

Ownership Right, Real Estate Management and Fulfilling Public Tasks in Relation to the National Roads as Real Estates

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Abstract

In Hungary, around 75% of the whole road traffic take place on the more than 31,000 km-long national network of public roads.¹ In my thesis, I am attempting to present this huge mass of property as real estate from three various aspects. After placing, categorising transportation management in the legal system, I wish to present these special real estates – constituting part of the national assets – from the aspects of ownership rights, asset management and fulfilling public tasks. I am giving an overview of the organisations representing three aspects but which operate based on the same principles and which wish to achieve the same objectives. In the end, by taking a practical example, I would like to show that – unfortunately – reality is sometimes different from the condition provided for by legal statutes.

Keywords: *asset management, fulfilling public tasks, ownership rights, transportation management*

1. TRANSPORTATION MANAGEMENT

Transportation management is a special field from the aspect of the theory of public administration law. However, the legal institutions relating to transportation can be found indirectly in almost all areas of law. Examples could be especially but not limited to civil law which regulates delivery services, transportation and insurance in independent contracts, or labour law with special legal regulations relating to the employees working in transportation, financial law regulating state expenses that can be spent on transportation, taxes generated by transportation and other revenues for the State. The Penal Code has a whole chapter on transportation crimes; and in the 21st century the laws on environmental protection are intended to provide the environment with protection from pollution caused by transportation.

Within transportation public administration two areas can be distinguished from each other clearly. When providing transportation as a public service, it is the

¹ VÁCZI, VINCENT: The Public Road Network Management is Uniform, in *The Safety of Transportation*, special issue (December 2013.) 41.

State that provides certain transportation activities that is to say it fulfils a public task. At the same time, transportation politics has to shape and operate transportation order and harmonise the activities, proportion of citizens, organisations and institutions that participate in transportation. Within transportation politics, activities serving transportation constitute a separate category which includes the construction, maintenance, development of the transportation infrastructure and the economic, organisational structure and operation of organisations providing transportation services. The other sub-category includes the legal and public administration and authority tools serving transportation activities such as the institutions of the state budget serving transportation, establishing the legal order of transportation, specifying the tasks of authority direction, its operation and in the end, the activities of international organisations connected to transportation.²

Road transportation – in addition to water, railway, air, line and local transportation – plays an outstanding role within transportation management based on the categories adapted to the basic tool system of transportation engineering. In Hungary, the road network is composed of public roads and private roads that are not closed from public transportation pursuant to the currently effective legal regulations. Public roads can be either national or local public roads based on the nature of transportation taking place on them, the quality of the roads, transportation load and composition of the transportation. As the notion is defined in the law on national assets, the national public road is a public road serving mainly motor vehicle transportation, having solid cover, that makes part of an hierarchical system (high-speed road, public road, subsidiary road), that is managed based on uniform public road management principles that creates transportation links between the local road network of localities and with the logistical connection points of railway, water and air transportation that cannot be reached via the local road networks.³

2. ASPECT MODES

2.1. Ownership right

If the page of title deeds of the real estate named national public road is considered, then its second part that specifies the beneficiaries, includes almost the same records. National public roads constitute the property of the Hungarian State and they constitute parts of national assets. National assets – except for some of them as per the legal regulations – shall not be sold, shall not be encumbered, shall not be provided as security and no shared property can be established on them. Its basic purpose is to ensure fulfilling the public task. The legal regulation referred to above

² LÖVÉTEI, ISTVÁN: A közlekedési igazgatás. [Transportation Administration], in FICZERE, LAJOS – FORGÁCS, IMRE (ed.): *Magyar közigazgatási jog* [Hungarian Public Administration Law], 2004, Osiris Kiadó, Budapest, 162.

³ Act CXCVI of 2011 on the law on national assets Art. 3. para. (1) point 13.

states that the national assets must be treated in a liable way and suitably to their purpose. National asset management is liable to operate, preserve the value of, utilise, increase the national assets suitably to their intended purpose as it is in harmony with the current load-bearing ability of the state, local government, primarily necessary for fulfilling public tasks and current social needs, based on uniform principles, in transparent, efficient and cost-saving ways and furthermore, to sell assets that become unnecessary from the aspect of fulfilling the state's or the local government's tasks.

The public tasks fulfilled by the State that is to say the maintenance, operation and development of national roads are realised on the infrastructure network constituting part of the public assets. The State enjoys a monopolistic position in this area which is justified by the huge volume of investments and the irrationality of factors expected by market competition conditions (e.g. parallel railway lines or just motorways). It is the clear consequence of monopolistic services that the transportation infrastructure is subject to stricter regulation and control of such services. The essential of the control is that no one can be excluded of the service that is to say of circulating on the road just for economic reasons.

The State, as the owner, exercises its partial rights arising from the ownership right via its organs established for that purpose. The first organ is the Hungarian National Asset Management Co. Ltd. by shares (hereinafter: MNV Zrt.), which plays a primary role in the coordinate system of the national assets (real estates, chattels, land, companies, special asset elements) and asset managers (MNV Zrt., Hungarian Development Bank, National Land Fund, the organs of the central budget, local governments). From the aspect of my subject matter, the most important task of MNV Zrt. is to exploit the national assets subject to its exercising the ownership right via direct or civil-law contracts. MNV Zrt. started its operation on the 1st January 2008 owing to the amalgamation of – the State Privatisation and Asset Management Co. Ltd. by shares, the Budget Asset Directorate and the National Land Fund Management Organisation – as their legal successor. Its establishment created the organisational conditions necessary for making the ownership aspect uniform regarding the national assets.⁴ At the time of its establishment, the owner's statements could be issued as a result of a complicated and mainly lengthy procedure. Later on, however, the bureaucratic system became more flexible, exercising the rights of the owner became smoother via concluding asset management contracts with other asset management organisations or by empowering them regarding specified groups of matters.

2.2. Asset management

By reading further the page of title deeds of the national public road as real estate, there the asset manager is Transportation Development Co-ordination Centre (hereinafter: KKK). Its history goes back to 1989 when the Country-wide Public Road Chief Directorate was established, which was named Road Management and Co-ordination Directorate until its termination of the 1st June 1996. The budget

⁴ Available at: http://www.mnvzrt.hu/bemutakozas/mnv_zrt.html [cit. 2014-08-27].

organ established under the same denomination has been named Transportation Development Co-ordination Centre since the 1st January 2007. KKK is central economic budget organ operating independently with country-wide competence, which is the background institution of the National Ministry of Development) (hereinafter: NFM). Its primary tasks are managing the financing of the road network and coordinating the transportation profession. It provides professional preparation and information background for work going in the Ministry and other background institutions. The institution is the centre of the coordination activities of transportation development: it coordinates the activities of scientific and non-government organisation working on the development of transportation infrastructure and transfers the results of their work to NFM, orientates the work of organisations participating and realising infrastructure development projects, guarantees the success, legality and efficiency of transportation infrastructure development projects. Upon request, KKK issues real estate manager's approvals and owner's approvals as well in connection with MNV Zrt as a result of the process described before in the subject matter of interventions affecting the assets managed by itself by providing green light to network development.

2.3. Fulfilling Public Tasks

In our country, the trustee of managing country-wide public roads is Hungarian Public Road Not for Profit Co. Ltd. by shares (hereinafter: MK). Though, the page of title deeds does not include the public road manager because it fulfils its tasks pursuant to legal regulations and a contract concluded with KKK. The legal predecessor of the public road managing company, Hungarian Public Road Public Utility Company was established by the Ministry of Transportation, Communication and Energy by amalgamating 19 department public road managing public utility companies into the State Public Road and Information Public Utility Company. Hungarian Public Road Public Utility Company 2009. was transformed into a company limited by shares by the turning date of 31st March 2009 which started its operation from the 1st April 2009.

The Hungarian State is the founder and shareholder of Hungarian Public Roads Not for Profit Co. Ltd. by shares. The Hungarian Development Bank Co. Ltd. by Shares exercises the shareholder's and owner's rights due to it as the primary legal entity. In the sense of company law, MK is a one-person not for profit public utility company limited by shares. When deploying its public utility activities, the company fulfils public tasks, which must be ensured by the ministry managed by the minister liable for transportation as a state organ regarding the country-wide public roads owned by the Hungarian State. By acting in its public road managing quality, MK deploys the activities relating to road, bridge, tunnel development, maintenance and operation of country-wide public roads that is to say activities connected to the public task. The Hungarian Public Roads Not for Profit Co. Ltd. by shares records its revenues and costs, expenses separately arising from each of its activities belonging to its basic purpose, and within them, its public utility activities and economic-enterprising activities. In addition to its public tasks, Hungarian Public Roads Not for Profit Co. Ltd. by shares deploys also

economic-enterprising activities, however, strictly in order to complete public utility tasks or tasks harmonising its basic objectives specified in its Establishment Instrument and by not endangering them. The organisation shall not distribute its profits of its economic activities but it shall spend the profit to its public utility activities.

Hungarian Public Roads Not for Profit Co. Ltd. by shares has a special place in the organisation system of Hungarian state administration. MK does not qualify as an authority. The headquarters of the organisation that has vertical and horizontal sections are located in Budapest and its divisions fulfil the daily tasks in all counties. The actual road management activity is deployed by the more than 160 operation engineering centres belonging to the operation and maintenance departments of the county divisions.

On the 1st November 2013 an important organisational transformation took place in the company's history: the State Motorway Management Co. Ltd. by shares merged with Hungarian Public Roads Not for Profit Co. Ltd. by shares. This meant that the public road management company took over assets worth around twenty billion forints and more than seven hundred employees. Therefore, Hungarian Public Roads Not for Profit Co. Ltd. by shares fulfils all the road management tasks in addition to the franchised motorway sections, private road networks and municipality roads. Owing to the above, the Company has become one of the top ten state enterprises of Hungary.

3. A PRACTICAL PROBLEM

Regarding, however, the condition of country-wide public roads in the register of title deeds, reality does not show the theoretical image described here in each case. Let us examine through a practical example what the problem can be? The law on public road transportation defines clearly what the territory of the road covers: the area between the road borders and the part of land belonging to the road. At the same time, the border of the road is its external edge – including the elevated curb, the road embankment, the back-slope, the drainage ditch, channel or other draining facilities.⁵ But in the register of title deeds the area of the national public road is „from wall to wall” that is to say the pavement or the cycle track by the road constitutes its part whereas these latter ones must be the ownership of the local government and therefore, must be managed by an operating organ of the local government. All the above can lead to several misunderstandings and unreasonable lengthy procedures. When, for example, a citizen using the pavement dislocates his/her ankle because of the uneven asphalt surface and as a consequence, the citizen must go on sick-leave, then the Country-wide Health Insurance Fund often wishes to collect the amount paid to the charge of the health insurance auxiliary system from the public road managing organ. This problem is much more complicated where it is not only the status shown in the register of title deeds which is not identical with the actual management relations but in addition, the area

⁵ Act I of 1988 on the law on public road transportation Art. 47.

constituting part of the real estate but falling outside the area of the public road remains without a „master”, that is to say, no one manages it. Fortunately, this situation occurs only very seldom.

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