

**JUDIT SIKET**

**TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY**  
**IX. Some aspects of local autonomy (1)**



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**CHAPTER IX**  
**SOME ASPECTS OF LOCAL AUTONOMY (1)**  
**LEGISLATIVE, AND FUNCTIONAL AUTONOMY, FINANCIAL AND**  
**ECONOMIC AUTONOMY**

Content of the Chapter

1. Special aspects of local autonomy
2. The concept of local self-government
3. Legislative function of local self-governments
4. Functional autonomy
5. Financial and economic autonomy: the economic foundation of local self-government

The aim of the Chapter: This Chapter presents the characteristics of Hungarian local self-government system, some aspects of local autonomy. The main elements of local autonomy are discussed, the regulative, functional and financial, economic autonomy in the light of the European Charter of Local Self-Government. The Hungarian local self-government system was assessed by the Monitoring Committee and the Congress, three times, these report explored the main inconsistency elements of the Charter's implementation.

**Estimated reading time: 15-20 minutes**

### **1. SPECIAL ASPECTS OF LOCAL SELF-GOVERNMENTS' AUTONOMY**

Hungary became a member of the Council of Europe on 6 November 1990 and ratified the European Charter on Local Self-Government<sup>1</sup> on 21 March 1994, which came into force in respect of Hungary on 1 July 1994.

Hungary signed the Additional Protocol to the European Charter on Local Self-Government<sup>2</sup> on the right to participate in the affairs of a local authority on 16 November 2009 and ratified on 7 June 2010.

The aim of this Chapter to highlight the coherence, or the lack of it, between the European Charter of Local Self-Government and the Hungarian Local Government Law in certain

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<sup>1</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122>

<sup>2</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/207>

territory of the regulation related to autonomy of local self-governments. The assessment of the situation is basically established on the findings of the Congress of Local and Regional Authorities.

The Congress examined the situation of local democracy and local self-government system of Hungary up to now three times, in 2002,<sup>3</sup> 2013<sup>4</sup> and 2019.<sup>5</sup> The recommendations of third visit are only draft form, because they have not been adopted yet by the Congress. The most important findings of monitoring reports provide a basis for discussing the aspects of autonomy.

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## 2. THE CONCEPT OF LOCAL SELF-GOVERNMENT

In this context, the *concept of local self-government* is the first topic.

The European Charter of Local Self-Governments defines the concept of local self-government, according to the Article 3. of the Charter

*(1) 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.*

*(2) This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.*

The second monitoring report laid down, that the principle of local self-government expressly included in the Constitution of Hungarian Republic (1949)<sup>6</sup> and guaranteed by legislative texts, as demonstrated by the 2002 monitoring report. At that time, local self-government was regarded as one of the foundation stones of the Hungarian Democratic system, which was intended to be two-tier.

The Hungarian Constitution defined the right to local self-governance as a fundamental collective right. After the change of regime this type of constitutional protection in the sense that in case of infringement or restriction of this collective right has not been effectively

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<sup>3</sup> Recommendation 116 (2002) on regional democracy in Hungary. <https://rm.coe.int/168071a65a> (hereinafter: 1<sup>st</sup> Monitoring Report)

<sup>4</sup> Recommendation 341 (2013) Local and regional democracy in Hungary. [https://rm.coe.int/168071910d#\\_Toc371513645](https://rm.coe.int/168071910d#_Toc371513645) (hereinafter: 2<sup>nd</sup> Monitoring Report)

<sup>5</sup> <https://www.coe.int/en/web/congress/-/congress-to-carry-out-a-monitoring-visit-to-hungary> Draft recommendation (for vote) <https://rm.coe.int/monitoring-of-the-european-charter-of-local-self-government-in-hungary/16809cba19> (hereinafter: 3<sup>rd</sup> Monitoring Report)

<sup>6</sup> Revised fundamentally in 1989-90.

enforced. Former Constitution had contained explicit provisions on constitutional and legal protection of right to local self-government nevertheless the Fundamental Law of 2011 has not incorporated the type of guarantee rules. The constitutional and legal protection of local self-government right got to a lower regulation level into the Local Government Act of 2011. It implied the provision on constitutional and legal protection as a Cardinal Act in the case of legal practise of the right.

The situation – as it shown - was very different in 2012. According to the findings of Monitoring Committee

*“[57] When examining the Fundamental Law of Hungary, the Venice Commission pointed to the lack of references to local self-government in the new text of the constitution: “Article 31 (1) of the new Constitution stipulates that “in Hungary local governments shall be established to administer public affairs and exercise public power at a local level”. Nevertheless, no explicit mention is made of the principle of local self-government. The Venice Commission recalls that the European Charter of Local Self-Government (CEAL), which is binding for 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.*

*According to Article 2 of the CEAL, “the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution”. It is recommended that the cardinal law entrusted with the definition of local governments rules duly stipulate this and other important key principles laid down in the CEAL: the principle of subsidiarity, the principle of financial autonomy and that of adequacy between resources and competences, the legal protection of local self-government, the limits of the administrative supervision of local authorities. Adequate guarantees should be provided for their effective implementation.”*

The 3<sup>rd</sup> Monitoring Report also examined the implementation of this Article.

*“[114] The main question ... is whether, in the present situation, Hungarian municipalities and counties regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision requires an assessment which takes into account the rather “subjective” and relative nature of such concepts as “ability”, “a substantial share of public affairs”, “under their own responsibility” and “in the interests of the local population” since no official or universal method of measuring such substantial character has yet been developed. The question must*

*be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis.”*

Analyse the findings of the Monitoring Committee. What problems may arise from the lack of constitutional rule on right to local self-government? Is it considered a real vital question? Summarize your opinion in a nutshell.

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### **3. LEGISLATIVE FUNCTION OF LOCAL SELF-GOVERNMENTS**

However, the legislative function is closely linked to the concept of local self-government, the extent of the legislative power is worth for consideration.

Local governments are organisations that have law-making (regulative) competence based on the Fundamental Law. Regulative competence is guaranteed by the European Charter of Local Self-Government also.

According to the Fundamental Law, there are two means of administering local public affairs: local governments issue decrees and make resolutions; therefore the exercising of public power might be with these legal tools. Local self-governments make their decisions in general independently, without previous or posterior assent of any other organisation; only in exceptional cases shall be subject the decision of local self-government to prior consent or posterior approval.

By the provision of Fundamental Law, decree of local government is a legal act, in which a generally binding rule of conduct may be determined. Decrees of local governments are at the lowest level in the legislative hierarchy, therefore cannot conflict with ‘other laws’. Local governments acting within their competences shall adopt local government decrees

- (1) to regulate local social relations on one hand which are not regulated by on Act, and
- (2) by the authority of the Act.

Where the local self-government is expressly authorized by the parliamentary act to issue municipal decree, it is not only a right, but an obligation also. The most important aim of these local decrees is to regulate statutory provisions more precisely, to fit to local social relations.

According to the 3rd Monitoring Report

*“[117] Nevertheless, the part of public affairs local authorities can regulate and manage is definitely limited. The share of public affairs entrusted to local government has decreased very significantly. The financial autonomy of local governments has severely reduced,*

*strengthening the control of central government over local government finance. In addition, numerous powers hitherto exercised by local government are described as being “naturally” recentralised. In particular, health and social care as much as education have been almost completely centralized. All three sectors, accounting for 86% of local expenditure, which were previously a matter for the municipalities and counties, have been transferred to the central level. In the new system of powers, counties now have only competences on rural development, regional development, regional planning and coordination.”*

This issue leads towards the functional autonomy. The local self-governments have legislative power in their responsibilities, within the limit of the law. The exercise of legislative power, as it was shown, may be mandatory or voluntary, it depends on the characteristic of the responsibility.

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#### **4. FUNCTIONAL AUTONOMY: OBLIGATORY AND VOLUNTARY TASKS**

Powerful centralization process could be traced in the state operation in Hungary, this trend has been hit particularly hard the local self-government sector as well. Outstanding changes might be observed in the case of municipal and county self-governments' responsibilities, reducing the regulative power on local social relations of local self-governments. It has to be highlighted that the functionality of local self-governments' responsibilities was basically changed provided by the new local governmental regulation. The expansion of the State in the provision of local public services had a negative effect on local public affairs and reduced the possibilities for regulation local social relations. All along, performing of public tasks characterized by strict regulation, the provision of service requirements, strengthening the control and from the side of local self-governments there is a decreasing margin for local discretion.

Public education, except for pre-school education is excluded from local public affairs.<sup>7</sup> Changes were occurred in the field of cultural services also: the maintenance of museums was delegated from the county governments to settlements. The same procedure was in the case of public libraries.<sup>8</sup> The archives were nationalized.<sup>9</sup> The social and health care institutions were socialized,<sup>10</sup> except for primary care. Therefore in these fields of local public affairs local self-governments are no longer able to regulate charges of provided services.

The municipal services are obligatory tasks of the local governments, but the statutory legislation may regulate the requirement of majority state or local government property in

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<sup>7</sup> Act CXC of 2011 on National Education.

<sup>8</sup> Act CXL of 1997 on Museums, Services of Public Libraries and Public Education.

<sup>9</sup> Act LXVI of 1995 on Public Files, Archives and Protection of Private Archives.

<sup>10</sup> Act CLIV of 1997 on Health Care and Act III of 1993 on Social Care and Social Administration.

corporations, which provide certain public services.<sup>11</sup> This is the situation *e.g.* in the field of healthy drinking water service, water drainage or waste disposal. The subject of local regulation has also been reduced in these areas of servicing. There is another important change: local government does not have empowerment to fix the charges of special services (*e.g.* waste disposal).<sup>12</sup>

The table below presents the process of centralization across several illustrative examples in the case of municipalities.

<b>Municipalities' competences</b>		
Until 2012	After 2012	Direction of changes
wastewater treatment and water supply	wastewater treatment and water supply	the form defined by law
waste management, waste disposal	waste management, waste disposal	fixing and collecting of charges - State
public hygiene and social welfare	public hygiene and basic level social welfare	narrowed – State
primary education	only nursery school	narrowed – State
local development	local development	unchanged
fire protection	-	State
minority rights protection	minority rights protection	unchanged

Outstanding changes might be observed in the case of the county self-governments' responsibilities, as illustrated in the following table.

<b>Counties competences</b>		
Until 2012	After 2012	Direction of changes
health and social institutional services	-	State
specialised education services	-	State
territorial development	territorial development	centralized financial sources
spatial planning	spatial planning	unchanged
environmental protection	-	municipalities and State
promotion of tourism	-	State

## **5. FINANCIAL AND ECONOMIC AUTONOMY: THE ECONOMIC FOUNDATION OF LOCAL SELF-GOVERNMENT**

The financial and economic autonomy is considered essential part of local autonomy. Local self-governments may exercise their powers freely and outside any influence, compliance their responsibility if they have sufficient financial resources.

The Charter provides detailed provisions on financial resources in Article 9, as follows.

*1. 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.*

<sup>11</sup> Act XLI of 2012 on Passenger Transport Services, Act LVII of 1995 on Water Management.

<sup>12</sup> Act CLXXXV of 2012 on Waste.

2. *Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.*
3. *Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.*
4. *The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.*
5. *The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.*
6. *Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.*
7. *As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.*
8. *For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*

According to Article 9, local self-governments shall have adequate financial resources of their own. Financial autonomy is an essential component of the principle of local self-government and an important condition for the exercise of a wide range of responsibilities in the field of local public affairs. These elements are cumulative and not alternative, which means that all the conditions laid down in Article 9 of the Charter are *mandatory*.

What are the most important issues of financial autonomy in Hungary in the light of the findings of Monitoring Committee visit in Hungary in 2019?

The issue was already raised in the 2013 monitoring report of Hungary. The recommendation 341 (2013) asked the Hungarian government to '*grant local authorities financial autonomy to enable them to exercise their powers properly, in particular by adjusting the level of grants allocated by the central government to local authorities so that their resources remain commensurate with their powers*'.

The true question is whether Hungarian local self-governments are allowed to dispose freely of those resources and whether these are proportional to the level of local responsibilities.



Although the local finances improved as a consequence of the consolidation of the debts, the transfer of competencies from the subnational to the national level has gone hand in hand with an even stronger reduction in subnational governments' revenue sources. As a result, the latter have fewer resources for the remaining tasks than before. In addition, rapporteurs were informed that most small municipalities have to apply annually to the central government for covering their operating costs or getting some capital revenue.

Special attention deserves the so-called '*solidarity contribution*', introduced in 2017. This contribution is a new payment obligation on the municipalities with large local taxes incomes. The Act specifically exempted the capital city of Budapest from this obligation. The contribution had a strong impact on the finances of the municipalities with important local taxes incomes.

Another basic principle, established in Article 9, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law. In Hungary, Article 34.1 of the Fundamental Law reproduces this principle, establishing that '*[f]or the performance of their mandatory functions and powers, local governments shall be entitled to proportionate budgetary and other financial support*'.

In practice, the financial resources do not cover the expenditures for mandatory tasks, usually. Also richer municipalities, as a consequence of the already mentioned '*solidarity contribution*', find difficult to have sufficient financial resources.

Article 9 requires that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate. The main local taxes are the local business tax (representing the 74% of local taxes in 2013), the tourism tax, the municipal tax on individuals and businesses, the land tax and the building tax.

In Hungary, the financial resources deriving from '*local taxes*' represent a minimal part of the municipal incomes.

Article 9, paragraph 4, refers to the need for the resources available to local authorities to be of a sufficiently diversified and buoyant nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

*In Hungary, the main financial resources of local authorities are State grants and subsidies, making local authorities highly dependent on the State.* The limited possibility of establishing local taxes makes it difficult to consider local resources as having a sufficiently diversified and expanding nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

The existing *equalisation mechanism* is quite obscure.

In Hungary, the *permission of the government for local government borrowing was introduced* by Article 34.5 of the Fundamental Law. Detailed rules are established by Act No. CXCIV of 2011 on the economic stability of Hungary. All loans and other transactions with the nature of loan must be authorised by the Government.

Answer the following questions.

1. What are the main elements of regulative authority?

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2. Remember the content of public affairs. How the functionality of Hungarian local governments developed in recent years?

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3. How many times the Monitoring Committee and the Congress examined the Hungarian situation of local and regional democracy? And when?

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4. What were the most important findings? How the situation changed?

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5. What are the main elements of financial autonomy? Is there any inconsistency with the Hungarian budgetary system of local self-governments?

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