

Electricity Supply Contracts, Public Services and Consumer Protection: A Comparative Analysis of French and Hungarian Law

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Abstract

The regulation of contracts concluded between electricity suppliers and consumers lies at the intersection of energy law, consumer law, civil law, and the law governing public services. Although France and Hungary belong to the continental legal tradition and regulate essentially the same contractual relationship, their legal systems approach its classification and normative placement from different theoretical and legislative perspectives. This article provides a comparative legal analysis of electricity supply contracts in French and Hungarian law. The research combines doctrinal analysis with the examination of the relevant legislative frameworks, focusing on the legal nature of contracts relating to public services, their position within the public-private law divide, and the degree of protection afforded to electricity consumers. Particular attention is given to the French theory of administrative contracts and public services, as well as to the less consolidated Hungarian concept of administrative or public contracts. The study demonstrates that, in France, electricity supply contracts are primarily regulated by the Consumer Code, even though electricity constitutes a public service governed more broadly by energy legislation. This legislative choice emphasizes the contractual position and protection of the consumer. In Hungary, by contrast, the relevant provisions are contained mainly in the legislation governing the electricity sector. The Hungarian model therefore adopts a more technical and sector-specific approach, distinguishing among contracts for connection to the electricity network, use of the network, and purchase of electricity. Despite these differences, the analysis reveals significant convergence. Both legal systems classify contracts between electricity suppliers and consumers as civil-law contracts and provide safeguards concerning pre-contractual information, contract formation, termination, billing, and the protection of vulnerable consumers. The article concludes that different theoretical conceptions of public services and administrative contracts may nevertheless produce comparable regulatory outcomes. These similarities may provide a useful basis for future European legislative development in the fields of energy services and consumer protection.

Keywords: electricity supply contracts; public services; consumer protection; administrative contracts; energy law; comparative law; France; Hungary.

JEL Classification: K23

DOI: 10.62768/PLPA/2026/15/2/07

Please cite this article as:	Article History
Csibor, Ferenc, „Electricity Supply Contracts, Public Services and Consumer Protection: A Comparative Analysis of French and Hungarian Law”, <i>Perspectives of Law and Public Administration</i> 15, no. 2 (June 2026): 289-308.	Received: 10 March 2026 Revised: 25 April 2026 Accepted: 28 May 2026

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1. Introduction

Through legal comparison and comparative legal studies, a great understanding can be gained into the deeper workings of the legal systems being compared.² Because of the potential of comparative legal research, this study aims at gaining a deeper understanding of the regulation of contracts relating to the supply of public services to the consumers in the Hungarian and the French legal system. The novelty of the approach comes from its narrow focus: the main research is an in-depth examination and comparison of the specific contract between suppliers and consumers of electricity. Due to the highly specific and technical nature of this contractual legal relationship its examination can provide valuable insight into the way the two nations approach the electricity sector.

An additional angle to the comparison of the two legal systems come from the theoretical background of administrative contracts or public contracts. In the Hungarian legal system this category of contractual legal relationships is still subject to many scholarly debates.³ Questions arise about the exact legal nature of such contracts, how much they belong to public law or private law.⁴ There are cases of Hungarian jurisprudence where the court struggled with determining the exact legal nature of a contract relating to some functioning of public administration.⁵ One particular aspect of Hungarian legal scholarship about public contracts relates to public services: some authors argue that contracts relating to the organisation of public services belong to public law, and contracts between the provider and the consumers of such services are civil law contracts.⁶

² Balázs Fekete, “A jogösszehasonlítás magyarországi történetének és alkalmazásának alapkérdései” [Fundamental Questions concerning the History and Application of Comparative Law in Hungary], in *A jog tudománya: Tudománytörténeti és tudományelméleti írások, gyakorlati tanácsokkal* [The Science of Law: Writings on the History and Theory of Science, with Practical Advice], ed. András Jakab and Attila Menyhárd (Budapest: HVG-ORAC, 2015), 306–310.

³ János Dúl, “Barangolás a magánjog és a közjog határán: A vagyongazdálkodási szerződés” [Exploring the Boundary between Private Law and Public Law: The Asset Management Agreement], *Magyar Jog* 72, no. 12 (2025): 756, <https://doi.org/10.59851/mj.72.12.5>.

⁴ János Dúl, “Tünődések a magánjog és a közjog egyes kérdéseiről a közszerződések apropóján” [Reflections on Certain Questions of Private Law and Public Law in Connection with Public Contracts], in *Liber Amicorum: Ünnepi tanulmányok Kisfaludi András 65. születésnapjára* [Liber Amicorum: Essays in Honour of András Kisfaludi on His 65th Birthday], ed. Balázs Tókei (Budapest: Wolters Kluwer Hungary, 2023), 21–28, 28.

⁵ Examples include: decision of the Budapest-Capital Regional Court of Appeal numbered 9.Pf.20.815/2009/3. (published as a law report under the identifier of ÍH 2010.84); decision of the Budapest-Capital Regional Court of Appeal numbered 5.Pf.20304/2010/4. (published as a law report under the identifier of BDT2011. 2445.); decision of the Hungarian Supreme Court numbered Legf.Bír.Gfv.IX.30.386/2009 (published as a law report under the identifier of BH+ 2010.11.495).

⁶ Marianna Nagy, “A közigazgatási szerződés néhány elméleti és gyakorlati hiátusa a közigazgatási jog szemszögéből” [Some Theoretical and Practical Gaps in Administrative Contracts from the Perspective of Administrative Law], in *Közszerződési jogi koncepciók: Tanulmányok a közszerződések köréből* [Public Contract Law Concepts: Studies on Public Contracts], ed. Ádám Auer (Budapest: Akadémiai Kiadó, 2022), https://mersz.hu/dokumentum/m1010kjk_15/; Gergely Barabás, “A közigazgatási szerződések” [Administrative Contracts], in *Közigazgatási jog. Általános rész II.: A közszolgáltatások szervezése*

On the other hand, in the French legal system the theoretical and practical category of administrative contracts (*contrat administrative*) has a long history based on the relevant jurisprudence and scholarly works of administrative law.⁷ In this highly developed system of administrative contracts the differentiation between contracts of public services does not depend on whether the given contract is related to the organisation or consumption of the given public service, but rather to its fundamental nature.⁸

The comparative legal analysis of the contractual legal relationships between suppliers and providers of electricity displays the different legislative outcomes from the different theoretical and practical starting points. Even though the contracts themselves have the fundamentally same objects, there is a great deal of difference between the legislation governing them. In addition to the in-depth exploration of the rules of these contracts in the French and Hungarian legal systems the study also illustrates the difficulties and challenges of comparative legal research. Due to the fundamentally different legislative approaches from the two compared legal systems significant care and attention is needed when comparing the contractual legal relationships.

The structure of the article follows the logic of the subject matter laid out in the introduction. First there will be a short overview of comparative legal methodology. Following this there will be an examination of the theoretical background of administrative contracts in the French legal system and public contracts in the Hungarian legal system. Special attention is given to the categorization of contracts relating to public services in each legal system. Following this the study will focus on the rules governing contracts in relation to supplying electricity, first in the French and then in the Hungarian legal system. In both cases the examination will first focus on the placement of the rules in the legal system and their wider context, followed by the specific rules governing these contracts. Finally, the study ends with the conclusions that can be drawn from this comparative analysis.

2. The Nature and Aim of Comparative Legal Research

The comparative legal method has great potential to not only describe legal doctrines, but also to provide a critical evaluation of their wider theoretical foundations.⁹ These theoretical foundations can include such abstract concepts as procedural justice and moral authority.¹⁰ Even though some legal concepts are

[Administrative Law: General Part II: The Organization of Public Services], ed. Marianna Fazekas (Budapest: ELTE Eötvös Kiadó, 2017), 198.

⁷ Jean Waline, G. Eckert, and E. Muller, *Droit administratif* [Administrative Law], 29th ed. (Paris: Dalloz, 2023), 351.

⁸ Pierre Esplugas-Labatut, *Le service public* [Public Service], 5th ed. (Paris: Dalloz, 2023), 23.

⁹ Anis Mashdurohaturun et al., "Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 82, <https://doi.org/10.32332/milrev.v5i1.11887>.

¹⁰ Mohammed Gharaybeh et al., "Conclusive and Non-Conclusive Judgements: A Comparative Study of Jurisprudence and Law in the Fiqh and Secular Legal Systems," *International Comparative Jurisprudence*

universally acknowledged, different legal systems might adopt diverging approaches to the practical implementation of legal institutions, that is influenced by the wider economic context.¹¹ Legal comparison can not only extend to specific narrow legal institutions, such as contracts, but can also be employed to examine wider policy systems of different countries, such as the area of social security and healthcare.¹²

The potential added value of legal comparison is that it can shed light on problematic aspects affecting the functioning of civil justice and discover similarities between legal systems.¹³ A possible basis for legal comparison can be a similar origin of the examined legal institution, for example if the evolution of it came from bottom-up initiatives in both examined legal systems.¹⁴ Additionally, it can help to gain a deeper understanding into diverging approaches towards dealing with a specific policy issue, for example corruption.¹⁵ The examination of legal systems through the comparative methodology can include legal provisions, legislative initiatives and regulatory frameworks.¹⁶

A comparative analysis of legal systems can also result in a deeper understanding of the specific features of a given national legal institution.¹⁷ Legal comparison can highlight the more successful solutions to specific issues, such as how the focus on rehabilitation can lead to better performance regarding repeat offences.¹⁸ In addition to this, comparative legal research methodology can be utilized in order to formulate proposals in order to improve a given area of law.¹⁹

11, no. 1 (2025): 17, <https://doi.org/10.13165/j.icj.2025.11.002>.

¹¹ R. Benny Riyanto et al., "Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law," *Jambura Law Review* 7, no. 1 (2024): 90, <https://doi.org/10.33756/jlr.v7i1.27327>.

¹² Arief Budiono et al., "Health Security Policies: A Comparative Study through Constitutional Frameworks and the Insights of Veronica Rodriguez-Blanco," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 2 (2025): 433, <https://doi.org/10.24090/volksgeist.v8i2.10524>.

¹³ Aliya Muidenova et al., "Civil Cases Involving Foreign Individuals: Specificities and Issues," *Khazanah Hukum* 7, no. 3 (2025): 327-328, <https://doi.org/10.15575/kh.v7i3.44029>

¹⁴ Novie Afif Mauludin, Ary Wahyudi, and Hafizatul Ulum, "Legal Policy Model of the Red and White Village Cooperative (KDMP): Implementation Factors and Comparative Insights from Brazil, Denmark, and Japan," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (2025): 684, <https://doi.org/10.29303/ius.v13i3.1894>.

¹⁵ Asmak ul Hosnah et al., "Comparison of Malaysian and Indonesian Whistleblower Legal Protection as a Tool for Criminalization Elimination," *Jurnal Media Hukum* 32, no. 1 (2025): 115, <https://doi.org/10.18196/jmh.v32i1.24751>.

¹⁶ Mohammed Abdelsalam, Alaa Abouahmed, Abdallah Shatat Adham Hashish and Enas AlQodsi, "Blockchain and Smart Public Procurement Contracts: A Comparative Legal Analysis of Digital Transformation in the Public Sector," *Access to Justice in Eastern Europe* 8, no. 4 (2025): 242-74, 243, <https://doi.org/10.33327/ajee-18-8.4-a000137>.

¹⁷ Anjeza Licenji and Alfiora Fortuzi, "Employer Liability for Employee-Caused Harm: A Study of Vicarious Responsibility," *Law. Human. Environment* 16, no. 4 (2025): 185, <https://doi.org/10.31548/law/4.2025.177>.

¹⁸ Anis Widyawati et al., "Crafting an Ideal Penitentiary Law: A Global Comparative Framework for Indonesia's Correctional System," *Legality: Jurnal Ilmiah Hukum* 33, no. 2 (2025): 418, <https://doi.org/10.22219/ljih.v33i2.40358>.

¹⁹ Ana Lucia Pegetti, and Carmen Neyra, "Brazil's Space Legal Framework: A Comparison with International Approaches for a National Planetary Defense Initiative," *Journal of Aerospace Technology*

In the case of France and Hungary, a strong foundation for the comparative analysis of these two legal systems is that both of them belong to the continental legal tradition.²⁰ This shared background serves as a basis and starting point for the scientific examination due to shared legal concepts, such as the differentiation between public law and private law.²¹ Additionally, there are significant enough differences between the two legal systems so that the comparative analysis can provide valuable results. First amongst such differences is the presence and role of administrative courts. In France there is a fundamental distinction between administrative jurisdiction (*juridiction administrative*) and the courts dealing with civil and criminal cases (*juridiction judiciaire*).²² Resulting from this distinction, it is a crucially important rule of French judicial competency, that civil judges cannot decide in cases relating to the revision of administrative decisions.²³ The reason for the importance of the differentiation between civil and administrative jurisdictions is that the jurisprudence of administrative courts had a crucial role in developing the concept and legal institution of the administrative contract.²⁴

In contrast to the French legal system, in Hungary a separate administrative jurisdiction only existed for a brief period of time at the end of the 19th century and the first half of the 20th century. Additionally, to this short time-frame, in Hungary there was no separate system of administrative courts, only a single court on the same level of the supreme court, which at the time was called the Hungarian Curia.²⁵ Following this the competence of overruling administrative decisions belonged to the ordinary civil courts. An administrative jurisdiction as a separate department of the courts has only recently been established in 2017 with the passing of Act CXXX of 2016 on the Code of Civil Procedure.²⁶ Due to the lack of a well-established system of administrative courts Hungarian jurisprudence did not develop such a complex and well-established system and understanding of administrative contracts. This divergence between the French and Hungarian approach to the contractual legal relationships of public administration can provide valuable insight into the theoretical and practical

and Management 18, no. 1 (2026): 2. <https://doi.org/10.1590/jatm.v18.1408>.

²⁰ Balázs Fekete, "Nyugati jog" [Western Law], in *Internetes Jogtudományi Enciklopédia* [Internet Encyclopedia of Legal Science], ed. András Jakab, Miklós Könczöl, Attila Menyhárd, and Gábor Sulyok (2022), para. 2, <https://ijoten.hu/szocikk/nyugati-jog>.

²¹ Burcin Aydogdu "The Private/Public Law Divide in Digital Law," *Digital Law Review* 5, no. 2 (2023): 202-204.

²² Maylis Douence and Marc Azavant, *Institutions juridictionnelles 4e édition* (Éditions Dalloz, 2019), 67.

²³ Bertrand Seiller, *Droit administratif I. Les sources et le juge 7e édition* (Flammarion Champs université, 2018), 148.

²⁴ Benoît Plessix, *Droit administratif général*, 5e édition (LexisNexis SA, 2024), 1301.

²⁵ András Patyi, *A magyar közigazgatási bíráskodás elmélete és története* [The Theory and History of Administrative Justice in Hungary] (Budapest: Ludovika Egyetemi Kiadó, 2019), 47, 100.

²⁶ Krisztina F. Rozsnyai, "A közigazgatási bíráskodás magyarországi története dióhéjban" [The History of Administrative Justice in Hungary in a Nutshell], in *Közigazgatási jog. Általános rész III.: A közigazgatási jog elméleti kérdései – A közigazgatási hatósági eljárásjog – A közigazgatási bíráskodás – A közigazgatási szankció* [Administrative Law: General Part III: Theoretical Issues of Administrative Law – Administrative Procedure Law – Administrative Justice – Administrative Sanctions], ed. Marianna Fazekas (Budapest: ELTE Eötvös Kiadó, 2023), 339–341.

questions and challenges arising from such contracts.

3. The French Theory of Administrative Contracts

Following the overview of comparative legal research methodology, I shall first examine the French system of administrative contracts. First it must be mentioned, that in spite of the well-established system of administrative contracts, still there are many contractual legal relationships made by the French public administration that are of civil nature and belong to the jurisdiction of civil courts („...*l'administration recourt à de nombreux contrats (...) du droit privé et de la compétence du juge judiciaire*”).²⁷ Due to this it is of crucial importance to be able to identify those contracts that are of administrative nature and belong to the jurisdiction of administrative courts („...*il est donc important de déterminer parmi les contrats conclus par l'administration ceux qui sont soumis au droit administratif*”).²⁸

In France administrative contracts have two main sub-categories, the first is those contracts that are determined to be administrative by the law („*les contrats administratifs par détermination de la loi*”).²⁹ First amongst such contracts are those related to public works, such as the construction of roads („*les contrats relatifs à l'exécution de travaux publics*”).³⁰ Other important categories of administrative contracts by the determination of the law are public procurements („*les contrats de commande publique*”),³¹ and contracts aimed at rural developments („*contrats de revitalisation rurale*”).³² It should be noted that this is only an illustrative list of different contracts that are considered to be administrative based on the relevant regulation and there are other such examples in the French legal system.

The second main category of administrative contracts consists of those contracts that are not determined to be administrative by the law, rather the competent administrative judge makes this distinction („...*il revient au juge de déterminer la nature juridique des contrats en cause*”).³³ This determination is based on the criteria developed by the jurisprudence of administrative courts („...*en application des critères dégagés par la jurisprudence*”).³⁴ The first criterion is that at least one of the contracting parties needs to be a public person („... *l'un des cocontractants soit une personne publique*”).³⁵ In the French legal system one of the most important distinctive characteristics of a public person is that it has a right to use public authority or force

²⁷ Hervé de Gaudemar and Élise Untermaier-Kerléo, *Droit administratif en 11 thèmes* (Éditions Dalloz, 2023), 329.

²⁸ Charles Debbasch and Frédéric Colin, *Droit administratif*, 13e édition (Economica, 2021), 428.

²⁹ André Maurin and Frédéric Colin, *Droit administratif* (Lefebvre Dalloz, 2023), 87.

³⁰ Philippe Dofrin and Michel Degoffe, *Droit administratif des biens* (Éditions Dalloz, 2021), 258-259.

³¹ François Benchedikh, *Droit de la commande publique* (Éditions Dalloz, 2019), 24-25.

³² Jacqueline Morand-Deville, Pierre Bourdon and Florian Poulet, *Droit administratif*, 17e édition (LGDJ. Lextenso, 2021), 423.

³³ Pascale Gonod, *Droit administratif général*, 4e édition (Éditions Dalloz, 2024), 137.

³⁴ Emmanuel Tessier and David Subra, *Droit des contrats administratifs* (Enrick B. Éditions, 2023), 24.

³⁵ Philippe Foillard, *Droit administratif*, 3e édition (Groupe Larcier s. a., 2014), 222.

(*prérogatives de puissance publique*).³⁶ The category of public persons includes amongst others the state (l'État) local governments (les collectivités territoriales) and public authorities (les établissements publics).³⁷

The second criterion to the determination of the administrative nature of a given contract contains two sub-categories: either the object of the contract is related to the uniquely French idea of *service public* or it contains such clauses that are clearly outside the scope of private law (*clause exorbitante*).³⁸ The most important characteristic of such clauses is that they fall outside the scope of traditional civil law practices („...qui sort de l'orbite, de l'ordre normal des choses en droit privé”).³⁹ These clauses usually provide some one-sided prerogatives to the contracting public persons, thus tilting the balance of the contract towards one side („...des *prérogatives de puissance publique* sont celles qui instituent un rapport fortement inégalitaire au profit de la personne publique”).⁴⁰

In relation to the object of the administrative contract, the other contracting party needs to take part in the execution of some *service public* („...le cocontractant doit se voir confier l'exécution même du service public, la simple participation à des missions annexes ne suffit pas”).⁴¹ It is important to note that in the French administrative legal tradition the term *service public* refers to a wider and more abstract idea, that basically encompasses all the activities done by public persons in the service of general interest.⁴² Additionally to having a crucial role in determining the administrative nature of a contract the idea of *service public* is important when discussing the categorization of public services in the French legal system.

3.1. Theoretical Background and Categorization of Public Services in the French Legal System

The abstract idea of *service public* originally developed as the theoretic background for the state itself taking some form of action and intervening in the economy or other areas of life.⁴³ It served as an explanation of the power of the state.⁴⁴ Additionally *service public* also gave a theoretical framework for administrative law, this way encompassing all the different rules governing public administration.⁴⁵ Apart

³⁶ Agathe Van Lang, Geneviève Gondouin and Véronique Inseguet-Brisset, *Dictionnaire de droit administratif* 8e édition (Éditions Dalloz, 2021), 307-308.

³⁷ Henri Oberdorff and Nicolas Kada, *Les institutions administratives* (Éditions Dalloz, 2023), 48.

³⁸ Jean-Claude Ricci and Frédéric Lombard, *Droit administratif des obligations: contrats, quasi-contrats, responsabilité* (Éditions Dalloz, 2018), 73-75.

³⁹ Xavier Braud, *Cours de droit administratif général*, 5e édition (Gualino Lextenso, 2022), 121.

⁴⁰ Ramu de Bellescize, *Droit administratif général* (Gualino Lextenso, 2024), 157.

⁴¹ Michel Degoffe, *Droit administratif*, 2e édition (Éditions Ellipses, 2012), 336.

⁴² Pierre Serrand, *Droit administratif Tome 1 Les actions administratives* (Presses Universitaires de France, 2024), 36-37.

⁴³ Franck Moderne, "Les transcriptions doctrinales de l'idée de service public," in *L'idée de service public dans le droit des états de l'Union Européenne*, ed. Franck Moderne and Gérard Marcou, (L'harmattan, 2001), 21-22.

⁴⁴ Esplugas-Labatut, *Le service public*, 23.

⁴⁵ Gilles J. Guglielmi, and Geneviève Koubi, *Droit du service public*, 3e édition (Montchrestien Lextenso

from the described more abstract understanding of the term, in the plural form *services publics* is also used to describe the actual public services provided by state entities or other contractual partners.⁴⁶

When describing public services in the French legal system there is a fundamental distinction between administrative public services (*les services publics administratifs*) and industrial and commercial public services (*les services publics industriels et commerciaux*).⁴⁷ In the former category such services are included that are fundamentally connected to the functioning of the state and public administration, and these contracts belong to administrative law.⁴⁸ The latter category includes activities that are aimed at the production and selling of goods or services, whose price is proportional to their value. Additionally, legislation can also categorize a public service in one of the two categories, and contracts relating to such public services belong to civil law.⁴⁹ Resulting from the practical implications and legislative background, contractual legal relationships are considered to be in the category of *service public industriel et commerciaux* therefore these contracts belong to civil law.⁵⁰

4. The Uncertain Category of Public Contracts in the Hungarian Legal Scholarship

The scientific understanding of contracts relating to the functioning in the Hungarian legal system is less developed than in the French, which is illustrated by the fact that there is a divergence in the terminology: some legal scholars call such legal relationships administrative contracts (*közigazgatási szerződés*) others public contracts (*közszerződés*) and others use the expression administrative law contracts (*közjogi szerződés*).⁵¹ In a large part of the relevant legal scholarship, authors attempted to create a list of the different characteristics of these unique contracts. First amongst such characteristics is that one of the contracting parties has to be an administrative body (*közigazgatási szerv*) or a public person (*közjogi személy*).⁵²

Apart from the parties of the contract, the other distinguishing feature identified by the Hungarian legal scholarship, is that the aim of the contract is aimed at providing public services, fulfilling public duties or aims ("*a megállapodás célja közszolgáltatás*

éditions, 2011), 106-107.

⁴⁶ Didier Linotte, Raphaël Romi and Emmanuel Cadeau, *Droit du service public*, 2e édition (LexisNexis SA., 2014), 25.

⁴⁷ Hervé de Gaudemar, "Commentaire d'arrêt: T confl., 9 janvier 2017, Centre Léman," in *Droit administratif*, ed. Xavier Dupré de Boulois (Éditions Dalloz, 2017), 108-109.

⁴⁸ Jean-Paul Valette, *Droit des services publics*, 2e édition (Ellipses Édition marketing S.A., 2013), 56.

⁴⁹ Jacques Chevallier, *Le service public 9e édition* (Presses Universitaires de France, 2012), 28.

⁵⁰ Laurent Richer, "Section 2 Synthèse des travaux de L'atelier «Énergie et déchets»," in *Services publics industriels et commerciaux: questions actuelles*, ed. Jean-Bernard Auby and Stéphane Braconnier (Librairie Générale de Droit et de Jurisprudence E.J.A., 2003), 223.

⁵¹ Tekla Papp, *Atipikus szerződések [Atypical Contracts]* (Budapest: HVG-ORAC Lap- és Könyvkiadó Kft., 2016), 115-118.

⁵² Ádám Auer, "Reflexiók a közszerződések jogi kérdéseiről szóló vitához" [Reflections on the Debate concerning the Legal Issues of Public Contracts], *Jogtudományi Közöny* 77, no. 10 (2022): 404.

nyújtása, biztosítása, közfeladat ellátása, közcél megvalósítása”).⁵³ Additionally, in the relevant literature it has been stressed that often times the party contracting on behalf of the administration has additional rights in a one-sided way compared to the other party (“a közigazgatási szervet többletjogosítványok illetik meg”).⁵⁴

Other authors stress that the administrative body is obliged to use a tendering procedure in order to choose its contracting party („...szerződő fél pályáztatás útján való kiválasztását”).⁵⁵ To summarise, in the Hungarian legal system when examining the contractual legal relationships of public administration, the main focus was usually on identifying the unique characteristics of such contracts, that differentiate them from traditional civil law contracts.

4.1. Differentiation Between Contracts Relating to the Organization and Provision of Public Services in the Hungarian Administrative Legal Scholarship

When examining the contractual legal relationships relating to public services, in the Hungarian legal scholarship one of the most important distinguishing feature is the aim of the given contract. Contracts whose purpose is the organisation of a given public service are considered to be administrative contracts (“a közigazgatás közszolgáltatás-szervezésre irányuló szerződése”).⁵⁶ The theoretical background for this distinction is that such contracts could only be categorized as civil law contracts at the cost of great difficulty, due to such principles as the need for continuous provision of the service and the protection of general interests (“...körülmenyesen sorolhatók polgári jogi szerződések közé (...) olyan alapelvek miatt, mint a folytonosság elve, illetve a (...) közérdekű szempontok miatt”).⁵⁷ On the other hand, the contract between a consumer of a given public service and its provider is considered to be part of civil law, reinforced by the principle that it does not involve the use of public authority, and the relationship between the parties is governed by non-subordination and equality (“...közüzemi szolgáltatások nyújtása nem közhatalmi, hanem polgári jogi természetű, tehát az egyenjogúság és mellérendeltség által meghatározott szerződéses jogviszony keretei között történik”).⁵⁸

This differentiation between contracts relating to the organisation and provision

⁵³ Tekla Papp, “A közigazgatási szerződés egy magánjogász szemszögéből” [The Administrative Contract from a Private Lawyer’s Perspective], *Jogtudományi Közlöny* 73, nos. 7–8 (2018): 323.

⁵⁴ Orsolya Fekete, *A közigazgatási jog alapjai* [Foundations of Administrative Law] (Szeged: Pólay Elemér Alapítvány, 2012), 140.

⁵⁵ Fábán Józsa, *Ket. kérdezz–felelek: A közigazgatási hatósági eljárásról és szolgáltatásról szóló törvény magyarázata* [Ket. Questions and Answers: Commentary on the Act on General Rules of Administrative Proceedings and Services] (Budapest: Opten Informatikai Kft., 2008), 227–232.

⁵⁶ Marianna Nagy, “Közigazgatási szerződés” [Administrative Contract], in *Internetes Jogtudományi Enciklopédia* [Internet Encyclopedia of Legal Science], ed. András Jakab, Miklós Könczöl, Attila Menyhárd, and Gábor Sulyok (2023), para. 49, <https://ijoten.hu/szocikk/kozigazgatasi-szerzodes>.

⁵⁷ Barabás, “A közigazgatási szerződések,” 198.

⁵⁸ István Kemenes, “Kommentár a Ptk. 6:256. §-ához” [Commentary on Section 6:256 of the Hungarian Civil Code], in *Nagykommentár a Polgári Törvénykönyvről szóló 2013. évi V. törvényhez* [Comprehensive Commentary on Act V of 2013 on the Civil Code], 3rd ed., ed. Péter Gárdos and Lajos Vékás (Budapest: Wolters Kluwer Hungary, 2021).

of public services shows a stark difference to the French legal system. In the latter, the categorisation of public services is primarily based on the object of the service. Therefore, it does not matter, whether the contract is between a provider of a service and an administrative entity, or a consumer of the service. If the nature of the given public service is not strongly related to public administration, then it will be considered industrial and commercial public service.

Even though the understanding of the legal classification of contracts relating to public services is fundamentally different, in the case of contracts for supplying electricity are considered to be civil law contracts in both legal systems. In the case of France, it is because the electricity sector is considered to be part of industrial and commercial public services. In the case of Hungary, the reason is that this particular contract is not aimed at organising the electricity public service, therefore it is not between an administrative body and an electricity provider. Rather, it is between the electricity provider and the consumer, therefore it is considered to be a civil law contract.

After the examination of the theoretical background of administrative contracts and public services in the French and Hungarian legal systems, the following parts of the study will focus on the regulations governing the contracts between consumers and electricity providers. First I shall examine the French rules governing this contract, and then after that I shall focus on the Hungarian legislation.

5. The Place of the Rules of the Contract for Supplying Electricity in the French Consumer Code

The adoption of the French Consumer Code (*Code de la consommation*) in 1993 was the result of a lengthy process of codification during the 20th century.⁵⁹ The Code contains all the general rules for different legal relationships of consumers.⁶⁰ Due to the all-encompassing nature of the Code in relation to consumer law, it contains both the general rules applicable to all consumer contracts and also the specific rules governing the different types of contracts. The Code's Second Book contains the rules for concluding and performing contracts (*Livre II. Formation et exécution des contrats*). In this, the first Title contains the general rules (*Titre I^{er}: Conditions générales des contrats*) and the second Title contains the rules of specific contracts (*Titre II: Règles de formation et d'exécution de certains contrats*). Contracts relating to the supply of electricity are regulated together with contracts for the supply of natural gas (*Section I: Contrats de fourniture d'électricité ou de gaz naturel*).

Some conclusions can already be drawn about the nature of the contract for supplying electricity in the French legal system based on the placement of the rules. First and foremost, the contract is primarily understood as a specific legal relationship between a consumer and a provider of a unique service. Because of this, particular attention will be given to rules that can be traced back to the presence of a consumer in

⁵⁹ Jean-Denis Pellier, *Droit de la consommation*, 4e édition (Éditions Dalloz, 2024), 3-5.

⁶⁰ Sophie Le Gac-Pech, *Droit de la consommation* (Éditions Dalloz, 2020), 18-19.

this legal relationship. Another important aspect of the French approach to the regulation of the contract for the supply of electricity, is that it is not its own separate Title, rather it is regulated together with the contract for the supply of natural gas. This shows that the legislator put less emphasis on the specific technical nature of the supplying of electricity, and started from the more general nature of the public service. Both electricity and natural gas are provided as part of a large-scale system, therefore it is logical to treat the contracts relating to these public services under the same Title.

It should be noted that in the French legal system there is a separate Energy Code (*Code de l'énergie*), that contains the main legislation for the energy sector. This Code does not contain specific rules for the contract for supplying electricity, it only cites the Consumer Code's regulation ("*Les dispositions des articles L. 224-1 à L. 224-16 du code de la consommation sont applicables aux contrats conclus entre les fournisseurs d'électricité et les consommateurs*").⁶¹ This differentiation clearly shows that in the French legal system, this particular contract is much more closely related as a part of consumer law, and not belonging to the laws governing the energy sector.

5.1. The Specific Rules Applicable to the Contracts Between Consumers and Suppliers of Electricity in the French Legal System

First it is important to examine the general rules of the Consumer Code that are applicable to all the contracts, including the contract for the supply of electricity. The main focus will be on the rules that give a unique characteristic to the contract. First amongst these is the declaration that in the terms and conditions of the supplier need to be clear and understandable, and in case of doubt it they have to be interpreted in the manner that is favorable to the consumer ("*Les clauses (...) doivent être présentées et rédigées de façon claire et compréhensible. Elles s'interprètent en cas de doute dans le sens le plus favorable au consommateur.*").⁶² The Code contains specific provisions that obliges the supplier to inform the consumer of warranties, and the possibility of consumer mediation procedure ("*des garanties légales (...) la possibilité de recourir, en cas de contestation, à la procédure de médiation de la consommation*").⁶³

One of the most important general rules of the Consumer Code declares that all terms of the contract that create a significant imbalance to the detriment of the consumer are to be considered unfair ("*sont abusives les clauses qui (...) créer, au détriment du consommateur, un déséquilibre significatif*").⁶⁴ Finally, amongst the general rules for consumer contracts it is declared that the good that is the object of the contract has to be consistent with the usual expectations of the consumer ("*Il est propre à l'usage habituellement attendu d'un bien de même type*").⁶⁵

Following the overview of the Consumer Code's general rules for contracts, the specific regulations regarding the contract for the supply of electricity and natural

⁶¹ Code de l'énergie Article L332-1.

⁶² Code de la consommation Article L211-1.

⁶³ Code de la consommation Article L211-2, Article L211-3.

⁶⁴ Code de la consommation Article L212-1.

⁶⁵ Code de la consommation Article L217-5.

gas will be examined.

First amongst the rules for contracts for the supply of electricity and natural gas is that the suppliers need to adapt a communication that conforms to the disabilities of consumers („*adapter la communication des contrats et informations aux handicaps des consommateurs*”).⁶⁶ Following this comes an in-depth set of rules for the content of an offer from a supplier. First, the offer has to contain all the information regarding the supplier, including its address, unique identification number, e-mail and telephone contact.⁶⁷ More importantly, the offer needs to contain the description of the service, including the standards applicable ("*description des produits et des services proposés ainsi que des niveaux de qualité des service offerts*").⁶⁸

In order to properly inform the consumer, the offer has to contain not only the price of the service at, but additionally the conditions regarding those prices ("*les prix de ces produits et services (...) les conditions d'évolution de ces prix*").⁶⁹ Also related to properly informing the consumer is that the offer has to contain the means of accessing information relating to access and use of the public distribution networks ("*les moyens (...) d'accéder aux informations relatives à l'accès et à l'utilisation des réseaux publics de distribution*").⁷⁰ Another important rule relating to the offer made by the supplier of electricity or natural gas is that it has to be for at least a year-long contract ("*celle-ci comporte au moins un contrat d'une durée d'un an*").⁷¹ It is important to mention that the supplier is obliged to give an offer to the consumer for a contract for the supply of electricity or natural gas („*est tenu d'offrir au client la possibilité de conclure avec lui un contrat unique portant sur la fourniture et la distribution d'électricité ou de gaz*").⁷²

Moving on from the precontractual obligations relating to informing the consumers, the following rules are related to concluding the contract. First the Code strictly specifies that the contract has to be in writing and the contract has to be in writing or a so-called durable medium ("*par écrit ou sur support durable préalablement*").⁷³ The most important criteria for a durable medium is that it has to allow for the long-term storage and later personal recalling of and reproduction of information ("*stocker des informations qui lui sont adressées personnellement afin de pouvoir s'y reporter ultérieurement pendant un laps de temps adapté aux fins auxquelles les informations sont destinées et qui permet la reproduction à l'identique des informations stockées*").⁷⁴ The contract can only be concluded with the signature of the consumer („*le consommateur n'est engagé que par sa signature*").⁷⁵

The Consumer Code not only has rules regarding the conclusion of contracts for the supply of electricity or natural gas, but also regulates the modification and

⁶⁶ Code de la consommation: Article L224-2.

⁶⁷ Code de la consommation: Article L224-3 1°-3°.

⁶⁸ Code de la consommation: Article L224-3 4°.

⁶⁹ Code de la consommation: Article L224-3 5°.

⁷⁰ Code de la consommation: Article L224-3 10°.

⁷¹ Code de la consommation: Article L224-5.

⁷² Code de la consommation: Article L224-8.

⁷³ Code de la consommation: Article L224-4.

⁷⁴ Code de la consommation: Article liminaire 8°.

⁷⁵ Code de la consommation: Article L224-6.

termination of the contracts. If the supplier wishes to modify the contract, first it has to send the proposed modification to the consumer by at least one month before the planned effect of the modification (*"des conditions contractuelles est communiqué au consommateur (...) au moins un mois avant la date d'application envisagée"*).⁷⁶ The consumer has the right to terminate the contract without penalty within three months from the delivery of the proposal for the modification of the contract (*"il peut résilier le contrat sans pénalité, dans un délai maximal de trois mois à compter de sa réception"*).⁷⁷ If not relating to the modification of the contract, the consumer has the right to terminate the contract, in which case the termination takes effect thirty day after supplier receives the consumer's statement of termination (*"la résiliation prend effet à la date souhaitée par le consommateur et, au plus tard, trente jours à compter de la notification de la résiliation au fournisseur"*).⁷⁸

A special way of terminating the contract for the supply of electricity or natural gas is when the consumer changes supplier, in this case the change has to happen in as short time as possible, which time-frime cannot exceed 21 days from the request (*"dans un délai le plus court possible, qui ne peut excéder vingt et un jours à compter de sa demande"*).⁷⁹ Following the termination of the contract the consumer has to receive the final invoice within four weeks from the termination, and the supplier can only charge such costs that are connected to the termination of the contract (*"ne peut facturer au consommateur que les frais correspondant aux coûts qu'il a effectivement supportés (...) au titre de la résiliation"*).⁸⁰ Finally, in relation payment of fees by the consumer, the Code declares that at least once a youar an invoice has to be issued, and a bill cannot be issued for consumption that happened later than fourteen months after the reading (*"aucune consommation (...) de plus de quatorze mois au dernier relevé ou autorelevé ne peut être facturée"*).⁸¹

It is clear from the overview of the rules of the French Consumer Code, that one of the most important aims of the legislator was to ensure the protection of the consumers. In the case of the contract for the supply of electricity or natural gas, the rules prescribing the informations a consumer has to receive before concluding the contract serve to ensure that the consumers can make a well-informed and well-reasoned decision. Additionally, the rules governing the termination of the contract and payment of fees are aimed at ensuring that the consumers are not in an overly burdensome situation in relation to their electricity or gas consumption.

6. The Different Contracts Between Consumers and Suppliers of Electricity in the Hungarian Law on Electricity

Lastly, after the overview of the French regulation governing contracts between

⁷⁶ Code de la consommation: Article L224-10.

⁷⁷ Code de la consommation: Article L224-10.

⁷⁸ Code de la consommation: Article L224-14.

⁷⁹ Code de la consommation: Article L224-14.

⁸⁰ Code de la consommation: Article L224-15.

⁸¹ Code de la consommation: Article L224-11.

electricity suppliers and consumers, I shall examine the Hungarian rules relevant to such legal relationships. The first important difference between the French approach is that the rules of the contracts are located in the in the Hungarian law of the energy sector, Act LXXXVI of 2007 on Electric Power, often simply called Law on Electricity (*villamosenergia törvény*). The placement of the rules of the contracts already shows that the Hungarian legislator treats the rules of this legal relationship primarily as a unique part of energy regulation.

The law contains rules for such areas of the energy sector, as the production of energy (*II. Fejezet: A villamos energia termelése*), the operation of the energy system (*III. Fejezet: Átvételi rendszerirányítás, villamosenergia-elosztás és a hálózati engedélyesekre vonatkozó közös szabályok*), the administrative rule governing the electric industry (*XI. Fejezet: A villamosenergia-üzemi tevékenységek végzésének általános feltételei*) or innovation in the energy sector (*XII/B. Fejezet: Energetikai innovációk támogatásával összefüggő feladatok*). The rules regarding contractual legal relationships between consumers and suppliers of electricity are located in the Chapter titled "Rights of Consumers and Consumers in Need of Protection" (*IX. Fejezet: A felhasználók jogai és a védendő fogyasztók*). This shows that even though the contracts between the consumers and suppliers of electricity are primarily not regulated as part of consumer law but as part of energy law, but still the presence of a consumer in the legal relationship receives special attention from the Hungarian legislator.

It is important to note, that in the Hungarian Law on Electricity there are three distinct contracts that relate to the consumer eventually receiving electricity. These are: the contract for connecting to the electricity network (*hálózati csatlakozási szerződés*), the contract for the use of the electricity network (*hálózathasználati szerződés*), and the contract for the purchase of electricity (*villamosenergia-vásárlási szerződés*). These contracts reflect on the different technical aspects related to receiving electricity, reinforcing that the contractual legal relationships of consumers of electricity are predominantly viewed as a unique regulatory area of the energy sector. Similarly to the overview of the French legislation, in the following part of this study I shall highlight parts of the regulation on these contracts that give them a unique nature.

6.1. The Regulation of the Contracts Relating to the Supply of Electricity to Consumers in the Hungarian Legal System

The first unique aspect of the Hungarian regulation is the highly technical differentiation between the contracts based on their objects. In the case of the contract for connecting to the electricity network the specific object of the contract is regulated in a Government Decree and it is the installation of the network connection at the connection point at the point of use (*felhasználási helyen lévő csatlakozási pontra a hálózati csatlakozás kiépítése*).⁸² In the case of the contract for the use of the electricity network, it is the constant supply of electricity according to the capacity obligated by

⁸² Government Decree 273/2007 (28 October) on the implementation of certain provisions of Act LXXXVI of 2007 on Electric Energy Annex 2. point 3.1.

the consumer (*a rendszerhasználó által lekötött teljesítménynek megfelelő villamos energia folyamatos szállítására*).⁸³ Finally, in the case of the contract for the purchase of electricity creates the actual legal relationship between the consumer and the supplier of electricity that results in the consumer receiving electricity.⁸⁴

For the contract for connecting to the electricity network and the contract for the use of the electricity network the electricity service provider is obliged to inform the consumer on all the important aspects of the contract ("*köteles (...) tájékoztatni a hálózati csatlakozási és a hálózathasználati jogviszony minden lényeges eleméről*").⁸⁵ The regulation for the contract for the purchase of electricity contains a more comprehensive list of all the elements the contract offer of the electricity supplier needs to contain.⁸⁶ It is important to note that for all three contracts the electricity service providers and electricity suppliers have a statutory obligation to conclude contracts with the consumers who express their intent of contracting.⁸⁷ Additionally, all three contracts can only be concluded in writing.⁸⁸ Similarly to the French legislation, in the case of the contract for the purchase of electricity there is a deadline of 30 days for the termination of the contract by the consumer and the electricity supplier has to provide a final invoice.⁸⁹

There are particular rules for the termination of the contract for the use of the electricity network. The electricity service provider has the right of unilaterally termination in three cases: if the consumer breaches the contract, if the consumer no longer consumes electricity, and if the consumer no longer has a contract for the purchase of electricity.⁹⁰ However, the law specifically states that in the first two cases the contract cannot be terminated if it is with a consumer in need of protection. Consumers in need of protection are defined as those who based on their characteristics specified in legal acts and due to their social needs or disabilities have the right to receive discounts from electricity service providers and electricity suppliers ("*jogszabályban meghatározott tulajdonságuk alapján szociálisan rászoruló vagy fogyatékossgal élő fogyasztóként részesülhetnek a villamosenergia-kereskedő és az elosztó hálózati engedélyesek által nyújtott külön jogszabályban részletesen meghatározott kedvezményben*").⁹¹

The relevant regulation specifies the different fees that are included in the sum that needs to be paid by the consumer to the electricity service provider under the contract for the use of the electricity network. These fees are the following: electricity network usage fee (*rendszerhasználati díj*), transmission fee (*átviteli díj*), distribution

⁸³ Ibid, Annex 2. point 7.3. b).

⁸⁴ Act LXXXVI of 2007 on Electric Power Section 61.

⁸⁵ Government Decree 273/2007 (28 October) on the implementation of certain provisions of Act LXXXVI of 2007 on Electric Energy Annex 2. point 2.5.

⁸⁶ Ibid, Article 22. paragraph (1).

⁸⁷ Act LXXXVI of 2007 on Electric Power Section 48., Section 58. Paragraph (2).

⁸⁸ Act LXXXVI of 2007 on Electric Power Section 58 Paragraph (1), Section 61. Paragraph (1).

⁸⁹ Government Decree 273/2007 (28 October) on the implementation of certain provisions of Act LXXXVI of 2007 on Electric Energy Annex 1. point 4.3. b.

⁹⁰ Act LXXXVI of 2007 on Electric Power Section 59.

⁹¹ Act LXXXVI of 2007 on Electric Power Section 64. Paragraph (1).

fee (*elosztási díj*) and public lighting fee (*közvilágítási díj*).⁹² Last but not least the relevant regulation specifies what counts as a breach of the contract for the use of the electricity network by the consumer. These include exceeding the capacity specified in the contract (*szerződésben meghatározott teljesítmény túllépése*), failure to meet payment obligations (*fizetési kötelezettség elmulasztása*), failure to report changes in data (*adatváltozás bejelentési kötelezettség elmulasztása*) and unauthorized consumption (*szabálytalan vételezés*).⁹³ This list of breaches of the contract serves as additional protection for the consumer, so that the legal consequences for breaching the contract can only be applied in these specific cases.

7. Conclusions

The most important conclusion that can be drawn from the comparative analysis of the French and Hungarian approaches to the regulation of contractual legal relationships relating to the supply of electricity, is that legal systems can reach very similar outcomes even if they start from vastly different points. This is applicable to two aspects of the regulation of the supply of electricity to consumers: first, the classification of the contract and second the focus on the protection of the consumer.

Both the French and the Hungarian laws and legal scholarship classify the contracts between the consumers and suppliers of electricity as civil law contracts. The reasoning for this classification however is fundamentally different. In France the differentiation between administrative and commercial and industrial public services is based on the nature of the given service. On the other hand, in Hungary the differentiation between contracts related to public services predominantly focuses on whether the given contract is aimed at the organisation of public services or at the actual provision of the public service to the consumers.

The second important convergence of the French and Hungarian legislation is the increased protection given to the consumers. In the French Legal system, the rules governing the contract between the electricity supplier and the consumer are placed in the Consumer Code, resulting in an increased focus on consumer protection. The Hungarian legislator placed the rules for the same contracts in the Law on Electricity, which gave a more technical nature to these rules. In spite of this, still there is a predominant focus on balancing the relationship between the consumer and the supplier through rules that are designed to protect the consumers of electricity.

The final conclusion of this study is that in spite of different approaches to certain areas of law, the actual legislation might be quite similar. This shows that similarities between distinct national legal systems can develop even with very different theoretical backgrounds. These similarities could serve as a shared basis for future legislation in the energy sector or different areas of law on a European level.

⁹² Act LXXXVI of 2007 on Electric Power Section 142. Paragraph (1).

⁹³ Government Decree 273/2007 (28 October) on the implementation of certain provisions of Act LXXXVI of 2007 on Electric Energy Annex 2. point 19.9.

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