

**JUDIT SIKET**

**TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY**

**XII. Development opportunities for the future in the field of  
territorial and local administration**



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## CHAPTER XII

### DEVELOPMENT OPPORTUNITIES FOR THE FUTURE IN THE FIELD OF TERRITORIAL AND LOCAL ADMINISTRATION

#### Content of the Chapter

1. Recommendation 341 (2013)
2. Report CG38(2020)14prov 12 February 2020
3. Development questions

The aim of the Chapter: This Chapter presents most important Recommendations of Monitoring Committee and the Congress related to the Hungarian local self-government system after the entering into force the Fundamental Law and the New Local Self-Government Law. The main purpose of the Chapter to generate a debate on the development opportunities, after that the basic knowledge was familiarized by the members of the course.

**Estimated reading time: 25-30 minutes**

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#### **1. RECOMMENDATION 341 (2013)**

What were the most noteworthy findings of the Monitoring Committee in 2013? This part of the Chapter contains a brief summary of the report, and recommendations, as follows,

- (1) the *principle of local self-government* is neither explicitly enshrined in the Cardinal (Implementing) Act on Local Government nor in the Fundamental Law (Constitution);
- (2) there is a *very strong recentralisation of powers*, which has led to the considerable reduction of competences previously assigned to local authorities;
- (3) the principle of the *financial autonomy* of local authorities is not respected;
- (4) the *principle of local self-government* is not complied with due to the pooling at the supra-communal level (district) competences of municipalities of less than 2000 inhabitants, which is implemented through an administrative structure, is composed of civil servants from the State;
- (5) there is *no real consultation in practice*, but only a formal one, between the government and local authorities, in particular because of unreasonable deadlines;

(6) there is *no effective legal remedy* which fully guarantees the protection of local self-government, with a genuine and extended right of local authorities to lodge a complaint with the domestic courts in order to secure the free exercise of their powers and respect for such principles of local self-government;

(7) the *position of the counties* is weak in both their institutional framework and as regards their functions;

The Congress therefore recommended that the Committee of Ministers invite the Hungarian authorities to:

(1) *revise the Cardinal Act* so that the principle of local self-government is explicitly guaranteed in the legislation and in practice, in accordance with Article 2 of the Charter;

(2) *revise the legislation* concerning local authorities' *mandatory tasks and functions* so as to extend the range of powers normally assigned to them on the basis of the principles of decentralisation and subsidiarity;

(3) 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 and by limiting central government supervision of the management of local finance so that it is "proportionate" within the meaning of Article 8 of the Charter;

(4) ensure that local and regional authorities are *equipped with the administrative structures and resources needed for performing their tasks*, while at the same time ensuring that elected councils are retained, including in small municipalities;

(5) *consult* local authorities and their national associations and define the consultation partners so that appropriate and effective consultation is arranged, in practice, within reasonable deadlines on all issues of interest to local authorities;

(6) revise the legislation in order to provide local authorities with an *effective judicial remedy* to secure the free exercise of their powers and guarantee the judicial protection of the good implementation of the basic principles of local self-government provided in the Charter ratified by Hungary;

(7) *strengthen the position of counties*, notably in the light of the Reference Framework for Regional Democracy of the Council of Europe;

(8) *keep the Congress informed* on the follow-up given to this recommendation.

After that findings and recommendations report describes in details the general social and political situation in Hungary and demonstrated the Hungarian administrative system.

There is a separate section on Hungarian local self-government system it *focuses the changes after the approval of New Hungarian Constitution, the Basic Law of Hungary, after 2011.*

The relevant findings will only underline and discuss in the following part.

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## **2. REPORT CG38(2020)14PROV 12 FEBRUARY 2020**

In the draft Recommendation the Congress noted, that most of the shortcomings raised in its previous Recommendation 341 (2013) have not been addressed and expressed its concerns in particular on the following issues:

- (1) the scope of own and delegated competences of local government is very limited (Articles 3.1, 4.2) most of them being reassigned to State deconcentrated administration (Article 4.5) in violation of the subsidiarity principle of division of competences (Article 4.3);
- (2) the interferences by the State within the local functions undermine the assignment to local authorities of full and exclusive powers (Article 4.4);
- (3) a genuine regional level of self-government as such does not exist in Hungary since counties have almost no significant competences and do not enjoy any financial autonomy;
- (4) there is no real and appropriate consultation mechanism in place in practice on all matters that concern local authorities, notably on redistribution and allocation of financial resources (Articles 4.6, 9.6);
- (5) local authorities cannot recruit high quality staff, and the organisational autonomy of small local self-government units to determine their internal structures is limited (Articles 6.1, 6.2);
- (6) the supervision on local authorities, carried out by government representatives, cannot be considered proportional to the relevance of the interests that it is intended to protect (Article 8.3);
- (7) in spite of remarkable economic growth, local authorities' financial resources remain insufficient, and in some cases a "solidarity contribution" has a disproportionately negative impact on local finances (Article 9.1,9.2);
- (8) local authorities lack sufficient financial resources from local taxes and charges of which they have the possibility to determine the rate (Article 9.3, 9.4);
- (9) the equalisation mechanism is rather obscure and limited in its impact on the protection of financially weaker local authorities (Article 9.5);
- (10) grants to local authorities are mostly earmarked for financing specific projects and the criteria of assignment are not objective (Article 9.7);

(11) local authorities' level of trust in courts for the legal protection of their autonomy is low, thus restricting genuine enjoyment by local authorities of the right to recourse to a judicial remedy (Article 11).

In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Hungary to:

- (1) *reverse the centralisation trend*, and in particular stop the allocation of local competences to the State administration and recognise to the local authorities a substantial share of public affairs under their own responsibility thus ensuring that the subsidiarity principle is applied in practice;
- (2) *limit the interferences* by State authorities in municipal functions;
- (3) *strengthen the position of counties* in terms of their competences and financial resources;
- (4) *introduce a fair and effective consultation process* in an appropriate way and in due time with local authorities as set out in Article 4.6 of the Charter on all matters that concern them directly;
- (5) ensure local authorities' *ability to recruit high quality staff* by providing necessary resources and increase the organisational autonomy of small local self-government units;
- (6) make sure that the supervision over local authorities is proportional to the importance of the interests that it is intended to protect;
- (7) allocate *sufficient financial resources* to local authorities, thereby respecting the principle that the resources should match the functions;
- (8) enable local authorities to establish local taxes and to determine their rate to *strengthen local authorities' fiscal capacity*;
- (9) revise the *equalisation system* to ensure its fairness and transparency;
- (10) establish a *fair and transparent mechanism for allocating grants* to local authorities;
- (11) follow the recommendations of the Venice Commission, contained in its opinions on the *judiciary* in Hungary, to guarantee to local authorities *the right of recourse to an effective remedy* and to restore their trust in the national judicial system.

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### 3. DEVELOPMENT QUESTIONS

1. How to develop the implementation of principle of local self-government?

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2. How the competences at municipal and county level have been changed? Identify the most important changes. How to develop these competences?

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3. The scope of local self-government, the Article 4. of the Charter is at the heart of the debate that is ongoing in Hungary on the subject of local government. How to improve the latitude of self-governance?

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4. The new Constitution empowers the governmental offices of the capital and of the counties to issue municipal decrees, by court decision, where a local authority fails to fulfil its “obligation to legislate imposed on it by law” (Article 32.5). Individual decisions can also be taken in this way, after the court has empowered the governmental office to do so. How this provision affects the autonomy of local governments?

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5. The financial autonomy of local authorities has been severely reduced recently. The system of central grants became stricter, as local governments lost their freedom in spending central subsidies as they want (transforming the old ‘resource-based’ finance to the more rigid ‘task-based’ system). What do you think about appropriate measurements to strengthen the financial autonomy of local self-governments?

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6. The right of local and regional authorities to appeal to courts to ensure respect for their competences is not guaranteed in the domestic legislation. Local authorities do not have any effective judicial protection to secure the free exercise of their powers or protect their rights as provided in the Charter. Judicial remedies exist in some cases, such as for legal disputes between local authorities.

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