procedural law, among other things, can only be understood in cases before higher courts or in the context of the work of the working group on the unity of jurisprudence.

While preparing the study on certain procedural issues of agricultural subsidy law, I took into account the works of researchers already dealing with the topic, so in the case of CSÁK Csilla[2] I could draw on publications related to agricultural finance, and in the case of ERDŐS Éva[3] on agricultural dispute settlement. In examining the relationship of the Common Agricultural Policy (CAP) to other community activities and community procedural law, I was guided by the approach of NAGY Zoltán[4], and in examining the civil-administrative conflict of laws in agricultural subsidies by the research of OLAJOS István[5]. In the case of TANKA Endre[6], I summarised the results published in his publications when examining the constitutional context of this area of law, and in the case of WOPERA Zsuzsanna, I took into account the articles on the system of agricultural subsidy appeals. In addition to the above, I have incorporated the research findings of a number of other national and international

2 | Csák 2009, 43–50.
3 | Erdős, Jakab & Raisz 2008, 19–28.
4 | Nagy 2018, 149–163.
5 | Olajos 2006, 439–456.
6 | Tanka 2012, 148–166.

legal scholars and other professionals, listed among the sources, in order to make the thesis a natural continuation of the academic research on the subject.

1. On the law and procedural law of agricultural subsidies in general

The law of state aid is part of economic public law, in so far as economic public law is understood as an institutional system of economic intervention by public entities[7]. State aid is one form of this economic intervention. The granting of state subsidies derives, therefore, from the economic function of the state; in terms of its function[8], it is one of the means of implementing the policy of central power in the modern state. According to NAGY[9]'s categorisation of the sources of regulation, subsidy law falls within the field of financial law, and within this field, mainly fiscal financial law. The granting of subsidies is thus intended to achieve an economic or social policy objective by providing an advantage without which market operators would not carry out the activity or would do so less efficiently. State aids are subject to the market condition that the public policy objective they are intended to achieve cannot be realised by other, less market-distorting measures[10]. Although there is no universally acceptable answer today as to the extent or necessity of the state's economic involvement, as SZILÁGYI confirms, public opinion in the profession is more inclined to accept state intervention in agriculture than in other areas of the economy[11].

The Common Agricultural Policy (CAP), which is at the heart of this article, is a common, sectoral, subnational EU policy, which is integrated in its design and implementation with external trade and harmonisation policy, economic and cyclical policy, social and regional policy, environmental policy and, finally, monetary policy[12].

In the EU, the regulation of state aid serves to create a single internal market and is part of competition law[13]. The general rule prohibiting the granting of aid is laid down in Article 107 of the TFEU, which sets out the cases in which market-altering measures may be applied outside the scope of market conduct of undertakings.

In order to understand certain procedural issues of agricultural subsidies, it is necessary to clarify the concepts of subsidy, budgetary aid, state aid, EU funds and finally agricultural subsidy in the sense of public finance, as regulated by national law. The Public Finances Act[14] (Áht.) provides guidance on the delimitation. The

7 | Barabás 2017, 201.
8 | Samuelson & Northaus 2012, 273–278.
9 | Nagy 2018, 149.
10 | Nyikos 2018, 22.
11 | Szilágyi 2016, 33.
12 | Kurucz 1999, 213.
13 | Barabás 2017, 325.
14 | Act CXCV. of 2011 on Public finances.

broadest definition is that of subsidies, which are grants from the central or local government sub-system of the state budget in any form whatsoever, without any payment being made in return[15]. A narrower scope is covered by so-called budgetary aid, which is defined as aid granted in cash from the central government sub-system without consideration other than social security funds[16]. State aid for the purposes of this thesis is a benefit granted by the national budget as de minimis aid within the meaning of Article 107 (1) of TFEU or under a directly applicable EU legal act[17]. The first three terms refer to a grant from the national budget at source.

In the national legislation, procedural law related to agricultural support schemes is laid down in laws, government regulations and ministerial decrees. For the periods that are currently ongoing or in the process of being settled, the highest in the hierarchy of legal sources are Act LXV of 2022[18], Act XVII of 2007[19] and Act CL of 2016[20], while at the ministerial level, general procedural rules are found in Government Decree No. 256/2021 (V.18.)[21], Government Decree No. 481/2023 (X.31.)[22], and at the ministerial level in FVM Decree 23/2007 (IV.17.)[23], and finally in AM Decree 54/2023 (IX.13.)[24].

In the following, after a general description of the characteristics of agricultural subsidy law, I will illustrate the difficulties of procedural law in this field by means of two examples.

2. Remedies in the procedures for agricultural subsidies

Article XXVIII (7) of the Fundamental Law establishes the fundamental rights framework for legal remedies against acts of public authorities establishing a subsidy relationship[25]. As the Constitutional Court has pointed out[26], the essential

15 | Áht. 1. (19) paragraph.
16 | Áht. 1. (14) paragraph.
17 | Áht. 1. (2) paragraph.
18 | Act LXV. of 2022 on the procedure for agricultural subsidies provided by the Common Agricultural Policy and the national budget (KAP Act).
19 | Act XVII of 2007 on certain issues of the procedure related to agricultural, agro-rural development and fisheries subsidies and other measures (Subsidy Act).
20 | Act CL of 2016. on the general administrative procedure.
21 | Government Decree No. 256/2021 (V. 18.) on the procedure for using subsidies from individual European Union funds in the 2021–2027 programming period.
22 | Government Decree No. 481/2023 (X. 31.) on the financial, accounting and administration procedure of agricultural subsidies provided from the financial foundations of the Common Agricultural Policy and the national budget.
23 | FVM Decree No. 23/2007 (IV. 17.) on the general rules for the use of grants co-financed by the European Agricultural Fund for Rural Development.
24 | FVM Decree No. 54/2023 (IX. 13.) on the procedure for using agricultural subsidies provided by the Common Agricultural Policy and the national budget.
25 | Based on the provision, everyone has the right to appeal against a court, official or other administrative decision that violates their right or legitimate interest.
26 | Decision of a Constitutional Court No. 35/2013. (XI. 22.).

content of the right to judicial remedy requires the legislature to provide that, in respect of substantive, case-law decisions of public authorities or courts, it is possible to apply to another body or a higher forum within the same organisation for a decision which is capable of reviewing the decision complained of and, if the harm is established, of remedying the harm by retroactive action. The remedies available in agricultural support cases have multiple constitutional implications. Firstly, because the possibility of legal remedy is a component of the paradigms of the rule of law and constitutionality, and secondly, because the Fundamental Law presents the right to legal remedy as a subjective constitutional right, without which the right to official proceedings would not be constitutional[27].

In the case of agricultural subsidy procedures, there is a system of multi-directional appeals against the first instance decision of the authority. Among the normal legal remedies, an appeal against the first instance decision of the Hungarian State Treasury (MÁK) in a subsidy case can be lodged with the Minister of Agriculture, while decisions which cannot be challenged in the official procedure can be challenged in an administrative lawsuit before the competent court with an administrative college. As WOPERA[28] has pointed out, in accordance with the rules laid down in the Administrative Court Procedure Code (Kp.), in a case concerning the review of an agricultural subsidy decision, the court must decide whether the body which took the administrative decision, in the context of the matter raised by the applicant, took its decision on the basis of the legislation in force at the time when the decision challenged in the proceedings was taken, in the possession of the available statements, data and documents, drawing an incorrect conclusion from them, and applying the relevant provisions of the legislation in breach of the law. The extraordinary remedy against a court decision in a subsidy case falls within the competence of the Curia, but a constitutional complaint against a court decision in a subsidy case that violates the Fundamental Law can also be lodged with the Constitutional Court. A preliminary ruling procedure before the Court of Justice of the European Union (CJEU) on an EU provision applicable to an agricultural subsidy case is not a normal form of appeal, but is subject to judicial review. In other agricultural matters, arbitration may be a form of dispute settlement, but this is excluded by the provision on the prohibition of administrative proceedings.

3. The collision of civil law and administrative law in our writing on agricultural subsidies

The problems of jurisdiction in financial aid disputes date back to the last years of the 2000s. State aid litigations were brought before the civil first instance division

27 | Varga Zs. 2011, 39.
28 | Wopera 2008, 95.

of the county courts of the time, and their courts, having established their jurisdiction, mostly ruled on the merits[29].

In support cases, the collision of civil and administrative law was first revealed in a decision of the Debrecen Court of Appeal[30] in 2007, and then the Budapest Court of Appeal also found in several decisions[31] that it lacked jurisdiction in civil enforcement, referring to the possibility of administrative enforcement.

In order to ensure uniform jurisprudence, the President of the Curia ordered an examination of the case law in civil and administrative cases in order to clarify jurisdictional issues related to the enforcement of claims in court. In 2012, the Jurisprudence Evaluation Group (JECS) of the Curia issued a summary opinion on the jurisprudence of civil and administrative cases concerning financial support[32]. In its analysis of the case law, the High Court examined the concept of financial aid, the main types of state aid, the specificities of the aid regulation, analysed the practice of the regional courts, the courts of appeal and the Curia, and finally made a proposal for the unification of the case law. The analysis itself has already shown that financial aid is a field of intersection between civil law and administrative law, where the emphasis is on the contractual nature of civil law and the financial law elements of administrative law.

The JECS highlighted the fact that state aid creates a sui generis legal relationship between the beneficiary and the recipient, which combines the instruments of different branches of law in a specific way. It may be said that, where the legal relationship of the grant is created by an administrative procedure, the imbalance, which is characteristic of administrative law, is always imbalanced and the contractual element can always be traced. The reverse is also true: in the case of civil-law legal relationships established by administrative bodies in their judicial capacity and giving rise to state aid, especially when the legal consequences of a breach of the grant contract or the grant instrument by the beneficiary are at stake, one can speak of a latent administrative relationship[33]. According to the analysis, the beneficiary in the grant relationship is an autonomous economic entity in civil law terms, but the intervening organisations may also be quasi-public authorities, for example if they are involved in the tender procedure but are not public administrations. As a solution to this problem, the JECS proposed the generalisation of public authority contracts in the legal relationship or the creation of a new legal instrument, the administrative contract, which would take account of both specific private and public law requirements.

29 | Summary report, 3.
30 | Summary report, 3.
31 | Summary report, 3.
32 | „Legal practice in civil and administrative cases related to financial support" Summary report 2012.
33 | Summary report, 17.

In agricultural subsidy cases, the concept of public administration act poses a jurisdictional problem when the specific forms of civil law and administrative law meet. There are three conjunctive conditions for the concept of an administrative act, the first being that the act must be carried out by an administrative body, the second that the act must be governed by administrative law and the third that the administrative act must produce legal effects[34]. In the administrative act challenged in the proceedings, the administrative nature of the administrative act or of another branch of law must be assessed by reference to the existence of the three conditions. In agricultural subsidy cases, this arises when the managing authority has approved the application for aid and issued a grant instrument.

According to the Curia's decision[35], the nature of the legal relationship prior to the issuance of the grant agreement is not defined by the Áht. or other legislation. The process leading to the grant decision falls outside the scope of the property turnover, since in this case the managing authority is not acting in accordance with an economic interest but is pursuing a public objective. The grant instrument establishes a bilateral civil-law relationship between the grantor and the applicant, whereby the grantor undertakes to provide the aid and the beneficiary undertakes to carry out the agreed task and to create the output. Claims for reimbursement of the aid, typically after the conclusion of the grant agreement or the issuance of the grant instrument, are generally considered to be administrative acts, which are subject to review by the administrative courts.

However, under the above-mentioned provision of the Áht., a distinction must be made between the period before and after the conclusion of the grant agreement. The period prior to the conclusion of the grant agreement, i.e. the decision on the grant, is an administrative matter and therefore disputes relating to it fall within the scope of the administrative procedure. If a grant agreement is concluded, it is a civil law relationship. Legal protection is then provided in civil proceedings.

According to the opinion of the KMK-PK in the case[36], litigation relating to financial support can be classified as a civil or public administration matter on the basis of whether a specific provision of the legislation confers administrative authority powers on an organisation in relation to the grant relationship. Administrative jurisdiction can be established only if the law clearly provides for it, by designating the authority acting in the first instance. On the basis of the guidelines referred to, the existence of elements of public law in the legal relationship or the public authority status of any of the participants does not in itself make the grant decision an administrative decision, and administrative proceedings may be brought only if the conditions laid down in the Kp. are fully met. However, if the aid legislation does not expressly confer administrative competence on the body involved in the

34 | Kp. 4. (3) paragraph.
35 | Decision of a Kúria No. Kpk.IV.39.341/2020/3.
36 | 1/2012. (XII. 10.) KMK-PK report (KMK-PK report).

aid relationship, the relationship is a civil law relationship under the Civil Code, notwithstanding the public law elements, and the dispute falls within the jurisdiction of the civil court.

Despite the JECS summary report referred to earlier, the problem of the conflict of civil and administrative law in state aid cases is addressed in a number of first and second instance decisions. The public nature of state aid and the legal status of the defendant mean that the administrative, public authority character of the aid application is predominant[37]. Until such time as a civil, contractual legal relationship is established between the parties (the issuance of a grant instrument or the conclusion of a grant contract), the public-law nature of the legal relationship is exclusive. A decision rejecting a grant application is an administrative act, which may be reviewed by means of an administrative procedure[38]. Consequently, a decision to refuse assistance from EU funds may be an administrative act, the subject of an administrative dispute[39]. The contract resulting from the grant instrument is therefore a civil law legal relation, in which the provisions of the General Administrative Procedure Code (Ákr.) do not apply as an underlying rule. The beneficiary may bring a civil action to enforce its claim for payment of the grant after an unsuccessful objection. The decision rejecting the objection[40] cannot be the subject of an administrative dispute[41]. In the event of withdrawal from a grant agreement as a civil law contract, the findings of non-compliance may be challenged before the civil courts, but in the absence of an administrative law relationship, an action for failure to act to enforce a decision may not be brought in the absence of jurisdiction[42].

As it is clear from the decision of the Curia[43]: in order to determine the dispute concerning the objection as an important legal instrument of the aid procedure, it is necessary to examine whether there is a ground for administrative dispute concerning the rejection of the applicant's objection to the refusal of the payment claim based on the grant instrument. According to the precedential decision, the subject matter of an administrative dispute, as provided for in the Kp., is the legality of an act of an administrative body governed by administrative law which seeks to change the legal situation of the legal entity concerned by it, or which has the effect of changing it, or the legality of the failure to act. Based on the definition of administrative litigation in the Kp., three conjunctive conceptual elements of administrative action can be identified. The first of these is that the activity is carried out by an administrative body, the second conceptual element presupposes

37 | Decision of a Kúria No. Kfv.35.433/2020/2.
38 | Decision of a Kúria No. Kfv.35.428/2020/6.
39 | Decision of a Kúria No. Kfv.35.452/2020/7.
40 | Decision of a Kúria No. Kfv.39.649/2020/2.
41 | Decision of a Kúria No. Kfv.35.400/2020/10.
42 | Decision of a Kúria No. Kfv.39.306/2021/2.
43 | Decision of a Kúria No. Kpkf. 35.105/2022/2.

that the activity is regulated by administrative law, while the third conceptual element presupposes that it is capable of producing legal effects, by which it is intended to change or has the effect of changing the legal situation of the legal entity concerned. By drawing up the grant instrument, the parties themselves created a bilateral civil-law relationship, whereby the grantor undertook to grant the aid and the applicant, as the beneficiary, undertook to fulfil the obligation laid down. The specific provision of the legal regulation did not grant any administrative authority competence in relation to the contractual relationship of the grant, on the contrary, it referred to the contractual relationships after the conclusion of the grant instrument as civil law contracts. In such a case, therefore, it is incorrect to refer to the public authority case governed by Section 7 (1) to (2) of the Ákr. or, in view of the embedded nature of the control procedure, to the capacity to produce legal effects. This is borne out by the fact that the Áht. draws a distinction between aid relationships under administrative law (public law) and those under civil law. Where the grant relationship is established by a grant instrument or a grant agreement, no administrative jurisdiction can be established. Act LXXXIX of 2021[44] clearly defers the resolution of disputes related to the decisions of the sponsor to civil litigation. The original legislative proposal clarified the procedural law of the establishment of a grant relationship by means of a grant instrument or a grant agreement by introducing a rule on jurisdiction in court proceedings, and that the non-formalised decision of the grantor (e.g. rejecting a grant application) taken during this period is to be decided by a civil court in civil proceedings in the dispute between the parties. The amendment also clarified, in view of the mixed legal nature of the grant relationship, that, in relation to legal declarations and procedures prior to the establishment of the grant relationship, the dispute is not subject to Act I of 2017 on the Code of Administrative Court Procedure, unlike the procedures relating to grant relationships established by administrative decisions and contracts.

4. The relationship between general and special procedural law in agricultural subsidy procedures

In addition to the above jurisdictional problem, a procedural question to be decided is whether the procedural law of agricultural subsidy law is governed solely by sectoral legislation or whether the provisions of the Ákr. can be applied as background legislation. In order to answer this question, it is necessary to examine the provisions of the Ákr. and the provisions applicable to the scope of the Aid Act in the pending court proceedings.

44 | Act LXXXIX of 2021 on the foundation of Hungary's 2022 central budget.

First of all, it should be clarified which procedural law was applicable for each programming period, taking into account the Fund as the source of the aid. For the truncated period between 2005 and 2007, the provisions of the Procedures Act[45] applied to procedures relating to agricultural subsidies, as they did for the entire period between 2007 and 2013. Between 2014 and 2020, payments from the EAGGF were subject to the provisions of the Procedures Act, while payments from the EAGF were subject to the provisions of Government Regulation No. 272/2014[46]. For the period between 2021 and 2027, the CAP Act and AM Decree No. 54/2023[47] shall apply, irrespective of the Fund as the source of the aid. Given that no precedent case law has yet been developed for the procedural law applicable in the last programming period, the problem of the application of the Ákr. as background legislation is presented in conjunction with the Aid Act.

At the time of the entry into force of the Aid Act[48], the provisions of the Ket.[49] were applicable to administrative authority proceedings covered by the Act, with certain exceptions. However, this provision was repealed by Act CCV of 2017[50] with effect from 1 January 2018. The legislator later clarified, in Act LX of 2021[51], that the agricultural and rural development and support procedure is separate from the other administrative procedures. As indicated in the Aid Act[52], the purpose of the Act was to regulate the procedures for receiving aid from community and national sources and for participating in other CAP market regulation measures, the rights and obligations of the client and of the bodies performing management and implementation tasks in a single, separate special procedural regime. The phrase "in a separate special procedural system", however, should only be interpreted in the context of Article 8 (2) and (3) of the Ákr, based on the precedent-setting decision of the Curia[53]. According to court practice, the sectoral procedure cannot therefore be a separate procedure, but only within the framework of the general procedure, i.e. the Ákr., in such a way that it cannot be deviated from in the absence of a permitting provision. The repeal of the provision on the applicability of the former Ket. as underlying legislation is therefore of no significance, nor is the fact that, according to the explanatory memorandum to Sections 20-21 of Act LX of 2021, the aid

45 | Act XVII of 2007 on certain issues of the procedure related to agricultural, agro-rural development and fisheries subsidies and other measures.
46 | Government Decree No. 272/2014 (XI. 5.) on In the 2014–2020 programming period, on the procedure for using subsidies from individual European Union funds.
47 | AM Decree No. 54/2023 (IX. 13.) on the procedure for using agricultural subsidies provided by the Common Agricultural Policy and the national budget.
48 | Subdidy Act 12. (1) paragraph.
49 | Act CXL of 2004 on the general rules of public administrative authority procedure and service.
50 | Act CCV of 2017 on the amendment of certain laws on agricultural regulation related to the Act on General Administrative Procedures and for other purposes 119. d) paragraph.
51 | Act LX of 2021 on the amendment of certain agricultural laws.
52 | Subsidy Act 1. paragraph.
53 | Decision of a Kúria No. Kfv.35.394/2022/5.

procedure is a sui generis type of procedure and the application of the Ákr. cannot arise even in a subsidiary manner.

The Ministerial Explanatory Memorandum to the Procedures Act also refers to the legislation as a modern, flexible, sui generis regime for procedures under the CAP, applicable only to the receipt of agricultural subsidies.

According to the Curia, the relationship of the Aid Act to the Ákr. had to be derived from the provisions on the scope of the Ákr. This is defined by the Ákr.[54] by negative taxation, in that the legislation on administrative authority procedures not mentioned in the list may only deviate from the provisions of this Act if this is permitted by this Act. Since the provisions of the Ákr. apply to administrative matters and the set of agricultural subsidy matters described above is a matter for the public authorities, the Ákr. continues to apply as background legislation in subsidy matters. The discrepancy between the legislator's intention and the legislative practice is thus caused by the fact that while the ministerial explanatory memorandum of Act LX of 2021 supported the need for a separate procedural system, this was not followed by the amendment of the Ákr. The Curia[55] confirmed the application of the Ákr. as the underlying legislation, pointing out that the Ákr. continues to provide the "core" of the rules applicable to all proceedings in public authority matters, which is at a high level of generalisation and the guarantee requirements it contains can only be departed from in the manner permitted by the Ákr. Consequently, according to the Curia, the principle lex specialis derogat generalis can only be applied to a limited extent in procedural matters, also as a consequence of Section 8 of the Ákr. In its decision, the Curia also referred to the fact that Section 12 (1) of the Aid Act was repealed only because it was no longer necessary to present the Ákr. in a legislative-technical manner identical to the former Ket. The possibility of the application of the Act as underlying legislation is also, according to the Curia decision cited, not precluded by the interpretation under Article XXVIII of the Fundamental Law, since the explanatory memorandum of Act LX of 2021 provides an explanation that is not in line with Section 1 of the Aid Act, and Section 1 of the Aid Act does not contain any provision that would render the system of the Ákr. inapplicable.

On the relationship between the Aid Act and the Ákr., and on the application of the general administrative procedural rules in matters not covered by the sui generis procedural rules, the Curia has also taken a position in several precedent-setting decisions. According to the established case law of the higher courts, legislation on administrative authority procedures not covered by the exception rules under Section 8 (1) of the Ákr. may only deviate from the provisions of the Ákr. if this is permitted by the Act[56]. It is also clear that, when interpreting a statu-

54 | Ákr. 8. paragraph.
55 | Decision of a Kúria No. Kfv.35.393/2022/6.
56 | Decision of a Kúria No. Kfv.35.444/2022/7.

tory provision, the part of the explanatory memorandum accompanying the draft statutory provision that is contrary to the wording of the statutory provision must be disregarded[57]. In this context, the provisions in the explanatory memorandum to the provision of the Act amending the Aid Act that "the aid procedure is a sui generis procedure, i.e. the application of the Ákr. cannot arise even on a subsidiary basis" must be disregarded, since the wording is contrary to the normative wording of the statutory provision[58]. It follows from the foregoing that the public authority procedure cannot be excluded from the scope of the Ákr. by an interpretation of the law based on the reasoning of the statutory provision[59].

Summary

In the course of my research, it became clear to me that it is not simply an error on the part of the legislator, but the diversity of the subject matter, the multifunctionality of agricultural subsidies law and the result-oriented nature of the CAP that inevitably leads to multi-level and often incomprehensibly complex procedural law. However, this should not be accepted, as it is in the interest of all those applying the law, from the national legislator to the farmer submitting an aid application, to be able to know, understand and comprehend the substantive and procedural legal system which they are called upon to apply or use.

It should have become clear from the article that in the current regulatory environment, the resolution of disputes in relation to state aid disputes and the determination of the applicable procedural law is often a problem for the courts. The same can be said when examining first instance decisions of the paying agency in subsidy cases and second instance decisions of the Minister of Agriculture, but also when analysing the work of lawyers representing the Minister of Agriculture. It follows that, in order to ensure the quality of the operation of this area of law, changes are needed in a number of areas, from higher education in agricultural law to the application of the law by the authorities and courts, from legislation to the provision of legal information on agricultural subsidies, so that this exceptionally rich and complex area of law can be applied in a way that is comprehensible to the lay citizen seeking legal advice.

57 | Decision of a Kúria No. Kfv.35.393/2022/6.
58 | Decision of a Kúria No. Kfv.37.598/2020/4., Kfv.37.598/2020/4.
59 | Decision of a Kúria No. Kfv.35.394/2022/5.

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