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CHANGE OF THE LOCAL SELF-GOVERNMENTS' SOVEREIGNTY IN HUNGARY

Abstract

The conception of the actual local self-government system had created at the age of the dualism. The development had two parts, the first one was the decentralism of the public law system, and the second one was the splay of the council's sovereignty. Unfortunately there was a lot of council who went into liquidation so the state had to help them. Therefore the state's influence became bigger and bigger, which process reflected at the new local self-government law. This law is limiting the local self-government's sovereignty because it ignores the recommendation of the European Charter of Local Self-Government. There was necessary to made a new local self-government but with the consent of the councils.

KEY WORDS: local self-governments, Hungary, sovereignty, fundamental law, education system

1 ACT NO. CLXXXIX OF 2011 – ON THE LOCAL SELF-GOVERNMENTS OF HUNGARY

In the 2010 electoral campaign, Viktor Orbán mentioned it as one of his primary objectives that if citizens put their trust in him, his government would carry out a complete public law reform, and would pass a new fundamental law instead of the constitution already displaying several weaknesses. FIDESZ-KDNP ('Alliance of Young Democrats- Christian Democratic People's Party') won the 2010 election, and following the counting of votes, it became clear that having a two third majority, the new government could start the process of drawing up a new constitution without the opposition. As a result, on 18 April, 2011, the Parliament passed the new constitution, Hungary's Fundamental Law.

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As had been planned, the government carried out a complete public law reform which involved the amendment of the current act on local self-governments, as well. In order to be able to investigate the differences between the 1990 Act on local self-governments and the equivalent 2011 Act, the regulations set out in the constitutions should be studied and the missing links should be explored.

Starting from the beginning, it is important to observe how these two fundamental law documents provide for the right of self-government. The Constitution is based on the right to local self-government, regulating the control of the state over local self-governments in a minimalist way. It is not surprising given the fact that the Act on local self-government was passed directly after a suppressive, authoritarian regime ceased to exist so it was a primary consideration to reduce state control to the minimum level. The fundamental rights local self-governments were entitled to were general and extended to each local self-government. Unfortunately, however, due to the large number of tiny self-governments and overregulation, this system became impossible to finance. The Fundamental Law attempts to find a solution to this. However, it does not provide for the right to self-government but incorporates the concept of local public affairs in its wording instead. The exact formula is: *'In Hungary local governments shall function to manage local public affairs and exercise local public power.'* It confers the right of local self-government on the citizens of settlements and counties so only the complete revocation of the right to self-government violates the Fundamental Law as the right to self-government does not appear in it as a fundamental right. Citizens may directly exercise their rights to self-government through local referenda and indirectly through elected representatives. According to the law, these rights mean the expression and implementation of local public will. Accordingly, the subject of law shall not be deemed to be the local self-governments but inhabitants of the local settlements who exercise the right of self-government. According to the act, local public affairs *'are related to the provision of the population with public services and to the creation of the organisational, personnel and material conditions for local self-government and cooperation with the population.'* That is, the task is to cater for the needs of the population and to create and provide the conditions for their well-being so the law does not only regulate but also sets forth obligations for the local self-governments and citizens. It is the citizens' obligation to alleviate the burdens of the community through self-provision, that is, to contribute to the performance of community activities as far as they are able to. The local self-government may define these tasks in a decree, and may also create legal consequences in case of non-compliance so it may hold inhabitants responsible. However, as a moral constraint, the principle of good faith and mutual cooperation should be followed while the law is exercised and enforced.

The tasks of local self-governments are regulated in section (1), Article 31 of the Fundamental Law, which sets forth that local self-governments manage local

public affairs and implement local public will. However, it fails to give an exact definition of what local public affairs are so it is left to the legislature to clarify it. The Fundamental Law gives a list of all the rights that the local self-government may exercise during the management of public affairs so through decrees and orders, it is a matter of local regulation to determine organisational and operational order, to exercise the right of enterprising, the right to charge taxes or to establish partnerships with other local self-governments. However, neither the act nor the Fundamental Law provides for the separation of the tasks and powers of local self-governments. And with this, we have arrived at an important point without the exploration of which it is impossible to go on as we are concerned with local self-governments here. These are the principles of decentralisation-deconcentration and subsidiarity.

The state system of the separation of powers is built out along two axes: a horizontal and a vertical one (Gallai and Török, 2003, p.318). The horizontal axis is the classical tripartite principle of the division of powers, treated by every country having a democratic political system as a basic element of power construction. The vertical division means the division of state power and tasks among lower levels. However, vertically, division cannot be complete as through its power to make the constitution, the legislative power may modify the powers of the hierarchical organisations of the vertical power system. Thus, local self-governments should always comply with the provisions of currently effective law so there is no institution system where one could speak about unlimited organisational powers. In case of the central and local division of power, one can speak about decentralised and deconcentrated models (Gallai and Török, 2003, p.319). Regional autonomy is the greatest in federal-type countries where the state grants separate state-level powers to federal elements. Nowadays, countries strive for decentralisation as the division of state powers also involves the passing on of functions and financial burdens in addition to the fact that this way, the principle of vertical power division also prevails. Thus, in case of decentralisation, division of power and division of labour are both attained, resulting in greater autonomy for local authorities. However, autonomy does not mean complete sovereignty as local self-governments also exist as part of the state. 'In a narrower sense, decentralisation is the actual division of powers among regional decision makers who are not organisationally subordinated to central authorities' (Gallai and Török, 2003, p.320).

Deconcentration is based on hierarchy so it means the subordination of local and regional authorities to the central power. At the same time, this shows the limitation of the right to make free decisions as self-governments organised on this basis work under the control of the central administrative authority in every case. Their power is only mediated power, and their scope of authority only covers the performance of specific tasks. Next, it is important to mention the principle of subsidiarity, the content elements of which appeared as early as in

the antiquity but was first widely applied in practice after World War II, and then it became the basic principle of the European Community. Former president of the European Committee, Jacques Delors named the following two aspects as the basis of subsidiarity:

- everybody should have the right to fulfil his/her duties on the level where he/she is most suitable for it;
- the obligation of the central authorities is to provide everyone with every device necessary to fully exploit their possibilities.

In today's modern states, subsidiarity is the principle of the limitation of power and the supervision of interference, which was incorporated by the Treaty of Maastricht (section (1), article 5 of the Treaty on European Union). With regard to the fact that these are uniform principles and models in the field of local self-government, the Hungarian local self-government system was also created by the act regulating this structure according to these models.

After this, let us return to the most recent Hungarian act on local self-government. In section (1), article 13, chapter II, the act gives a detailed description of the range of tasks to be performed by local self-governments. In this section, 21 activities are specified from urban planning through cultural and social tasks to waste management and water supply. The new Act on local self-governments regulates the tasks to be performed by local self-governments in greater detail, incorporating new fields, and putting former tasks of local self-governments under state control. Municipal development and urban planning are included in both acts but municipal operation is a new concept although it is true that some of the tasks to be performed were also included in the former act.

The new act incorporates the following tasks in municipal operation: establishment and maintenance of public cemeteries, provision of street lighting, provision of chimney sweep services, construction and maintenance of public roads and their accessories, establishment and maintenance of public parks and other public areas, and provision of parking places for motor vehicles. In other words, the act specifies the tasks that local self-governments shall perform. Earlier, these tasks were not specified individually. In my opinion, the reason for such detailed regulation is to prevent any legal disputes arising from the lack of regulation. Beyond the incorporation of social benefits and services, the new act on local self-governments also includes the right of the local self-government to determine social benefits.

The Act on social benefits and the Act on local self-governments set forth that the self-government representative body of the settlement shall provide social benefits in cash for individuals socially in need subject to the conditions set forth in the relevant decrees of the local self-government in the form of care allowance and self-government benefit but may also define other benefits paid in cash. In

addition, the local self-government may also provide social benefit in kind, and may order personal care to be provided for those in need (Feik, 2017). Since the introduction of the public works programme, the organisation and provision of public works have also been the task of local self-governments although it is true that the state gives assistance in the provision of the necessary financial resources. It could have been included among the social tasks of the state, still, the provision of care for and rehabilitation of people who have become homeless, and the prevention of this are regulated separately. The reason for giving it priority in the act may have been the increasing social sensitivity for the problem. The provision in the act requiring local self-governments to provide an opportunity for local small farmers and primary producers to sell the products listed in legal statutes has greater importance in the provinces.

With this, legislators try to promote the development of the Hungarian sector of small producers and the giving priority to Hungarian goods. Unfortunately, this regulation has not been of much help in stopping the decrease of the number of agricultural primary producers as since 2008, there have been fewer and fewer primary producers registered year by year. The Hungarian production sector badly needs this layer so this problem is an ever recurring item on the political agenda. The organisation and provision of local waste disposal services is also a new task to be performed. Earlier, it caused problems several times as in many cases, waste management companies could not agree with local self-governments so waste disposal was not solved. In order to prevent such cases, the act makes it the responsibility of local self-governments to perform waste management tasks.

The most important issue in today's political situation in Hungary is the educators' movement against the improper conditions and the system of financing in education. These causes can also be led back to the provisions in the Act on local self-governments as earlier, it was the responsibility of the local self-governments to provide education but in the new Act on local self-governments, the authority of local self-governments only covers the supervision of kindergarten education while other levels of education are put under state control.

2 THE IMPACT OF THE 2011 ACT ON LOCAL SELF-GOVERNMENTS ON THE HUNGARIAN EDUCATION SYSTEM

Following the change of the political system, similarly to many other areas, the Hungarian education system underwent significant reorganisation. Education itself was regulated by Act No. LXXIX of 1993. The act made it the responsibility of the self-governments of villages, towns, capital districts and cities with county rank to organise and supervise the operation of kindergarten and public education services. This act made it possible for the educational services to be provided jointly by several local self-governments in the framework of a self-government

partnership in which 'every such self-government could become a member that maintained a school providing vocational training' (Csörgits, 2017). Thus, according to the former regulation, the local self-government was the basis of the organisation and provision of education from kindergarten to university education.

This system was upset by the new Acts on public education and local self-governments, which deprived local self-governments of the right to maintain educational institutions with the exception of kindergartens, and put these institutions under state control. In the exact wording of the act, 'a public education institution may be established and maintained by the state, and subject to the provisions herein, by ethnic minority self-governments, church legal entities, organisations involved in religious activities or by other persons or organisations if it has obtained the right to pursue such activities in compliance with the relevant legal statutes.' The act also sets forth that kindergarten institutions may also be maintained by local self-governments. As of 1 September, 2012, the state established Klebelsberg Intézményfenntartó Központ ('Klebelsberg Centre for Institution Maintenance') (Hungarian abbreviation: KLIK), the task of which is to maintain public education institutions involved in providing state services and to operate public education institutions efficiently, professionally and legally. KLIK performed the tasks set forth in the act in 198 educational districts with more or less success. Right after starting its operations, the institution already generated considerable loss, and the educational experts of the opposition labelled it 'the most unnecessary institution' since the change of the political regime.

It is a fact that the operation of this institution shows the signs of chaos, with its accumulated debt already exceeding ten billion HUF although repayment of it has started in the meantime. Teachers' former demonstrations, which turned public attention to the conditions in education, may have partly been attributed to the operational problems of KLIK and partly to other circumstances. Probably due to social pressure, the government announced that it would close down KLIK, and the new institution to be established would only have maintenance and employer functions, and all other authorities would be given back to school principals. School principals would also have cash funds so that no central approval would be required for every single procurement of assets, which formerly endangered everyday work in schools. Secretary of state for education László Palkovics said in a television interview that the operations of the universities would not be affected by the new institution as they were functioning properly.

With regard to the universities, it is important to remark that they have a different maintenance system. Universities are led by their senates headed by the rectors but they are operated by the chancellors, who are responsible for economic, financial, controlling, internal auditing, accounting, HR, legal, administrative and IT activities as well as for the asset management of the institution, including any technical, facility utilisation, operational, logistics, service, procurement and

public procurement issues, as well, pursuant to law. This means that the actual supervision of universities has been taken over by individuals appointed by the prime minister, through which the autonomy of the universities has also been curbed. It is a negative impact of the reorganisation in higher education that several institutions have been closed down, faculties have been merged, several, formerly state-owned specialisations have been made fee-paying, and in several cases, the amounts of fees have been considerably increased so that many students cannot pay them. As a result, there is a significant decrease in the number of students in higher education.

Due to the act, several educational institutions have been taken over by the churches for maintenance. In comparison with the 2009/2010 period, the number of elementary schools in church ownership had increased by a little more than one hundred by the academic year 2014/2015 while in the case of the academic grammar schools, this number was thirty. Since 2005, the number of students in public education has decreased by almost 200,000 while the number of students educated in church schools could only be counted in thousands at that time but now a quarter of a million students are taught there. Due to the better financial conditions – as church schools get both state and church subsidies -, more and more students are enrolled in church schools by their parents. The fact that the number of students educated in church schools is increasing is in line with the government's objectives.

3 CHANGES IN THE SOVEREIGNTY OF HUNGARIAN LOCAL SELF-GOVERNMENTS

The Hungarian self-government system had prominent significance from the early Middle Ages. The Hungarian principle of local self-government originates from the sovereignty of counties, and if there is any dispute between the state and local self-governments, as a rule, historical experiences are activated to support the importance of the power and autonomy of local self-governments. In the 27 years that have passed since the change of the political system, there have been frequent changes in the obligations and control of local self-governments. At the time of the change of the political system, legislators, understandably, intended to give back to local self-governments the maximum sovereignty permitted by law, which worked well in the beginning, and were welcomed by citizens but as the years passed, the negative aspects of the system became evident, as well. Mainly due to the increase in their responsibilities, local self-governments got indebted, and by 2010, the amount of their outstanding debt had reached 1,200 billion HUF.

Understandably, local self-governments expected the state to solve this problem, and as a result, they had to sacrifice some of their sovereignty, giving it over to the state. The restructuring of the education system described above was

due to this sacrifice but the access of the local self-governments to loans has also become limited and the system of central resource allocation has been changed, as well, so settlements with stronger economic potential get less subsidy than the more disadvantaged ones. Before the changes, there were some who were of the opinion that Hungary should adopt the Swedish local self-government model, where first, the number of local self-governments was reduced from 2,498 to 1,037, and then, due to further reductions, only 278 local authorities remained. This means that a large number of local governments were eliminated or merged. However, under Hungarian conditions, this would have been an inconceivable change as Hungarian local self-governments enjoy historically guaranteed autonomy.

The new regulation in the Fundamental Law gives up the fundamental right approach to the right to local self-government, and sets forth that local self-governments may only exercise their functions (and not their fundamental rights) subject to the principle of legality, thus creating the possibility for a broad limitation of the rights of local self-governments just like for the requalifying of local public issues as national public issues. These provisions reduce the autonomy of local self-governments, guaranteed by the constitution. In the new regulation system, local self-governments are controlled by the competent government authorities, whose status and functions have been considerably extended due to the combination of the great many deconcentrated functions. Through this, the county has become the scene of intermediate level administration. The result of the new regulation is a local self-government system shifting towards centralisation, accompanied by a considerable reduction of the functions and limitation of the autonomy of the local self-government system. Leaving the role of the 'night watchman' behind, the state actively interferes in local and regional politics and self-government activities. The fundamental changes can be summarised as follows:

- there has been a considerable decrease in the number of local self-government representatives;
- in contrast to the previous system, a five-year election cycle has been introduced with the justification that it is worth separating local elections from the parliamentary cycle and elections in the hope of a higher participation rate and more balanced power relations;
- the next element is the reduction in the functions and roles of local self-governments referred to several times;
- with the appearance of government offices, authority functions have been taken away from local self-governments;
- in case of the existence of the conditions set forth in the act, the opportunity for local self-governments to form mandatory partnerships, and the closing down of mayor's offices in settlements having fewer than two thousand inhabitants;
- judicial review has become stricter;

- the management functions of local self-governments have become stricter due to the large number of cases of their getting indebted;
- one of the most important changes on the local level is that the position of the mayor has become stronger within the organisation of the local self-government, weakening that of the notary so few opportunities have remained to control mayors.

CONCLUSION

These were the most essential points bringing about a change in the new Act on local self-governments. It is quite sure that it is impossible to investigate the actual impacts of changes after such a short period of time but some initial conclusions can be made. Evidently, the new act overregulates local self-governments, thus curtailing their sovereignty, and giving too much priority to state influence. The termination of the former close connections between county self-governments and local self-governments may also be the source of significant problems in the future. With regard to the fact that due to the absolute majority of the governing party, the new constitution was passed relatively quickly, the Act on local self-governments was also drawn up without any serious impact studies or negotiations with the local self-governments themselves.

As our country is a member state of the European Union, our fundamental acts should comply with the basic principles of the Union, and as far as local self-governments are concerned, with the European Charter for Local Self-government, as well. Whether the provisions in the new Fundamental Law and the Act on local self-governments comply with the Charter or not is doubted by many, what is more, one of the reports which investigated Hungarian conditions explicitly recommended the review of the Hungarian Act on local self-governments referring to excessive centralisation. Therefore, it is becoming more and more evident that according to the experience gathered so far, the new regulation needs reviewing but in view of current political trends, this review is not likely to be carried out in the near future.

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