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Basic Rules for Local Self-Governments in Hungary

1. Concept of self-governance and local self-governments. European standards for local self-governments and Hungarian regulations

‘One of the most important legislative tasks of these months and even of this year is to adopt the act on local governments and to hold local elections’, said Prime Minister József Antall, in the Hungarian Parliament on 22nd May 1990, and the last twenty-plus years have verified his statement¹. (Kiss, 2004:1598)

The new structure was extended with a new sub-system (the sub-system of local self-government administration), new organisational principles were introduced (e.g. real decentralisation and autonomy) and while the importance of certain principles of operation declined (e.g. state guidance), at the same time others increased (e.g. the principle of legality).

After the full review of Act XX of 1949 on the Constitution of the Republic of Hungary, local communities gained independence and were granted the right to independently regulate and manage local public affairs in a legal framework. (Art. 44/A (1) a) of Act XX of 1949 on the Constitution of the Republic of Hungary. In effect until 01 01 2012.) Autonomy made the interests and peculiarities of individual settlements become known as the result of a legally managed correct procedure and made it possible for local governments to perform their tasks and exercise their authority independently².

All of these were accompanied by economic independence guaranteed by the Constitution. In the period of transition, a liberal and – relatively – modern sys-

¹ P. Kiss (ed.), *Magyar Kormányprogramok, 1867-2002*, Budapest 2004, s. 1598.

² L. J. O’Toole, *Local public administrative challenges in post-socialist Hungary*, „International Review of Administrative Sciences”, 1994, nr 2, s. 293.

tem of local government institutions developed on the basis of the provisions of the Constitution:

- the principles of the European Charter of Local Self-Government prevailed;
 - democratic power could be exercised locally;
- the system offered scope for self-regulatory processes and local legislation³.

‘Convention no. 122 of the Council of Europe, the European Charter of Local Self-Government was a milestone in the development and legal regulation of local governments. This Charter laid down the principles and legal precepts of local self-governance which are generally applied and applicable in the member States of the Council of Europe. The contents of the Charter comply with the generally accepted legal principles of the concept of local government⁴.

The convention, adopted in Strasbourg on 15th October 1985, was announced in Act XV of 1997 on the European Charter of Local Self-Government. The Charter was created under the auspices of the Council of Europe (this international organisation is not to be confused with the Council of the EU, which is an organisation of the EU) and its purpose was to specify standards, deriving from the rule of law and democracy, which are generally applied in the nearly fifty Member States of the Council of Europe in the course of establishing their respective systems of local self-governments.

A certain democratic mechanism was developed, in which ‘centralisation, which may be regarded as having a general effect, can prevail in the interest of achieving social aims, while in the interest of achieving all other aims of public interest, partial self-governance (autonomy) can prevail’⁵. The peculiarities of the Hungarian local government system, developed in this way, stem from several sources: Hungarian traditions of self-government, the institutions of the former soviet-type council system which were ‘presentable’ and proper within the framework of a constitutional state of the rule of law and solutions originating from Western-European (mainly South-German) self-governmental systems. The modern structure of Hungarian self-governments is based on these factors.

The structure of Hungarian local self-governments still rests on two other pillars: settlement-level and county (regional level) self-governments. Task performance (and financing) is focused on settlement-level self-governments. Since 1990, county self-governments have been seeking their place in the Hungarian self-government administration⁶.

³ F. Csefkó - I. Pálné Kovács (ed), *Tények és vélemények a helyi önkormányzatokról*, Pécs 1993, s. 175.

⁴ S. Berényi, *Az európai közigazgatási rendszerek intézményei (Autonómiák és önkormányzatok)*, Budapest 2003, s. 311.

⁵ A. Tamás, *A közigazgatási jog elmélete*, Budapest 1997, s. 157.

⁶ L. Szabó, *A középszint az önkormányzati törvény módosításának tükrében „Magyar Közigazgatás”*, 1994, nr 12, s. 721.

Although the task of self-government has a double character, with service and (public) authority, it is indisputable that local self-governments provide certain local public services, while self-government organs rarely participate in exercising local public authority.

On the one hand the past two decades have proved that local objectives and intentions, collaboration, common will, parochial spirit and a sense of local identity can yield significant results, bring about revival and preserve values. On the other hand, by the end of the first decade of the new millennium, it became obvious that the self-government system suffered from internal conflicts, and due to the steadily decreasing state subsidies and the impact of the economic downturn, anyone could see that the established system was not sustainable and was grievously unfair – from several points of view⁷.

2. The constitutional legal status of self-governments in Hungary

The Constitution of Hungary (abrogated on 1st January 2012), when compared internationally, dealt with local self-governments in a quite detailed way, as does the Fundamental Law of Hungary (which came into force on 1st January 2012). Only five articles and twenty-three paragraphs of the Fundamental Law deal with local self-governments. The territorial division of Hungary is specified in Article F) of the part titled Foundation of the Fundamental Law:

(1) “The capital of Hungary is Budapest.

(2) The territory of Hungary consists of the capital, counties, cities and towns, as well as villages. The capital, as well as the cities and towns may be divided into districts.”

A more important change is that – unlike the Constitution – the Fundamental Law does not speak about the districts of the capital as a special type of settlement (vested with the right to local self-governance). Thus the Fundamental Law repealed the constitutional guarantee of the functioning of the self-governments of districts in the capital.

Provisions pertaining to public authority at a local level can be found in the part titled Local governments. The fact that ‘constitutional statutes’, called cardinal Acts, detailing special rules pertaining to local self-governments – to be adopted later – are referred to four times in this part indicates that essential content elements of legal regulation appear in the detailed rules. [“Cardinal Acts shall be Acts, the adoption and amendment of which require the votes of two-thirds of the Members of Parliament present.” Article T (4) of the Fundamental Law.]

The provisions pertaining to the territorial division of the country and to local self-governments got ‘torn apart’ (structurally) in the Fundamental Law. “In Hun-

⁷ L. Kákai (ed), *20 évesek az önkormányzatok. Születésnap, vagy halotti tor?* Pécs 2010, s. 149.

gary local governments shall be established to administer public affairs and exercise public power at a local level” and the basic rules are to be defined by a cardinal Act [Article 31 (1) of the Fundamental Law].

The Fundamental Law – unlike the provisions of the Constitution – makes no reference to the content of local self-governance, local independence (autonomy) or the fundamental constitutional right to local self-governance which enfranchised local citizens are entitled to. Obviously, enfranchised local citizens can still participate both directly and indirectly in the exercise of local power. A provision in the chapter titled Freedom and responsibility lays down, “Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of Parliament, local government representatives and mayors, and Members of the European Parliament.” [Article XXIII (1) of the Fundamental Law]

Article 32 of the Fundamental Law sets forth that “In administering local public affairs local governments shall, to the extent permitted by law:

- a) adopt decrees;
- b) adopt decisions;
- c) perform autonomous administration;
- d) determine their regime of organisation and operation;
- e) exercise their rights as owners of local government properties;
- f) determine their budgets and perform independent financial management accordingly;
- g) engage in entrepreneurial activities with their assets and revenue available for the purpose, without jeopardising the performance of their compulsory tasks;
- h) decide on the types and rates of local taxes;
- i) create local government symbols and establish local decorations and honorary titles;
- j) ask for information, propose decisions and express their views to competent bodies;
- k) be free to associate with other local governments, establish alliances for the representation of interests, cooperate with the local governments of other countries within their competences, and be free to affiliate with organisations of international local governments, and
- l) exercise further statutory responsibilities and competences.

Acting within their competences, local governments shall adopt local government decrees to regulate local social relations not regulated by an Act or by authority of an Act. Local government decrees may not conflict with any other legislation.

Local governments shall send their local government decrees to the metropolitan or county government office immediately after their publication. If the metropolitan or county government office finds the local government decree or any provision of it unlawful, it may apply to any court for a review of the local government decree.

The metropolitan or county government office may apply to a court to establish a local government’s neglect of its statutory obligation to pass decrees or take decisions.

If such local government continues to neglect its statutory obligation to pass decrees or take decisions by the date determined by the court's decision on the establishment of such neglect, the court shall, at the initiative of the metropolitan or county government office, order the head of the metropolitan or county government office to adopt the local government decree or local government decision required for the remedy of the neglect in the name of the local government. The properties of local governments shall be public properties which shall serve for the performance of their duties.”

There are minimal, hardly noticeable changes in the text compared to previous regulation. The most important change was the title of the article: instead of the term fundamental rights of self-governments used formerly, the above mentioned rights are named as the responsibilities and competencies of local self-governments in the Fundamental Law. This term – compared to fundamental rights – better matches the nature of local self-governments as administrative organs⁸.

The possibility of intervention granted to county (metropolitan) government offices is relatively far from the modern supervisory methods (e.g. consultation, notice) applied to prevent violations that local self-governments might commit. The primary goal of state supervision is to ensure the lawful operation of self-governments. State organs must facilitate the performance of the tasks of self-governments while striving to assert the constitutional principle of the legality of public administration. A further goal of state supervision is to help local governments perform their tasks by providing advice, support and protect local communities and enhance the sense of responsibility of local government organs.

Establishing the statutory obligation of local governments to legislate and ordering on this ground, the county (metropolitan) government offices adopt the required local government decrees in the name of the local self-governments thereafter the omission of the adoption of the local decree was stated by the (supreme) court (Kúria). [Article 32 (5) of the Fundamental Law] The county (metropolitan) government offices adopt the required local government decrees – which are also placed under the competence of the courts – in the name of the local self-governments. This new right of government offices to adopt ‘substitute decrees’ should be regarded a strong supervisory authority.

The responsibilities and competences of local governments shall be exercised by local representative bodies. Local representative bodies are headed by mayors. County representative bodies elect one member to serve as president for the term of their mandate. Local representative bodies may elect committees and establish offices as defined by a cardinal Act. [Article 33 of the Fundamental Law]

It can be claimed that no essential changes have been made to the organisational units and organs of local self-governments except that in the text of the Fundamental Law – unlike in the Constitution – there is no reference to town clerks. Thus this institution has lost its constitutional status.

⁸ A. Fábrián (ed.), *20 éves a magyar önkormányzati rendszer*, Pécs 2011, s. 47.

The internal construction of Hungarian self-governments is remarkably structured and proportioned; it almost maps the system of ‘checks and balances’. This means that there are three organs (the representative body, the mayor and the town clerk) at the imaginary centre of the organisation and operation of self-governments, none of these can be replaced or evaded – due to the legal regulation – and are all stable for the most part.

“Local governments and state organs shall cooperate to achieve community goals. An Act may define compulsory responsibilities and competencies for local governments. Local governments shall be entitled to proportionate budgetary and other financial support for the performance of their compulsory responsibilities and competences. An Act may authorise local governments to perform their compulsory duties through associations.

An Act or a government decree authorised by Act may exceptionally specify duties and powers relating to public administration for mayors and presidents of county representative bodies.

The Government shall perform the legal supervision of local governments through the metropolitan and county government offices. An Act may define conditions for, or the Government’s consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance.” [Article 34 of the Fundamental Law]

The traditional “natural law” approach should undoubtedly be abandoned when defining the notion of local self-government. It should be started from the idea that modern (local) self-governments form part of the state organisation, although the notion of self-governance may be traceable to several theoretical starting points.

Modern local self-governments have their autonomy, yet they are still clearly state self-governments, not independent from state organisations, and genuine collaboration and cooperation with central (state administration) is indispensable, the importance of which is constitutionally recognised under the provisions of the Fundamental Law.

The economic situation of Hungarian local self-governments before 2012 is best characterised by the fact that the number and volume of their compulsory tasks dramatically outweigh their revenues, especially the amount of state subsidies. This process has led to that situation in which self-governments are indebted to such an extent that nobody can precisely assess and measure it, as not only self-government budgets are weighed down by debts (which is visible) but self-government undertakings as well (which is mostly invisible). This actually means that the central (state) budget attempts to keep its own deficit in check by ‘shifting’ it upon the local government system to an ever growing extent.

Establishing the institution of mandatory local government associations, making it possible to provide for it by law, may serve further modernisation. In the interest of effective task performance, former government practice tried to make settlement-level municipalities fulfil their tasks jointly by budgetary-financial means, while in the future, by virtue of the Fundamental Law, this will also be possible under a statutory provision.

State control (supervision) of local self-governments has been a cardinal issue of the Hungarian self-governmental system since before 2012. The multitude of remedial and control mechanisms is a peculiar feature of the Hungarian self-government system, but at the same time it can make the system weak and contingent. It is true that there are enough – internal and external – organs (county government offices, prosecution services, State Audit Office, self-government committees, clerks, auditors etc.) to supervise the legality of the operation of self-governments, but these organs have insufficient corrective powers.

The reinforcement of legal control and its converting into legal supervision from time to time have been urged in special literature for theoretical reasons and also on the basis of accumulated practical experience. A minimal widening of the sphere of authority was regarded as achievable by temporarily implementing decisions deemed unlawful and by authorising supervisory organs to adopt a decision in the case of a failure to adopt a decision. (Some authors argued in favour of more substantial widening of supervisory authority.)

The other supervisory power according to the Fundamental Law is disputable: ‘An Act may define conditions for, or the Government’s consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance.’ [Article 34 (5) of the Fundamental Law]

The abovementioned provision is another novelty in Hungarian constitutional law; its aim is easy to specify: to prevent the further indebtedness of local governments, which has grown to an extent by now jeopardising state budget balance. (Legal regulation restricted local government borrowing before 1st January 2012 as well, but these restrictions were easy to avoid, so expectations were not met.)

The borrowing of local governments tends to serve the purpose of operation and the performance of compulsory tasks instead of financing investments and developments. Obviously, the deficit in the budget of local governments is caused typically by the insufficiency of state subsidies and own revenues to cover the expenses of performing compulsory tasks and providing local public services.

The Fundamental Law cannot solve the issue of financing, only tool for “a debt break” has been institutionalized. Its effectiveness is heavily disputed, and it severely restricts local economic autonomy. It should also be added that the effectiveness of this provision is further endangered by its being belated: credit institutions – noticing the enormous problems of managing property of and financing local governments – tend to be less willing to finance the operation of local governments regardless of whether the Government will consent to borrowing or not.

Voters exercise universal and equal suffrage to elect local government representatives and mayors by direct and secret ballot, during the elections allowing the free will of voters in the manner defined by a cardinal act.

Local government representatives and mayors are elected for a term of five years according to a cardinal act. The mandate of local representative bodies shall end on the day of the national elections of local government representatives and

mayors. In the case of elections cancelled due to a lack of candidates, the mandate of local representative bodies shall be extended until the day of the interim elections. The mandate of mayors shall end on the day of the election of the new mayor.

Local representative bodies may declare their own dissolution, as provided by a cardinal act. At the motion of the Government – submitted after obtaining the opinion of the Constitutional Court – Parliament shall dissolve any representative body which operates in a way contrary to the Fundamental Law. [Article 35 of the Fundamental Law]

Until now the abovementioned provisions have been contained in separate statutes, but by lifting them to constitutional level, their core contents have not changed except for lengthening the term of the representative bodies and mayors from four to five years and terminating the mandate of the mayor in the case of the dissolution of the representative body.

The former wording of the Constitution evoked the atmosphere of the transition of 1989-90; also defined as fundamental rights of self-government were local governance replacing the central direction of local councils, independence, the freedom of wide local self-determination, which was especially manifest in considering the concept of self-governance as a collective right enjoyed by the community of the local electorate, and the functions of local representative bodies⁹.

3. Conclusion

The Fundamental Law departs from this approach and clearly shares the standpoint claiming local self-governments are institutions within the organisation of the state; these are local organs of public administration which are not opposed to the state but are an integral part of it, strengthening democratic legitimacy. Local self-governments are not institutions organised on a social basis, but they are a form of administration, legitimised by the principles of democracy and vertical separation of powers and functions, decentralised and thus easing the burden on the state for managing public affairs at their own responsibility¹⁰.

The Fundamental Law no longer defines the essence of local self-governance as the subject of special fundamental rights which realises local people's sovereignty but (following Western-European models) as a constitutional (institutional) guarantee, a basis on which local self-governments must exist and operate in Hungary. The Hungarian state/government must ensure the regulatory and financial conditions for the realisation of this guarantee. This constitutional basis is much closer to Western-European standards and constitutional solutions than the former was, but it departs from a century of Hungarian public-law tradition.

⁹ H. Küpper, *Die ungarische Verfassung nach zwei Jahrzehnten des Übergangs*, München 2007, s. 86.

¹⁰ K. Stern, *Das Staatsrecht der Bundesrepublik Deutschland*, München 1984, s. 405.

The fundamental purpose of the Hungarian Act on Local Self-Governments adopted on the basis of the provisions of the Fundamental Law is to establish a modern, cost-effective and task-oriented self-government system which allows for democratic and effective operation and at the same time – in a manner asserting and protecting the collective rights of the electorate to self-governance – imposes stricter limits on self-government autonomy than before. The provisions of the new Act on Local Self-Governments allow for the inclusion and operation of renewed structures (e.g. differentiated transfer of powers).

Abstract

Establishing local self-governments in 1990 had significant importance in the history of Hungary. After the full review of Act XX of 1949 on the Constitution of the Republic of Hungary, local communities gained independence and were granted the right to independently regulate and manage local public affairs in a legal framework. The Fundamental Law no longer defines the essence of local self-governance as the subject of special fundamental rights which realises local people's sovereignty but (following Western-European models) as a constitutional (institutional) guarantee, a basis on which local self-governments must exist and operate in Hungary. The Hungarian state/government must ensure the regulatory and financial conditions for the realisation of this guarantee. This constitutional basis is much closer to Western-European standards and constitutional solutions than the former was, but it departs from a century of Hungarian public-law tradition.

Keywords: local self-governments, constitution, Fundamental Law.

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