

**JUDIT SIKET**

**TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY  
IV. Theoretical foundations of local self-governance.**



*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 IV

### THEORETICAL FOUNDATIONS OF LOCAL SELF-GOVERNANCE

#### Content of the Chapter:

1. General meaning of local self-government
2. Concepts on the origin of local self-government
3. Local self-government models in Europe
4. What is the potential significance of ECLSG?

The aim of the Chapter: This Chapter contains an attempt to determine the theoretical foundations of local self-government, the potential sources of right to local self-government. It briefly summarizes the European models and to explore the meaning and relevance of European Charter of Local Self-Government.

**Estimated reading time: 20-25 minutes**

#### 1. THE GENERAL MEANING OF LOCAL SELF-GOVERNMENT<sup>1</sup>

Local or municipal self-government is a system of management local affairs which is exercised by special elected bodies directly representing the population of particular administrative-territorial unit of the country. The European Charter on Local Self-Government adopted by the Council of Europe (see later 4.), gives a general definition of local self-government which become universal and accepted all democratic states. Under the local government Charter understands the right and ability of local authorities, within the limit 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. (Art. 3.)

In most modern states local government is carried out by special bodies of local self-government (councils, assemblies) freely elected by secret ballot on the basis of direct, equal, universal suffrage. Local government is practically the only centre of power outside the parliament (local sovereignty).

The degree of independence of local authorities is limited. The vertical type of separation of powers prevails between the centre and administrative territorial units within the unified state mechanism. Local authorities do not have the competence to establish their jurisdiction.

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<sup>1</sup> Helena Vodyanitskaya: Local Government. In: Oxford Constitutional Law.

Define the most important elements/features of local self-government.

a)	d)
b)	e)
c)	f)

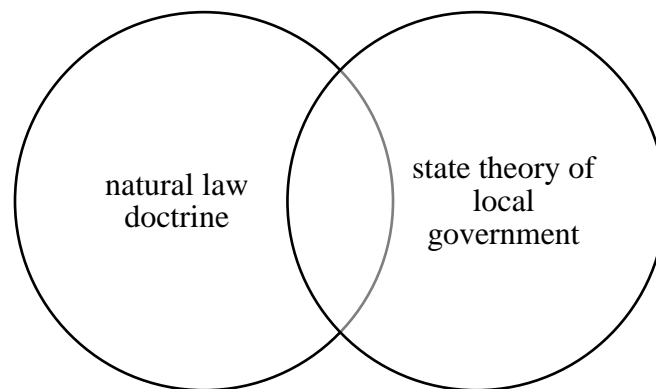
## 2. CONCEPTS ON THE ORIGIN OF LOCAL SELF-GOVERNMENT

There are a lot of concepts of local self-governance, but only two main concepts will be highlighted, (1) the natural law doctrine and (2) the state theory of local government.

The *natural law doctrine* distinguishes the artificially created administrative territorial units (e.g. canton, district) and naturally existing entities, only recognised by the central authorities (city). The artificially created units the interests of the state should prevail, while the naturally existed ones can have autonomous rights and be guided by local interests.

According to the *state theory of local government*, local governments are agents of central authorities providing services to the population in accordance with national standards and under state control. The main function of local government is to exercise public authority at local level. Local authorities operate as the central government is not able to independently manage all administrative territorial units from the centre only, without creation local bodies.

Place the most important features of the theories to the figure. May be overlaps?



The more territorial units are involved in the state politics, the more they are forced to abstract from local specifics and to follow the unified principles of state policy. As local authorities are linked with the tax and financial system of the state, they are rather part of the whole than independent territorial units, and the ability to do something at municipal level is more dependent on the general situation in the country than from specific local circumstances.

In many works on local governance interpretation of local government in the spirit of the *natural law doctrine* is replaced by the thesis that local government derives from the public authorities.

If we study the development of Hungarian local self-government system from the 1990 years, we can simplify the process and conclude, that we followed the same path, after the regime change in 1990 the concept of local governance based on the natural law doctrine. Perception on local self-governments changed step by step, in the concept of Hungarian Constitutional Court and in the concept of the legislator also. After the Fundamental Law of Hungary entered into force in 2012, the state theory of local government is dominant.

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### 3. EUROPEAN MODELS OF LOCAL SELF-GOVERNMENTS

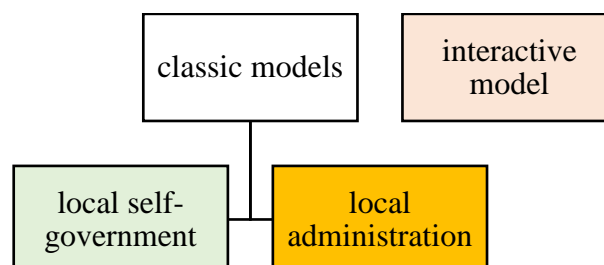
In this subsection the systematization of local self-government regimes can be examined. Analysis of the European local self-government models cannot be uprooted from the socio-historical embedded circumstances. The local self-government systems based upon different constitutional bases and therefore the most important features may be detected. *Models could be classified on*

- (1) local public affairs,
- (2) relationship of central and territorial public administrative organizations,
- (3) determination of local self-government responsibilities.

Another *standardization* may be familiar, which is *based on*

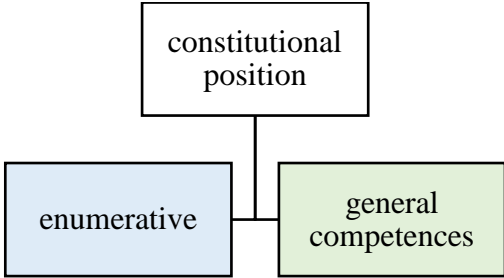
- (1) special constitutional rules for local authorities,
- (2) the position among the state organizations,
- (3) the definition of tasks and responsibilities, as well as
- (4) the internal structure of local governments.

In this section, the description of classifications is limited, it only attempts to present the key, well-known local self-government models.



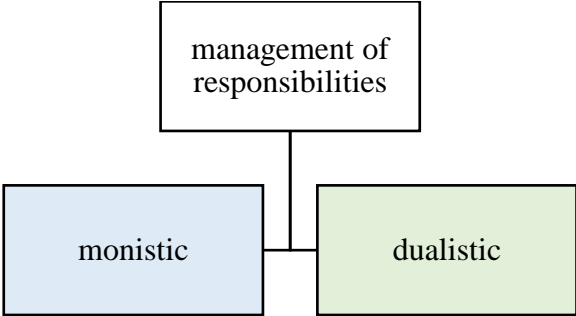
As referred earlier, *two classic models* may be distinguished in pursuance of the interpretation of local self-government, on one hand the *local self-government* and *local administration*. In

addition, a third one, the so-called *interactive model* also can be proposed. The interactive model includes the social relationship between local governments and local citizens.



On the basis of the examination of the *constitutional position* of local government, the British model and the United States model can be classified, both models based on *ultra vires principle*. The ultra vires principle of a single administration was introduced since the 1990s in several states outside the Anglo-Saxon legal culture as well - Ukraine, Moldova, Armenia, Georgia, etc. The most important feature of this model, that only the law determines competences for local self-governments, this way, if local self-governments act beyond the framework of the law, it is leading to the breach of law, infringements, to ultra vires. The tasks and responsibilities of local self-governments are *enumerated* by the law, the competence limitation, forbidden of limits of powers is prevailing. It should be noted, that in the United Kingdom the Localism Act 2011 established a certain general clause system, recognised the general competences of local self-governments. The Local Government Act of 2011 includes a provision on general power of local government, the community, to bring any infringement to the courts, and the possibility of obtaining community assets. In sum, the ultra vires system has been replaced by a limited general clause model.

The other large group of countries is based on general clause, *general competences*. These states represent differentiated responsibilities and powers in the field of local public affairs. Subgroups can be formed within these groups, where strong state control and influence prevails or the broad legal protection of self-government is guaranteed by the central government. Examples of the former subgroup are France and Italy, as well as Romania and Russia. The latter one includes the Federal Republic of Germany, Poland and Czech Republic.



In determining models of local self-governments, another different classification – into a monistic and a dualistic model – is also possible, on the basis of own and delegated from the state responsibilities.

The *monistic* management model is based on the uniformity of the tasks carried out by local governments. In the *dualistic* model, in contrast, the municipal tasks and administrative tasks delegated by the State are separated.

These basic models more or less exist either in a pure form or overlapping coincidences may occur.

What classification aspects have you known? Make a list about and put them in the table.

aspects	models

**4. WHAT IS THE POTENTIAL SIGNIFICANCE OF THE ECLSG?**

Fundamental characteristics of European local self-governments models were shown, the differences could be detected, and however there is a *general minimum on the score points of local self-governments*. These minimum standards of different models may be sum up in the European framework of local self-governance, namely in the European Charter of Local Self-governments. This *international convention* was adopted within the framework of Council of Europe.

Council of Europe’s aim is *not to harmonize the various national laws* through the adoption of common rules, but rather it *lays down and specifies the fundamental principles and values*, and promotes their adoption both in law and in practice. The Council of Europe is one of the most important defenders of human rights and of the institutions of democracy in the world. The activity of the Council has significant importance in the field of local democracy and local self-governance.<sup>2</sup>

The basic document of local self-government’s core values is the Charter of Local Self-Government which was adopted under the auspices of the Congress and was opened for signature on 15 October 1985. At present, all Member States are parties to the Charter. The Charter is the

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<sup>2</sup> Statute of the Council of Europe signed at London on 5 May 1949, Article 1.

*first binding international convention* to reach a *minimum level of legal coherence* in Europe and to ensure rights for local communities and their elected local self-governing bodies.

In the focus of the Charter is the *right and ability* of self-governance to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population within the limits of the law. The core values of the local democracy like decentralization and subsidiarity are also in the scope of the Charter.

The principles on local democracy and core values of European Charter of Local Self-Government *serve as a standard* in the examination of European local self-governments systems. However, it should be noted, that the Charter – by its legal nature – is an international treaty, serves as a framework, along its core values provides a platform for highly diverse solutions.

Choose the correct answer.

1. Right to local self-government

- a) is exercised directly by the citizens of municipalities
- b) is exercised by representative bodies indirectly
- c) generally is exercised by representative bodies, particularly by local referenda.

2. The definition of local self-government established by the Council of Europe

- a) is a general maximum of local self-government systems in Europe
- b) is a general minimum of local self-government systems of the world
- c) is a general minimum of local self-government system in Europe.

3. Ultra vires principle means

- a) that local self-governments can act within the limit of the law
- b) that local self-governments can act only in the delegated competences from the state, determinate by the law
- c) that local self-governments have general power to act within the limit of the law.

4. Natural law concept of local self-governments means

- a) artificially created units have autonomous rights
- b) naturally existing entities have autonomous rights and guided primarily by local interests
- c) administrative-territorial units are recognised by the central administrative authorities.

5. All Member States of the Council of Europe are parties to the Charter of Local Self-Government.

- a) true
- b) false.

6. European Charter of Local Self-Government by its legal nature is

- a) a national treaty
- b) a part of national law of member states
- c) an international treaty

7. Council of Europe's aim is to harmonize the various national laws.

- a) true
- b) false

8. Which is correct?

- a) The monistic management model is based on the uniformity of the tasks carried out by local governments.
- b) In the dualistic model the municipal tasks and administrative tasks delegated by the State are not separated.

9. The local self-governments system of France and Germany

- a) are under the ultra vires model
- b) are under the general competence model.

10. Charter of Local Self-Government was opened for signature

- a) on 1 of January 1985
- b) on 1 of July 1989
- c) on 15 October 1985