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The Transformation of the Financial Autonomy of Local Governments

András Bencsik*

* Associate Professor, Department of Administrative Law, Eötvös Lóránd University, Budapest, Hungary. E-mail: bencsik.andras@ajk.elte.hu

Abstract

Ensuring a broad degree of financial autonomy is a fundamental issue for local government. In the context of the administrative modernization of recent years, several legislative measures have been taken which have directly or indirectly limited the financial and economic autonomy of local governments in Hungary. The paper gives a brief overview of the development of the Hungarian local government system in 1990, comparing the initial regulation with the standards of the *European Charter of Local Self-Government*. It discusses, then, the restructuring of the system in 2011, and lists the legal institutions which, in the author's view, have led to restrictions on local government management. The paper covers the introduction of the task-financing system, the establishment of district offices, the restructuring of the role of county governments, and the constitutional and other legal obstacles to municipal borrowing.

Keywords

local governments, public administration, decentralization, rule of law, Fundamental Law of Hungary, financial autonomy

1 Introductory thoughts

Local governments are – in the words of Zoltán Magyary (Magyary, 1942, 112) – key players in the unified national public administration, that is to say, they are the custodians of decentralization in the Hungarian state. The economic-political-social regime change of 1989–90 reinstated, through Act LXV of 1990 on Local Self-Government (hereinafter: 1990 LG Act), the two-tier local self-government system, remedying a historic debt of the Socialist council system. During that period, placing local governments in the unified institutional system of public administration did not pose any dilemmas, as they were meant to become meaningful actors in the renewed Hungarian public administration. What is more, they were believed to counterbalance the central state power. The spirit of this novel sentiment had its origin, among others, in the thoughts of Zoltán Magyary, who distinguished two forms of decentralization as an organizational principle: deconcentration and self-government (cf. Magyary, 1942, 112). In the years following the transition, local government thus became a decentralized body of Hungarian public administration, which meant essentially decentralizing public functions, that is, imposing compulsory tasks on the local government subsystem (see Fazekas, 2019, 119–120).

Needless to say, the decentralization of public tasks should, at least ideally, also involve the transfer of the necessary financial resources, since scarcity of funds and decentralization of public tasks "may in some cases lead to a reduction in the independence of local governments" (cf. Hoffman & Nagy, 2012, 350). Local governments thus essentially face a risk of a linear process where the gap between their revenues and their mandatory costs gradually increase, making them financially dependent on the central budget and public subsidies.

This leads, then, to the most sensitive issue in the financing of local government: the question of local autonomy. In the most general sense, autonomy is unthinkable without organizational, operational and financial aspects. This is rather well-illustrated by asserting key significance for the provision of financial resources which expresses both the autonomy the state wishes to guarantee and the role local governments assume in the performance of public tasks (Berényi, 2003, 323).

That is why, "if local governments are so strongly linked to the central budget, their political independence also becomes questionable" (Csefkó, 2011, 111). This very idea has been elaborated by the former judicial practice of the Hungarian Constitutional Court, ruling that "the autonomy of local governments can only be achieved if the economic conditions for it are met, and administrative autonomy is coupled with economic autonomy".[1]

These trends have led to serious anomalies in financing the Hungarian system of local government and have prompted legislators to 'redesign' the system on several occasions, the most radical version of which was the adoption of the Fundamental Law of Hungary and Act CLXXXIX of 2011 on Local Governments in Hungary (hereinafter: 2011 LG Act.). These changes concern two main issues, namely, (1) whether the financial relationship between the government and local governments is too close-knit, and (2) whether the Government will provide the necessary resources for local governments to fulfil their responsibilities. The first question concerns the autonomy of municipalities, while the second their debt problems.

The present study examines, then, the changing financial situation of local governments in a non-exhaustive manner, focusing on those issues that tighten the relationship between the state and local governments, thus limiting the financial autonomy of the latter.

2 The birth of local government: the concept of the Constitution

It is worth pointing out that, in 1990, a broad national consensus gave birth to the system of local government, which was an indispensable step in the democratic transition. Today, this system is subject of frequent criticisms in terms of its functioning, and many legal experts deem that the entire system of local government established in 1990 was mistaken. Generally speaking, the 1990 LG Act created a modern and liberal system of local government (see Siket, 2021, 208–215). These modern attributes manifest themselves in the specificity of the system, allowing room for self-regulation and in the fact that the 1990 LG Act has applied the general requirements of the European Charter of Local Self-Government (hereinafter referred to as the Charter) as a benchmark.[2] The liberal character, on the other hand, is hallmarked by the fact that the legislation created the conditions for the democratic exercise of local power.

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[1] 67/1991 (XII. 21.) decision of the Constitutional Court of Hungary.

[2] The Convention was formally promulgated in Hungary by Act XV of 1997.

The Charter was drafted in 1985 to protect the autonomy of local governments, and it was a compilation of European best practices, intended to be a point of reference for the development of the European systems of local government. Article 9 of the Charter furnishes a system of guarantees for the economic autonomy of local governments, including:

- local governments are entitled to adequate financial resources of their own, within the framework of national economic policy,
- local governments' financial resources must be commensurate with their functions as defined in the constitution and legislation;
- at least part of the financial resources of local governments shall derive from local taxes and charges, the level of which these bodies have the power to set, within the limits of the law;
- the need to develop diverse and flexible financial systems based on the financial resources of local governments;
- the protection of financially weaker local governments requires the institutionalization of certain financial equalization procedures;
- local governments should be consulted in an appropriate manner when determining their share of the resources;
- the granting of subsidies must not restrict the autonomous decision-making powers of local governments within their jurisdiction
- local governments shall have access to the national capital market to borrow for investment purposes, within the limits set by law.[3]

As such, the 1990 LG Act vested an array of responsibilities in the newly emerging local government system, and to commensurate with this, a high degree of autonomy as well. However, subsequent legislation put local governments in a difficult position: the parliament steadily imposed new compulsory tasks on local governments, but failing to keep the level of funding at pace with the volume of these new tasks (Gasparics et. al., 2015, 612). This trend has essentially coded financial dependency into the local government system, with the risk of a perpetuation of deficits (i.e. indebtedness) in the longer term. The initial experience of this phenomenon, even in the early stages of local government, made it difficult for local governments to achieve effective management. The emergence in recent years of emergency ordinance governance, which has become increasingly steady, has further reduced local governments' room for maneuver in terms of finances (see Hoffman, 2023).

The situation was further aggravated by a direct consequence of this practice, which led to management and financial anomalies: as the decentralization of public tasks was not followed by the decentralization of central resources, local governments were forced to 'plug' the holes in their budgets. A popular solution among local governments has been to use the funds allocated for development under various legal titles to finance their operations (see Lentner, 2015). What is more, in the case of several municipalities, similar consequences have been associated with some of the 'callable' tenders for EU membership from 2004 onwards, when some local governments started to take out foreign currency loans and then issue bonds in order to secure the co-financing that was a condition for participation in these tenders.[4]

[3] European Charter of Local Self-Government. Strasbourg, 15 October 1985. Online: https://tinyurl.com/2f7p83st

[4] It should be noted that the situation of local governments has been made even more precarious – from a management point of view – by the legislator's constant attempts to reform and restructure local taxation options. For a more detailed discussion of these, see Szilovics (2008).

The trends outlined above have reinforced each other, with the result that the majority of local governments have been constantly 'struggling to survive'. Given that the number of compulsory tasks imposed on local governments far exceeded the available revenues, we have essentially witnessed the central budget imposing its deficit on local governments. These systemic trends have led to a number of anomalies and problems, which has been a subject of many professional forums and empirical research on local governments. It is well-illustrated by the fact that budget support for tasks to be performed has never covered the financial needs of those tasks, that the levying of local taxes varies enormously from one local government to another, and that the system of earmarked subsidies has on more than one occasion led to political tension, thus making the stable and economic operation of local governments a subject of political fiction (see Csefkó, 1997, 101).

3 Redressing the local government system: conceptual change of the 2011 LG Act

In light of almost two decades of experience gained through the operation of local governments, the Government, having won a sufficient majority in the 2010 parliamentary elections, decided to resolve a thorough reform of Hungarian public administration through systemic changes in the system of local government. And this was initiated by the adaptation of a cardinal act, the 2011 LG Act. According to its preamble, the 2011 LG Act was adopted in order to "fulfil the rights of local government as defined in the Fundamental Law, create the necessary conditions for local self-government, strengthen national cooperation, promote the self-sustainability of settlements and strengthen the local community's capacity for self-care" (taking into account the principles of the European Charter of Local Self-Government) (cf. the Preamble of the 2011 LG Act). On the whole, the text of the 2011 LG Act is in tune with the provisions of the Charter, though, certain provisions (e.g. the powers of the head of the government office to replace the head of the local government) and some other Hungarian laws (e.g. the National Property Act, the Stability Act), have the potential of infringing either the Charter itself or certain international investment protection and competition rules (see Horváth M., 2014, 9).

Without going into details, there are two comments to be made on the context of evaluating the 1990 LG Act. First, both the preamble to the 1990 LG Act and the explanatory memorandum to the 2011 LG Act reveal the legislative objective, namely to create a modern, cost-effective, task-oriented system of local government which, however, sets a stricter framework for the autonomy of local government than the system of the 1990 LG Act (see Rixer, 2013, 95). This legislative decision can be linked to a phenomenon which, as the State Audit Office has pointed out on several occasions, has led to a significant imbalance in the finances of local governments.

Second, there is a continuing pattern of stronger central government control over the functioning of local governments. Almost two thirds of local public services have been centralized and the administrative competences of the state within the local government organization are radically increased (cf. Rixer, 2013, 96). Nevertheless, it is also worth pointing out that the systematic changes outlined above, carried out under the aegis of a consistent alignment with the state administrative order, have resulted in societal 'damage' in devaluing the dignity of the mayor's office by way of reducing its tasks and powers (see Hegedüs & Péteri, 2015, 96).

In what follows, I discuss the system of task financing and the restriction on borrowing which are the most closely related innovations introduced by the 2011 LG Act.

3.1 Introduction to the task funding system

The system of task financing introduced by the 2011 LG Act is undeniably an innovation in the context of the economic foundations of the operation of local governments which, in many respects, has ushered in a new era for local governments. Generally speaking, it can be said that the basically free, non-binding funding system of the 1990 LG Act has been replaced by a fixed, task-financing regime (see Hoffman & Nagy, 2012, 409). The entry into force of the 2011 LG Act has reshaped the basic framework of the system of resource funding which has led to a radical reduction in central budget support. In this changed situation, local government management must operate within a different framework as well. The changed legal environment has not only made it necessary to fine-tune the financial regulations, but has also forced local governments to rethink their previous management practices, to restructure local taxation and to reorganize their various expenditure streams.

With regard to the task financing of local governments, the 2011 LG Act provides that "in the framework of the task financing system, Parliament shall, in the manner specified in the Act on the Central Budget, provide task-based funding for the performance of certain tasks of local governments, which are to be compulsorily performed and prescribed by law, with a utilization obligation, in accordance with the public service level specified in the legislation defining the task, or provide funding for their performance on the basis of the task, the indicators based on local needs or the number of inhabitants"(2011 LG Act, Art. 117(1)). The legislative intention behind the creation of the abovementioned provision is to ensure that local governments have the operating expenditure necessary to carry out the compulsory tasks of local government under the conditions stipulated.

I believe, two comments are due. First, it may be noted that in line with Article 117(2) of the 2011 LG Act the legislature is required to take certain criteria into account when determining the amount of aid, such as sound financial management, a given local government's expected and actual own revenue. It follows that the calculation of specific budgetary support is based on the definition of expenditure needs.[5] On the other hand, the specific nature of task financing is also to be defined as an obligation to use budgetary support exclusively for the operating expenditure of the local government, and therefore such support cannot be used to cover, for example, development or investment costs. This specificity is also reflected in the provision of the 2011 LG Act stating that the aid in question "may be used by the local government exclusively for the expenditure relating to the tasks it is required to perform on an annual basis. In the event of any other use, the local government is obliged to repay the amount of the subsidy to the central budget, together with interest as provided for in the Public Finance Act" (2011 LG Act, Art. 118(1)). This financial sanction guaranteeing the obligation to use the funds is mitigated by the wording: 'on an annual basis'. This does not mean that the amount received by the municipality under the task-based funding can only be used for the task in question, but rather that all task-based funding must be used annually to ensure the performance of compulsory municipal tasks and that the municipality must account for the amount used (cf. Hoffman & Nagy, 2012, 416).

[5] Without going into the details, it should be noted that the content of the central budget laws reflects the legislative intention to set the amount of aid for the following year according to the share of motor vehicle tax revenue and other local tax revenue of the local government concerned.

Within the context of the regulation, it is necessary to mention two provisions that will ease the above tension. Article 117(1)(b) allows, in addition to the obligation to finance compulsory tasks by means of normative funding, the granting of aid with or without a commitment to use the aid for the performance of voluntary tasks which are not considered compulsory and which are assessed as priorities (e.g., support to performing arts organisations can be considered as such a voluntary task eligible for public support) And an extension, according to which "[i]n exceptional cases, additional aid may be granted in a manner provided for by law in order to maintain the viability of the local government" (2011 LG Act, Art. 118(2)). It should be noted that, before the entry into force of the 2011 LG Act, local governments were entitled to receive additional aid under a number of legal titles, whereas the current legislation essentially leaves the decision on additional state aid to discretionary powers, and in this context the (current) Budget Law merely refers back to the elements of the 2011 LG Act (see Hoffman & Nagy, 2012, 417).

The introduction of this task-based financing has somewhat shifted from the forced reaction to the actual practice of the previous two decades, which can be seen in the fundamental withdrawal of resources and the repositioning of local government. There are voices, though, that make a more strident assessment, arguing that "[t]he political slogan of task funding has never been backed by a clearly defined financial mechanism" (see Hegedüs & Péteri, 2015, 100), as is illustrated by the sometimes subjective and abstract nature of the criteria to be taken into account for task funding. However, the post-2010 funding system has doubtless increased the dependence on the central government.

3.2 Limitations on municipal borrowings

The peculiar history of the development of local government management had its anomalies in disfunction, unique management solutions and, in several cases, the indebtedness of certain local governments. Hence, it was a principal objective of the legal reforms to prevent any increase of indebtedness of local governments. I cannot simply pass, however, over underfunding which is as much to blame for creating the precarious economic situation as indebtedness. And, in my opinion, the extent of debt was by no means of such a scale or so unmanageable to have justified a drastic reallocation of responsibilities (cf. Horváth M., 2012, 6).

In order to achieve this goal, the Fundamental Law of Hungary addresses certain issues of the financial and economic autonomy of local governments in two places. Article N(1) states that "Hungary shall observe the principle of balanced, transparent and sustainable budget management". This provision emphasizes balance, transparency and sustainability as the basic principles of (budgetary) management, while remaining essentially at the level of the Declaration (see Petrétei, 2013, 239). However, given that all the provisions of the Fundamental Law can be interpreted as normative commands, the question of who is responsible for implementing this principle is of particular importance. In order to make this more specific, the text stipulates that the National Assembly and the Government "shall have primary responsibility for the observance" of this principle and that "[i]n performing their duties, the Constitutional Court, courts, local governments and other state organs shall be obliged to respect" this principle (Fundamental Law, Art. N(2)–(3)).[6]

[6] For a systemic analysis of this provision in relation to the principle of balanced and sustainable management, see Ercsey (2016), 83.

The provision of Article 34(5) of the Fundamental Law, according to which "[i]n order to preserve a balanced budget, an Act may provide that, for any borrowing or for other undertaking of commitments by local governments to the extent determined in an Act, certain conditions and the consent of the Government shall be required", is of particular importance for the institutionalization of the so-called debt brake in the operating system of local governments. In essence, the legislator has established a system based on actively controlling local government borrowing (see Kecső, 2016, 118–122).

In the context of the provision of the Fundamental Law, the following comments should be made. The 'Act' clause in the text of the norm defines the legal source level for the creation of a debt brake. This may take the form of simple majority, as it is not a constitutional requirement to pass a cardinal act by qualified majority. The purpose of introducing the debt brake is defined in the text of the norm as the preservation of budgetary equilibrium, which can be generally understood as the requirement that local government revenues and expenditures be in balance in a given fiscal year. One criticism made is that the provision of the Fundamental Law does not link this mandate to the above-mentioned provision declaring the principle of sustainable budget management, even though the balance in any given financial year may be unsustainable in the longer term.

The phrase 'borrowing or for other undertaking of commitments', which is essentially the subject of the debt brake, may raise questions of interpretation. According to the linguistic interpretation, any declaration or decision on the use of local government revenue could be subject to the restriction laid down in the Fundamental Law, but this would severely restrict the financial autonomy of local governments and could paralyze economic activity. Therefore, an interpretation according to which borrowing and 'other similar' commitments are covered by the power addressed to the legislature is the dominant interpretation.[7] It should also be pointed out that the constitutional provision in question allows for the application of two types of limits: the normative limit and the requirement of prior consent of central government as a condition of validity.[8]

The Fundamental Law of Hungary has, thus, essentially opened up the possibility for enacting a law that makes the validity of certain debt-generating transactions of local governments subject to legal conditions, or the prior consent of the government. And, indeed, the Parliament adopted Act CXCIV of 2011 on the Economic Stability of Hungary (hereinafter: Stability Act), followed by Government Decree 353/2011 (XII. 30.) on the detailed rules for the consent to debt-creating transactions, which sets out further detailed rules (hereinafter: Stability Decree).[9] According to the main rule of the legislation, the local government may validly assume sureties and guarantees under the Civil Code and enter into debt-generating transactions only with the prior consent of central government (Stability Act, Art. 10(1)).[10] It should be pointed out, though, that the law itself eases the general clause by stipulating that "the consent of the Government is

[7] Act CXCIV of 2011 on the Economic Stability of Hungary.

[8] It also follows that the intention of the drafters was to restrict borrowing in order to ensure smooth government monitoring, not to prohibit borrowing outright.

[9] It should be noted that the philosophy of the regulation has undergone some metamorphosis, as the initial idea was that local governments were only entitled to enter into these transactions with the prior consent of central government. However, the Stability Decree has relaxed this concept, as a result of which the original wording of the Stability Act has been amended to allow (for the first time) in 2012 the option for the municipalities concerned to take out operating loans with a maturity of more than one year.

[10] Article 10 § (1) of the Stability Act

not required for the transactions of the municipality which create specific liabilities" (Stability Act, Art. 10(3)). The system of legal exceptions can be seen as differentiated: the legislator grants exemptions from the general rule on the basis of the types of commitments on the one hand and their extent on the other.[11]

Based on the early practice of application, it is safe to say that the central government does not perform formal monitoring, which would require the central government to have insight into the development of the municipal debt, but rather it wants to actively shape the amount of room each municipality has to maneuver. This is borne out by the individual decisions taken following the introduction of the legal instrument, which have sometimes given the green light to certain debt-generating transactions, and sometimes put obstacles in the way of the planned acts.[12] On the basis of the practice that has since become established, it can be concluded that the legal regulation of credit authorization, although indispensable and of a guaranteeing nature, does not exclude the possibility of individual decisions taken on the basis of political considerations. Obviously, this raises questions in terms of the nature of government acts as well, but these are beyond the scope of this study (see Fazekas, 2023, 49–57).

4 Concluding thoughts

In this paper, I have given a brief overview of the financial-economic foundations of local governments, and I have also examined the financial scope of local governments and their redress in Hungary. The trends that emerge clearly point in the direction of the state (legislator) holding the financial 'reins' more tightly than before, and building up a more intensive system of relations with local government administration. According to the prevailing view, the reorganization of public administration has led to a reduction in municipal autonomy and the elimination of the role of the county as a public service provider (cf. Hegedüs & Péteri, 2015, 97). According to Horváth (2012, 5), the amendments resulted in reduced protections for municipal property, thus breaking down the walls between the economic basis of local governments' autonomy and the central government's right to dispose of it (Horváth M., 2012, 5).

This reassessment of the relationship between central and local government manifests itself in the changes in the allocation of tasks and competences, the creation of district offices (as of 1 January 2013), the centralization of a significant part of local public services, the mandatory 'profiling' of county governments, and the redesign of the financial and economic framework. Despite assurances of objectivity and predictability, both legislative instruments contain a number of subjective elements which, contrary to declared objectives, could create a precarious

[11] Accordingly, the prior consent of central government is not required if the debt-creating transaction is intended to secure the pre-financing of development aid obtained by the local government from the central budget of the European Union or another international organisation, if it relates to a reorganisation loan used in the debt settlement procedure for the conclusion of a creditors' agreement, and, among other things, it serves a development purpose and does not exceed HUF 100 million in the case of the municipality of Budapest and the local government of a city with county status, HUF 20 million in the case of a national minority government; and 20% of its own revenues in the given year, but not more than HUF 10 million in the case of other local governments.

[12] In June 2012, the Government gave a contribution to 21 local governments (e.g. Veresegyház, Sopron, Hódmezővásárhely, Lánycsók), while it did not contribute to refinancing the debts of Köblény and Vékény and to the development loan agreement of the Local Government of Budapest District XI.

situation for local governments. The question arises as to the extent of the normative support for a given compulsory task in one or another municipality, or the conditions under which central government may grant prior approval for a debt-creating commitment. The institutionalization of the system of task financing was linked to the process of debt consolidation in a way that was easily foreseeable and clearly planned (see Bordás, 2019, 153–158). This has been done, although it is beyond the scope of this study, on the basis of the concept of 'I own the debt, I own the task and I own the assets', which suggests an extremely close link between the imposition of relatively few compulsory tasks and trends in the implementation of task financing.

Within a unitary public administration, it is inevitable, and in some respects even justified, to establish links between the central power (the state) and the local power (the municipalities), the only (inevitable) limitation being the guarantee of the autonomy of the municipalities (cf. Ercsey, 2016, 104). As Zoltán Magyary (1942, 116) put it: "[t]he basic idea of self-government is that if we want something to be good, we must do it ourselves". But this quest can only be achieved by guaranteeing the integrity of autonomy which is the essence of self-government. It is especially important as the ideal of self-government in general appears to be devalued in the process of Hungary's reorganization (cf. Horváth M., 2012, 9).

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