

IMPORTANCE OF EXECUTION IN THE ADMINISTRATIVE PROCEDURE

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Modern social coexistence presumes the existence of norms that determine the means of conduct to be followed in different situations by its society members. Throughout the history of man, such norms increasingly take shape in the form of legislations. A basic requirement on any legislation is that it must fully fulfil the role intended for it, because if the whole or a part of any legislation should fail to be capable of fulfilling such a role, organised social coexistence itself may be exposed to dangers. Consequently, legislators must take several different aspects into consideration in the process of preparing legislations. One of such aspects is to ensure that legislations must include clear and understandable notions and terms, as law abiders can only be expected to ensure proper conduct upon such conditions. If this condition should fail to be met, it could easily lead to cases when people, without any fault, would act in an unlawful manner as a result of a disputable interpretation of a law. Nevertheless, legislators must reasonably expect that voluntary legal compliance does not always take place in every case. According to the subjectivity of man, people do not intend to follow the rules stipulated for them, especially if such rules include some kind of obligation as well. A hazard of non-compliance with the law is also increased by the fact that belonging to a society requires a person to make plenty of compromises, as no person would choose to pay the taxes, or take the interests of their neighbours and the public into account during constructing a house, if it was not compulsory. Accordingly, an individual may get to the point of not being inclined all the time to make the expected compromises in all circumstances. Regarding their intent to resolve this issue, legislators found it out rather quickly that some preventive measures needed to be built into legislations that encourage the law abiding conduct of subjects. Perhaps one of the most common mean for this purpose can be the adoption of criminal laws. However, the rules of criminal law rather have the characteristics of “ultima ratio”, and, moreover, based on the lack of grounds — if the severity of the given act does not make it reasonable — their enforcement is not possible and justified in all cases. In case a person does not mow the grass on their land or in their garden, and consequently, ragweed overspread may be witnessed, the act — or in this case, the lack of it — is not yet justified to be punished with the means of criminal law. Fortunately, it can be stated that the majority of unlawful conducts does not require the

enforcement of legal consequences belonging to criminal law; nevertheless, this imposes a rather peculiar duty on legislators. This means that preventive means need to be specified in each and every legal field, which are capable of facilitating voluntarily compliant conduct even in the light of the particularities of the given field of law. Based on their different functions, each of such different fields of law has to fill different, specific roles. Accordingly, in the cases of different legal branches, needs for preventive measures appear on different bases, and different demands result in the need of enforcing compliant conduct.¹ In the case of civil law, preventive characteristics should aim to serve the protection of harmed parties. Regarding the field of criminal law, it is the protection of the members and order of the society against criminal acts and criminals that should be most present in the sphere of prevention. Administrative law should focus on facilitating the undisturbed practise of the executive power of the government, ultimately meaning the enforcement of complying with the legislations. Accordingly, it is rather apparent that the need for prevention exists within each and every legal field, though resting on different bases.

Proceeding with the above presented train of thoughts, I am trying to present and justify through this study that execution is a mean of prevention with respect to administrative law. The Hungarian word “*végrehajtás*” has several different meanings, which is an interesting peculiarity of the Hungarian language, and this ambiguity is also true for Hungarian special legal terms, and that is why it is important that I define what I mean under the term ‘execution’. The term ‘execution’ has a rather broad scope of interpretation in Hungarian law, and it is used in a totally different context when it refers to the executive-ordering acts implemented by public administration. In such cases, the term is associated with the execution of legislations, and in this sense, it is applied — besides in legal literature — by courts, for example when they define an act or crime. The term of “*végrehajtás*” execution is used in a totally different meaning (~collection) when it means the enforcement of collecting a liability in default. The ambiguity behind the term is well reflected by the fact that special legal dictionaries often omit this term despite the fact that a number of relevant legal terms

¹ Decision No. 60/2009. (V. 28.) AB of the Hungarian Constitutional Court — “In Decision No. 3/1998 (II. 11.) AB, the Constitutional Court stated that “[a] based on properly justifiable reasons, the legislator determines the rules referring to all persons involved in transport in order that the lives and safety of all people involved in transport could be ensured. The legislator also wishes to facilitate compliance with the regulations through different — administrative, misdemeanour or offense — sanctions” (ABH [Decisions of the Hungarian Constitutional Court] 1998, 61, pp. 65–66).

When examining whether the legislator used the legal institution for purposes other than its function, it is the basic function that needs to be considered. Regarding the relations of civil law, criminal law and administrative law protections with respect to one another, it can be stated that the aim of determining the liability for risk is primarily the legal protection of the particular injured persons. Through its special and general preventive function, criminal law protects its society against criminals committing crimes hazardous to the society, whereas the primary function of administrative law is to ensure justice and accordingly, prevention as well. While civil and criminal law liabilities are responsive to consequences of acts already done, the aim of administrative law, in this case, is to prevent graver consequences — loss of life, physical injuries or material damages.

are clearly defined in them.² Legislations also use the term of execution based on different interpretations, which is presented in extensive details in the work of András Kovács.³ In the context of the preventive means of administration, I am going to use the term execution for the execution procedure and its rules. By execution procedure, I mean the procedures according to the definition of András Kovács, i.e. “The execution procedure is a type of state constraint that serves the specific enforcement of a public authority act (court judgment, authority decision) or any other legal act legally equal to the former items.”⁴

The selection of means that would facilitate compliant conduct on a specific legal field is determined both on functionality and the characteristics of the given field. Obviously, the legislator only allows intervention in private law affairs to the minimum extent required. On the other hand, such intervention is justified to be of greater extent in the field of administrative law⁵. Accordingly, in administrative law, prevention is to be ensured by means of a system of tools. Nevertheless, before commencing to present these means, I think it is important to define what is to be meant by preventive means.⁶ In my view, I find the precise definition of this term important because it allows us to decide on what basis should the legal means classified in this category and discussed herein should be selected. I believe that when we talk about the prevention of law, we consider the whole legal system in this range in a broader sense, as law itself already has a preventive characteristic and function. When a way of conduct is stipulated under a piece of legislation, the legislator intends (through such conduct) to prevent the occurrence of disputable, undesired life situations. This statement is both true for substantive and procedural law legislations, because while in substantive legislations a specific way of conduct or a life situation is specified and “evaluated” from the perspective of law, regarding procedural legislations, the state act taking place due to the given life situation will be specified. If an act requires permission according to the relevant legislations, such obligation will be determined in the substantive legislations. However, if the state is obligated to take any respective actions through any of its bodies, such acts are set out in procedural legislations. It can be said that a client is typically informed about the fact that their act requires permission through information provided by the relevant authorities. In my opinion, the authority aims to prevent a

² BÍRÓ Endre: *Jogi szakszótár* [Legal Dictionary]. Dialog Kampus, Budapest–Pécs, 2006, pp. 520–522. The author defines several terms ranging from the expiration of execution to the executive body, but not the term of execution in itself.

³ KOVÁCS András: A közigazgatási jogerő és a végrehajthatóság [The Binding Force and Execution of Administrative Decisions]. *Jogtudományi Közlöny*, 2008, pp. 437–440.

⁴ KOVÁCS: op. cit. 3, p. 438.

⁵ On the differentiation between justice and public administration, please refer to: VARGA Zs. András: *Ombudsman, ügyész, magánjogi felelősség. Alternatív közigazgatási kontroll Magyarországon*. [Ombudsman, Attorney, Private Law Liability. Alternative administrative control in Hungary] Pázmány Press, 2012, p. 15.

⁶ BÍRÓ: op. cit. 3, p. 398. According to the definition accepted by the author, prevention means forestalling, which, from a legal perspective, can be general, such as the material criminal law rules, or special, e.g. the prevention of aggression in the field of international law.

clearly non-intentional unlawful act by means of providing information, therefore the preventive characteristic is present in this case as well. Procedural rules also serve to prevent authorities from exercising their tasks in an abusive manner, or by causing harm to members of the society. Nevertheless, there are some means of law the function of which is to keep people from potential or wilful misconduct. I include means among these ones that embody the dissuasive force of law. It is a much narrower category, as it includes means in which some sort of forcing issue is present further to the general dissuasive force of law, through which the relevant subjects can be “made to comply” with the contents of the legislations. Accordingly, these means can also be considered as securities for successful and effective creation and application of law. The means considered by me as preventive ones are classified as the means of law enforcement by other experts.⁷ Nevertheless, I fully agree with this kind of statement. I call the means specified in this study preventive because the term ‘means of law enforcement’ stands for a broader category, in my view. I believe that law enforcement operates in a two-way manner, as it also includes law enforcement from the side of subjects, even in the field of administrative law. On this basis, legal remedies or different rights of clients — right of access to the files of proceedings, etc. — can be included in this category, although their preventive features in a narrower sense is not significant. Undoubtedly, if law enforcement only stands for the implementation of state will through different state bodies, the two groups are practically the same. The reasons behind it, in my opinion, is that law enforcement is the consequence of the lack of voluntary legal compliance, the means of which, beside or together with effectiveness, must involve the issue of prevention.

I believe that basically there are three legal institutions that have such preventive effects, which are control, sanction as well as the execution of a decision or act. These three legal institutions are interrelated and have strengthening effects on one another, practically forming a chain together. In this chain, the role of the first link is the legal institution of control. Regarding control, it can be stated that it is a legal institution mainly used in administrative law, as it is not applied in the field of civil law and it is not characteristic to criminal law either. For the sake of completeness, it is worth pointing out that I have made this statement based on legal relations. Accordingly, something is to be classified in the field of administrative law if an administrative body carries out controlling activities in relation to an executive ordering act. Consequently, I also include here the inspections made with respect to tax and customs control, irrespective of the fact that according to some views, they belong to the category of financial law — if such field of law exists at all — and I also include personnel and labour safety inspections as well, considered to belong to the field of labour law.

⁷ NAGY Marianna: Meddig növelhető a közigazgatási jogérvényesítés hatékonysága a szankcionálás szigorításával? [How can the effectiveness of administrative law enforcement be increased through stricter sanctions?] *Iustum, Aequum, Salutare*, 2012.

The preventive characteristic of control can be derived from its primary purpose, according to which control serves to ensure that unlawful acts should, if possible, not be hidden. If we examine the reasons for people carrying out wilful unlawful conduct, I am quite sure that the leading reason would be the hope that such act would not be found out by the authorities. Accordingly, if control works well, and it is rather unlikely that an unlawful conduct would not be revealed by the authorities, the preventive characteristic can be considered implemented. Nevertheless, it should be asked when control is supposed to work well in general. In legal literature, studies published in the subject of control typically focus on financial control. As far as I am concerned, I think that generally the same statement can be made on control, regardless of the respective type of public administration, according to which control must fulfil alarm and restraining functions.⁸ In my view, control can be implemented in an effective way if it meets three basic requirements. One of such requirements is the sureness of control. By sureness, I mean that a potentially inspectable person may have a reasonable expectation to be controlled by inspection sooner or later. I believe that the significance of sureness cannot be emphasized enough, which I wish to illustrate with the following example. In food market trading, the notion of primary producers was introduced, perhaps in the 1990s. The reason provided by the regulators was that “rural people” who wished to sell their products grown in their properties should be able to do such activities free of state burdens, which would have been justified based on the essence of market trade. For this purpose, a limit value was stipulated — as far as I know, its sum was five hundred thousand HUF at first — below which primary producers were able to do trading activities free of burdens. Practically, you only needed an identification certificate as a primary producer, which could be acquired in a rather easy way. The respective intention of the legislator could be — and still is — considered as justified. However, no party inspected in practice how such primary producer activities take place in reality. People prone to speculations soon found out about this issue, and soon a quite serious extent of black market trading evolved on the food markets throughout Hungary. According to some estimations, such black market activities added up to a total of almost (or maybe even more than) an annual turnover of 1 billion HUF on the central market of the town of Miskolc in the second half of the 1990s. The basic reason is rather evident, as any person carrying out such activities could be quite sure that no party would inspect the actual extent of their sales and whether their turnover would actually exceed the value limit stipulated in the relevant legislation. For the record, it needs mentioning that primary producers were not obligated to issue receipts on the money taken, therefore the conditions for effective inspections were totally unavailable. It can be quite certain that the intentions of the legislator were not realised at all.

⁸ NAGY Marianna: Az állami ellenőrzés kérdőjelei, szabályos és szabálytalan a közigazgatásban [Question marks in state control; regularities and irregularities in public administration]. *Pénzügyi szemle*, 2012 (57. évf.), 1. sz., p. 88.

The regularity and continuity (also meaning chronological uninterruptedness) of control, as the second requirement, has similar significance. Typically, this requirement has an increased significance in relation to the inspection of acts that take place regularly or in a continuous manner, such as participating in transport activities or practising certain activities requiring permits, for example industrial, trading or service provision activities. The continuity of control can also have similar significance, if the aim of the given activity is the achievement of a result, the production of a product, as in the case of production-type activities, or construction work activities.⁹ Unfortunately, news can often be heard about the distribution of products that are of poor quality or even hazardous to health, and such distribution takes place through multinational trade, thus allowing such products to reach a broad range of customers.¹⁰ In such cases, the harms caused in health and in materials can no longer be remedied. The solution — as shown through examples — could be ensured through prevention executed by public administration. However, this is not fully implemented, one of the reasons of which is definitely the inspections not being carried out with frequent enough regularity, which is obviously known by the offenders of such abuses. Such irregularities are usually revealed in a posterior manner, if revealed at all. The party carrying out such abuse is able to earn high profits, therefore in several cases unlawful conduct can be considered worth doing. Regarding tax issues, it frequently happens that after a tax year closed with profit, an operating business organisation suffer significant losses (in proportion to its size) within a relatively short time period, a dominant part of which is made up of public debts. Usually, this sum, or the majority of it never makes its way into the state treasury. Regular and continuous control could probably decrease the occurrence of such situations. Another example is that during a period of a serious case of influenza epidemic, my general practitioner prescribed a relatively new and intensively advertised medicine for my illness. I had never experienced any side effect with respect to any medication before; however in this case the first pill I took caused such a reaction that I was not able to use the rest of the medicine. As a number of people also took this medicine in my environment during the same period, I asked around and nearly everyone described similar effect to mine regarding this medicine. When I returned to my GP, I complained about this issue; he responded that unfortunately it was a quite common phenomenon, and he prescribed me some other medicine that I had successfully taken in previous times and which had no side effects. The manufacturer of the new medicine did provide written notification on the product regarding the side effect that I personally experienced, however, its probability was indicated to be at the level of 1% of the patients. Obviously, in this case, a much higher rate could be witnessed within my micro environment. One year later, one of my acquaintances told me about the use

⁹ KÁRPÁTI Zoltán–KOZMA György–MADARÁSZ, Gabriella–PETRIK, Ferenc: *Az építésiügy kézikönyve* [Handbook for Construction Issues]. HVG-Orac, 1998, p. 124.

¹⁰ As an example, I would just like to mention the cases of red paprika contaminated with lead or food products containing guar gum, that were well presented by public media.

of a medicine that had caused effects fact he had never experienced before and it turned out to be the same medicine I mentioned above. I do not know which party was responsible for the preliminary justification of the notification made by the manufacturer and displayed on the medicine about potentially expectable side effects, but I am rather sure that in the process of applying this medicine there was no party checking this information on an annual basis. It is rather hard to try to estimate how much damage may have been caused by this fact. I also wish to bring up another example in relation to construction industry. I heard a saying from a mason according to which the most important issue is the attractive façade, as it covers everything. Dozens of legal cases known by me have verified how true this saying was, and how it is only serendipity that the unpleasant truth can come out at times. In more fortunate cases, only material damages take place — which usually cannot be claimed in a posterior manner — however, sloppy work may also have consequences hazardous to health. The reason is quite obvious; in practice the regular, thorough, comprehensive inspection of construction procedures usually do not take place, although they are stipulated by law and would be or should be efficient.¹¹

Nevertheless, control may not effectively of work even if the above two conditions are met, unless the third requirement is also a completely fulfilled. According to this third requirement, inspections must be carried out in a way that all the necessary information on the subject of the inspection could be revealed as a result of that inspection. Quite often, the targeted people can be almost certain that they cannot avoid control and the second condition is also met, as the competent authorities carry out their controlling activities in a continuous, regular manner with respect to all elements of the controlled activity. And despite all that, control is still not efficient, if the committing of an unlawful act or the clear exclusion of such unlawful act cannot be verified through the inspection. To reduce offensive in public transportation, the legislator introduced the institution of so-called objective liability in the legislation regulating public transport.¹² As a result of the changes in the legislations, it could already be presumed that prosecution could become more efficient, and, consequently, the number of offenses would show a decreasing tendency. The bodies and persons carrying out the controlling activities often carried out inspections in a negligent manner as they trusted the success of procedure based on legal regulations. As a result of such negligent work, the actually committed offence could not be verified. Naturally, such inappropriate inspections do not only take place in the field of public transport; according to my experiences, they are present in nearly every branch of public administration. I admit that there may be cases presumably not in small number when one time or random inspections even if they are not thorough, may lead to success. Nevertheless, in such cases the factor of good luck plays a significant role, because it is only a fortunate coincidence that an unlawful status existed or an unlawful act was carried out exactly at

¹¹ MAGYAR Mária: *Építésügyi hatósági engedélyezési eljárások* [], KJK-KERSZÖV Budapest, 2001, pp. 160–161.

¹² Section 5 of Act CLXXV of 2007 on the Amendment of certain Acts on transport.

the time and place of the inspection. Not to mention the fact that the certain exclusion of unlawful act cannot be determined by such inspections. I believe that a competent legal institution can only realise proper prevention if the number of coincidences can be decreased to a minimum or, ideally, could be fully excluded. Another considerable issue is that a significant part of acts of unlawful conduct are committed for some kind of an intention, primarily for financial gain.¹³ If the efficiency of the means that was meant to prevent committing such act can be significantly influenced by coincidences, the increase in people's inclination to commit offences can be presumed to be present. Accordingly, the preventive effect will definitely not take place in such cases.

Control is only a single link in the chain of preventive legal means of public administration, which in itself, even if it works well, cannot ensure prevention. There must be some kind of proper dissuasive legal consequence related to control in function of the giving inspection's results. This is the point where the system of administrative sanctions joins the preventive means of administrative law.¹⁴ The system of sanctions in public administration is subject to comprehensive researches, therefore I only wish to discuss it herein in a short manner. In accordance with the definition of Marianna Nagy¹⁵, the effectiveness of public administration can be increased by means of stricter sanctions, and this way its preventive effect could not be questionable. Undoubtedly, if a sanction is not severe enough, it cannot be considered as a dissuasive force. This may bring up the question how severe a sanction should be to ensure a proper preventive function. Nevertheless, the intentions of the legislator that can be witnessed in the general regulations of the administrative sanction system are rather contradictory to the intention of increasing the dissuasive force of sanctions through enhancing their severity.¹⁶ The law introduced two legal institutions the nature of which does not increase the severity of the sanction system, yet the legislator expects them to cause the strengthening of the preventive characteristic of sanctions. These two legal institutions are the notice and the administrative security deposit. Notice serves as the form of the weakest, primary sanction. Its dissuasive force is that the client is subject to no actual penalty, but it serves as the basis for applying a more severe sanction in the future.¹⁷

In my view, the intention of the legislator according to which this solution would be efficient with respect to a significant proportion of administrative offences can be justified. Please note that the law is based on the principle of proportionality, with which the legislator also wishes to strengthen dissuasive forces. Accord-

¹³ NAGY: op. cit. 6. p 126.

¹⁴ NAGY Marianna: *A közigazgatási szankciórendszer* [The system of administrative sanctions]. Budapest, Osiris, 2000.

¹⁵ NAGY: op. cit. 6. p 126.

¹⁶ Act CXXI of 2017 on Sanctions against administrative misconduct

¹⁷ Act CXXI of 2017 on Sanctions against administrative misconduct, Section 6(1) Through the notice, the authority expressed its disapproval for the committing of the administrative offense, and warns the client to restrain from committing any further administrative offenses, otherwise further sanctions will have to be introduced.

ingly, notices are followed by the imposing of an administrative security deposit, which “only” generates a presumed legal sanction regarding the client,¹⁸ as the deposit is to be paid back to the client in case the client does not commit any subsequent act that could be the basis for sanctioning. Undoubtedly, this legal institution indeed generates a dissuasive force, despite the fact that its severity is rather questionable. The security deposit can be actually considered as a link between the notice and the imposing of a fine, i.e. a penalty causing an actual legal sanction. The extent of such fine — and the determination of the extent of the security deposit — raises further concerns, which are based on substantive law. It is a basic principle that in case the extent of an imposable sanction is high enough, and exceeds the extent of profits that can be acquired through the relevant offenses, or it is capable of forcing a party to restrain from any unlawful conduct not intended for material gain, it will realise prevention.¹⁹ Nevertheless, the dissuasive force of a sanction actually depends on the extent how much it can or cannot be implemented. Even if a sanction is rather severe and can be imposed a number of times, it is not effective if it cannot be implemented in practice. Accordingly, in the chain of preventive means control — if its results make it possible — is followed by the imposing of sanctions, and if necessary, the chain is closed by the mean of execution. Following this thread of thought, it can be seen that such preventive means are closely interrelated. If any of the links is broken in the chain — i.e. there is a deficiency in their application — it has a practical effect on the final outcome. If is rather difficult, if not impossible, to differentiate the three means of the basis of the level of priority. Nevertheless, based on the perspective of law enforcement, it can be stated that the role of execution seems to have begun domineering. In civil law relations and disputes, I always wholeheartedly gave everyone the advice to first examine — regardless of the expectable or expected legal judgment — that they should consider the potential outcome, i.e. even if they are the winning party in the dispute, whether they would be able to execute the decision, and whether the dispute is worth initiating at all. Naturally, I do not wish to downgrade the value of a court judgment, but it is indeed a fact that a positive court decision often only means that the given party is justified to be right by the government. If the contents of the decision cannot be implemented — naturally in the case of the lack of voluntary compliance — the party will not find the contents of the given judgment satisfactory, as the dispute does not only aim the determination of rightfulness but also

¹⁸ Act CXXI of 2017 on Sanctions against administrative misconduct, Section 8 (1) The sum of administrative security deposit shall be paid back by the body assigned by the Government to manage the administrative security deposit to the client or their legal successor upon the expiration of one year after the payment of the surety.

(2) The client loses their right for the sum of the administrative security deposit if any administrative sanctions are applied with respect to the client within a year upon the payment of the administrative security deposit.

¹⁹ Deciding on this cannot be done beforehand, therefore the legislator usually sets out a limit range from min to max, the application of which the law applying body is granted a quite broad power of assessment. The aspects of assessment, however, as stipulated by law. Act CXXI of 2017 on Sanctions against administrative misconduct, Section 10 Subsection (1) a)–g)

to achieve a certain outcome. It is true that the decision is an integral part of the outcome but it is not a major part. This statement made on private law relations can also be referred to administrative law relations. In my view, the basic technique of law enforcement is sufficient — if I consider administrative law enforcement from the aspect of substantive efficiency — if I make a preliminary assessment where I can get to through the process from a given point and I decide on the steps of my actions accordingly. If the accomplishment of the final goal is questionable, it is not worth wasting state resources on it. The significance of execution in administrative procedures is well presented by facts the bases of which were the lack of its effective execution. Several cases occurred when a malpractice done by a land owner in relation to a real estate caused loss(es) of life. In a number of cases with high media attention, the competent personnel of the respective competent municipality could make statements. Their responses were always nearly the same, i.e. that they had no sufficient means in their power to resolve such situations in a safe manner. Several times they were able to verify that they indeed did everything they could. Nearly in all cases, the fault was to be found in the impossibility of execution. During the inspection, the actual misconduct was revealed, resulting in consequent responses, but it was quite apparent even at the beginning of the procedure that in case voluntary compliance does not take place, no sufficient measures could be taken. Regarding a case of this nature, a notary public stated that the only reason they carry out the procedure in the first place is to protect themselves from accusations of negligence.

Apparently, the body obligated to conduct the respective procedure cannot actually do anything more by the means of law. In such cases, the legal and substantive conditions of control are provided, and therefore the outcomes of control are successful as well. The inclination to avoid or defy such controlling inspections is often non-existent in these cases. The system of sanction means ensured by legislations should also be sufficient for embodying a dissuasive force. However, I did intentionally use the modal “should” in the previous sentence, as this issue could only be true if such sanction means could be executable. In the course of liquidation proceedings known by me, public debts were always present as well, and usually not in a negligible extent. Such debts were typically uncollectible, and were never paid to the state treasury despite the fact that the owners had no actual financial difficulties as a result of a wealth gathered from different operations. In the case of larger outstanding debts, it is not surprising that the tax authority is willing to enter into reconciliatory discussions; this may also be connected to collectability. If the authority could surely expect to have a successful collection of debts, it would be unnecessary for the authority to enter into negotiations, and would surely not be done at all. If we examine the efficiency of public administration merely on the basis of execution, I strongly believe that we could not find sufficient efficiency in certain areas. In this context, it can also be stated that the current execution regulations only provide opportunities for efficient legal enforcement regarding a narrow layer of the society, and the preventive effect only appears in there regard. Finding out why this current situation could emerge would require more thorough

research. Nevertheless, it can be definitely stated that the situation cannot be traced back to one single reason, in case we examine the background. The low efficiency of execution can be attributed to social, economic as well as legal aspects. If we only examine legal aspects in themselves, we will still find a rather comprehensive phenomenon. The examination of regulations and principles belonging to different legal branches should be required to have a clear view on the reasons for low efficiency, at least from the perspective of law. In this regard, the examination of issues related to constitutional law, civil law and criminal law might be necessary. It can certainly be stated that the legal institutions mentioned above and applied in administrative law make-up the chain and thus have impacts on execution. Due to the fact that in this chain, execution is preceded by the issuance of sanctions the voluntary compliance of which results in execution, sanctions have a more direct effect than control. The potential success of execution as well as the outcome of the procedure often depend on the extent of sanctioning set out in the relevant decision — if legislations leave discretion to the law enforcement party at all. In my opinion there can be no doubt that the rules of control, sanctions and execution are jointly meant to implement prevention in administrative law. Without any of them, the other two prove to be not only inefficient but unenforceable as well.

However, when viewing from the perspective of prevention, I believe that it can be stated without exaggeration that the effective emphasis is placed on execution. Here is a case for illustration. Let us presume that within a given special administrative area, controlling practices work in a flawless manner and no misconducts can be hidden from the authorities. Consequently, the bases for potential issuance of sanctions are provided. The authority first sends a notice, stating the prospect of a more severe future sanction. If the client believes that the specified sanction could not be implemented — i.e. executed — in their case, the question is whether the client will restrain from further misconduct or can we only hope for their good conscience? In my opinion, it is clear that only the second alternative is realistic, i.e. the conscience of the client. However, behind the unlawful acts implemented in the field of public administration you will find such conduct of clients that already carry conscience and awareness-related problems in themselves. From the aspect of authority law enforcement and hence the effectiveness of public administration, it can be stated that the effectiveness of execution has a crucial role. In this regard, when it comes to the role of execution among the preventive means of administrative law enforcement nothing is more telling than the old Hungarian saying according to which “each law is only worth as much as it can be enforced”.