

JUDIT SIKET

TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY
VIII. Local self-governments in Hungary, historical, organizational
and functional perspective – at constitutional level



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 VIII

LOCAL SELF-GOVERNMENTS IN HUNGARY, HISTORICAL, ORGANIZATIONAL AND FUNCTIONAL PERSPECTIVE.

Content of the Chapter

1. Historical background
2. General characteristics of local self-government system
3. Regulation on constitutional level

The aim of the Chapter: This Chapter presents the characteristics of Hungarian local self-government system, first of all, from historical aspects. The main features of the system after the regimes changes, the collapse of soviet-type council system also covered. The provisions of Hungarian Constitution and the Fundamental Law on local self-government system ensure the opportunity to compare the changes at constitutional level.

Estimated reading time: 15-20 minutes

1. HISTORICAL BACKGROUND

Local self-government system *in a modern sense* was established in Hungary after the regime change, the collapse of soviet-type council system, in 1989-1990.

The roots of Hungarian local self-government system may be detected in pursuance of the formation and evolution of royal and further on the noble county. The determinant territorial units of the Hungarian state were the counties for long centuries. Local self-governments in public law sense existed only in these territorial units. The self-governance rights of settlements generally based on the privileges or contracts between the communities and the feudal lord or the church. The public law autonomy, such as territorial legislative and judicial power, power to manage local public affairs belonged only to the counties. These noble counties were considered “constitutional linchpins” in the history of Hungarian statehood, they represented the independence from the central government for centuries. The civic revolution of 1848/49 resulted the end of feudal monarchy, local self-governments also were the subject of the legislation of 1848, but after the fall of struggle for liberty the acts related to local self-governments were not entered into force. The legal status of local self-governments was arranged only after the Compromise 1867, which established the dualist monarchy of Austria-

Hungary. It ensured for Hungary autonomy in its inner public affairs in the field of governance. The municipal acts was adopted in 1870 (Act XLII), and 1871 (Act XVIII). The second arrangement of municipalities was carried on in 1886. However, this legislation established the local self-government system in civic sense. The dual level system (counties at regional level and municipalities at local level) existed until 1950. The judicial power was abolished in 1869 (Act IV), but administrative scope of local governments was broadened.

The *soviet-type council system* was introduced after the World War II, in 1950. It was a strongly centralized model, followed from the Communist state concept. The basic principle of the soviet-type local administration was the “democratic centralization”, which resulted a strong subordination of all local and county councils to the government. The two-tiered model prevailed, at local level the local councils had general competences of state administration. The county level councils were the so-called “arms outstretched” of the central government.

After the regime change of 1989-1990, in the new established public administration system the establishment of new local self-government system has taken a prominent position after the collapse of soviet type council system as a result of the democratic transformation.



‘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 1990.¹

The amalgamation process of local administrative units had been disrupted, the principle of one settlement – one local self-government prevailed.

PM József Antall

Source: <http://politikapedia.hu/antall-jozsef>

The state public administration, especially at territorial level, showed fragmentation, the disruption of consistency was demonstrated.

Specify the relevant events in the following years.

- 1867
- 1870-71
- 1950
- 1989–1990.

¹ See: András Patyi – Ádám Rixer (eds.): Hungarian Public Administration and Administrative Law. Schenk Verlag GmbH, Passau, 2014. p. 320.

2. GENERAL CHARACTERISTICS OF LOCAL SELF-GOVERNMENT SYSTEM

The Local Self-Government Act of 1990 adopted the concept of local self-government with a broad scope of responsibilities, based on general competence and the principles and values of European Charter of Local Self-Government. The provisions of the Charter are incorporated into the Hungarian Constitution (Act XX of 1949) and additional partial rules are laid down in the Local Self-Government Act (Act LXV of 1990). Local self-governments have equal rights, but responsibilities are different. The law determined and now also determines the mandatory tasks and functions to be performed by self-government authorities. Only the parliamentary act may establish tasks and responsibilities for local self-governments, the government regulation may only determine personnel and infrastructural conditions for them.

Local self-governments shall embrace a wide range of local public affairs and legislation may only exceptionally refer management of local public affairs to another, state organization. They may undertake voluntary local public affairs not referred by law to the competence of another organ. They may in the light of local needs and possibilities, freely determine which function to perform and what extent and how.

The Hungarian self-government system is two-tiered, consists of local self-governments (of settlements and counties), there is no hierarchical relationship between the levels of local self-government units. The Capital has a unique legal status, because provides also municipal and territorial responsibilities.

The legal supervisory function was the competence of Government, but it means only legal not practical or professional control of the operation and decisions of local self-governments.

The assets of local councils were transferred to local self-governments during the abolition of the state ownership exclusivity.

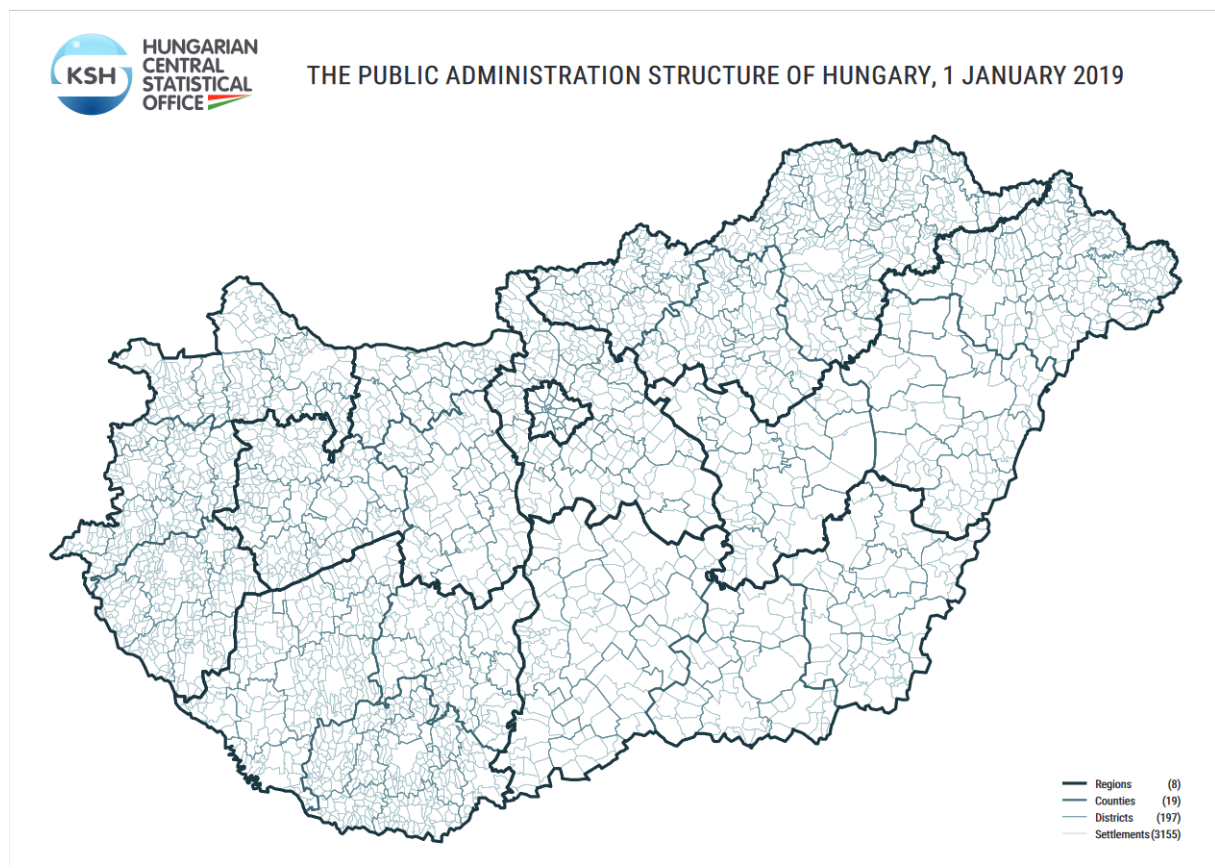
3. RESTRUCTURING OF HUNGARIAN SELF-GOVERNMENT SYSTEM 2012.

Nowadays – after the change of government in 2010 – in Hungary the state plays more and more increasing role in the realization of common goals. Strengthening of the state role is traceable in the field of local government's responsibilities also.

The administrative structure of Hungarian public administration is shown on the map as follows. The Fundamental Law of Hungary disposes regarding the public administration structure of the country. According to it: 'The capital of Hungary shall be Budapest. The

territory of Hungary shall consist of capital, counties, towns and villages. The capital and towns may be divided into districts.’ (Article F).

From 1 January 2013 the district-level was introduced between the settlement and county level, and the planning and statistical region level between the county and country level. The country consists of regions, the regions of counties, the counties of districts, the districts are made up of settlements. Every level covers the whole territory of the country. Among the administrative units the districts of Budapest are in a special situation, as we consider Budapest one territorial unit, while on district level the districts are considered territorial units.



In the table below the text of Hungarian Constitution and the Fundamental Law related to local self-governments may be examined. Compare the text both constitutional regulation using the aspects after the figure. What conclusion may be made?

Alteration of fundamental right concept at constitutional level: Fundamental Law

| Constitution of Hungarian Republic | Fundamental Law of Hungary |
|---|---|
| <p style="text-align: center;"><i>Article 41.</i></p> <p>(1) The territory of the Republic of Hungary is divided into the following administrative units: the capital, the counties, the cities and communities.</p> <p>(2) The capital is divided into districts. Districts may be formed in cities as well.</p> <p style="text-align: center;"><i>Article 42.</i></p> | <p style="text-align: center;"><i>Article 31</i></p> <p>(1) In Hungary municipal governments are set up for the administration of public affairs locally and for exercising local public authority.</p> <p>(2) A local referendum may be held in accordance with the relevant legislation in connection with matters falling under the responsibility of the municipal government.</p> <p>(3) The regulations relating to municipal governments shall</p> |

Eligible voters of the communities, cities, the capital and its districts, and the counties have the right to local government. Local government refers to independent, democratic management of local affairs and the exercise of local public authority in the interests of the local population.

Article 43.

(1) The fundamental rights of all local governments (see Article 44/A.) are equal. The duties of local governments may differ.

(2) The rights and duties of local governments shall be determined by law. The lawful exercise of the powers of local government is afforded the legal protection of the courts and any local government may appeal to the Constitutional Court for the protection of its rights.

Article 44.

(1) Eligible voters exercise the right to local government through the representative body that they elect and by way of local referendum.

(2) With the exception of mid-term elections, members of local representative bodies are elected for a term of four years.

(3) The mandate of the representative body shall extend to the inaugural session of the newly elected representative body; the mandate of the Mayor shall extend to the election of the new Mayor.

(4) A representative body may declare its dissolution prior to the expiration of its mandate and in accordance with the conditions stipulated in the law on local governments. Upon dissolution of the body [Article 19, Paragraph (3), Point 1)] the mandate of the Mayor also ends.

Article 44/A.

(1) The local representative body -

a) shall independently manage and administrate the affairs of local government and its decisions may only be reviewed with respect to their legality;

b) shall exercise the rights of ownership in the assets of local government, independently manage local government revenues, and may undertake business activities at its own liability;

c) shall be entitled to its own revenues for attending to the duties of local government as prescribed by law, and shall furthermore be entitled to state support commensurate to the scope of such duties;

d) shall determine the types and rates of local taxes in accordance with the framework established by law;

e) shall independently establish its own organization and rules of procedure in accordance with the framework established by law;

f) may develop symbols and emblems of

be laid down in an implementing act.

Article 32

(1) In connection with local public affairs the municipal government shall, within the framework of law:

a) adopt decrees;

b) pass resolutions;

c) autonomously administer its affairs;

d) determine its organizational structure and rules of operation;

e) exercise ownership rights with respect to the property of the municipal government;

f) determine its budget and autonomously manage its financial affairs on the basis thereof;

g) have the option to engage in business activities using its assets and revenues, these activities, however, may not jeopardize the performance of its statutory tasks;

h) decide on the types and rates of local taxes;

i) have the right to create its own symbols and institute local honors and titles of merit;

j) have the right to request information from the competent organ, initiate the delivery of a decision, and express its opinion;

k) have the right to freely associate with other municipal governments, set up associations for the representation of its interests; cooperate with municipal governments from other countries in matters falling within its competence, and seek membership in international organizations of municipal governments;

l) perform other tasks and exercise other competencies laid down by law.

(2) A municipal government, acting within its competence, shall issue municipal decrees relating to local affairs of society, which are not regulated by an act of Parliament, and when expressly authorized by law to do so.

(3) A municipal government decree may not be contrary to any other legislation.

(4) Following promulgation, municipal governments shall forthwith send their decrees to the competent Budapest or county government office. If the competent Budapest or county government office finds the municipal decree or any provisions thereof unlawful, it may initiate the judicial review of the municipal decree in question.

(5) Budapest and county government offices shall have powers to bring action against any municipal government alleging the omission of obligation to adopt decrees and to pass resolutions on the strength of law on the municipal government's part. If the municipal government fails to discharge its obligation to adopt decrees and to pass resolutions inside the time limit the court has prescribed in its ruling on the omission, the court shall - at the initiative of the relevant Budapest or county government office - order the head of the Budapest or county government office to draw up the municipal decree or municipal resolution with a view to remedying the omission in the name of the municipal government at fault.

(6) The assets controlled by municipal governments shall be public property, serving the performance of municipal government tasks.

Article 33

(1) The powers and jurisdictions of a municipal government

| | |
|--|--|
| <p>government, and establish local honors and titles;</p> <p>g) may present proposals to the authorities responsible for decisions that affect the local population;</p> <p>h) may freely merge with other local representative bodies and create associations of local government for the representation of their interests, may co-operate with the local governments of other countries and may be a member of international associations of local government.</p> <p>(2) Local representative bodies may issue decrees, which may not conflict with legal statutes of a superior order.</p> <p style="text-align: center;"><i>Article 44/B.</i></p> <p>(1) The Mayor is the chairman of the local representative body. The representative body may elect committees and create offices.</p> <p>(2) In exceptional cases the Mayor may attend to state administrative duties and authorities in addition to his responsibilities of local government, in accordance with the law or a government decree authorized by law.</p> <p>(3) State administrative duties and authority may be assigned to the Clerk of local representative bodies and in exceptional cases to the Director of the Office of Local Government.</p> <p style="text-align: center;"><i>Article 44/C.</i></p> <p>A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on local governments. The fundamental rights of local governments may be restricted by a law which also requires a two-thirds majority.</p> | <p>shall be exercised by the council of representatives.</p> <p>(2) The local council shall be governed by a mayor. The chairman of the county representative council shall be elected by the council from its members for the term of the council.</p> <p>(3) Councils shall have powers to elect committees and set up their own offices as laid down in an implementing act.</p> <p style="text-align: center;"><i>Article 34</i></p> <p>(1) Municipal governments and the State shall cooperate in order to achieve the goals of the community. Statutory tasks and responsibilities for municipal governments may be conferred by an act of Parliament only. In order to perform their tasks and responsibilities, municipal governments shall be entitled to receive budgetary and other financial means as commensurate.</p> <p>(2) An act of Parliament may prescribe that a statutory task of a municipal government be performed within the framework of an association.</p> <p>(3) In accordance with the relevant legislation or a government decree authorized by law, in exceptional cases the mayor, the chairperson of the county representative council, and the head or administrator of the council office may be delegated to attend to state administrative duties and responsibilities.</p> <p>(4) The Government shall exercise supervision of the legality of municipal governments through the Budapest and county government offices.</p> <p>(5) In order to maintain a balanced budget, an act of Parliament may restrict the borrowing of municipal governments above a specific limit, as well as their other commitments subject to certain conditions or Government approval.</p> <p style="text-align: center;"><i>Article 35</i></p> <p>(1) Municipal government council members and mayors shall be elected by the constituents by direct universal and equal suffrage in a secret ballot which guarantees the free expression of the will of voters, in accordance with the procedures laid down in an implementing act.</p> <p>(2) Local elections of municipal government council members and mayors shall be held in the month of October of the fifth year following the previous election of municipal government council members and mayors.</p> <p>(3) The mandate of the representative council shall last until the day of the general election of council members and mayors. If elections cannot be held due to a lack of candidates, the mandate of the representative council shall be extended until the day of by-election. The mandate of a mayor shall last until the election of a new mayor.</p> <p>(4) A representative council may declare its dissolution in accordance with the conditions laid down in an implementing act.</p> <p>(5) Parliament shall dissolve the council of representatives functioning contrary to the Fundamental Law upon receipt of a motion of the Government submitted following consultation with the Constitutional Court.</p> <p>(6) Upon dissolution of a council of representatives the mandate of the mayor shall also end.</p> |
|--|--|

Aspects for comparison:

1. How may be assessed the regulation dogmatically?

.....
.....

2. How may be assessed the extent of regulation?

.....
.....

3. How the right to local self-government appears? What conclusion may be form?

.....
.....
.....

4. What are the main functions of local self-governments? Why the legislator established them?

.....
.....
.....
.....
.....

5. Other aspects, such as administrative organs of local governments, freedom of association:

.....
.....
.....
.....
.....