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Pázmány Péter Katolikus Egyetem
Jog- és Államtudományi Kar

Doktorandusz tanulmányok 7.

‘LAW IN TIMES OF CRISIS’

Selected doctoral studies

Edited by:
Gyula Bándi – Anett Pogácsás

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‘JOG VÁLSÁG IDEJÉN’

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Szerkesztette:
Bándi Gyula – Pogácsás Anett

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Jog válság idején
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KÖNYVEI

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THE INDIGNITY OF THE STAFF OF PUBLIC ADMINISTRATION IN LEGAL PRACTICE

Zsófia Holecska*

1. Introduction

The study aims to examine the differences in the rules on the indignity of public administration staff through the analysis of the Hungarian judicial practice. The starting point of the research is a different system of indignity rules for the actors of the public administration, which results from the functional grouping of the staff. This difference is even more evident in front of the court. The purpose of this paper is to examine and analyse these differences.

Firstly, it groups the actors of the public administration using the method of comparison, giving a brief introduction to the indignity rules applicable to them. Secondly, applying the empirical research methodology, takes into account the decisions establishing indignity contested in court among certain actors. Thirdly, using the method of induction, starting from the legal cases of the investigation, the research tries to formulate generalizations that explain the observed differences and their justification. On the one hand, the study aims to point out the distances between legislative goals and social reality, and on the other hand, it aims to serve as feedback to the legislator with the *de lege ferenda* suggestions formulated at the end of the study.

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2. The differentiation of the staff of administration

The staff of the current Hungarian public administration can be grouped based on different aspects[1], however, this research makes this distinction from a different approach than before.[2] In civil administration in the narrower sense, as in the narrowed field of investigation, two subsystems can be separated from each other: *public administration* and *local government administration*. Both spheres have *political* and *professional* actors. This means that both the public administration and the local government administration have actors who are responsible for the legal, lawful and professional operation of the administration (professional actors), and some embody the political will (political actors).[3]

The detailed list of actors is provided by the laws governing their legal status. For the professional actors of the public administration the Act CXCIX of 2011 on public servants (hereinafter: Kttv.), the Act CXXV of 2018 on government administration (hereinafter: Kit.) and the Act CVII of 2019 on bodies with special legal status and the status of their employees (hereinafter: Küt.) contains provisions,[4] while the political actors of the state administration can only be found in Kit.[5]

The professional actors of local government administration are listed by Kttv.[6], while the political actors are included in the Act CLXXXIX of 2011 on local governments in Hungary (hereinafter: Mötv.).[7] This list is illustrated in the table below:

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1 Hazafi, Zoltán (ed.): *Kormányzati személyzetpolitika*. Budapest, Dialóg Campus, 2019. 13–19.; Ludányi, Dávid: A közszolgálati jogviszony differenciálódása. *Munkajog*, 2020/1. 42–51.

2 The purpose of this study is not to repeat the distinctions made in previous studies, but only to discuss questions to be clarified in relation to the direction and method of the current investigation. See, Holecska, Zsófia: The Legal Institution of Indignity in the Hungarian Public Administration and Europe. In: Csatlós, Erzsébet (szerk.): *Recent Challenges of Public Administration 4: Papers presented at the conference of '4th Contemporary Issues of Public Administration' on 10th December 2021.* Szeged, Iurisperitus, 2022. 23–34.

3 Ibid.

4 Act CXCIX of 2011 on public servants (hereinafter: Kttv.) Article 1, Act CXXV of 2018 on government administration (hereinafter: Kit.) Article 3, Act CVII of 2019 on bodies with special legal status and the status of their employees (hereinafter: Küt.) Article 1.

5 Kit. Article 3 (2)–(5).

6 Kttv. Article 1.

7 Act CLXXXIX of 2011 on local governments in Hungary (hereinafter: Mötv.).

1. table: Administration staff. See, Kttv., Kit., Küt., Mötv.

Administration		
	Public administration	**Local government administration**
Political actors	1. Senior political leader: prime minister, minister, state secretary, 2. Political leader: Shireman 3. Political adviser 4. Senior political adviser 5. Head of Cabinet 6. Commissioner	1. Mayor 2. Senior mayor 3. Local government representative
Professional actors	1. Senior professional leader: state secretary for administration, deputy state secretary, head of government headquarters and central office, and their deputy, director-general of the government office 2. Professional leader: director of the government office, district clerk, deputy district clerk, head of the general department, head of the department 3. In the case of the maintenance of government institutions, they are government officials, government administrators 4. Civil servants of special status bodies.	1. Notary 2. Mayor's Office of civil servants, public service administrators 3. Senior government adviser

The differentiation is significant not only from the point of view of the different functions, but also from the attempt to explain the rules of indignity established differently and from the analysis of the related jurisprudence.

3. The concept and place of indignity among administration actors

Indignity as an expression could best be described and explained with inappropriate, undeserving or questionable words. A situation where someone does not deserve something because of the circumstances they have created. A display of behaviour, if you will, that calls into question your fitness and personality to perform a given task. This meaning is formulated when declaring

the indignity of the professional actors of local government administration.[8] If in the course of their work, they violate an obligation arising from their legal relationship, or outside their workplace, they exhibit behaviour that seriously damages the employer's good reputation, the authority of the position, and trust in good public administration, their legal relationship will be terminated with dismissal.[9] From this wording, we can conclude that they are required to comply with a higher -than- average standard of behaviour: they must be aware that with all their actions and expressions – both in connection with their work and outside of their workplace – they are establishing or even shaking citizens' trust in bodies exercising public trust. The same rules apply to some professional actors of the public administration but to the majority the Kit. and Küt. names a completely different legal institution that can be called unworthiness.[10] However, unlike Kttv., Kit. and Küt. according to its provisions, only behaviour outside the workplace is relevant. Inadequate behaviour during their work is evaluated as a misdemeanour to be considered in the disciplinary jurisdiction and sanctioned accordingly. The second case of unworthiness is when government officials do not perform their duties with the professional dedication expected by the foundation and because of this, it is not expected that the employer will maintain his legal relationship, Kttv. factual element evoking the elements of loss of trust.[11]

The indignity system for political actors is based on an opposite principle, where political actors in the public administration are not subject to either indignity rules or unworthiness rules, i.e. their legal relationship cannot be terminated on the basis that they do not behave in a way that is worthy of trust. In the case of political actors of the local government administration, Mötv. names indignity as a reason for termination of office as a new legal institution compared to the previous regulations, which entered into force on the day of the 2014 general municipal elections.[12] Given the subjective value judgment formulated as the concept of indignity, in which several standards may appear, and thus cannot be determined objectively, the law listed the cases in which representatives or

8 For a critique of his installation, see Kártyás, Gábor: A felmentés indokolása a közszolgálati jogban. *Közjogi Szemle*, 2014/2. 33.

9 Kttv. Article 64 (1).

10 Kit. Article 109 (2), Küt. Article 39 (18).

11 Hazafi, Zoltán – Ludányi, Dávid (eds.): *Kommentár a kormányzati igazgatásról szóló 2018. évi CXXV. törvényhez*. Budapest, Nemzeti Közszolgálati Egyetem, 2021. 362–364.

12 Balázs, István: Az önkormányzatokra vonatkozó szabályozás átalakulása. *MTA Working Papers*, 2014/3. 2.

mayors lose their mandate.[13] According to this, representatives are unworthy if a) they are legally sentenced to imprisonment due to an intentional crime; b) they fail to settle the public debt; c) they do not satisfy established creditor claims; d) they obstruct the execution of a legally binding court decision or fail to do so; e) they fail to disclose an existing conflict of interest.[14]

The above list is largely punitive and economic-based, where the behaviour shown by the representative is not important, even though they got their mandate based on the embodiment of their trust by the voters - their election. Based on these, it can be concluded that in their case, the demonstration of socially expected, dignified behaviour is not evaluated, as is the case with professional actors.

The different determination of the rules of indignity for each actor is even more evident in the legal practice, the analysis of which was set out in this study. It did this because the majority of the decisions of the bodies primarily authorized to determine indignity - as will be presented later, the representative body and the employer - cannot be searched, as they are not public, so no conclusions can be drawn from them. The representative body publishes the local government decree as specified in the Mötv.[15], but latency is still characteristic of these cases. However, it is possible to examine court decisions, as will be explained below.

4. Indignity in judicial practice

4.1. The indignity of political actors in local government administration

As a starting point, we must state that the indignity of local government representatives is generally established by the representative body in the form of a decision in a closed session. This decision must be sent to the representative and the government office.[16] A representative whose indignity has been

[13] Balázs, István – Balogh, Zsolt Péter – Barabás, Gergely – Danka, Ferenc – Fazekas, János – Fazekas, Marianna – F. Rozsnyai, Krisztina – Fürcht, Pál – Hoffman, István – Hoffmanné Németh, Ildikó – Kecső, Gábor – Szalai, Éva: *A Magyarország helyi önkormányzatairól szóló törvény magyarázata*. Budapest, HVG-ORAC, 2016. 167.

[14] Mötv. Article 38 (1).

[15] Mötv. Article 51 (2).

[16] Mötv. Article 37 (2)-(3).

determined and whose position has been terminated may, within five days of the announcement of the finding decision, seek legal remedies[17] and challenge it before the court dealing with public administrative matters.[18]

If the representative body does not establish indignity, or its decision is against the law, the government officials can also claim the court to establish indignity. There is an appeal against the court's decision. However, there is no room for a retrial against the court's decision, but there is room for review.[19] The application of these rules also applies to establishing the indignity of mayors.[20]

Based on the above provisions of the Mötv., the court investigates the indignity of local government representatives and mayors if they object to the decision of the representative body, or if the representative body did not make a decision or this decision violates the law and the government office initiates a lawsuit. In the latter two cases, the government office appears on the plaintiff's side, while on the defendant's side, the local government representative itself is the primary defendant, and the municipality is the second defendant.[21]

Before looking for ordinary court decisions, it is important to take into account the practice of the Constitutional Court, whether it examined the framework of the application of the Mötv. and whether it made findings for practice. The Constitutional Court has direct, institutionalized and external constitutional control over judicial decisions.[22] The examination of the decisions of the Constitutional Court in connection with indignity is significant because its decisions are binding on ordinary courts, and it also has a balancing and law-making role.[23]

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17 The Fundamental Law of Hungary Article XXVIII (7), Article 25 (2).

18 Mötv. Article 37 (4). In Hungary, after April 1, 2020, after the independent Public Administrative Court, which would have been a significant means of legal protection against the public administration, was not built, the administrative colleges of the courts act in the first instance in public administrative lawsuits, which decide on the cases defined above, so that they, we examine the decisions made by the adjudication boards as a second instance and the Court as a second instance and review forum. See, Patyi, András: Törések és hiányok – a magyar közigazgatási bíráskodás történeti modelljének néhány példája. *Miskolci Jogi Szemle*, 2021/1. különszám. 246–247.

19 Mötv. Article 37 (5)–(6).

20 Mötv. Article 72 (4).

21 See Curia Decision Kf.IV.39.100/2020/3. and Court Decision 101.K.700.872/2021.; 101.K.702.579/2021/6.; 101.K.701.157/2021.

22 Zakariás, Kinga (szerk.): *Az alkotmánybírósági törvény kommentárja*. Budapest, Pázmány Press, 2022. https://jogkodex.hu/doc/9645076 (2023.02.07.).

23 Schanda, Balázs: Az alkotmánybíráskodás új szerepe az Alaptörvény első évtizedében. *Acta Humana*, 2021/2. 117.

The decisions published by the Constitutional Court[24] were narrowed down to the period 2014-2022, due to the entry into force of indignity in 2014, on the official website of the Constitutional Court.[25]

In its decision, the Constitutional Court established unconstitutionality by the legislator's omission, because the mayoral candidate who is sentenced to a suspended prison term for committing an intentional crime is unworthy until he is exempted from the adverse legal consequences of the conviction. This is not only the case during the mayor's office but also the election after the criminal verdict. It follows that he can run in the elections, but he is disqualified from holding office in the first place, which is a disproportionate restriction since if he can run, he cannot be considered a person who is unfit to hold the office. This rule does not apply to the entire range of personnel, but only to those whose execution of a prison sentence has been suspended for a probationary period, as well as those who have not received a prior exemption. There is an unconstitutionality because, due to the contradictory regulation, the electoral right of the mayor who wins an election but is sentenced to a suspended prison sentence and does not receive a preliminary exemption, is void. A collision between laws of the same level is associated with a violation of the right to passive suffrage. If the candidate has a passive right to vote, he cannot be inherently unworthy. The Constitutional Court found the essential content of the indignity regulation of Mötv. is incomplete, because it does not allow persons who can run as candidates to hold the position of mayor.[26]

The analysis of the practice of ordinary courts, i.e. the search for judicial decisions, is created by the Act CLXI of 2011 on the organization and administration of the courts (hereinafter: Bszi.), which declares those court decisions which, according to its provisions, must be made accessible to anyone, without personal identification, without restrictions and free of charge.[27] The website of the Courts of Hungary[28] can be used to access the Client Document Access System website[29], where it is possible to search for anonymized court decisions. We search for decisions through several filters to strive for

[24] Act CLI of 2011 on Constitutional Court (hereinafter: Abtv.) Article 44.

[25] Official website of the Constitutional Court. https://www.alkotmanybirosag.hu/. (2023.02.13.)

[26] Constitutional Court Decision 23/2020. (VIII.4.), ABH 2020, 2076–2077.

[27] Act CLXI of 2011 on the organization and administration of the courts (hereinafter: Bszi.) Article 163–166.

[28] Official website of the Court System of Hungary. www.birosag.hu. (2023.02.13.).

[29] Official website of the Customer Document Access System. www.eakta.birosag.hu. (2023.02.13.).

completeness. Within the framework of this investigation, it was carried out according to the following filter criteria: a) decision search: searching for a term, or search word; b) the legal area affected by the decision; c) time of making the decision and d) provision of legal place.

In the case of the political actors of the local government administration, the search was first made using the term indignity, the field of public law and the 2014-2022 decision-making as filtering criteria. The narrowing of the period is also justified here by the fact that the provisions on indignity entered into force on the day of the 2014 general municipal elections. By searching with this method, many more results are displayed that establish indignity, including those that are not the subject of the investigation, on the one hand, because they do not belong to the public administration staff covered by the study. On the other hand, because they are actors in the professional sphere, whose practice of indignity the study intends to analyze later on. With this search, 51 results are displayed, of which 16 are decisions, i.e. 31% of all results are relevant to us.

If we leave the term indignity, the years 2014-2022 and the field of public administration law as a filter, but add the Mötv. as a practical law, we get 20 hits, of which 9, or 40%, are related to the subject of the research. If we clarify the law by its Article 38, i.e. the section number for establishing the rules of indignity, we get 7 hits, of which 6 procedures examined indignity in the strict sense, the seventh court decision defines the nature of indignity and conflict of interest, the difference between their application and their framework. However, if we change the place of the law to Article 29 (1), that is, to list the reasons for the termination of the office of representative, we do not find an example of practical application.

Concerning the judicial decisions found based on all these combinations, we can reach the general conclusion that most often a representative was found unworthy due to the failure to settle the existing public debt, i.e. most of the time he was unworthy because he did not pay the outstanding public debt within 60 days of receiving the notification from the NAV or did not arrange or request payment deferrals.[30] The existence of this is worrisome because in this case, it belongs to the community itself, the public, whose interests it must also serve, from which it takes wealth. On the other hand, it is also worrisome because it does not respond to any official calls, and does not settle the debt, thus shaking the trust of the voters in them.

[30] See, Curia Decision Kf.39.990/2021/6 and Court Decisions: 103.K.702.828/2020/6., 101.K.702.128/2021., 103.K.702.593/2021/4., 103.K.702.021/2021/8., 104.K.700.768/2022/10., 102.K.700.328/2021/19., 101.K.700.872/2021/13., 101.K.702.579/2021/6., 101.K.701.157/2021/6.

The same doubt is raised when the representative fails to implement a final court decision maliciously. In this case, he does not demonstrate law-abiding behaviour based on which indignity can be legally established.[31]

The more serious proof is required when the government office requests a declaration of the representative's indignity, citing the failure to disclose the existing conflict of interest. If a representative group publishes a paper financed by the party, whose responsible editor is the local representative, but whose income does not come from it, even if there is also a book recommendation in it, the representative will not be unworthy, even if the National Media and Infocommunications Authority also registered as a press product. The Curia pointed out that registration is not binding in terms of the classification of the publication, to be a press product, it must be aimed at providing an economic service, it must meet the conceptual elements of a press product, and it must be examined in every case. It also drew attention to the fact that in the procedure to establish indignity, the requirements of a fair procedure must prevail, the facts based on the facts of indignity must be revealed, and the evidence found must be presented to the representative, who has the right to make a statement and provide counter-evidence. The entire material of the procedure must be presented to the representative body before the decision is made.[32]

It is judged differently when a representative commits an intentional crime for which he is sentenced to imprisonment but receives a preliminary exemption, so he is exempted from the adverse legal consequences of the conviction, so he does not become unworthy.[33] However, this circumstance does not change the fact that he committed an intentional crime, and the preliminary discharge is based on the original intention of the offender, which did not go into the criminal law, which encompassed the result and its realization. And this behaviour works even more against the public trust, especially since in this case the crime involved endangering a minor. Due to receiving a preliminary exemption, the representative does not become morally blameless, although this is suitable for the voters to question his dignity for the position, it does not make the local government representative unworthy, because the demonstration of morally objectionable behaviour in itself was not evaluated at the legal level, compared to civil servants case, where this requirement is expressed *expressis verbis* in legal provisions.

31 Court Decision 103.K.701.302/2021/9.

32 Curia Decision Kf.IV.39.100/2020/3.

33 Curia Decision Kf.VI.39.949/2020/4.

As a result, the question may arise as to whether a mayor who commits an intentional crime but receives a prior exemption cannot become morally reprehensible. This is because they do not remain credible in the eyes of the electorate, even though they are also part of the public administration, their position requires trust in the same way as professional actors, and they are obliged to carry out their duties in the interest of the public, keeping that in mind. This analogy can be used to prove that they can be expected to comply with similar rules of conduct.

The need to declare this is also supported by the anomaly arising in legal practice, about the case when the representative body established the conflict of interest of the representative who – as a result of the procedure conducted by the committee – carried out an activity that undermined public trust. According to the committee's point of view, public trust is essential for the performance of its work, and its violation is considered a conflict of interest, since its perverted behaviour, contrary to public morality, cannot be separated from its activities as a private individual. He engaged in activities that are capable of shaking public trust. However, the court took the position that the behaviours referred to by the local government could be more grounds for the indignity. Article 38 (1) does not generally make moral integrity scrutinize, but only based on the facts listed there. In the absence of other general provisions, the representative body cannot define moral minimums during the indignity procedure, the violation of which could lead to the termination of the office. This was perceived by the local government when it wanted to evaluate it as a conflict of interest, but the court pointed out that a conflict of interest is not the same as an indignity. It follows from this that if there is no basis for the indignity because it is not included in the tax assessment, then no conflict of interest can be established. There is indeed a general case of conflict of interest, but this does not mean that when it is applied, it is possible to break away from the legal institutional nature of the conflict of interest and fill it with additional consequences belonging to the scope of moral integrity.[34]

The legislature must do this by declaring the display of morally objectionable behaviour as an indignity, as it has done in the case of civil servants.

[34] Court Decision 104.K.702.405/2020/8.

4.2. The indignity of the professional administration of local governments and some professional actors of the state administration

The indignity of civil servants is a mandatory case of exemption within the termination of the legal relationship, which right can be exercised within fifteen days from the knowledge of the underlying cause, at most within one year from the occurrence of the cause, and in the case of a crime until the statute of limitations expires. Before the release, the civil servants must be allowed to learn the reasons and defend themselves.[35] The civil servant also has the opportunity to challenge the employer's exemption in court, citing the illegal termination of the legal relationship.[36]

We are looking for the appearance of the indignity of civil servants in practice by the Constitutional Court from the year 2012 because these provisions of the Kttv. was entered into force on March 1, 2012, and the closing year is 2022. The Constitutional Court examined indignity in connection with freedom of speech as a fundamental right. As part of this, it pointed out that by holding a government service relationship and exercising the right to hold public office, government officials also subject themselves to a kind of self-limitation. They accept that they live with some of their fundamental rights only to the extent that they do not become unworthy of holding public office. Civil servants are bound by public service obligations. Civil servants must be aware that the trust of the citizens or the bodies exercising public trust is formed or shaken as a result of each of their actions, utterances or other manifestations. The opinion formed by the persons exercising public power is already subject to judgment. This means that if the opinion maker is a public official, the public office holders may also be a limitation.[37]

When searching for court decisions, we work with a similar method as in the case of local government representatives. Remaining within the jurisdiction of public administrative law but between the years 2012-2022, because of the scope of the law. If there are 18 hits based on a specific legal position, i.e. based on Article 63 (2), in 7 cases the civil servant's indignity was investigated. If we add indignity as a term to the search, we get 9 court decisions, 6 of which

35 Kttv. Article 64 (2)–(3).

36 Csatlós, Erzsébet – Siket, Judit: *Közigazgatási alapismeretek*. Szeged, Iurisperitus, 2021. 205–206.

37 Constitutional Court Decision 3070/2017. (IV.19.), ABH 2017, 419–421.

are relevant. If we specify the specific indecency rules and search for Article 64, we get 10 hits, of which 6 court cases are also indignity disputes. If we add indignity as a term, there are only 6, but they are all relevant to us. However, if we search for indignity as a term and Kttv. as a practical law, 14 results appear, of which 8 are those that discuss the indignity of public service actors, i.e. only 57% are relevant.

In justifying these judgments, they often refer to the principled court decisions made by the Curia, which examined unworthiness to establish correct jurisprudence. It was pointed out that the employer can also evaluate the breach of duty as conduct that provides a basis for establishing indignity, but it does not follow from this that there is only an obligation to waive indignity as a legal consequence. If the employee culpably violates his job duties, the employer may decide to initiate disciplinary proceedings against the culpable breach of duty.[38] However, a well-founded conclusion can be drawn regarding the existence of a mandatory reason for dismissal if the employer proves that the civil servant breached his obligations and that the behaviour leading to the breach of obligations seriously undermines the authority of the position held by the civil servant or the good reputation of the employer or the trust in good public administration, which cannot be expected so that the employer maintains the legal relationship.[39] Going further than that, based on a final criminal judgment against the civil servant, the employer can legally conclude that this fact is capable of seriously damaging the authority of the position held by the civil servant, as well as the good reputation of the employer. The initiation of disciplinary proceedings does not preclude the termination of the legal relationship by dismissal because the dismissal has become unworthy if the conditions are met.[40] Regarding these principled decisions, the courts have established in several cases that the employer unlawfully terminated the civil servant's employment. Indeed, if the employer refers to continuous inappropriate employee behaviour, due to which he is dismissed on the grounds of indignity, he must prove the continuity of this and that he exercised his right to dismissal within 15 days of becoming aware of it. If they do not prove the continuity of the inappropriate behaviour, it is impractical to establish the inappropriateness at a later date.[41]

38 Principled Court Decision made by Curia EBH2016.M.31.

39 Principled Court Decision made by Curia EBH2018.M.2.

40 Principled Court Decision made by Curia EBH2018.M.34.

41 Curia Decision Kf.VII.40.524/2021/5.

In the same way, the court did not establish the indignity of the civil servant whose employer terminated his civil service relationship, since - according to his position - he and another colleague violated the ethical rules contained in the job description: they did not perform their work completely independently and objectively. However, according to the court's and Curia's interpretation, there was no breach of duty, and as a result, it is not possible to prove the existence of dishonesty. As known, the provision of behaviour with "other parties" in the job description cannot be interpreted in the relationship between colleagues, so in the absence of a breach of duty, the indignity does not materialize.[42]

The civil servant will not be indecent even if he has placed pornographic images in the locker room at his workplace, as both the court of first instance and the Curia have pointed out, referring to the principled decisions formulated earlier, that exemption on the grounds of indecency can only take place based on additional facts if the proven breach of duty behaviour is capable of seriously damaging the position's authority or the employer's good reputation, as well as trust in the public administration. The employer bears the burden of proving this. In the absence of such additional factual elements, the employer may or is obliged to apply other sanctions, so especially in the case of a well-founded suspicion of a disciplinary offence, it is obliged to initiate disciplinary proceedings and apply a legal consequence commensurate with the gravity of the disciplinary offence. On a principled level, it stated that the impairment of the authority of a position can be realized even if the behaviour imputed to the civil servant is carried out in the presence of third parties, i.e. the pornographic image is placed in the locker room, but this behaviour must objectively, regardless of the individual value judgment, be suitable for the authority of the position, to the serious destruction of the employer's good reputation and public trust in the public administration. These circumstances must be proven by the employer, and it must always be investigated in the specific case whether posting a picture with such content grounds the termination of the civil service relationship concerning indignity. If the proof is not done, then the civil servant will not be unworthy.[43]

There is room for dismissal based on indignity if the government official makes a cynical, disrespectful entry (response) to a complaint on behalf of his employer that conflicts with public service standards.[44] In the same way, indecency is legal if the civil servant sends a reply letter via e-mail to current and

42 Curia Decision Kf.VII.39.471/2021/4.

43 Curia Decision Kfv.VII.37.107/2021/10.

44 Curia Decision Kf.VII.40.449/2021/4.

former employees of the office, journalists, etc., which is suitable for damaging the good reputation of the clerk or the office.[45]

4.3. The novelty of unworthiness in judicial practice

Unworthiness as a new legal institution[46] appears in Kit. and Küt. The rules for determining lack of merit are similar to the Kttv. to its rules of indignity.[47]

The Kit. entered into force on January 1, 2019, which is why we narrowed down the search to the period 2019-2022, in the field of public administration law, and with the keyword unworthiness as a term. However, none of the three hits is about finding the government official's dismissal based on unworthiness.

If we look for unworthiness according to the Küt., also in the time interval of 2019-2022, in the area of public administrative law, we get four court decisions as a result, one of which is relevant and pointed out that the Küt. is not the background rule of the Kit. or the Kttv. These two laws regulate possible and mandatory reasons for exemption from the Kttv. Based on the legal regulations, the legal institution of unworthiness can be legally linked to behaviours where it can be clearly distinguished whether the civil servant's behaviour has also committed a breach of duty since behaviour outside the workplace cannot generally be considered a breach of duty, but it can be suitable for damaging the reputation of the body with special legal status or seriously destroys trust in good public administration. On the other hand, the condition that the civil servant does not carry out his duties with the professional dedication expected by the foundation and therefore cannot be expected to maintain his legal relationship is undoubtedly related to the work, but it does not necessarily assume the civil servant's breach of obligations and guilt. Due to the reference to the tasks and the expected professional dedication, not all objectionable behaviour of the civil servant at the workplace can be included in this scope.[48]

45 Curia Decision Kfv.37.956/2020/5.

46 Szalai, András (szerk.): *A közigazgatás tudománya és gyakorlata*. Budapest, HVG-ORAC, 2020. 381.

47 Kit. Article 109 (3)–(4), Küt. Article 39 (19)–(20).

48 Court Decision 34.K.705/927/2020/18.

5. Conclusions and recommendations

Based on the revealed knowledge, conclude that the requirement of behaviour worthy of public trust is formulated when declaring the indignity of the professional actors of the public administration. If they do not act under the expected good reputation of the employer, the authority of the position and the trust in good public administration, their legal relationship will be terminated with dismissal. They are required to comply with a higher – than- average standard of behaviour: they must be aware that with all their actions and expressions, both in connection with their work and outside of their workplace, they establish or even shake the trust in the bodies exercising public trust in citizens.

The indignity system for political actors is based on an opposite principle, where political actors in the state administration are not subject to indignity rules at all, while local government actors can only lose their mandate in cases classified as such by the legislator. Therefore, the demonstration of socially expected, dignified behaviour is not evaluated, as is the case with professional actors. The legislator connects the issue of public trust with the legal institution of conflict of interest, but only in connection with the cases listed there. It is not possible to evaluate the requirements outside of this, which fall under the scope of moral integrity, the legislator should have done this during the creation of the indignity rules, if only looking at the literal meaning of the word. However, this was not done, which resulted in a legal gap during the application of the law. Furthermore, the occurrence of one of the causes of indignity does not automatically result in indignity.

Legal cases that have arisen in practice underscore the pressing need for lawmakers to standardize rules regarding dignity for administrative personnel. It is crucial that both professional and political actors adhere to the same set of requirements. Additionally, individuals in the professional sphere should not be able to create a new legal institution with the same purpose and wording but with a different name.

The basis of unification is the role of the staff in administration. The point of connection is the fiduciary nature of their position because, in the case of local government representatives, trust is embodied in their election. This can also be observed indirectly in the case of the political actors of the public administration. Professional actors perform a public task in the state or local government apparatus, and the existence of trust in the bodies depends on how they perform their tasks. If this is shaken, trust in the organs will also be shaken. The same

clause must also apply to political actors, because the performance of their tasks and the behaviour they display also shape trust in the state organization. For this very reason, compliance with higher rules of conduct could be expected from them. A criterion for demonstrating appropriate behaviour for voters, for maintaining trust in their office and good public administration.

Given the above, the demand and the opportunity are given, only the solution is waiting for itself.

6. Summary

The study aims to show the indignity of the actors of the administration by analysing judicial practice. As a starting point, the thesis defined the subject of the investigation: the group of people whose indignity was later analyzed. In the process, it has been proven that the indignity of the political and professional actors of the public administration is based on a completely different concept. In the case of the political actors of local government administration, this takes the form of an exhaustive list, which does not exhaust all behaviour that violates the public trust, even though the anomalies that arose in legal practice proved the necessity of this. This is contrary to the regulation of professional actors, where the legislator specifically focuses on a procedure that corresponds to the expected good reputation of the employer, the authority of the position and trust in good public administration. This requirement accompanies all interactions of the civil servant with third parties.

Indignity is used in the same sense for some professional actors in the public administration sphere, however, for the majority of them, unworthiness is applied, for which jurisprudence has not yet been developed, given its entry into force four years ago. And the rules of indignity and unworthiness do not apply to political actors at all.

The cases revealed by jurisprudence highlighted and made more urgent the need for the legislator to standardize the indignity rules for administration staff. On the one hand, the need to meet the same requirements among professional and political actors, as well as the uniform definition of legal institutions, the basis of which is their role in public administration, assumes trust. Eliminating these anomalies is the task of the legislator.