PROCEDURAL RULES IN THE CODE OF PROFESSIONAL ETHICS

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Abstract

In this paper, I examine the current rules of the Code of Professional Ethics of the Hungarian Government Officials' Corps., especially its procedural rules. The first part of the Code sets out ethical principles in the form of mandatory rules of conduct for Hungarian government officials. From a different approach, with some simplification, it can be stated that the intentional or negligent violation of the established principles of professional ethics gives rise to an ethical offense. In view of the mandatory nature of the substantive rules of public service ethics and the absence of a grey zone, the ethical procedure[2] may be regarded as an irregularity procedure, the purpose of which is to reach a final decision on the question whether the person subject to the proceedings or a third person has committed an ethical offense and, if so, a warning or a reprimand can be the sanction imposed by the Ethical Council in relation to the Code during a procedure conducted with the exclusion of the public. My aim is not to examine whether it is appropriate for the Code to include both substantive and procedural rules, because such a uniform structure[3] was an accepted codification solution in the case of codes of ethics for other professions, and I do not undertake to compare the Code with the codes of ethics of other professions, just as I do not mention law historical issues related to my topic. However, my career in the civil service for more than one and a half decades and my participation as a whistleblower in an ethical procedure underpin my personal involvement, as a result of which I would like to draw the profession's attention to the fact that ethical councils fulfilling the role of "honor court" are subject to the conduct of ethical procedures under the Code, the procedural rules of which may seriously violate the rights of the applicant (and, where appropriate, the person subject to the proceedings) to a fair trial, even in the case of individual procedures conducted with the greatest benevolence and equity. Consequently, I intend to give guidance to persons and organizations who come into contact with public service ethics in any form, so that they can formulate the aspects of the reform of the Code on the basis of scientific arguments, if necessary, bringing it into line with the social expectations of the 21st century, without waiting for any changes in actual political requirements. The ethical rules are eternal, but the ethical procedure must be ensured at the regulatory level and at the level of practical implementation that whistleblowers can boldly act in this forum in the event of an infringement, because the possibilities offered by the Hungarian labour law, as I shall explain in my study, may not be applied directly in all cases.

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[2] The material of the ethical procedure, which appears in the form of an irregularity procedure, is somewhat related to the nature of criminal proceedings and infringement proceedings, whereas the substantive law of public service ethics, on the other hand, is similar in nature to labour law (public service law).

[3] Here I would like to highlight the Code of Ethics of the Hungarian Law Enforcement Corps., which is in its title: "Policy Code and Code of Ethics."

Introductory thoughts

If we look through the Code of Professional Ethics of the Hungarian Government Officials' Corps. (hereinafter referred to as: The Code) and the Code of Ethics of the Hungarian Law Enforcement Corps., they both immediately show that the legislator's interest in the creation of these rulebooks was primarily to ensure the integrity of the organization as fully as possible, to emphasize the national security requirement of inviolability, and to minimize the risk of corruption. This can be stated regarding the fact that the detailed rules of professional ethics exhaustively set out in Part III of the Code, the violation of which (just as a violation of the principles) is an ethical offense, explicitly contain such problems on five entire pages. The detailed rules of "we do not accept gifts" and "responsible use of official and public resources" are particularly extensive, although these rules are certainly at least duplicated for government officials, and it is sufficient to think only of the protocol, management and various security regulations of the body that employs them. Accepting the above mentioned statement, it can be seen that the rules of conduct related to work in the workplace are somewhat neglected, even though the forum, style and unwritten rules of communication with colleagues and managers have completely changed in the era of digitalization, which has been further complicated by the 'home office work' that was previously[4] used only in the private sector and in the magistrates' public sector as a result of the COVID-19 coronavirus pandemic. There are a number of questions about this line of thought: What does ethics mean in the public sector, how can its essence be summarized? Are soft-law rules linked to work and corporate/organizational culture justified in codes of ethics compared to anti-corruption rules, which are already fully regulated at the level of criminal law? Does a proper ethical procedure in the public sector in the present form provide a legal protection to the applicant in principle? Does the principle of equality of arms apply? Ethical problems related to the activities or omissions of an employee of a public body, or, in the worse case, of some level of manager of a state body, may be detected by a citizen who has (even) been in direct contact with that person/body. You can make your announcement, if it is obviously not unfounded, it will be investigated, but you will probably not know how the procedure will be closed from official sources. This is because, according to Section V/18.4 of the Code: 'The present Chamber shall inform the applicant of the fact that the proceedings have been closed by decision'. It follows categorically from that declaratory sentence that the applicant must be informed of the fact of the closure, but it also comes from this that the ethics advice adopted is not, a contrario, required to inform the applicant of the manner in which the ethical procedure is concluded. If the notification triggering the initiation of an ethical procedure is regarded as a kind of public-interest notification, which is not in the legal sense, the existence of the above rules cannot be regarded as undermining the fairness of the procedure if the whistleblower does not have an explicit legal interest in prosecuting the person subject to the proceedings. At the same time, this raises another question: What if the subject matter of the ethical procedure is, in concreto, the investigation of ethical misconduct between employees, managers, or one or more colleagues and one or more managers? Can it be considered a purely private interest if the applicant initiates an ethical procedure in relation to a case involving a well-founded suspicion of an ethical offense? Is it correct for the applicant not to be aware of the content of the decision to finalize the case in relation to ethical cases involving such personal prejudices? Is it permissible for the applicant not even to be aware of the merits of the decision in such a case? It cannot be overlooked that, for each ethical procedure, it is within the discretion of the Ethical Council to decide whether to initiate of its own motion other (ethical, disciplinary, infringing, criminal, etc.) proceedings – even in connection with the processing of a case initiated on request – and whether, as a result of the possible withdrawal of the applicant, the procedure already initiated will be continued ex officio. In my view, the above questions are currently awaiting a solution and, as in all cases, several regulatory solutions can be outlined here. In the detailed description, instead of the solution, I try to identify the most pressing problems and shortcomings and to outline the clues that can identify the paths that can

[4] The term I use refers to the faculty of judges and prosecutors, which in some countries (e.g. France) are magistrates (in free translation: they form a layer of senior officials.

be followed in the design of the solution.

Reflections on the scientific basis of professional ethics

There are ethical rules of general application, which are equally binding on all people, although they can only be enforced at the level of law if they are expressly found in a valid, effective and applicable law, and there are systems of technical rules which, by their very nature, have more specific content than the above, and apply to members of a community of people defined by a group-forming criterion. This includes vocational ethics[5], in connection with which Professor Nándor BIRHER, canon law professor, formulated the following ideas in his scientific article, co-quoted with Professor Olivér Homicskó, co-signed with Professor Árpád Olivér HOMICSKÓ, from the period before the entry into force of the current Labour Code in 2011[6]: work is a value-creating activity that is one of the places in man's unfolding, in which the employer and the employee can only serve the cause of work together. He explained that 'professional ethical principles include ethical standards which workers in employment-oriented legal relationships must apply in practice in their daily work activities'[7]. In the style of the phrase 'workers working in employment-oriented relationships', which at first sight appears too pettifogging, it is an extratext in the wording of a sentence such as the above, which introduces any general definition. In the present case, however, it can in any event be considered justified for the simple reason that, in the current Hungarian labour law system, a number of employment regimes co-exist in parallel, from which it would be unreasonable to mention either the public service relationship or the employment relationship as an example. It is a different question whether all occupations can be raised to the level of vocation, whether the vocational ethics and the principles of vocation are too euphemistic, but there can be no doubt that vocational ethics is an "applied morality", as it was stated by the above source. In this regard, BIRHER refers to the definition of Metapedia in his above-mentioned study, namely that vocational ethics is "a set of moral principles which individuals working on different career paths are bound to follow while fulfilling their vocation."[8] In his joint study with her husband Zoltán SŐRE on the ethics of their own vocation, Eszter SŐRÉNÉ, in the introduction of her thoughts on ethical implementation and the code of conduct of executives in connection with it, highlights - almost provocatively - that the social belief is that "ethical implementation and ethical execution are highly likely not conceivable or incompatible in the minds of the majority of people – not only Hungarian citizens"[9]. Yet the author concludes that there are ethical executions and there are ethical bailiffs. The press-recognized criminal case of the president and associates of the Bailiffs' Service makes the emphasis on the importance of the above-mentioned consequence particularly relevant. No other conclusion can be reached, because although 12 years have elapsed from the entry into force of Act LIII of 1994 on judicial enforcement, as SŐRÉNÉ underlines in its conference scientific paper, the Ethical Regulations of the Hungarian Bailiffs' Service were established in 2016. With the existence of a code of conduct for bailiffs, the starting point is that the bailiff (including the bailiff-candidate) acts ethically, this obligation, because the breach of the ethical standards applicable to him constitutes a direct disciplinary offense within the meaning of Article 2(2) of the Code, which may, by analogy, result in disciplinary proceeding[10]. Here I would like to point out what Szabolcs GERENCSÉR put forward in a study published in 2012 in the context of the

[5] The "public service professional ethics" relevant to the study can be found on the official website of the National University of Public Service, and therefore the authentic Online Lexikon for Public Service is defined as: 'designates the rules of moral conduct prevailing in the field of public service career'.
[6] MT. — Act I of 2012 on the Labour Code entered into force on 1 July 2012.
Ktv. — Act CXCIX of 2011 on civil servants entered into force on 1 March 2012.
[7] Nándor BIRHER – Árpád Olivér HOMICSKÓ: From the honour of work to the process of exchange through the medium to the code of professional morality: The legal theory of the phenomenon of work in history. In Legal Theory Review, (2011) 12(4), p. 24.
[8] see BIRHER – HOMICSKÓ, same place.
[9] Eszter SORENE BATKA– Zoltán SORE: Ethical implementation. In XX. Conference of Doctoral Students of Law, Budapest, Károli Gáspár University of the Reformed Church, 2021, p. 92.
[10] A specific provision is cited in Paragraph 2(2) from the point of view of the fact that a breach of certain ethical rules is directly classified as a disciplinary offence. In the case of professional members of government officials and law enforcement bodies, unlike the members of the executive order, the ethical and disciplinary offences, as well as related ethical and disciplinary proceedings, are separate from each other due to the material and procedural nature of the proceedings.

constitutional foundations of public service ethics. On the one hand, he stated that "a constitution contains values first and foremost," then, referring to Ádám ANTAL, he emphasized, referring to the constitutions of European states, that all of them can be inferred from them as "ethical principles and requirements" which include Roman law, natural law and the law of human and civil rights rooted in their document[11]. With all these examples, we can find without concern: the codes of Professional Ethics have scientific raison d'être. The framework of these regulations is defined by the existence, organization and operation of a public body of members of the profession (even on the basis of compulsory membership), even if the background of the ethical regulations in some cases is laid down by statutory regulations and, in addition, by the approval of the minister responsible for supervising the given profession (e.g.: government officials, bailiffs). Given that, as stated above, the scientific basis of codes of professional ethics can be justified, it can be assumed that they must be consistent with the current state of science regarding their content. Of course, in the case of a code amendment, it is also conceivable that from the projected context of the old text covered by the amendment and the new texts that has replaced it, the political motivations that have previously triggered the codification impulse and the governmental concepts in which the regulation took place will be clearly identified. However, I firmly believe that it is fortunate that the maintenance of codes of professional conduct concerning the public sector is carried out primarily or optimally on the basis of purely public administration-professional considerations.

Specific procedural rules for the public service ethical procedure

Chapter V of the Code contains the rules of the ethical procedure, which, in terms of its scope, accounts for about half of the Code. Section V/1 defines the concept of ethical offense, according to which "ethical offense is an act of government officials in breach of vocational principles or rules of professional ethics which is contrary to the ethical rules of the "Kit" Act, the Code and the provisions of the Statutes". A specific solution is that the systematic place of the sanctionable ethical infringing act, the 'ethical offense', can already be found here in the procedural part; the conceptual definition provides for a transition between the substantive and procedural parts of the code, although such divisions have not been explicitly carried out so far. Reference was made to Kit., which is Act CXXV of 2018 on Government Administration (hereinafter referred to as: Kit.) However, there is no rigid reference. Nevertheless, it is clear from the Kit. that the relevant chapters in this regard are as follows: Chapter X: 'General requirements and principles of conduct', Chapter XII: "The Hungarian Government Officials' Corps.". The former contains the "legal" ethical rules which, in addition to the ethical principles set out in the Code, may be taken into account when assessing the ethical offense: the principle of good faith and fairness (Paragraph 63), the prohibition of abuse of rights (Paragraph 64), the principle of professionalism (Article 65), the principle of effectiveness (Section 66), the protection of personality rights (Article 67). The reference to the Statutes is not justified at present, because it contains only the provisions of the Government Officials' Corps. with organizational and operational content, including the election rules, but there are no normative provisions with an ethical characteristic, the violation of which could result in an ethical offense. It should be noted that the Statute-type documents do not contain any moral or ethical rules for any other organization. Paragraph V/1.3 states generally the levels of ethical responsibility based on fault, which presupposes the intentional or negligent conduct of the government official (which, in my view, may also be manifested in the general sense of action and omission). In this context, it would be worth examining pro futuro whether there are ethical principles or detailed rules, the violation of which can only be done intentionally, because if they can be identified, the above code point needs to be differentiated. In this case, the degree of fault, like in the Criminal Code[12],

[11] Balázs Szabolcs GERENCSÉR: New challenges of public service ethics. On Good Governance, Theory and Challenges, (ed.: Szabolcs SZIGETI – János FRIVALDSZKY), JTMR Faludi Ferenc Academy Jesuit Europe Office – OCIPE Hungary, L'Harmattan Publishing House, Budapest, 2012, pp. 303-304.

[12] It's the penitentiary. Section 4(1) gives the current definition of a criminal offense in the legal sense as follows: 'A criminal offense shall be an act committed intentionally or negligently, if this Act also criminalizes negligent conduct, which is dangerous to society and to which this

should be based on intentionality, and in comparison, negligent conduct – and where the Code also criminalizes negligent conduct – should be reworded by applying the wording "and where the Code also criminalizes negligent conduct". Coherence, if it were to be conceived as a goal, could be realized. The current legislation would also allow intentionality and negligence, as a degree of guilt in an ethical offense, to be explicitly assessed in a decision imposing an ethical penalty, even though wise ethical advice can assess intentionality and negligence in the 'all circumstances of the case' (even the possibility of proper application of the two types of punishment – warning, reprimand). Why should it be ensured that ethical procedures are conducted in the fairest way possible by acting ethical councils, beyond the fact that common sense dictates this? The answer to this question is clearly given in the Code and point V/2.1 contains a direct declaration: 'Ethical procedures must be conducted lawfully and fairly, taking into account efficiency, good faith and the principle of trust.' The provision in point V/2.2 makes it immediately clear to lawyers that the millennia-old principle of criminal law has been incorporated here: 'V/2.2. The presumption of innocence must be enforced in the ethical procedure and the right to good repute of all government officials must be protected.' The inclusion of the presumption of innocence in the Code clearly confirms my previous finding, namely that the ethical procedure is an irregularity procedure. Summa summarum: the implementation of the principle of integrity in relation to public service ethical procedures follows from the normative provision of the Code cited above. In my view, this requires at least two basic conditions to be met: let's face it, if the detailed rules governing the conduct of the ethical procedure do not allow for a fair trial, then it is up to the chairman and the members of the board to decide whether or not the procedure for assessing a specific individual ethical case is conducted fairly or not. Thus, in logical order, the first condition (a precondition) is the fairness of the procedural rules and the second condition is the fairness of the conduct of the proceedings. In this place, I would draw a parallel with Ágnes CZINE's statement in his monograph published in 2020, in which he considers the previous practice of the Constitutional Court to be followed, according to which, in general terms, "the fairness of a procedure can always be judged on a case-by-case basis, taking into account the circumstances of the specific case". It points out that, although individual Constitutional Court rulings define the criteria required for a fair trial on a case-by-case basis, a number of requirements that must be met by a procedure (of a non-specific type) can be identified in order to be able to classify it as fair.[13] Point V/2.3 states that 'members of ethical councils shall be independent in their activities'. The extent to which this is achieved in practice also depends on whether the rules on conflicts of interest are complied with in the course of the composition of the members of each council, but in my view it is best to think whether the members of the acting Ethical Board may be disadvantaged due to their activities in the ethical procedure and the decision (vote) taken there. A parallel can be drawn with the provision of labour law guaranteeing the independence of trade union officials, the essence of which is that a trade union official (typically the president, the secretary-general) who, in the course of carrying out his or her duties, is necessarily in conflict with his employer, cannot be removed from his legal relationship based exclusively on his trade union activity or decision. In the absence of detailed regulations, the declaration of independence in the Code can only be enforced with correct application of the law, because it will not be independent – even if limited to its activity – because it is stated by a norm. In the absence of guarantees of independence, all this is an empty declaration. The provisions on competence, personal and territorial scope laid down in point V/3.3 do not require detailed explanations; similarly to the public administration organized along the counties, at first instance the regional (i.e. counties) ethical committee (hereinafter referred to as: TEB), at second instance, the National Ethical Committee (hereinafter referred to as: OEB) will act on ethical matters, i.e. in each county, it must be able to set up the TEB, even if a small number of ethical procedures are launched annually in the smallest counties. Only exclusion on grounds of conflict of interest, merger of cases or the case of a government official who has moved to another county is an

law imposes a penalty.'

[13] Ágnes CZINE: The Fair Court Procedure – Audiatur et altera pars, HVG-ORAC, Budapest, 2020, p. 42 (the author refers to dozens of decisions of the Constitutional Court and the grounds for certain decisions in connection with the determination of the applicable requirements).

exception to this rule in proceedings at first instance. The jurisdiction defined by the prosecuted government official follows the principle of "actor sequitur forum rei", which can be traced back to Roman law, which is also applicable in the Hungarian Code of Civil and Administrative Procedure and also applies in criminal proceedings. Since the plaintiff may sue the defendant's competent court[14], it is not the applicant's place of residence which determines in which county the jurisdiction of the defendant may be sued, but jurisdiction is determined according to the place of residence of the civil servant subject to the proceedings. Given the number of ethical councils of three members, it is similar to the chambers of the first instance of classical labour lawsuits, just as in such a labour lawsuit the two judges may jointly vote the President of the Chamber (who is a professional judge), so the TEB also takes a majority decision, which also means that the President may remain in a minority position with his only vote. And if we compare the ethical procedure to the first instance civil service litigation (labour lawsuit) of government officials, it can be seen that a fair decision is to be judged by the single judge in these proceedings, compared to a three-member ethical council (typically composed of legally executed members and presidents) which can better guarantee the "more eyes see more" folk wisdom. The mathematical probability of a "justizmord" occurring in the case of decisions taken by a three-member council is lower than due to individual decisions. In relation to the substantive cases of grounds for exclusion of liability (point V/4), some parallels can be found between Hungarian criminal proceedings, infringement proceedings and ethical procedures, but I consider it necessary to mention the case of the presiding officer's order – which is not clearly regulated – to which I call on the analogy of military criminal law (the presiding order). Among the grounds for non-criminalization, the Criminal Code. Section 130(1) provides for the exclusion of liability according to which: 'A soldier shall not be punished for the act carried out on the order, unless he knew that he was committing a criminal offense by executing the order.' This is accompanied by the auxiliary rule that: 'The commissioner is also responsible for the offense committed on the order if the soldier knew that he was committing a crime or was otherwise liable as the indirect perpetrator of the order.' As a result of the hierarchical conditions prevailing in the administration, the government official may be unlawful and, in extreme cases, receive instructions from his leader which, in substance, are similar to those of the military superior. In such cases, it is necessary to act in the manner prescribed by the substantive rules governing the employment relationship, and no one may be instructed to commit a criminal offense by following an instruction[15]. In a particular way, the current material criminal law literature sees it as a case of error at the order of the magistrate discussed separately in the law, as a reason for excluding liability. In this connection, it observes that the dogmatic classification of this obstacle to to criminal liability, which is relevant only in military life, is disputed, but that the placement among the grounds for non-culpability can be justified on the ground that 'a soldier who executes a criminal order is essentially mistaken: he is not aware that he is committing a criminal offense by executing the order.[16] It is clear that in a fairly conducted ethical procedure, it is necessary to examine, if the case arises, whether, as regards ethical rules, the government official subject to the procedure may have been mistaken. However, the level of expect ability associated with the recognition of crimes and acts of ethical misconduct is different for the same person, and therefore error cannot be judged in the same way. The assessment of whether a workplace manager's instruction constituting the implementation of an ethical offense should be a place in the Code can be determined only on the basis of practical experience. In my view, the introduction of the Code would, in any event, strain the structure of the Code, the current version of which regulates "official living conditions" too general to reduce one of the grounds for excluding liability to the relationship between a manager and a subordinate in the workplace. In favour of reduction, there is a need to write clearer ethical responsibilities, but in this case, I would consider the differentiated codification of the will-bending or breaking-out nature of the compulsion or threat of ethical responsibility, which is a

[14] English translation of the Latin quote based on the dictionary published on the DictZone website.
[15] Undercover investigators (built agents) who are in a professional law enforcement relationship may be a very close exception, but they are not usually held accountable for the execution of such crimes.
[16] Ilona GÖRGÉNYI - József GULA – Tibor HORVÁTH – Judit JACSÓ – Miklós LÉVAY – Ferenc SÁNTHA – Erika VÁRADY: Hungarian Criminal Law General, Wolters Kluwer Hungary, Budapest, 2019, p. 211.

delimitation criterion with a long past in classical criminal dogmatics (vis absoluta, vis compulsiva). This would not be exaggerated if the 'non-responsible state' as an exemption would apply only if the condition of actio libera in causa is linked to it. The rules on communication (point V/6) should be carefully examined in two respects: on the one hand, whether they, taken as a whole, make it possible to ensure the practical application of the principle of non-publicity of the ethical procedure (V/13.9), which is undoubtedly one of the most important principles of the public service ethical procedure, which raises most problems, and, on the other hand, whether they are also capable of guaranteeing the equality of the parties to the procedure (which the literature calls equality of arms). The current regulation lists almost every conceivable medium of communication, but the link on the Hungarian Government Officials' Corps.' website, indicating the place and the manner in which the notification was made, promotes the submission of electronic filing (e-paper). Given that the applicant may not be a government official but also a client or a third party detecting the infringement, the above solution, since no legislation imposes a general obligation on electronic administration, is objectively objectionable. Pursuant to the Code, the notification must be made to a member or chairperson of the TEB and, consequently, the rules on communication cannot be included in this circle, because the relations of the ethics council itself are regulated in point V/6. It is therefore not permissible to interpret the law that, at the time of filing the notification, the applicant is in contact with the Council of Ethics, because that body will be established only if the initiation of the procedure becomes reasonable and timely on account of the existence of a reasonable suspicion of the ethical finality contained in the notification and, in addition, if a prior examination of the conflict of interest has already been carried out. On the basis of the above detailed reasoning, the question arises as to whether it would not be appropriate for the rules of notification which are the basis for an ethical procedure not ordered ex officio to be presented in a more precise manner, even in a completely separate manner from the case of an ex officio procedure, but lege ferenda. Nor do I consider it incidental to suggest that the manner in which the notification is made (formality) should be regulated in more detail. This optional codification request may, in my view, be justified on a professional basis by the fact of the closed nature of the ethical procedure opened by the ordering of the investigation. Moreover, a closed procedure requires, or at least presupposes, that the fact that the notification was made and its content (even with reference only to the name of the notified person) should be made available exclusively to the addressee, since it seems evident that an ethical announcement which is not secret or horrible dictu directly accessible to the public no longer necessarily ensures that the procedure itself remains closed. What does it mean in practice that the ethical process is not public? Is the ethical trial closed? In addition, separate treatment of documents generated during the proceedings? Have been heard the obligation of confidentiality of the parties to the proceedings, their possible legal representatives or the witnesses or experts there? Have been closed the treatment of the decision taken in the course of the proceedings? On the basis of the four affirmative answers to the above questions, the validity of point V(6) is questionable. In the light of the above, can it be taken seriously that the communication "...in person or by electronic means other than written can it be practiced? If the possibility of personal contact has already been given, it would be reassuring to specify in detail and in detail which cases may be (e.g.: request for information, indication of an obstacle to attending a hearing), where it is possible to deviate from electronic communication because it is justified by flexibility.[17] The rules on representation, deadlines and limitation periods do not raise concerns about the fairness of the ethical procedure that deserve more serious mention. I would merely point out a contradiction, which consists of the fact that, in the case of more frequent defamation or defamation among the offenses to be prosecuted against a private motion, the victim has a subjective period of 30 days, which starts on the day after becoming aware of the crime, but there is no such subjective time limit for committing an ethical offense which also constitutes such a criminal offense,

[17] Drawing a parallel, it can be concluded that, in the context of court litigation, on the basis of presidential instructions and other internal regulators, most of the time, even in the context of the necessary administration, legal representatives and litigants cannot communicate informally with the judges. Personal communication by telephone (ad absurdum facsimile) with the handling offices or the descriptor of the judge has also become very limited. This has led to greater inflexibility, but cannot be challenged in order to ensure integrity, equality of the parties and the conduct of a fair trial.

which would thus shorten the general time limit for the enforcement of claims. The Code goes far beyond this, because it does not contain any subjective deadlines, point V/9.1 merely states that: 'It is not possible to initiate an ethical procedure if one year has elapsed since the offense was committed.' Is it possible that the victim of defamation or defamation at the workplace, even in order to avoid the difficulties and the cost of charges for otherwise private prosecution, will use the ethical procedure as an alternative solution in order to remedy the infringement of the law subsequently? It is only after a brief critical assessment of the provisions relating to the decision, the minutes and the notification of the fact that the proceedings have been closed that the answer to that question can be reassuring. A fundamental problem with decisions is the application of a uniform approach, since point V/10.1 of the Code declares with laconic simplicity that 'all decisions of the Ethics Council shall be taken in the form of a decision'. The limping nature of this rule can already be seen in point V/10.4, which, as regards the status of res judicata, highlights the category of 'decision not on the merits' of the decisions. There must also be meaningful decisions. Would it be possible to resolve the limping confusion if the Code were adapted to the "dichotome" regulatory solution consistently applied by the procedures manifested in the legislation, according to which there are decisions, which are adjudicating, and there are orders in relation to them, which are not substantive, but are procedural, that is to say, they relate to certain procedural acts of the ruling Ethical Council? If the answer to the question is in the affirmative, the use of the term 'decision not on the substance' could be omitted. Unfortunately, however, there is an even more serious problem with the application of the concept of a single decision, namely that the Ethical Council acts properly if the applicant who has been informed of the fact that the procedure has been closed is merely informed by a decision taken separately that the procedure has been closed. Indeed, it is not possible to ascertain from this, or even to infer, that the procedure was closed on the ground that one of the cases existed (that is to say, the ethical council had to act as the case may be), or that the adoption of the decision entailed a substantive conclusion involving the establishment of liability and the imposition of an ethical penalty, which, moreover, in a common sense means[18]. A number of problems related to reporting can be mentioned, among which I consider critical at regulatory level that the possibility of literal reporting is not mentioned in the Code, although this is an essential requirement in criminal proceedings. If an ethical procedure is considered to be an irregularity procedure, the right to do so should be guaranteed at least by express verbis. However, the looser nature of ethical procedures is reflected in the unrestricted feasibility of documenting the minutes of the hearings. This can be criticized in the light of the fact that the power of the president of the ethical council to conduct a hearing is very broad in determining the order of each procedural act. Nor is it specified that the applicant or the person subject to the proceedings must first be heard at the hearing, according to the practice of Budapest, this order has been applied, and there is no provision in the Code as to whether there is room for a joint hearing, or whether the applicant and the person subject to the proceedings are to be heard separately, the two may be combined if the parties have to be confronted. How can the last part of Section V/13.3 of the Code apply, according to which at the hearing the decision is to be published by the council if, according to the aforementioned rule of law, the decision on the merits of the proceedings may be communicated only to the person (and his legal representative) subject to the proceedings, and the applicant may not be informed of the fact of the closure. Keeping the above inconsistency in the regulation may render the Code and the ethical procedures regulated by it discredited, so in some cases where ethical penalties are imposed, sanctions cannot be given serious importance.

Summary

I am convinced that the function of our public service ethical legislation should not be to use the

[18] For example, if a tax inspection by a state tax authority concludes with a 'decision', we can clearly infer from this notion, which is common in common language, that there has been an infringement and that there is a penalty (e.g.: tax fine, default penalty) has been applied. Drawing a parallel with the terminology of tax audits and public service ethics procedures, we find that the word decision has different content, which can be misleading and misleading for the parties to the ethical procedure and their legal representatives.

procedure directly for the enforcement of individual rights and interests in certain cases, especially when there has been an ethically relevant infringement in the interaction between the staff of the body concerned. The ethical procedure cannot replace labour disputes, civil service lawsuits[19], nor can it replace the proceedings of the Public Service Arbitration Board. Nor can this type of procedure be made suitable for directly replacing civil proceedings where labour law enforcement can no longer be accessible. It is not directly suitable for these functions at the moment, but unfortunately it does not even facilitate it. However, de lege ferenda, the redefining of the strictly procedural provisions of the ethical procedure should be considered, in my view, in some appropriate way, so that, in some cases, we can thus ensure that a whistleblower who has previously suffered an ethical violation, who is (or more often dependent) on his or her job leaders, superiors and (most direct) colleagues, could receive at least one 'substantial extract' information on the outcome of the ethical procedure carried out on the basis of its announcement, whether the breach of the ethical offense was established, if so, what was the underlying facts, and what ethical penalty the acting ethics council applied to the offender. This would make it possible, at least indirectly, to exploit in such cases the possibility of an ethical decision being communicated in some form to the person concerned as a basis for a civil action between the perpetrator of the ethical offense and the injured party, in which it would also be possible to obtain material satisfaction (typically a penalty of harm). I think that if the above were to be ensured, a much larger number of ethical procedures would be launched – even during the period of the legal relationship. I firmly believe that only in this case would the government officials concerned have a greater interest in complying with the ethical rules laid down in the Code, because under the shadow of the possibility of an indirect (transfer) civil law enforcement, the legal institution of the ethical procedure is also considered differently. Of course, there may be a regulatory alternative for the future that would further expand the sanctions regime and have specific types of punishments such as financial consequences or apologies, public apologies. Labour law is not always a remedy for solving problems at work[20], whether of a legal or ethical nature.

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[19] The proceedings of this forum must be used in cases specified by law, where it is not possible to bring a direct labour lawsuit (civil service dispute). Of course, there may also be ethical violations among the matters involved in the proceedings of the Public Service Arbitration Board, but this forum typically deals with strict labour law issues (e.g.: illegality of acquittal).

[20] Without comment, it is enough to mention the current legislation according to which there is an employment regime in Hungary today, where "workers" falling within their personal scope cannot directly initiate labour lawsuits concerning the substantive findings of their individual performance assessment, but can only take action against the employer's measures taken on the basis of it.

Legislation, Codes of Ethics

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