

MÁGÓ, BARBARA

The citizenship procedure as a special public administration procedure¹

Introductory thoughts

Citizenship-related administrative procedures can be considered special in several respects, with procedural specialties ranging from the submission of applications to decision-making and even the system of appeals. Due to these specific characteristics, citizenship administration cannot be considered part of general public administration and therefore cannot be subject to its general procedural rules. The aim of this study is to present these unusual attributes, which seem to confirm that citizenship administration is a specialised administration with its own specific procedural law.

Foreword: Administrative citizenship matters

Before describing the specificities, it is necessary to state that citizenship proceedings are an umbrella concept that covers a wide range of acquisition, loss and declaratory rights. Although there are many similarities between the procedures under various titles, they are not identical. Different rules of detail apply to the certification of nationality by descent, naturalisation or re-naturalisation procedures and acquisition by declaration, and the procedural mechanisms for the acquisition of citizenship by application and forfeiture of rights on application and *ex officio* are not entirely identical. However, in the light of the foregoing, I would like to present here a general overview of the Hungarian citizenship procedure, contrasting it with other constitutional, administrative and alien law procedures.

¹ This study is the English version of the presentation delivered at the conference 'The Science and Practice of Law Enforcement' held in Pécs 27.06.2024.

Legal classification

When classifying citizenship cases into different fields of law,¹ the public/private law distinction alone can be a source of considerable difficulty, and it is impossible to determine their exact location without any doubt. At the beginning of modern development, the area of law at the border between the two fields of law was dominated by the private law aspects, with regulations forming part of the civil codes, following the French model.² In the second half of the 19th century, however, a public law approach came to the fore, with the newly emerging autonomous citizenship norms emphasizing the legal relationship between the state and the individual. The Hungarian approach traditionally placed citizenship in the sphere of public law, thus emphasizing the importance of belonging to a nation.³ However, despite the predominance of public law, the institution of citizenship still contains elements of private law, which are mainly related to the broadly understood family law (marriage, naming, inheritance).

Accepting the public law focus brings us to another milestone to be examined, since delimiting the public law subfield is as difficult as choosing between the main branches of law. The citizenship procedure is both a matter of constitutional law or, in other words, of constitutional law and administrative law. Authors who consider it to be more of a constitutional nature tend to focus on the decisions taken in citizenship cases, while those in favour of the administrative nature concentrate on the public nature of the pathway to decision making. However, administrative law can also be defined as a set of legal rules that regulate the legal relations between the state and the individual within a constitutional framework.⁴ By analogy

¹ A field of law is understood as a set of laws governing similar legal relationships in similar ways.

²Kisteleki, K. (2024): Állampolgárság. In: Internetes Jogtudományi Enciklopédia. HUNREN Társadalomtudományi Kutatóközpont Jogtudományi Intézet, ORAC Kiadó Kft., Budapest, 1-24

³ Kisteleki, K.: Ibid.

⁴ Madarász, T. (1989): A magyar államigazgatási jog alapjai [The foundations of Hungarian administrative law]. Tankönyvkiadó, Budapest, 173–176

with the former definition, it can be concluded that the coexistence of the two branches of public law within citizenship law is not excluded, but merely reflects a hierarchical relationship. The practical implementation of this concept could be achieved by enshrining the main principle of citizenship (the principle of consanguinity) in fundamental law and defining the detailed rules in a cardinal law.⁵

Constitutional procedure?

In the context of classifying citizenship cases exclusively as constitutional procedures, the question may arise as to which procedural rules apply in the course of the administration of the case. Unlike other branches of law, constitutional law does not have a conceptualised procedural law, and it does not apply a dual approach.⁶ Constitutional procedural law means (at most) the method of investigating a so-called constitutional complaint. The enforcement of the highest substantive standards, on the other hand, cannot be ignored in the application of the law, and it is the primary duty of the authority in charge to enforce them. Case law offers two ways of resolving this anomaly: either the constitutional law itself contains procedural rules or it refers them to other, lower-level legislation. As explained above, under current Hungarian law, the detailed rules on citizenship are contained in a law adopted by a qualified majority and are not provided for in the Fundamental Law. The types of citizenship cases are therefore indirectly constitutional procedures, the principles laid down in the Constitution merely serving as a yardstick for other procedural rules.⁷

⁵ The Fundamental Law of Hungary, Art. G) section (1) and (4): “The child of a Hungarian citizen shall be a Hungarian citizen by birth. A cardinal Act may specify other instances of the origin or acquisition of Hungarian citizenship.”

⁶ Chronowski, N. – Petrétci, J. (2016): Alkotmányi eljárásjog, alkotmányjogi eljárások, eljárási alkotmányosság [Constitutional procedural law, constitutional procedures, procedural constitutionality]. Iustum-Aequum-Salutare, 63-84

⁷ Chronovszki, N. – Petrétci, J.: Ibid. 63-84

Administrative procedure?

According to the jurisprudential concept of administrative procedures, the ..administrative procedure is a way of enforcing substantive administrative law, which involves the order in which specific administrative acts are issued.⁸ The current text of the rules is contained in the Ákr.⁹ However, citizenship procedures are so-called exempted procedures, so in these cases the general public administrative rules cannot be used as background legislation, either.

The separate procedural method is not new in the context of citizenship procedures; the first¹⁰ and second¹¹ citizenship acts already contained procedural provisions. An interesting feature of the first general administrative procedural law¹² is that, although it was negotiated at the same time as the third citizenship law,¹³ it did not include citizenship procedures among the excluded procedures.¹⁴ It was included as part of the legislative process following the change of regime¹⁵ and its distinct status has been maintained by the Ket.¹⁶ and Ákr.¹⁷ However, since the entry into force of the Ket., the procedure for the issuance of citizenship certificates is still a general administrative procedure as an exception to the exception. In cases falling

⁸ Árva, Zs. – Balázs, I. – Barta, A. – Pribula, L. – Veszprémi, B. (2023): *Közigazgatási eljárások* [Administrative procedures]. Debreceni Egyetem Állam- és Jogtudományi Kar, Debrecen, 42

⁹ Act CL of 2016 on the general public administrative procedure.

¹⁰ Act L of 1987 on the acquisition and loss of Hungarian citizenship.

¹¹ Act LX of 1948 on the Hungarian citizenship.

¹² Act IV of 1957 on the general rules of public administrative procedure.

¹³ Act V of 1957 on citizenship

¹⁴ Boros, A. – Patyi, A. (eds) (2020): *A hazai közigazgatási (nem hatósági) eljárások alapvető jellemzői a hatékonyság tükrében* [Basic characteristics of domestic administrative (non-administrative) procedures in terms of efficiency]. Ludovika Egyetemi Kiadó, Budapest, 63

¹⁵ The law currently in force: Act LV of 1993 on the Hungarian citizenship: Art. 24. sec. (2) and Act I of 1981, Art. 3. sec. (7)

¹⁶ Act CXL of 2004 on the general rules of public administrative procedures and services

¹⁷ Act CL of 2016 on the general public administrative procedure

under the scope of the excluded procedures, the legislator may lay down fully separate procedural rules.¹⁸

From the outset, the citizenship norms have shown a regulatory dichotomy, with each norm being accompanied by some kind of implementing provision.¹⁹ However, the dichotomy between the law and the implementing regulation does not imply a substantive and formal legal division, with the derivative regulations merely containing detailed rules on the exclusive legislative subject matter. In conclusion, both the Act and the implementing regulation contain substantive and procedural provisions, although the procedural predominance of the implementing regulation is considerable.

However, in spite of the exceptional procedure, general administrative procedural features are still present in many areas of citizenship procedures. Similarities can be found in relation to the submission of applications, suspension and termination of proceedings, the obligation to clarify the facts, the calculation of the time limit for the submission of applications, the involvement of the competent authorities and judicial review. The treatment of the citizenship certificate as an official certificate has been recognised by the legislator itself. It should be noted here that the naturalisation certificate can ultimately be considered as a simplified decision.

Marked procedural specificities are most evident in the exercise of decision-making power. Applications for naturalisation are decided by the President of the Republic on the basis of a proposal and countersignature by the competent minister.²⁰ The decision of the President of the Republic is not subject to a time limit, is discretionary (no reasons are given) and cannot be appealed. The applicant does not acquire Hungarian citizenship on the day of the issuance of the naturalisation certificate (decision), but at the time of taking the oath of citizenship,²¹ after which he/she may exercise

¹⁸ Hajas, B. (2016): Általános közigazgatási rendtartás – Ket. kontra Ákr [General administrative procedure - Ket. v Ákr]. Új Magyar Közigazgatás 2016/4, 19

¹⁹ Decree 584/1880. of the Minister of Interior, Decree 600/1949. (I. 23.) of the Minister of Interior, Decree-law 55. of 1955., Gov. Decree 125/1993 (IX. 22)

²⁰ Act LV of 1993 on the Hungarian citizenship (hereafter: Ápt.) Art. 6. section (1)

²¹ Ápt. Art. 7. sec. (1)

the rights and obligations attached to citizenship. Another difference is the personal procedural obligation and the exclusive use of the Hungarian language,²² authorised representative and interpreter can only be used in a very limited number of cases. The possibility of appeal is also limited, as the client can only submit a new application after the naturalisation application has been rejected.

A further particularity of this area of law is that the application of the law must take into account not only the existing body of law, but also all legislation that has ever affected the institution of Hungarian citizenship.²³ As a result of the prohibition of retroactivity, the substantive law in force at the time of the event giving rise to the right applies.²⁴

Specialised administration of foreign law?

Alien law is the set of legal rules whose subject does not have Hungarian citizenship.²⁵ As a general rule, aliens administration covers three broad areas: asylum administration, aliens policing and citizenship administration.

However, as stated above, contrary to popular belief, citizenship administration covers not only naturalisation but also a number of other types of procedures. The forms of acquisition of citizenship (naturalisation, re-naturalisation, declaration) meet the above requirement of alienage, since the applicant does not have Hungarian citizenship at the time of application.

Yet, in the case of citizenship loss titles, the person wishing to renounce his/her citizenship or the client subject to the revocation procedure is a

²² Applications for a citizenship certificate are an exception.

²³ Lőrincz, A. – Parragi, M. (2013): Állampolgársági jog és jogalkalmazás. Egyetemi jegyzet [Citizenship law and law enforcement. University note]. Nemzeti Közszerkesztési Egyetem Rendészettudományi Kar, Budapest, 31

²⁴ Ápt. Art. 1 sec. (4): “The Act is not retroactive. Hungarian nationality is governed by the law in force at the time when the facts or events affecting nationality occurred.”

²⁵ Hautzinger, Z. (2014): A magyar idegenjog rendszere és az idegenjogi (szak)-igazgatás [The Hungarian alien law system and the (specialised) administration of alien law]. Pro Publico Bono – Magyar Közigazgatás 2014/2, 71

Hungarian citizen. In the case of applications for the establishment of citizenship and for the issue of citizenship certificates, the ratio of persons with Hungarian citizenship is also high, and the majority of them have acquired their citizenship by descent at birth. Thus, as far as the acquisition titles are concerned, it can be clearly established that they are part of the specialised aliens administration, but the forfeiture and establishment titles cannot necessarily be considered as classical aliens proceedings.

Notwithstanding the foregoing, it is also worth looking at loss titles from a different perspective, since it is well known that successful completion of renunciation and withdrawal results in a foreign status. As a consequence of becoming an alien, the subject of the proceedings becomes a foreign client and thus also a subject of alien law. Since the definition of alienage does not make it clear at which stage of the proceedings the client must be an alien, I consider that these claims may be part of alienage, if interpreted not narrowly, then broadly.²⁶

The majority of clients in proceedings for the establishment of Hungarian nationality are latent, hidden citizens. Although they cannot prove their citizenship by any credible document at the time of the application, their citizenship still exists at that time. The procedure of issuing a certificate of citizenship as proof of Hungarian citizenship is therefore not part of the specialised administration of aliens' rights in a narrow and broad sense. It is an interesting parallel that it is precisely this procedure which, although based on a different reasoning, applies the exception to the citizenship procedures exempted from the Ket.

The domestic registration procedures closely linked to naturalisation, as well as the transfer of any name changes in the registers, are also not part of alienage, as these procedures can only take place after the oath or vow has been taken.

²⁶ For more on the concept of alien law interpreted broadly and narrowly, see: Hautzinger, Z. (2014): *Idegenjog kontra idegenrendészet* [Alien law versus aliens policing] In: Gaál, Gy. – Hautzinger, Z. (eds.): *Rendészettudományi gondolatok. Írások a Magyar Rendészettudományi Társaság megalapításának egy évtizedes jubileuma alkalmából*. Budapest, MRTT, 113-120

Conclusion: sui generis procedure?

Citizenship procedures are complex in nature. Most of the preparatory work, both in terms of its nature and the body responsible for it, can be classified as administrative procedures. The decision-making mechanism, however, follows a very different set of rules and is often regarded as a constitutional procedure, given that it belongs to the powers of the President of the Republic. In support of this, it should be noted that in most higher education institutions citizenship issues are taught as part of the constitutional law discipline. Nor is there any doubt about the alien law link between citizenship law and the asylum and immigration procedures. In times of mass migration, there has been a legislative tendency to treat aliens procedures separately, so that the Ákr. has included the two related areas mentioned above in the group of excluded procedures, in addition to the citizenship procedure. With this objective in mind, it is now less conceivable that citizenship procedures, despite their many administrative features, should be placed in the domain of subsidiary legislation.²⁷

The issue of citizenship is also linked to other areas of public and private law: international law, EU law,²⁸ criminal law, family law, inheritance law and labour law.

A review of the procedural similarities and differences, as well as of the related areas of law and regulatory trends, leads to the final conclusion that citizenship procedures, as a special administrative procedure, constitute a sui generis procedure with its own specific characteristics.

²⁷ Boros, A. – Patyi, A. (eds): Ibid. 68

²⁸ For more on EU citizenship, see: Ganczer, M. (2022):. Az uniós polgárság természete, összetétele az állampolgársággal [The nature of EU citizenship and its comparison with citizenship] In Ganczer, M. – Knapp, L. (eds): Az uniós polgárság elmélete és gyakorlata. Gondolat Kiadó, Budapest