

JUDIT SIKET

TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY
II. Decentralization, subsidiarity and good governance
Different levels of public administration – European comparison.



This teaching material has been made at the University of Szeged, and supported by the European Union. Project identity number: EFOP-3.6.2-16-2017-00007

CHAPTER II

DECENTRALIZATION, SUBSIDIARITY AND GOOD GOVERNANCE. DIFFERENT LEVELS OF PUBLIC ADMINISTRATION IN A EUROPEAN COMPARISON.

Content of the Chapter:

1. Decentralization, subsidiarity and good governance
2. The interpretation possibilities of decentralization
3. Different levels of public administration
4. European comparison in a nutshell

The aim of the Chapter: This Chapter examines the relationships between dominant organizational principles, decentralization, subsidiarity and good governance. The political, administrative and financial meanings of decentralization are also in the focus. Beyond the dominant principles the Chapter contains a European comparison, covered different tiers of Public Administration in different European countries.

Estimated reading time: 25-30 minutes

1. DECENTRALIZATION, SUBSIDIARITY AND GOOD GOVERNANCE.

The principle of decentralization may prevail as a territorial and a functional decentralization. The decentralization and subsidiarity are current together, as a basis of local self-governance also. The most important features of the principle of decentralization have been determined in Chapter I.3. Before going ahead with the detailed discussion of decentralization, the principle of subsidiarity should be briefly explained.

The principle of subsidiarity first of all is interpreted on EU level, thus it is fundamental to the functioning of the European Union, and more specifically to European decision-making. The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. There are two Protocols annexed to the Treaty of Lisbon,

(1) Protocol No 1 on the role of national Parliaments encourages national Parliaments' involvement in EU activities and requires EU documents and proposals to be forwarded promptly to them so they can examine them before the Council takes a decision.

(2) Protocol No 2 requires the Commission to take into account the regional and local dimension of all draft legislative acts and to make a detailed statement on how the principle of subsidiarity is respected.

Look at the text of the Article 5 of the Treaty and the Protocol (No2)¹.

Article 5 of TEU

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Match and connect related elements and phrases. One element or phrase could be suitable more than once.

1. The limits of Union competences are governed by the principle of _____.
2. The _____ shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act.
3. Under the principle of _____, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
4. Before proposing legislative acts, the _____ shall consult widely. Such consultations shall, where appropriate, take into account the _____ of the action envisaged.
5. Each institution of the EU shall ensure respect for the principles of _____ and _____.
6. Under the principle of _____, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States.

- a) subsidiarity
- b) conferral
- c) proportionality
- d) regional and local dimension
- e) Commission
- f) Court of Justice of the EU

The principle of subsidiarity generally aims to ensure that decisions are taken as closely as possible to the citizen. In that sense the principle of subsidiarity and the principle of

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2010.083.01.0001.01.ENG#d1e186-201-1

decentralization are closely linked to each other. The principle of decentralization aims to decision-making should take place at the nearest level where all information is available.

According to it, the principle of decentralization is a *sharing of competences* between public administrative bodies at different territorial levels, which have different level of *autonomy* in contrary with the decontrentation. The *functional decentralization* means the implementation of public tasks by public law entities.

The principle of subsidiarity and decentralization linked to the fundamental values of *good governance* also. Generally accepted point of view, that the good governance and decentralization shows correlation, decentralization is a premise of democratic good governance.²

What are the most important values of good governance? Identify them with the help of the White Paper of the Commission of European Community.³

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____

The principle of *Good Governance may be interpreted at local level*. The Council of Europe determined the key requirements of the principle in 12 points, summarized as a responsible conduct of public affairs and management of public resources at local level.

What are the most important requirements of Good Governance at local level? Try to settle the most important features.⁴

Principle	Characteristics	Tools
<i>Participation, Representation, Elections</i>		
<i>Responsiveness</i>		
<i>Efficiency, Effectiveness</i>		

² PÁLNÉ KOVÁCS 2006, 282. p.

³ Brussels, 25.7.2001COM(2001) 428.

file:///C:/Users/user/AppData/Local/Temp/European_Governance_A_White_Paper.pdf

⁴ 12 Principles <https://www.coe.int/en/web/good-governance/12-principles#%2225565951%22:011>

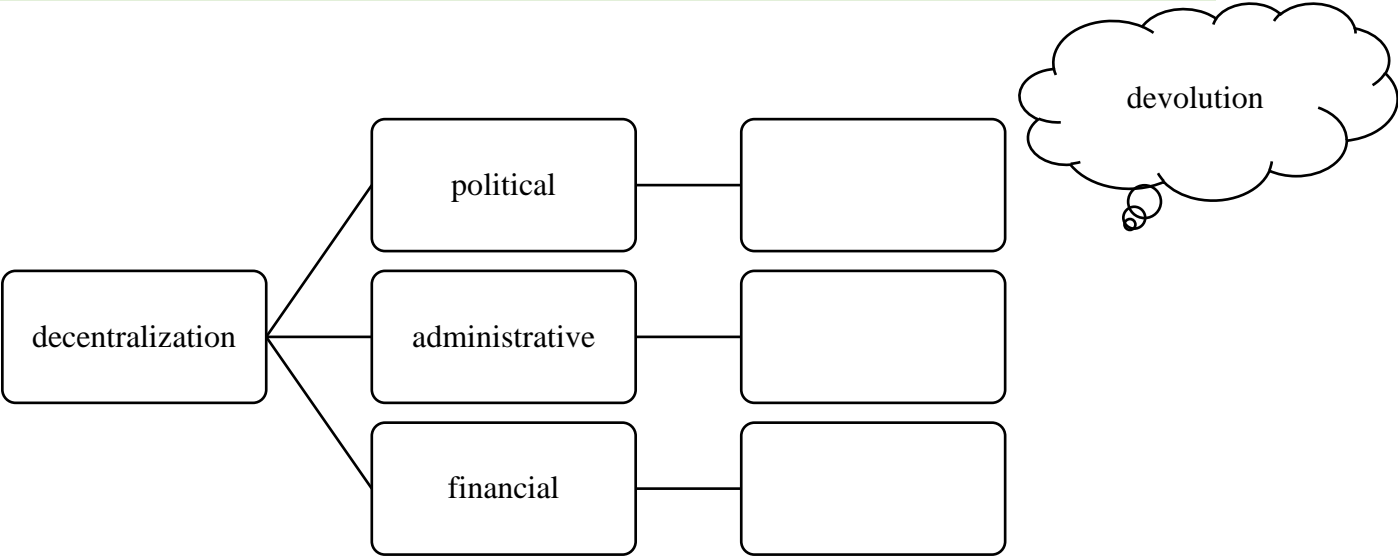
<i>Openness, Transparency</i>		
<i>Rule of Law</i>		
<i>Ethical conduct</i>		
<i>Competence, Capacity</i>		
<i>Innovation, Openness to Change</i>		
<i>Sustainability, Long-term Orientation</i>		
<i>Sound Financial Management</i>		
<i>Human Rights, Cultural Diversity, Social Cohesion</i>		
<i>Accountability</i>		

2. THE INTERPRETATION POSSIBILITIES OF DECENTRALIZATION

The principle of decentralization has complex interpretation possibilities. *Political decentralization* means usually the transference of political power and financial sources for the territorially organized self-government bodies. Realization of *administrative decentralization* mostly local administration come into operation in the field of local public affairs. *Financial decentralization* (fiscal federalism) is a form of manifestation of financial autonomy. The central government transfers the financial resources for territorial level local self-governments,

who have the power to decide on the use of them and guarantees the accountability and effectiveness. The context between centralization and decentralization determinates basically the supply of public services at the central government level and the territorial or local level. *Devolution* has to be distinguished from the definition of decentralization. Devolution is used in Anglo-Saxon legal terminology, similar to the continental sense political decentralization. In this case the central government transfers powers to territorial, local units, ensuring the financial sources.

Look at examples for the realization of different types of decentralization. Fill the gaps.



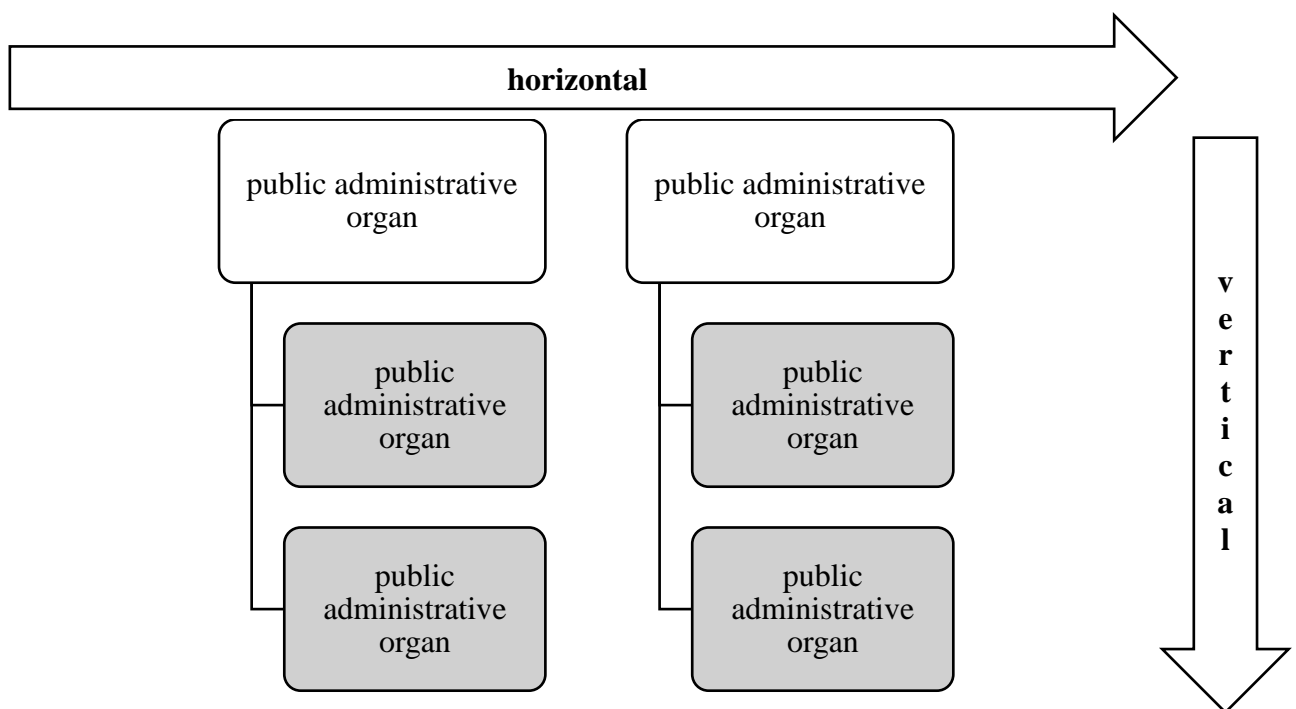
3. DIFFERENT LEVELS OF PUBLIC ADMINISTRATION

The system of public administrative organs shows a particular picture, compared with the organizational framework of legislative or judiciary bodies. Public administrative organs may accessed throughout the state, it interweaves all of the territory of the state.

The starting point of local administration is the subdivision of territory of the state from public administrative aspect. Horizontal determination may be in municipal, local level, county or regional as territorial level. This type of subdivision determines those public administrative units, which are in the same level and their operational territory is similar. Vertical divisions of public administration are organized by the principles of subsidiarity, decentralization or deconcentration. The territorial aspect of decentralized public administrative organs is dominant in the state territorial subdivision, degree of fragmentation depends on several factors, like the territorial extent of the state. The establishment of territorial levels (district, county or

region) is determined basically by the number of population also, but the historical, geographical and economic aspects, accessibility prevail as well.

Territorial distribution of deconcentrated organs is similar to decentralized bodies. Decentralized bodies – opposite to the deconcentrated organs – not only implement administrative tasks, but they function as centres of political power. The basic units of decentralized bodies were established at municipal level. Ensuring consistency in the field of public administrative services requires that in every territorial level should be organised basic services. This requirement may conflict with efficiency, therefore the number of population is dominant at the establishment of different types of administrative bodies.



4. EUROPEAN COMPARISON IN A NUTSHELL

The *EU* has no specific competences in the administrative sphere but still has a strong indirect impact on the administrative practice in Member States through the administrative standards set in the *acquis*.

The institutional system and operation of the European Union is a two level system, from the view of public administration. The majority of EU-policies are implemented not only by EU institutions, but also by national authorities, the division of administrative function is a basic principle. National public administrations not only implement EU policies, they are also in charge of approving and complementing them. EU institutions envisage the objectives of the EU, collect information, plan, decide, coordinate and control. The implementation of the

decisions of the EU – in areas of shared competences – is primarily the responsibility of member states, mainly of their public administrations.

The large majority of EU Member States now has two or three administrative tiers, while seven Member States have four administrative tiers, and Portugal five. The presence of more than three administrative tiers is generally observed in large Member States with Austria, Belgium and Portugal as exceptions. In Belgium the high number of administrative tiers on a small territory is explained by the presence of different communities (based on language) and regions (based on territory, with Flanders, Wallonia and Brussels). In Portugal, two autonomous regions (the archipelagos of Madeira and Azores) exist beside the districts, municipalities and parishes.⁵ The most European countries have a unitary state structure, federal structures prevail in Austria, Belgium, Germany, and Spain.

The specific constellation of how the competences are allocated to the different government tiers for different policy fields varies substantially between different EU Member States. The distribution of competences between government levels though varies, but the legislative function is generally concentrated at the central level of governance. It can be seen the *very high diversity of countries* with regard to allocating regulatory, funding and provision competences. It can be distinguished the ‘separationist model’ in which local and central governments have distinct competences and exercise them independently (Anglo-Saxon and Nordic countries) and ‘administrative integrated models’ which different levels interact strongly and local government exercise both their responsibilities and tasks delegated by central government (South European and Central and Eastern European countries).⁶

Number of administrative tiers

⁵ Comparative overview of public administration characteristics and performance in EU28. European Commission November 2017. 12-13. p. <file:///C:/Users/user/AppData/Local/Temp/KE0218323ENN.en.pdf> (Accessed 31/08/2020)

⁶ Comparative overview 13-14. p.

Countries with 2 administrative tiers

- CY, EE, FI, IE, LV, LT, LU, MT, SI

Countries with 3 administrative tiers

- BG, HR, CZ, DK, EL, HU, NL, RO, SK, SE

Countries with 4 administrative tiers

- AT, BE, FR, DE, IT, PL, ES

Countries with 5 administrative tiers

- PT

Europe administrative divisions

Source: https://commons.wikimedia.org/wiki/File:Europe,_administrative_divisions_-_ISO3166.svg



Examples

State	Number of administrative tiers	Name of administrative tiers
Austria	4	9 federal provinces /states 79 districts as administrative territorial units 2,100 municipalities
France	4	13 regions 96 departments in metropolitan France and 5 overseas departments 35,416 communes
Germany	4	16 states (Lander, 12 area states and 3 city states) 295 districts 11,091 municipalities
Hungary	3	19+1 county governmental offices (168 district administrative offices)

		3,200 municipalities
Spain	4	17 autonomous communities 50 provinces 8,124 municipalities (+ island authorities of Balearic and Canary Islands)
Sweden	3	21 county councils/regional councils 290 municipalities

Mark the correct answers.

1. Decentralization and subsidiarity are common
 - a) in the functioning of central administration
 - b) in international relations, first of all between countries
 - c) in the field of local governance.

2. The principle of subsidiarity may be interpreted
 - a) on EU level also
 - b) only in EU level
 - c) only in relations of Member States of the EU.

3. In a unitary states the principle of decentralization
 - a) may prevail.
 - b) may not prevail.

4. The characteristic structure of public administrative organs in Europe is
 - a) 4 tiered
 - b) 3 tiered
 - c) 2 tiered.

5. Horizontal division of labour means
 - a) those public administrative units, which are in the same level and their operational territory are similar.
 - b) those administrative units, which are in the same level but their operational territory are different.

6. Vertical divisions of public administration are organized
 - a) by the principal of proportionality.
 - b) by the principles of subsidiarity, decentralization or deconcentration.