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Autonomy of Local Self-Governments From a Financial Perspective in Hungary

Abstract: Recently, there has been a constitutional change related to self-governments in Hungary. The article examines the status of Hungarian local governments in comparison with EU member states from a financial perspective. Autonomy has several aspects, but one of the most important factors is financial, which is the basis of an organisation's operation. Without an appropriate financing system local decision-making cannot work. The research uses statistics of Eurostat, which are a good standpoint for comparative work. Thus, the remarks are of comparative nature.

The study deals also with the changes in municipal tasks, because competence is the core of autonomy. Finance and municipal tasks are closely related, which largely determines the level of autonomy.

The author examines the connections with the European Charter of Local Self-Government which is implemented by Hungary. Is the Hungarian regulation in compliance with the provisions of the Charter? What will be the future? What kind of trend is in progress in Hungary? Is it in accordance with the EU model? These and other questions are discussed in the article. The aim of the article is to follow up the changes in autonomy of local governments in Hungary and try to predict the future of national self-governing authorities.

Keywords: autonomy, local governments in Hungary, constitutional changes, finance and municipal tasks, future prospects

Introduction

In Hungary there have been constitutional changes which affected the sphere of local governments. The Fundamental Law of Hungary¹ took effect on 1 January 2012, which laid down new foundations for local self-governments. From this date, the right to local self-governments ceased to exist in the Fundamental Law but remained

1 Title Published on 25 April 2011.

in place under the Self-governments Act.² In essence, the constitutional protection of this right was terminated.

Hungarian local governments are part of the state organisation.³ By entering the Fundamental Law into force, local self-government became a state organisational issue and not a collective fundamental right. The most significant difference from state administration is that they have a certain degree of autonomy (but, not independence!). The state transfers rights, functions and competences to an organ having autonomy (namely self-governments) and waives the right to instruction as well (decentralisation). The state retains only the right to legal supervision of those autonomous organs.⁴

However, several new rules are heading in the direction of centralisation. This article will examine local governments from a financial perspective and will deal with the changes in local tasks. I try to answer the question: what may be and should be the future of local governments in Hungary?

1. State tasks versus tasks at local self-government level

Every change concerning the sphere of autonomy was based on the issue of effective operation of public administration. But what are the criteria of effectiveness? How can we measure it? It differs according to the time period and the area concerned. There is no general rule.

The advantage of local governments is that they are close to the local residents, they can handle local issues in a differentiated way and expenditure relates to meeting local needs at optimum level. Local solutions may be more flexible than those of the state.⁵ Local governments have sufficient autonomy to decide, manage and rule which is ensured by the state (by way of an act).⁶ But this does not lead to uncontrolled functioning. Thus, they are not independent from other state organs, but they do have the right to act under specific legal provisions.⁷ However, it is true that there is not such close supervision over local self-governments as there is over other state administrative organs. Consequently, stricter control can be a good reason for centralisation.

2 Act CLXXXIX of 2011 Magyarország helyi önkormányzatairól [*on self-governments*] (henceforth: Self-governments Act).

3 Preamble of Self-governments Act.

4 I. Balázs, A helyi önkormányzati autonómiafelfogás változása az új törvényi szabályozásban, "Új Magyar Közigazgatás" 2012, vol. 5, no. 10, p. 38.

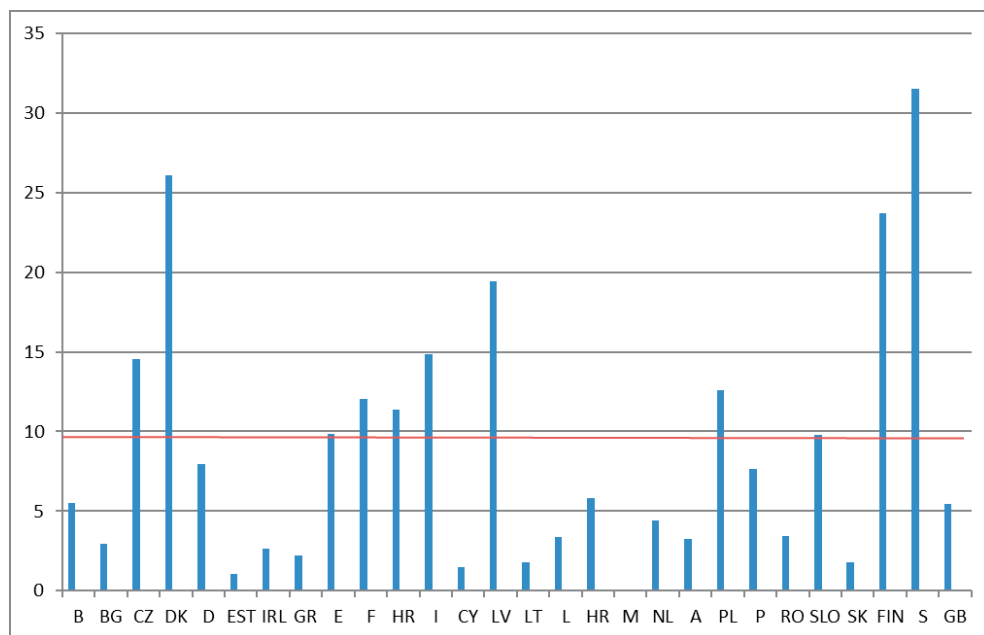
5 A. Vigvári, Is the conflict container full? Problems of fiscal sustainability at the local government level in Hungary, "Acta Oeconomica" 2010, vol. 60, no. 1, p. 50.

6 I. Dudinská – M. Cirner, Crucial Legislative Reforms in Public Administration in Slovakia Since 1990, "Hungarian Journal of Legal Studies" 2016, vol. 57, no. 1, p. 27.

7 *Ibidem*, p. 28.

The question here, is whether or not the system of Hungarian local self-government is an example of decentralisation in comparison with other EU member states. The data collected by Eurostat is a good starting point of the examination. The following chart shows the distribution of tax revenue between the member states and their respective local governments in the EU (2015):

Chart 1 – Percentage of tax revenues received by local governments



Source: Eurostat

It follows that local governments in Hungary receive less tax revenues than other EU member states. The red line on the chart shows the average percentage of distribution, and Hungary is below that line. As regard local governments in Hungary, financial centralisation is quite high.⁸

The table below contains data on the distribution of tax revenues in GDP ratio:

8 L. Jankovics, Local government finances in Hungary: from the culprit of fiscal slippages to a source of stability?, "Society and Economy" 2016, vol. 38, no. 4, p. 459.

Table 1 – Total receipts from taxes and social contributions after deduction of amounts assessed but unlikely to be collected (Million EUR)

GEO/TIME	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
European Union (28 countries)										
European Union (27 countries)										
European Union (25 countries)	3,9	4,0	4,0	3,8	4,1	4,2	4,2	4,2	4,1	
European Union (15 countries)	3,9	4,0	4,0	3,9	4,1	4,2	4,3	4,2	4,2	
Belgium	2,6	2,4	2,7	2,6	2,6	2,5	2,6	2,5	2,6	
Bulgaria	0,8	0,9	0,8	0,7	0,8	0,8	0,8	0,9	0,9	
Czech Republic	4,8	4,7	4,6	4,5	4,6	4,6	5,0	5,0	5,0	
Denmark	11,2	11,2	11,7	12,1	12,1	12,2	12,3	12,3	12,4	
Germany (until 1990 former ter	3,1	3,2	3,0	2,9	3,0	3,1	3,1	3,1	3,2	
Estonia	0,3	0,4	0,4	0,5	0,5	0,4	0,4	0,4	0,4	0,4
Ireland	0,9	1,0	1,0	1,0	1,0	1,0	1,0	0,9	0,6	
Greece	0,7	0,7	0,7	0,8	0,8	0,9	0,9	0,9	0,9	
Spain	3,0	2,8	2,7	2,9	2,9	3,1	3,3	3,4	3,4	
France	4,9	4,9	5,2	4,2	5,4	5,5	5,6	5,7	5,8	
Croatia	4,3	4,4	4,4	4,1	4,1	4,3	4,5	4,5	4,3	
Italy	6,6	6,5	6,0	6,1	6,2	6,7	6,6	6,7	6,4	
Cyprus	0,5	0,5	0,5	0,5	0,5	0,4	0,6	0,5	0,5	
Latvia	5,1	5,3	5,1	5,8	5,5	5,5	5,5	5,7	5,7	
Lithuania	0,4	0,4	0,5	0,5	0,5	0,5	0,4	0,5	0,5	
Luxembourg	1,6	1,7	1,8	1,6	1,7	1,5	1,4	1,3	1,3	
Hungary	4,4	2,6	2,6	2,4	2,4	2,4	2,2	2,2	2,3	
Malta										
Netherlands	1,5	1,5	1,6	1,6	1,6	1,6	1,6	1,6	1,7	
Austria	1,4	1,4	1,5	1,5	1,4	1,4	1,5	1,5	1,4	
Poland	4,6	4,6	4,1	4,0	3,9	4,0	4,0	4,1	4,2	
Portugal	2,7	2,6	2,5	2,4	2,5	2,5	2,8	2,8	2,8	
Romania	1,1	0,9	0,9	1,0	1,1	1,0	1,0	1,0	1,0	
Slovenia	3,4	3,3	3,8	4,1	4,1	4,2	4,1	4,0	3,6	
Slovakia	0,7	0,7	0,7	0,7	0,7	0,7	0,8	0,8	0,6	
Finland	8,8	9,0	9,7	9,9	9,7	9,7	10,2	10,3	10,5	
Sweden	14,3	14,7	14,8	13,9	13,7	14,2	14,3	14,0	13,9	
United Kingdom	1,8	1,8	2,0	1,9	1,9	1,9	1,9	1,9	1,9	
Iceland	9,8	9,1	8,7	8,5	9,2	9,3	9,5	9,5	9,4	
Norway	5,3	4,9	5,7	5,7	5,1	5,2	5,3	5,4	5,9	
Switzerland	4,2	4,1	4,2	4,1	4,1	4,1	4,1	4,0	4,1	
Serbia	1,5	1,4	1,4	1,6	1,5	1,4	1,4	1,4	1,4	

Source: Eurostat

If local taxes are examined in the GDP ratio, Hungary again lags behind other EU member states. In Hungary, local governments manage their tasks from almost half the amount of local tax revenue when compared with the EU average. The above table shows slow growth in the EU average. However, in Hungary there has either been in stagnation or decreasing over the past decade with the only exception to this trend being in 2015 when there was a very slight increase. The reason for this is the possibility for local governments to levy new wide-ranging local taxes.⁹ Nevertheless, local governments are less independent from the state than in other EU countries, largely because their financing is not ensured by local taxes.¹⁰

9 From 1 January 2015, local governments may rule and levy such local taxes, which are not banned by other acts. [Art. 1/A of Act C of 1990 a helyi adókról [on local taxes].

10 L. Jankovics, Local government..., *op. cit.*, p. 460.

The competence levying local taxes was broadened in 2015,¹¹ but in other respect there are many (including new) statutory limits for the management of local governments. For instance:

- local governments may undertake guarantees or conclude a contract resulting in debt only with the prior consent of the government. [Art. 10(1) of Act CXCV of 2011 on the economic stability of Hungary (henceforth: the Stability Act)];
- local governments (except counties) may conclude a contract resulting in debt if they levy a local business tax or at least one kind of property tax or municipal tax. [Art. 10(2) of the Stability Act];
- local government debt cannot endanger the level of state debt. [point a) of Art. 10/B(1) of the Stability Act];
- the level of debt undertaken may not exceed 50% of annual locally generated revenues. [Art. 10(5) of the Stability Act].

The Hungarian regulation follows two models, one based on governmental consent and the other based on normative provision. These are the two strictest rules related to borrowing. Two other models can also be applied, the first based on cooperation and the second on market discipline. The latter does not provide appropriate guarantees for the public sector,¹² but the model based on governmental consent gives the opportunity to influence local governments' management.¹³

The above rules are in compliance with the Fundamental Law and also with the interpretation of the Constitutional Court. Pursuant to constitutional rules, the legislator is only obliged to establish the financing system of local governments by way of several methods. The financing system of local governments only raises a constitutional question if the autonomy is infringed, namely where self-governance becomes dysfunctional or impossible to manage.¹⁴

These restrictions formally infringe the European Charter of Local Self-Government. The Charter states: "Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers." [Point 1 of Art. 9 of the Charter]

Another interesting question is whether or not the division of tasks between the state and local governments may have an effect on state debt. "In Hungary, most municipalities and counties were relieved from almost all of their aggregated debts in 2012, when the state budget assumed them. However, local authorities paid a huge price for this: central government took over some primary public services, such as

11 *Ibidem*, p. 472.

12 G. Kecő, A helyi önkormányzatok gazdálkodásának egyes kérdései nemzetközi kitekintésben, "Új Magyar Közigazgatás" 2013, vol. 6, no. 1, p. 9.

13 *Ibidem*, p. 11.

14 Decision 48/2001. (XI. 22.) AB.

education and/or most welfare, social and health facilities. In fact, county governments fared worse, they lost all of their institutions and have since become coordination centres for regional development and planning. In sum, the share of local government has reduced, with the costliest public services becoming centralised.”¹⁵

As regards the reasons for decentralisation, spending may be more effective and better fitted to local differentiated needs. However, it may also result in duplication (e.g. in administration). It is an established fact that citizens are more willing to pay local taxes than state ones. Others argue that more money may lead to uncontrolled management.¹⁶

The Spanish example¹⁷ shows that such fears have not materialised.¹⁸ But what could be the reason? Decentralisation led to competition for tasks between regions.¹⁹ It lasted until the economic crises in 2009, when local tax revenues depreciated more than state revenues.²⁰ Namely, local governments are more vulnerable and neither the rules nor the controls are accountable under these circumstances.²¹

2. Changes in local tasks

The Fundamental Law declares the groups of competence of local governments and acts within its framework may lay down further tasks. Because of the autonomy of the local governments, rules can be laid down only in statutes (acts) and not in other forms of law. Acts are passed by the Hungarian parliament, which is the guarantee of autonomy.

Primarily, the Self-government Act contains a list of tasks,²² which is not exhaustive. Thus, other acts may establish other municipal competence for local governments. [Art. 13(1)-(2) of Self-government Act] On the other hand, this list is only a “menu”, as the detailed rules of the tasks are laid down in other special acts (e.g. under what conditions and which local government shall perform certain

15 Point 63 of the Governance Committee CG/GOV05(2017)03 Coping with the debt burden: local authorities in financial difficulty – Draft report https://search.coe.int/congress/Pages/result_details.aspx?ObjectId=090000168070b135 (access 04.06.2018).

16 L. Jankovics, Local government..., *op. cit.*, p. 462.

17 As the democratic transformation in 1978, 17 parliaments and governments were established in regional level beside the local level. The expenditure at local and regional level was over 48% in 2008 (earlier it was only about 13%).

18 F. Toboso, Asymmetric decentralisation, economic cycle, regional and local government's borrowing in Spain, “Acta Oeconomica” 2014, vol. 64, no. 4, p. 441.

19 *Ibidem*, p. 447.

20 *Ibidem*, p. 456.

21 *Ibidem*, p. 458.

22 Art. 13 of Self-governments Act.

tasks). Thus, not all tasks can be considered compulsory tasks for all types²³ of local governments, but there are also voluntary tasks as well.

In determining competence, differentiation was always an important factor. Thus, the tasks of different types of local governments at different levels are ruled in other acts by which the need for differentiation is performed. Different types of local governments at different levels have different compulsory tasks.

The assignment of responsibilities must be examined regarding not only the relation among local governments, but also between the State and the local government sector. From the aspect of the right to self-government, this is of significant importance. During preparation of the Self-governments Act, the objective was that local governments shall perform general tasks to be provided at local level while services that require specialised support (as in settlements with a large catchment area) shall be performed by state organs.

It can be established that municipal tasks change from time to time, and this is true of what happened following the adoption of the Self-governments Act. The changes, which occurred between 2012 and 2017, are depicted in Figure 1 below.

Figure 1 – Main changes in the tasks of local governments (2012–2017)

2012	<ul style="list-style-type: none"> • establishment of joint mayor's office instead of separate offices [Art. 85 of Self-governments Act] • county archives merged into the State Archive [Art. 17(1) of Act LXVI of 1995] • health institutions are maintained by the State instead of the counties [Act CLIV of 2011]
2013	<ul style="list-style-type: none"> • public education (except kindergarten) became State task (operation was transferred to the State, but maintenance remained at the settlements with the population over 3000) [Art. 74(1)-(2) of Public Education Act] • maintenance of museums became the competence of the cities with county rights instead of the State [Art. 45(1)-(3) of Act on Culture] • maintenance of libraries became the competence of the cities with county rights instead of the State [Art. 64(6) of Act on Culture] • certain social tasks became State tasks: <ul style="list-style-type: none"> a) homes and rehabilitation facilities for psychiatric patients, addicts, disabled people, b) care homes for disabled people, temporary homes for psychiatric patients and addicts, c) child protection institutions. [Art. 1 of Act CXII of 2012]
2014	<ul style="list-style-type: none"> • new legal status of the mayor and local representatives [Art. 28-40, 69-70, 72-78 of Self-governments Act]
2015	<ul style="list-style-type: none"> • districts offices (and not local governments) establish the followings: active and old age allowance, care allowance (basic amount, increased amount and high amount), public health care support (subjective and normative forms), right to health service [Art. 33(1) of Act III of 1993] • municipal support [Art. 7 of Act III of 1993]
2016	<ul style="list-style-type: none"> • chimney sweeping services from the local governments to the disaster emergency management agency (State) [Art. 2(1) of Act CCXI of 2015]
2017	<ul style="list-style-type: none"> • full nationalisation of schools [Art. 74(1)-(2) of Public Education Act] • shared obligation to preserving the traditional appearance of the settlements [Art. 8 of Governmental Decree 104/2017. (IV. 28.)]

23 These are the followings: local governments of the capital, the counties and of the settlements (cities with county rights, cities with district rights, cities, villages and districts in the capital), [Art. 3(1)-(3) of Self-governments Act].

In accordance with the subsidiarity principle,²⁴ tasks should primarily be assigned to the local government that is closest to the general population, and should only be assigned to another local government, if its reach extends beyond the administrative area of the settlement or infringes the requirement of economy and efficiency, and professional consideration justifies it.²⁵

It is stated also by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, that the reform and rationalisation of a local self-government system which is based exclusively on financial considerations is not in compliance with the right of self-government, as it goes against the rules of the European Charter of Local Self-Government. According to the Charter: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population"²⁶ [Point 1 of Art. 3 of the Charter]. In this spirit, according to the opinion of the Congress for Local and Regional Authorities of the Council of Europe, the centralisation of tasks gives cause for concern, especially in the field of public education and health care.²⁷ So for example, the fact that public education and health care represent the highest costs burden among municipal tasks, this by itself should not constitute just reason for the state to relieve local governments of those services. In all cases it should be properly examined to determine whether or not increased cost-effectiveness can be reached by other means, e.g. by resource transfers.²⁸

Similarly, the Venice Commission established that the European Charter of Local Self-Government, which is binding on Hungary, "requires compliance with a minimum number of principles that form a European foundation of local democracy, including, as a starting point, the principle of local self-government." Based on this, "the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution" and should stipulate other important key principles (e.g. the principle of subsidiarity, the principle of financial autonomy and that of adequacy between resources and competences, the legal protection of local self-government, and limits of the administrative supervision of local authorities).²⁹

24 It is declared neither in the Fundamental Law, nor in other acts.

25 I. Verebélyi, *Az önkormányzatiság alkotmányos alapjai II.*, "Magyar Közigazgatás" 1995, vol. 45, no. 10, p. 549.

26 Helyi és regionális demokrácia Magyarországon, "Új Magyar Közigazgatás" 2014, vol. 7, no. 1, p. 13.

27 *Ibidem*, p. 6.

28 *Ibidem*, p. 149.

29 Opinion on the New Constitution of Hungary: Adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011) [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)016-e) (access 04.06.2018).

It is obvious that public services cannot be effectively provided below a certain population number. However, this statement requires some qualification.³⁰ For example, people living next to the border are in a different position to those living in the heartland of the country; geographical conditions, tourism characteristics, the existence of urbanization and industrial area, etc., are different in every settlement. The theory is over-simplified and taking into account only the population number is the wrong way to look at it.³¹ It is fact that there is a settlement in Hungary where only nine people live (Iborfia in Zala County, 2015), while c.1.8 million people live in the capital. The types of settlement and counties vary widely.³² The thinking must be more differentiated and more complex regarding the determination of tasks, than simply drawing a line based on population number. The Self-government Act differentiates based on the types of local governments, the nature of competence, and the different characteristics of the local governments (e.g. especially economic capacity, population number, and size of the administrative area). [Art. 11(1)-(2) of Self-government Act].

Several studies have shown that public services provided in one area frequently overspill into an adjacent area. Thus, people not living within the boundaries of a particular local government may nevertheless benefit from the services it provides. Therefore, it can be said that the effective and appropriate performance of tasks influences the way voters exercise their rights, either by moving to a settlement that meets their needs or by forcing their own local government to introduce services appropriate for them.³³ It is very difficult to rule on such circumstances with an act parliament.

Conclusions

It is undisputed that the right to local self-government is not protected by the Fundamental Law of Hungary. The protection of local governments has in fact weakened. However, the rules provided for in the former Constitution are incorporated in the act on local governments. The system of local governments may be amended by an act at any time. However, I cannot say that local governments have lost their power in the administration system.

The new financial rules restrict autonomy. They lead to a more centralised system. However, I must also emphasise that the current state of supervision does not infringe the autonomy declared in the Fundamental Law, as its goal is simply to enforce legality.

30 G. Zongor, Önkormányzati vissza- és előretékinés, avagy szubjektív értékelés az elmúlt csaknem negyedszázadból, "Új Magyar Közigazgatás" 2014, vol. 7, no. 1, p. 84.

31 E.g. in case of establishment of joint mayor's office [Art. 85 of Self-governments Act].

32 G. Zongor, Önkormányzati..., *op. cit.*, p. 85.

33 R. De Siano – M. D'uva, Fiscal decentralization and spillover effects of local government public spending: the case of Italy, "Regional Studies" 2017, vol. 51, no. 10, p. 1508.

In essence, the national regulation is literally in compliance with the provisions of the Charter. But, examining the spirit of the Charter, I arrive at an opposite conclusion. The Preamble of the Charter declares that, “the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen” and “the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power”. By signing the Charter, members states undertook to strengthen the system of local governments, but the recent tendency is to the contrary.³⁴

I suspect that there will be a greater centralisation of national local self-governments. I can imagine that the principle of “one municipality in one settlement,” which stems from the regime change, will be replaced. In my opinion, the power of local governments is more important than the number of tasks it performs. Thus, it would be in compliance with the Charter, if local government existed not necessarily in all settlements in Hungary, but where they did, it would be under circumstances of having real power in local affairs with an appropriate financial background. In my view, this is the optimistic scenario.

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34 I. Balázs, A helyi önkormányzati..., *op. cit.*, p. 41.