

# CHANGES OF THE HUNGARIAN LOCAL GOVERNMENT SYSTEM

## DEMOCRACY, LOCAL PUBLIC AFFAIRS AND LOCAL GOVERNMENT

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### Introduction

The aims of this dissertation were to analyze the exercise of- and the recent changes in local democracy. The exercise of power was studied only on the level of settlement, the dissertation does not contain analysis on the regional (county and capital city<sup>1</sup>) level. The limits of exercising local democracy are determined by the rules of local representatives' and a mayor's election, as well as by the autonomy of local governments.

Therefore the legal institutions of these fields are analysed in the dissertation. The dissertation does not contain previous laws or rules, and does not intend to review the historical antecedents, it only focuses on existing and newly accepted provisions. The goal of the dissertation is to introduce the local elections' rules analytically, including international and domestic requirements in the light of the Hungarian Fundamental Law. Also changes in the local government's duties require evaluation in terms of autonomy of local governments. Numerous problems came up in practice, which were caused by incomplete, ambiguous or slow provisions. Thus, this work aims to solve these problems with suggestions, moreover to make easier the work of law enforcements.

### Methodology of the research and structure of the dissertation

The dissertation was made with the help of methods which are usually used in jurisprudential researches. The collection of materials, the organization of the material, the assessment and the consequent conclusions were based on the analysis and the evaluation of research literature, laws, other legal documents and judicial decisions. In addition to these methods, the work also contains my own practical experiences. Historical and comparative legal method was used in some cases, which means comparison of existing and newly adopted but not yet effective provisions with the rules

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<sup>1</sup> Capital city is a type of the local government on the level of settlement and region, as well.



of the previous state. The institutions of local democracy were approached in practical ways.

The dissertation places special emphasis on significant changes that have occurred in 2012-2013 and which are important in local democratic exercise of power. The work is divided into five main parts. The first part describes the research field and the methodology of the research. The second part contains the theoretical foundation of the research topic. This section determines the conceptual framework of local democracy and specifies its location in the system of power of the state and in the system of division of powers. This second section also contains the processing of the relevant domestic and foreign literature. However, the starting point was always the provisions of Fundamental Law. Presenting<sup>2</sup> the practice of Constitutional Court is unavoidable in connection with the constitutional declaration. The third section describes the local democratic institutions of direct and indirect exercise of power, particularly with regard to the changing rules. In this regard, I fundamentally relied on laws.

As well as the born election laws are evaluated in the light of rules of the rights of local governments, the Fundamental Law and the European Charter of Local Government's regulations. In this connection, the European Court of Human Rights case law is also analysed. In connection with the direct local exercise of power, statistical data and conclusions drawn from the data can be found in the dissertation. In this section, I proceed to discuss the organization of local government, including the provisions of local government associations as well, because the rules of the local government associations also changed significantly and their tasks were imposed on local governments participating in associations.

The third part ends with presenting the relationship between the local exercise of power and the political spoils system. Another major conceptual unit of the thesis contains the changes of local government functions, which can be found in part four. Academic literary sources on the above mentioned changes were not available, so instead of relying on the literature, law and issues which came to surface in relation with the restructuring of local government tasks are processed in this dissertation. In this context, the results of discussions with representatives of administrative authorities are drawn into the dissertation. Studying the local government jobs, the presentation of their financing and overview of the basic rules of local government management cannot be disregarded. This process based on use of literature. While the Hungarian aspects of this method are supplemented by interpretation of laws and analysis of discussions with experts about the arising problems.

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<sup>2</sup> In my opinion, the Constitutional Court's decisions require analysis even if the Fourth Amendment of the Fundamental Law was repealed. [Fourth Amendment of the Hungarian Fundamental Law Art. 19 Par. (2); Decision 55/1994. (XI. 10.) AB, ABH 1994, 296, 302.]

In the work - within the fourth part - a separate chapter is devoted to present rules on the administrative supervisory competence over local governments in an evaluative focus, which is mostly based on analysing domestic literature, law interpretation and a synthesis of practical experience.

The fifth part of the dissertation contains a summary of the research results and separately deals with the changes occurred in the provisions of electoral law and in local government functions.

## Summary and applicability of the dissertation's results

### *Summary of the dissertation's results*

Statements related to the local exercise of power When studying the current regulation of the Hungarian Fundamental Law in connection with local democracy, I found that the right of local governing is not declared in Fundamental Law. The right of local governing was a rule of scope in the Constitution and the Constitutional Court did not use the test of necessity-and-proportionality during the evaluation of the above mentioned rule. The Fundamental Law does not dispose of the right of local governing but it also does not determine its content or levels of local governments. Instead of these, it places the definition of local public affairs into the centre. The Fundamental Law declares that local governments dispose of public power, which is, with the state power together, part of the single public power, so the executive power is vertically divided.

The definition of arranging public affairs means making decisions in normative or individual cases. The exercise of local power does not give additional tasks compared to arranging public affairs, rather it classifies the duties from another point of view. According to the Act on Hungarian Local Governments CLXXXIXth Law of 2011 (hereinafter: Act on Hungarian Local Governments), the right of local governing expresses the will of people so it is the right of making decisions. Local governing also puts into effect the will of people, namely it is the right of the execution of the decision.

So the subjects of local governing are members of local community and not local governments or its agencies. Members of local community can exercise the right of local governing directly, by referendum or through chosen representatives (indirectly). [Act on Hungarian Local Governments § 2] The local governing is supported by a new kind of approach. This approach requires not only right, but also obligation to local voters when it states the enforcement of "civic responsibility" and when it provides an obligation that "it expresses and implements the local public will in public affairs in a democratic way, creating widespread publicity." [Act on Hungarian Local Governments § 2]

The new Hungarian legislation harmonizes with the expectations, as the European Charter of Local Self-Government<sup>3</sup> does not state that the right of local governing should be fixed on constitutional level. Local governments are considered to be part of the executive power in the sense of the classical division of powers system, but they must be separated from central government bodies, namely from the Government (which is the top of the executive power) and from the ministries. The essence of self-government, described by Article 3rd of the Charter, is dissolved if direct or indirect influences of central government agencies reach beyond a certain limit. The Paragraph 1 of Article 8th of the Charter states that supervision over local self-governments are exercised by state authorized administration under circumstances and procedures which are defined by the Constitution and laws.

In light of these facts, it is worth examining the new rules of Fundamental Law and the Act on Hungarian Local Governments whether certain elements of the newly introduced supervisory authority individually, or especially combined together provide a particular level of influence for the Government, which excessively limits the autonomy of self-governing. The head of the county government office (hereinafter: government office) has legislative competence and obligation as well. This is such an external intervention into the operation of an autonomous body, which calls into question its autonomy. It results in a weaker local government, and orients towards a more centralized state operation. However, this does not go beyond the limits provided by the Charter. The preamble of the Charter has an important criterion stating that only "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". Within the framework of the Charter the contracting states agreed in 1985 that the existing government system will be strengthened and real responsibilities for governments will be given but the current processes do not follow this direction. The local government sector is not included in the restructuring priorities of public administration, its development (or rather conversion) follows the definition of other participants of the organization of public administration. Thus, the local government system may not correspond with the criterion, but overall it cannot be said that the Hungarian regulation does not meet the requirements of the Charter.

The exercise of local power can implement directly or indirectly in which case the exercise of power through referendum which supersedes the power of representatives. The exercise of local power in practice happens almost exclusively indirectly. Therefore the rules that determine the conditions for the development of local representative

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<sup>3</sup> The Charter uses the „local self-government” term, which is same as the „local government” term preferred by me

democracy are important because voters are only able to express their will every four or five years. From this perspective, the most important rule is the definition of right to vote. In the case of local elections, the right to vote can only be exercised in city of inhabitancy or residence. Restriction of the right to vote can be achieved through placement under guardianship, implemented imprisonment or disqualification from public affairs, exclusions that could reasonably be expected in regard to someone who is an electorate or can be elected. However, exercising the right to vote of people who are under house arrest or in custody is not solved, but in a given situation people who are subject to the more strict measure (pretrial detention) have more opportunities to exercise their right.

It should be considered in connection with the Hungarian regulations that the very permissive regulations of the right to vote should be changed in the future, since they do not set further bounds. Maintaining contact with minority<sup>4</sup> local governments and facilitating their legal operation often cause problems, not only for local governments who are responsible for their operating, but also for the responsible government offices that provide legal supervisory oversight. The problem stems from the fact that members of the minority local governments often do not speak Hungarian. They do not understand the legal requirements, therefore they cannot submit their application for normative support, they do not know which resolution should be passed and how to put them on record, they cannot compose their budget, draft their contracts etc., which leads to settlement problems later. The lack of requirements also apply for local representatives which could affect the exercise of local power; if a representative is unable to keep in contact directly with the voters, it may damage the success of local democracy.

The Hungarian legislation is very liberal since it does not prescribe qualifications requirements, moreover it does not require candidates to declare their qualification. Considering that in exercising local power, representatives and mayors have to make decisions about the of appropriation of public funds, often in the values of billions, it would be desirable for candidates qualifications to be public records, since voters could only decide responsibly when knowing all necessary information. In my opinion, the new provisions which enter into force in this year (2013) will help a broad representation of public will with the introduction of the electoral sheet and the institution of multiple proposal coupons. Compensation votes are counted differently than in the case of parliamentary elections, which helps to represent the pluralistic electoral will of the electorate in the local representative body.

The introduction of the electoral threshold affects this process to the contrary, nevertheless this does not constitute to be a constitutional issue. In connection with the

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<sup>4</sup> The „minority” term was used by Hungarian laws before 2012. The present term is the „nationality” in Hungary, but I use the „minority” term in this text because of that is the English terminology

minority elections, it is worth noting that it would have been a more ideal solution, if the size of the bodies were to correspond to the numbers of the voters. As the case today is, hundreds or thousands of people have the same number of representatives as 30 people, it causes problems in providing a quorum especially where there are vacant mandates. In the case of exercising local power it has to be noted that the Act on Hungarian Local Governments fixed almost every rules about the legal status of local representatives however, there are important questions which are not defined precisely.

A representative, as a direct practitioner of local power has the right to initiate a decision and representatives also have the right to participate in decision-making. This is one of the most important rights in exercising local power. However, this right is not unrestricted. Representatives do not have this right in every case as there are cases when the Act on Hungarian Local Governments or other laws restrict this right of the representatives. For example only a mayor may propose (a) deputy mayor(s). There are also other examples that representatives abuse this right in urgent cases by initiating the decision-making in the session and at the same time evading laws which contain procedural rules in connection with the given decision.

There are many ways to group or take apart the rights of representatives (e.g. questions, interpellation, oral, written, formal and non-formal) but it has to be emphasized that representatives have right to know all materials of the local government, including the closed, confidential documents as well. It is also important to mention that this right does not apply to state administrative matters. I have to highlight that dismissal of the representative democracy may not be reached by indirect democracy (referendum) because the Hungarian Fundamental Law prohibits holding a referendum in order to dissolve of representative bodies.

The group of representatives, a representative body has the right to make decision during managing the public affairs, which is comprised of individual votes of the representatives. The representative body may adapt a decree or take a resolution. A decree bases on legislative authorization or it is adapted in original legislative power. In many cases it the question arises, whether the legislative authorization also creates an obligation. In my opinion it does not, because if the local public affairs do not justify the regulation of the given subject, then the representative body does not have to adapt a decree.

The situation is different in cases when laws provide the obligation to adapt a decree, but in such cases the obligation has to be unequivocal. It is an interesting question whether a government decree can give authorization for local governments to adapt a decree and whether it can provide such an obligation. After all, in some cases this is what happens, which greatly limits the territorial decentralization of local governments.

The representative body in majority of the cases passes a resolution. Resolutions may be normative or individual. In connection with numbering the resolutions, there is a peculiar situation, as the minister has only been authorized to adapt decrees in case of numbering the normative resolutions, but the Minister of Public Administration and

Justice extended this decree to individual resolutions which was only adapted for normative resolutions. From the 2014 elections mayors may not be members of parliament. Their ability to influence the central power will therefore be reduced. Mayors, as representatives who are on the top of local executive power, it can be naturally expected to be incorruptible and at the same time it is also an expectation that they do their jobs to promote the interest of their city. I think that the rules for determining their compensation just meet the above mentioned expectations. From this year, mayors exercise the employer's rights over clerks, so the mayors are able to control them and the office through them more directly, than at the time when mayors had only other employer's rights. This however raises the question, how could a clerk be the agency of the representative body, and functionary of the local governments, when the representative body does not possess any authority over them.

In addition it is only the absurdity occurring in the Act on Hungarian Local Governments that clerks are the guard of legality, obliged to signal violations of law by his/her superior but the clerk also is obliged to control himself. Although, the tasks of clerks have been reduced by approximately 50%, clerks are still unable to comply with all laws. Moreover even the requirements of the Act on Hungarian Local Governments cannot be fully enforced, as can be exemplified by obligatory participation in meetings of the representative body and in committee meetings. In Hungary the direct exercise of local power negligible, as there are 3200 local governments and only 10 referendums are held per year in average. In most cases, the questions asked belong to the scope of obligatory referendums (e.g. area-organizational processes). It can be seen from statistics that these referendums are invalid or inconclusive, which indicates that citizens do not use with the opportunity of exercising direct local power.

The system of the political spoils is also present locally. We should not forget that who fill the status and where he/she comes from may have a great significance. It can be generally stated that public servants do their tasks in a yet politically neutral way, although the strengthening of political spoils system aims to act against this neutrality. The parties have not yet established groups of experts on the local level, which would be essential for changing the local administration at the end of a political era. Change cannot be expected, as there are no alternative jobs where experts can work until they regain their political status. At the distribution of different positions (e.g. committee members, supervisory board members, institutional management) political aspects started appearing in the selection process, loyalty towards the leader and the party gaining preference over professionalism. Reasons for this change include the fact that many votes can be reached through these institutions, whilst promoting the values of current political power and the implementing programs can also be achieved.

The aim (during the Fall of Communism in 1989) was to present the local governments as a counterpole of the central power, which failed to succeed as the election time in spring and autumn were too close to each other. This resulted in party politics to tend toward the system of political spoils so as the same pole government

may develop at the same governing cycle. Due to the five-year election cycle from 2013, this development will be further shifted, however the function of local governments as counterpoles will still not materialize due to several rules applying to local governments (such as financing).

### *Findings in relation to local government functions*

Since the Fall of Communism, the tasks of local governments became multifaceted, changing from the centralized management to a much more fragmented operation. For 12 instance settlements were supplied by 40 water public utilities providers at the time of the Fall of Communism, while nowadays this number is nearly 400.

Local governments may decide to carry out their duties, or establish institutions to implement their tasks, they can also set up business associations and in addition local governments can also associate with other local governments. The regulation about associations has been changed, which prescribes that the association agreement had to be examined until 30 June 2013 and the agreement had to comply with the Act on Hungarian Local governments. It has to be noted, that the Act on Hungarian Local Governments does not regulate cases where the representative body does not accept the amendment thus resulting Associations are particularly important in the case of local government functions, as they were the typical answer to increase in duties which was also previously encouraged by the state normative funding.

Carrying out the educational tasks has also changed. Leaving only the pre-school education as the responsibility of local governments, whereas schools are operated by the state (over population of 3000 schools are operated by local governments). However, catering services in schools remain the responsibility of local governments. The changes in the cultural sector mainly affected the municipalities in county seats. The county museums were closed down, and were substituted by county-scope museums, which are maintained by the local government of county seats. A similar case occurred with county libraries. Unlike in the other cases, in case of county archives and public cultural institutions, the state maintains these institutions and is responsible for their operation and for professional management. In connection with the reorganization of social tasks, the guiding principle was that primary care service would remain the responsibility of local governments whereas the state would be responsible for specialist care service. However this has not been implemented in all cases, as for instance the residential care for people with disabilities remains a responsibility for several local governments. Only minimal changes occurred in providing other public services. The other privileges, obligations, tasks remained the responsibility of the local governments.

The most challenging tasks for local government and state institutions were the transfer of the actual administration and corresponding assets. The laws which were released in December 2012 and the complementing government decrees and ministerial



decrees about restructuring the institutions provided such deadlines which were impossible to carry out 13 legally, for example ratification of articles of incorporation of associations by the representative bodies. Apart from procedural rules, substantive issues during decision-making about takeover may also have been left undecided. Ten thousands items of property and thousands of personnel cannot be thoroughly prepared for handover in a couple of weeks. This is demonstrated that a large number of contracts between the Hungarian state and local governments, which should have been signed during the course of the year or at the end of the year, are to this day not concluded. However, it is good to note that despite these shortcomings the system has not collapsed, but is operating with occasional hindrances.

Local governments may also fulfil self-imposed tasks, besides the compulsory ones. Categorizing these tasks is hard, as there is a lot of overlap between them. These overlaps are important because the financing of local governments by the state has transformed. The central budget provides sources only for compulsory tasks, however, self-imposed tasks have to be provided primarily from sources of local governments. The previous state normative funding was replaced by financing of specific tasks, but this change has not been implemented in all sectors (e.g. social sector) yet. The compulsory prescribed revenue and the way of its calculation reduces the autonomy of budget-planning and management in local governments and strengthens the enforcement of central interest.

The Parliament can decide freely how they arrange financial backing for the tasks which are determined by the law. However, the Constitutional Court also stated that guaranteeing legal certainty is important in connection with the management of local governments. In this context, it is worth thinking about that the issue of regulated local government loan, for the purpose of national debt reduction, which can be seen as an intervention into the autonomy of local governments. This could lead one to think that with a little exaggeration a part of local government asset can be, with a help of a law, transformed into state asset, as it is already a national property.

The obligations which are laid down in the laws of the European Union have to be observed in connection with financing public services, which means that financing a public service cannot restrict the economic competition. Local governments have to conclude public service contracts with institutions providing public services and with business organizations as well. The contracts has to fix what can be accounted from public funds. It is important to emphasize that overcompensation is strictly prohibited. There are exceptions to the prohibited state subsidies, Hungary is exempt in cases of the cultural sector, meaning that cultural 14 activities can be financed freely, as it does not fall under the restriction of economic competition. There are additional exceptions and other opportunities to provide regular support, it is enough to refer to the rules of *de minimis*. It can be said that the Hungarian Government is not responsible for the debts of local governments. This statement, however, is not true in reality, when systemwide problems occur or a bigger local government finds itself close to insolvency. In such

cases the state is responsible for providing continuous public services and the integrity of the country. A good example of such case could be the one from 2013, when Hungarian Government took over debts of 1956 settlements (around 600 billion Forint) from local governments.

### **Applicability of the dissertation's results**

The applicability of the research results is fundamentally two-directional. The dissertation topic has not yet been discussed in Hungary as a scholarly monograph. Therefore, instead of the theoretical approach of the institutions of local democracy I conducted a practical research. In this regard, the dissertation could potentially appeal to the interest of theoretical experts and practical experts as well. Furthermore, the election law and law about functions of local governments have been accepted recently, rendering the current period ideal for collecting experiences about the changes and the transitions. Following their assessments the possible errors and inadequacies will have to be corrected. The issues which are mentioned in the dissertation and their answers will help to step forward by offering proposals on how to modify the issues in the legislations at hand. By introducing the different viewpoints that have come to light during the interpretation of laws, the dissertation can be a useful guide for law enforcements, with special regard that reasons of the misunderstandings are clarified in the work