Local Self-Government in Hungary

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LOCAL SELF-GOVERNMENT IN HUNGARY

Introduction

Constitutional and Legal Changes in the System of Local Democracy

The new Fundamental Law of Hungary, which entered into force in 2012, regulates the local self-government system differently from the relevant provisions of the previous Constitution, adopted during the political transition in 1990. The justification provided for these very detailed constitutional provisions concerning local governments was to guarantee local autonomy. In the new constitution, they were replaced by overarching provisions ones which relegated more detailed regulation to the cardinal Act\(^1\) on local self-government in Hungary.\(^2\)

The previous Constitution defined the right to local self-government as a fundamental right belonging to local voters, but today this right is not recognized by the new Fundamental Law, only by the cardinal Act.

The legal consequence is that the right to local self-government is no longer a fundamental right guaranteed by the constitution and is not constitutionally protected.

The other important change in the interpretation of the right to local self-government is the appearance of obligations in the regulation.

Thus the emphasis is on the responsibility of local citizens\(^3\), who – being entrusted with the right to local self-government – “should reduce the common charges and contribute to the execution of the common tasks”\(^4\).

The place of local government within the organisation of the state has also been redefined by the Fundamental Law and the cardinal Act on local self-government in Hungary. According to the Act, “local governments shall function as a part of the organisation of the State.”\(^5\)

The management of local public affairs has been redefined, and now focuses on the local public services prescribed by the Act.\(^6\)

The system of local powers has not been formally changed. Therefore, two types exist: local governments’ own powers, determined by law or appropriated by the local government itself, and there are other powers delegated by the state administration.

In reality, the technique of regulating the powers of local governments, both mandatory and belonging to the government, has resulted in profound changes. Under the previous system, the Act on local self-government in Hungary defined the basic powers of local governments.

\(^1\)Cardinal acts are special constitutional laws, “the adoption and amendment of which require the votes of two-thirds of the Members of Parliament present”.
\(^2\) Cardinal Act No. CLXXXIX of 2011 on local self-government in Hungary (Mőtv.)
\(^3\) Mőtv. 2. § (1)
\(^4\) Mőtv. 8. § (1)
\(^5\) Mőtv. Preamble
\(^6\) Mőtv. 4. §
This fact provided stability and guarantees, because amendment process required a two-thirds majority.

This situation has changed, and the powers of local governments can now be regulated by means of ordinary laws. As a consequence, local powers were severely diminished following the entry into force of the new constitutional control over local autonomy.

These basic changes resulted in other important provisions concerning local autonomy, along with a remarkable centralisation of the Hungarian public administration.

The Outlines of the New Legislation

The following important changes can be pointed out:

- By putting an end to the basic constitutional right to local self-government and redefining the concept of local affairs, local powers have been drastically curtailed.
  - In the new system of powers, counties now have only one competence of note: territorial development. Very strong legal supervision of the functioning of the local governments was introduced with special supervisory actions that are lesser-known elsewhere. The metropolitan or county government office responsible for the supervision may substitute itself for a local government in its law-making capacity if local authorities have failed to adopt a decree required by law.
  - The government may administer local government assets if the local government does not fulfil its investment obligation as prescribed by the EU or by an international convention.
  - According to the new Fundamental Law, an act may provide that mandatory tasks of local governments shall be performed through associations. The cardinal Act on local self-government in Hungary provides that neighbouring communities with fewer than 2,000 inhabitants shall establish common offices. This provision affects more than 80% of communities (2,632 out of 3,154), whereas the former voluntary district-notary offices united only 1,313 communities, representing 40% of the total.
  - The financial system governing local governments has also been changed. The previous system of normative and global supports from the central budget was transformed into a financial system based on the powers of local governments. Besides this change, a very strong budgetary control was introduced, which included limitations on borrowing, for which the authorisation of the Treasury is required.

These restrictions on local autonomy were recognised and justified by the government by referring to the global economic crisis and the country’s fiscal situation. In reality, the new system of local self-government underlies a new conception of the state, and a new approach concerning democracy and the principle of the rule of law. This new conception casts doubt upon the strength of local democracy and strictly subordinates it to the interests of the central government.

Because of the economic crisis and the indebtedness of both central and local government budgets, the central government has “re-nationalised” a large part of local governments’ mandatory tasks. Now, those powers related to the public education, health, social and cultural affairs, etc. are exercised by the central government. Large equipment centres have been created for the management and funding of national public services.
Behind the changes, a counter-productive effect can be seen, after the economically liberal legislation that followed the change in political regimes in 1990, when the liberal concept of local autonomy – which was considered as an important part of the organisation of a democratic state – resulted in a large system of powers under minimal legal supervision, coupled with a system of normative and global support from the central budget.

It is also true that some problems were noticeable in the system of local democracy which were reflected in local community’s life. Although the democratic deficit of local autonomy\(^7\) was known in Hungary as elsewhere in traditional democracies, local autonomy was sometimes certainly exaggerated. But the previously discussed counter-reactions might become a source of danger in the future. Such a profound transition can not be justified easily and carries a considerable risk for local democracy, which is a basic element of a democratic state. This is one reason why the changes were very strongly criticized by the Council of Europe\(^8\) as well.

In this context, the Congress of Local and Regional Authorities “recommends\(^9\) that the Committee of Ministers invite the Hungarian authorities to:

- a. revise the Cardinal Act so that the principle of local self-government is explicitly guaranteed in the legislation and in practice, in accordance with Article 2 of the Charter;

- b. revise the legislation concerning local authorities’ mandatory tasks and functions so as to extend the range of powers normally assigned to them on the basis of the principles of decentralisation and subsidiarity;

- c. grant local authorities financial autonomy to enable them to exercise their powers properly, in particular by adjusting the level of grants allocated by the central government to local authorities so that their resources remain commensurate with their powers and by limiting central government supervision of the management of local finance so that it is “proportionate” within the meaning of Article 8 of the Charter;

- d. ensure that local and regional authorities are equipped with the administrative structures and resources needed for performing their tasks, while at the same time ensuring that elected councils are retained, including in small municipalities;

- e. consult local authorities and their national associations and define the consultation partners so that appropriate and effective consultation is arranged, in practice, within reasonable deadlines on all issues of interest to local authorities;

- f. revise the legislation in order to provide local authorities with an effective judicial remedy to secure the free exercise of their powers and guarantee the

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\(^8\) Recommendation 341 (2013). Discussion and adoption by the Congress on 29 October 2013, 1st session (see document GC(25)7FINAL explanatory memorandum), rapporteurs Artur Torres Pereira, Portugal (L, EPP/CCE) and Devrim Çukur, Turkey (R, SOC).

\(^9\) See the previous footnote.
judicial protection of the good implementation of the basic principles of local self-government provided in the Charter ratified by Hungary;

g. strengthen the position of counties, notably in the light of the Reference Framework for Regional Democracy of the Council of Europe,”

The changes in the local government system were not well received by international organisations, but we should also pause to examine the government’s intentions more closely.

**A New Policy of Local Autonomy or Introducing a New Model of Local Democracy?**

After all of these critical remarks, there is still an important question about the nature of the changes: is it a new policy in terms of local autonomy, or rather the implementation of a new model of local democracy in Hungary?

The new legislation makes it seem more and more certain that the current government intends to introduce a new system of local government with a view for long-term changes.

According to the general explanation given for the new cardinal Act on local government in Hungary,¹⁰ “the democratic system of local government has fulfilled its mission over the past 21 years... Now it is clear – at professional and political level as well – that our system of local government is in need of a complete reform. During the transformation, the effects of the current reform of the state organisation must be taken into consideration, with special regard to the re-evaluation of the role of the state... The reform is pressed by the radically changed economic, social and legal environment¹¹”.

If we try to answer the above-mentioned question in light of the explanation, we can state that the changes are describable as the elaboration of a new model of local democracy. This model is no longer based on the neoliberal concept of the state or the principles of NPM.

On the contrary, these changes fit in with the model of the new neo-Weberian state which gives the executive and the central government a more important role.

In this context, local governments are part of the organisation of the state, but the central state’s organs are dominant in the execution of public affairs.

The “Magyary Zoltán Public Administration Development Programme”¹² serves as proof of the government’s intentions.

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¹⁰ Bill no. T/4864 of 2011.
¹¹ See the previous footnote.
1. LOCAL INSTITUTIONAL SYSTEM

1.1. SOURCES OF LOCAL SELF-GOVERNEMENT

1.1.1. Constitutional Source

1.1.1.1. Concept of Self-Governance and Local Government. European Standards for Local Governments and Hungarian Regulations

“One of the most important legislative tasks of these months and even of this year is to adopt the Act on local self-government and to hold local elections”, declared Prime Minister József Antall before the Hungarian Parliament on 22 May 1990, and the last twenty-plus years have verified his statement.\(^{13}\)

The new structure was extended with a new sub-system (the sub-system of local government administration), new organisational principles were introduced (e.g. real decentralisation and autonomy), and while the importance of certain principles of operation declined (e.g. state guidance), at the same time others increased (e.g. the principle of legality).

After the full review of Act No. XX of 1949 on the Constitution of the Republic of Hungary, local communities gained independence and were granted the right to independently regulate and manage local public affairs within a legal framework (Art. 44/A (1) a) of Act No. XX of 1949 on the Constitution of the Republic of Hungary. In effect until 1 January 2012.). Autonomy made the interests and peculiarities of individual municipalities known as the result of a legally managed correct procedure and made it possible for local governments to perform their tasks and exercise their authority independently.\(^{14}\)

All of these were accompanied by economic independence guaranteed by the Constitution. During the transition period, a liberal and – relatively – modern system of local government institutions developed on the basis of the provisions of the Constitution:
- the principles of the European Charter of Local Self-Government prevailed;
- democratic power could be exercised locally, and
- the system offered scope for self-regulatory processes and local legislation.\(^{15}\)

“Convention no. 122 of the Council of Europe, the European Charter of Local Self-Government was a milestone in the development and legal regulation of local governments. This Charter laid down the principles and legal precepts of local self-governance which are generally applied and applicable in the member States of the Council of Europe. The contents of the Charter comply with the generally accepted legal principles of the concept of local self-government.”\(^{16}\)


The convention, adopted in Strasbourg on 15 October 1985, was announced in Act No. XV of 1997 on the European Charter of Local Self-Government. The Charter was created under the auspices of the Council of Europe (this international organisation is not to be confused with the Council of the EU, which is an organisation of the EU), and its purpose was to specify standards derived from the rule of law and democracy to be generally applied in the nearly fifty Member States of the Council of Europe in the course of establishing their respective systems of local government.

A certain democratic mechanism was developed in which “centralisation, which may be regarded as having a general effect, can prevail in the interest of achieving social aims, while in the interest of achieving all other aims of public interest, partial self-governance (autonomy) can prevail”. The peculiarities of the Hungarian local government system, developed in this way, stem from several sources: Hungarian traditions of local government, the institutions of the former Soviet-type council system which were “presentable” and proper within the framework of a constitutional state bound by the rule of law, and solutions originating from Western European (mainly South-German) local government systems. The modern structure of Hungarian local government is based on these factors.

The structure of Hungarian local government still rests on two other pillars: municipal-level and county (regional level) governments. Task performance (and financing) is focused on municipal-level governments. Since 1990, county governments have been seeking their place in Hungarian local government administration.

Although the task of self-government has a dual character, combining service and (public) authority, it is indisputable that local governments provide certain local public services, while self-government organs rarely participate in exercising local public authority.

On the one hand, the past two decades have proved that local objectives and intentions, collaboration, common will, parochial spirit, and a sense of local identity can yield significant results, bring about revival and preserve values. On the other hand, by the end of the first decade of the new millennium, it became obvious that the local government system was suffering from internal conflict, and due to the steadily decreasing state subsidies and the impact of the economic downturn, anyone could see that the established system was unsustainable and grievously unfair – from several points of view.

1.1.1.2. The Constitutional Legal Status of Local Governments in Hungary

The Constitution of Hungary (abrogated on 1 January 2012), when compared internationally, dealt with local governments in quite a detailed way, as does the Fundamental Law of Hungary (which came into force on 1 January 2012). Only five articles and twenty-three paragraphs of the Fundamental Law deal with local government. The territorial division of Hungary is specified in Article F) of the part entitled Foundation of the Fundamental Law:

(1) “The capital of Hungary is Budapest.

The territory of Hungary consists of the capital, counties, cities and towns, as well as villages. The capital, as well as the cities and towns may be divided into districts.”

A more important change is that – unlike the Constitution – the Fundamental Law does not define the districts of the capital as a special type of municipality (vested with the right to local self-governance). Thus, the Fundamental Law repealed the constitutional guarantee of self-government by districts in the capital.

Provisions pertaining to public authority at a local level can be found in the part entitled Local self-government. The fact that “constitutional statutes”, called cardinal Acts, detailing special rules pertaining to local governments – to be adopted later – are referred to four times in this part indicates that essential content elements of legal regulation appear in the detailed rules. [“Cardinal Acts shall be Acts, the adoption and amendment of which require the votes of two-thirds of the Members of Parliament present.” Article T (4) of the Fundamental Law.]

The provisions pertaining to the territorial division of the country and to local governments were “dismantled” (structurally) by the Fundamental Law. “In Hungary local governments shall be established to administer public affairs and exercise public power at a local level” and the basic rules are to be defined by a cardinal Act [Article 31 (1) of the Fundamental Law].

The Fundamental Law – unlike the provisions of the Constitution – makes no reference to local self-governance, local independence (autonomy) or the fundamental constitutional right to local self-governance which enfranchised local citizens are entitled to. Obviously, enfranchised local citizens can still participate both directly and indirectly in the exercise of local power. A provision in the chapter titled Freedom and responsibility declares that “Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of Parliament, local government representatives and mayors, and Members of the European Parliament” [Article XXIII (1) of the Fundamental Law].

Article 32 of the Fundamental Law sets forth that “In administering local public affairs local governments shall, to the extent permitted by law:

a) adopt decrees;
b) adopt decisions;
c) perform autonomous administration;
d) determine their regime of organisation and operation;
e) exercise their rights as owners of local government properties;
f) determine their budgets and perform independent financial management accordingly;
g) engage in entrepreneurial activities with their assets and revenue available for the purpose, without jeopardising the performance of their compulsory tasks;
h) decide on the types and rates of local taxes;
i) create local government symbols and establish local decorations and honorary titles;
j) ask for information, propose decisions and express their views to competent bodies;
k) be free to associate with other local governments, establish alliances for the representation of interests, cooperate with the local governments of other
countries within their competences, and be free to affiliate with international local government organisations, and l) exercise further statutory responsibilities and competences.

Acting within their competences, local governments shall adopt local decrees to regulate local social relations not regulated by an Act or by authority of an Act. Local decrees may not conflict with any other legislation.

Local governments shall send their local government decrees to the metropolitan or county government office immediately after their publication. If the metropolitan or county government office finds the local government decree or any provision of it unlawful, it may apply to any court for a review of the decree.

The metropolitan or county government office may apply to a court to establish a local government’s neglect of its statutory obligation to pass decrees or take decisions. If such local government continues to neglect its statutory obligation to pass decrees or take decisions by the date determined by the court’s decision on the establishment of such neglect, the court shall, at the initiative of the metropolitan or county government office, order the head of the metropolitan or county government office to adopt the local government decree or local government decision required for the remedy of the neglect in the name of the local government. The properties of local governments shall be public properties which shall serve for the performance of their duties.”

There are minimal, hardly noticeable changes in the text compared to previous regulation. The most important change was the title of the article: instead of the term fundamental rights of local governments used formerly, the Fundamental law refers to them as the responsibilities and powers of local governments. This term – compared to fundamental rights – better corresponds to the nature of local governments as administrative organs.20

The possibility of intervention granted to county (metropolitan) government offices is relatively far from the modern supervisory methods (e.g. consultation, notice) used to prevent violations that local governments might commit. The primary goal of state supervision is to ensure the lawful operation of governments. State organs must facilitate the performance of the tasks of local governments while striving to assert the constitutional principle of the legality of public administration. A further goal of state supervision is to help local governments perform their tasks by providing advice and support, protecting local communities, and giving a greater sense of responsibility to local government organs.

Establishing the statutory obligation of local governments to legislate and acting on these grounds, county (metropolitan) government offices adopt the required local government decrees in the name of the local governments immediately after the failure to adopt the local decree is established by the (supreme) court (Kúria) [Article 32 (5) of the Fundamental Law]. The county (metropolitan) government offices adopt the required local government decrees – which are also placed under the jurisdiction of the courts – in the name of the local governments. This new right of government offices to adopt “substitute decrees” should be regarded as a strong supervisory authority.

The responsibilities and competences of local governments are be exercised by local representative bodies. Local representative bodies are headed by mayors. County representative bodies elect one member to serve as president for the term of their mandate. Local representative bodies may elect committees and establish offices as defined by a cardinal Act [Article 33 of the Fundamental Law].

It can be claimed that no essential changes have been made to the organisational units and organs of local governments, except that in the text of the Fundamental Law – unlike in the Constitution – there is no reference to town clerks. Thus, this institution has lost its constitutional status.

The internal construction of Hungarian local governments is remarkably structured and proportioned; it almost maps the system of “checks and balances”. This means that there are three organs (the representative body, the mayor and the town clerk) at the imaginary centre of the organisation and operation of local governments, none of which can be replaced or circumvented – due to legal regulation – and are all stable, for the most part.

Local governments and state organs must cooperate to achieve community goals. An Act may define compulsory responsibilities and powers for local governments. Local governments are entitled to proportionate budgetary and other financial support for the performance of their compulsory responsibilities and competences. A law can authorise local governments to perform their compulsory duties through associations.

A law or a government decree authorised by law may exceptionally specify duties and powers related to public administration for mayors and presidents of county representative bodies.

“The Government shall perform the legal supervision of local governments through the metropolitan and county government offices. An Act may define conditions for, or the Government’s consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance” [Article 34 of the Fundamental Law].

The traditional “natural law” approach should undoubtedly be abandoned when defining the notion of local self-government. It should grow out of the idea that modern (local) governments form part of the state organisation, although the notion of self-governance may be traceable to several theoretical starting points.

Modern local governments have their autonomy, yet they are still clearly state government organs, not independent from state organisations, and genuine collaboration and cooperation with central (state administration) is indispensable – the importance of which is constitutionally recognised under the provisions of the Fundamental Law.

The economic situation of Hungarian local governments before 2012 is best characterised by the fact that the number and volume of their compulsory tasks dramatically outweighed their revenues, especially the amount of state subsidies. This has led to that situation in which governments are indebted to such an extent that no one can precisely assess and measure it, as it is not only local government budgets that are weighed down by debts (which is clear) but local government undertakings as well (which is mostly invisible). What this actually means
is that the central (state) budget attempts to keep its own deficit in check by “shifting” it upon the local government system to an ever-growing extent.

Instituting mandatory local government associations, making it possible to provide for them by law, may serve further modernisation. In the interest of effective task performance, the previous government practice attempted to make municipalities fulfil their tasks jointly by budgetary-financial means, while in the future, by virtue of the Fundamental Law, this will also be possible under a statutory provision.

State control (supervision) of local governments has been a cardinal issue in the Hungarian system of self-governance since before 2012. The multitude of remedial and control mechanisms is a peculiar feature of the Hungarian local government system, but at the same time it can make the system weak and contingent. It is true that there are enough – internal and external – organs (county government offices, prosecution services, State Audit Office, local government committees, clerks, auditors etc.) to supervise the legality of the operation of local governments, but these organs have insufficient enforcement powers.

The reinforcement of legal control and its conversion into legal supervision from time to time have been urged in special literature for theoretical reasons and also on the basis of accumulated practical experience. A minimal widening of the sphere of authority was regarded as achievable by temporarily implementing decisions deemed unlawful and by authorising supervisory organs to adopt a decision in the case of a failure to adopt a decision. (Some authors argued in favour of a more substantial broadening of supervisory authority.)

The other supervisory power according to the Fundamental Law is debatable: “An Act may define conditions for, or the Government’s consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance” [Article 34 (5) of the Fundamental Law].

The above-mentioned provision is another novelty in Hungarian constitutional law; its aim is easy to specify: preventing the further indebtedness of local governments, which has grown to such an extent that it now jeopardises the balance of the national budget. (Legal regulation restricted local government borrowing before 1 January 2012 as well, but these restrictions were easy to avoid, so expectations were not met.)

Borrowing by local governments tends to serve the purpose of operation and the performance of compulsory tasks instead of financing investments and developments. Obviously, the deficit in the budget of local governments is caused typically by state subsidies and own-source revenues that are insufficient to cover the expense of performing compulsory tasks and providing local public services.

The Fundamental Law cannot solve the issue of financing; a tool for “a debt break” has simply been institutionalized. Its effectiveness is intensely disputed, and it severely restricts local economic autonomy. It should also be added that the effectiveness of this provision is further endangered by its being belated: credit institutions – aware of the enormous problems of managing property of and financing local governments – tend to be less willing to finance the operation of local governments, regardless of whether the Government will consent to borrowing or not.
“Voters exercise universal and equal suffrage to elect local government representatives and mayors by direct and secret ballot, during the elections allowing the free will of voters in the manner defined by a cardinal Act.

Local government representatives and mayors are elected for a term of five years according to a cardinal Act. The mandate of local representative bodies shall end on the day of the national elections of local government representatives and mayors. In the case of elections cancelled due to a lack of candidates, the mandate of local representative bodies shall be extended until the day of the interim elections. The mandate of mayors shall end on the day of the election of the new mayor.

Local representative bodies may declare their own dissolution, as provided by a cardinal Act. At the motion of the Government – submitted after obtaining the opinion of the Constitutional Court – Parliament shall dissolve any representative body which operates in a way contrary to the Fundamental Law.” [Article 35 of the Fundamental Law]

Until now, the above-mentioned provisions were contained in separate statutes, but by raising them to a constitutional level, their core contents have not changed except for lengthening the term of the representative bodies and mayors from four to five years and terminating the mandate of the mayor in the case of the dissolution of the representative body.

The previous wording of the Constitution evoked the atmosphere of the transition of 1989-90; also defined as fundamental rights of self-government were local self-governance, which did away with the central direction of local councils; independence, the freedom of wide local self-determination, which was especially manifest in considering the concept of self-governance as a collective right enjoyed by the community of the local electorate; and the functions of local representative bodies.21

1.1.1.3. Conclusion

The Fundamental Law departs from this approach and clearly shares the view that local governments are institutions within the organisation of the state; they are local organs of public administration that are not opposed to the state but are an integral part of it, strengthening democratic legitimacy. Local governments are not institutions organised on a social basis, but they are a form of administration, legitimised by the principles of democracy and the vertical separation of powers and functions, decentralised and therefore easing the burden on the state, since they managing public affairs at their own responsibility.22

The Fundamental Law no longer defines the essence of local self-governance as the subject of special fundamental rights that emphasises the sovereignty of local populations, but rather (following Western-European models) as a constitutional (institutional) guarantee, a basis on which local governments must exist and operate in Hungary. The Hungarian government must ensure the regulatory and financial conditions for the realisation of this guarantee. This constitutional basis is much closer to Western-European standards and constitutional solutions than the former was, but it departs from a century of Hungarian public-law tradition.


22 Stern, K. **Das Staatsrecht der Bundesrepublik Deutschland.** München: CH Beck, 1984, 405.
The fundamental purpose of the Act on local self-government in Hungary, adopted on the basis of the provisions of the Fundamental Law, is to establish a modern, cost-effective, and task-oriented self-government system which allows for democratic and effective operation and at the same time – in a manner asserting and protecting the collective rights of the electorate to self-governance – imposes stricter limits on local government autonomy than before. The provisions of the new Act on local self-government in Hungary allow for the inclusion and operation of renewed structures (e.g. differentiated transfer of powers).

1.1.2. Legal Sources

In Hungary local governments manage local public affairs and exercise local public power. The main rules concerning the functioning of local governments are based on:

1. the Fundamental Law of Hungary,
2. Act No. CLXXXIX of 2011 on local self-government in Hungary,
3. Act No. L of 2010 on the election of local government representatives and mayors and

The basic rules on local governments can be found in the Fundamental Law of Hungary. This Act was adopted on 18 April 2011 by the Hungarian Parliament as Hungary’s new Fundamental Law, which was signed in a ceremonial event by the President of Hungary on Easter Monday, 25 April 2011. The Fundamental Law came into effect on 1 January 2012, abrogating Act No. XX of 1949 on the Constitution of the Republic of Hungary.

According to Art. 31. (3) of the Fundamental Law the rules relating to local governments are to be laid down in a cardinal Act. This is a type of law which requires a two-thirds vote by the Members of the Parliament in attendance.\(^23\)

The functioning of local governments is regulated by the Fundamental Law and in the Act No. CLXXXIX of 2011 on local self-government in Hungary. The main area in which local governments act is the management of local public affairs, which takes place within the framework established by law. In managing local public affairs, local governments adopt decrees; make decisions; autonomously administer their affairs; determine the rules of their organisation and operation; exercise rights of ownership with respect to local government property; determine their budgets and autonomously manage their affairs on the basis thereof; may engage in entrepreneurial activities with their assets and revenues available for this purpose, without jeopardising the performance of their mandatory duties; decide on the types and rates of local taxes; may create local government symbols and establish local decorations and honorific titles; may request information from the organ vested with the relevant functions and powers, make decisions, or express an opinion; may freely associate with other local governments, establish associations for the representation of their interests, cooperate with local governments of other countries within their functions and powers, and become members of international organisations of local governments; exercise further functions and powers as required by law.\(^24\)

\(^{23}\)Fundamental Law Art. T (4)
\(^{24}\)Fundamental Law Art. 32. (1)
The functions and powers of a local government are exercised by its representative body, which is headed by the mayor. The representative body of a local government consists of Government Representatives and the Mayor. “Local government representatives and mayors shall be elected by universal and equal suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in a manner laid down in...” Act No. L of 2010 on the election of local government representatives and mayors. General elections for local government representatives and mayors are held in the month of October of the fifth year following the previous general election of local government representatives and mayors.25

“Acting within their functions, local governments shall adopt local government decrees to regulate local social relations not regulated by an Act, and/or on the basis of authorisation by an Act, [which shall not] conflict with any other legal regulation.”26 The regulations concerning local government legislation comes from Act No. CXXX of 2010 on legislation and Act No. CLXXXIX of 2011 on local self-government in Hungary.

“The Government [ensures] supervision of the legality of local governments through the capital or county government offices.”27 This type of control of legality is regulated by Act No. CLXXXIX of 2011 on local self-government in Hungary.

25Fundamental Law Art. 33., 35. (1)-(2)
26Fundamental Law Art. 32. (2)-(3)
27Fundamental Law Art. 34. (4)
1.2. LOCAL GOVERNMENT ORGANISATION

Nowadays, local government administration in Hungary is a two-tier level organisation: towns and cities (település) and counties (megye). There are 3,154 cities and towns and 19 counties, and Budapest has a special status.

1.2.1. Organs of Deconcentration in Hungary

In several areas, deconcentrated organs contribute to the fulfilment of tasks of the administration of the Hungarian national government. State administration is managed by the Government on the basis of the principle of hierarchy. For this reason, units on the local/territorial level of state administration are also called organs under central subordination – deconcentrated services.

In Hungary the current dual system of local administration was developed in 1990, when decentralized organs (local governments) and deconcentrated organs took the place of Soviet-type councils. Basically, deconcentrated organs of state administration have specific tasks, while local governments are responsible for general administration. For this reason, deconcentrated organs are also called organs of special administration.

Together with the reorganisation of public administration, the organisation of the deconcentrated state administration system has changed. There are central state administration organs (e.g. the Government, ministries). The county (capital city) government offices are the regional organs of the Government with general scope. At the moment of reorganisation, most of the previously separated local/regional deconcentrated state administration organs became parts (administrative departments) of the county (capital city) government offices. However, some specialized regional local administration agencies with a limited scope still remained; their jurisdiction usually extends to one county, but there is also a territorial division that differs from this (e.g. the National Tax and Customs Office is on a regional level, but they also have an intra-regional organ, as well). Thus, deconcentrated organs of state administration operate in middle tier as a general rule. They have units in regions or in counties. However some of them have organisations in smaller units of public administration: for instance, the police have offices even in some cities and towns.

The local government system is constitutionally based (Fundamental Law paragraph 31-35) and legally based, as the Act on local self-government in Hungary provides a single and unified legal background for the structure. Similarly, the structure and legal status of central administration organs are regulated by a single Act, but the status of these organs is regulated by different legal rules – mainly by governmental decrees, but some of them were established by Acts of Parliament. Hierarchical relations between supervisors and local units are regulated in the same manner, mainly in the decree or act establishing the organ and defining the scope of its authority. The names of these organs can also differ, but one cannot usually draw a conclusion about the activity or the tasks of a certain deconcentrated organ from its name.

The county (capital city) government office should be differentiated from the deconcentrated organs, because they exercise the power of supervision of local government action. It is
important to mention that the county (capital city) government office is an organ of the Government, and it is in a sub- and superordinate relation with it. So the Government practices the supervision of the local government sub-system through the county (capital city) government offices. This guarantees that supervision can only be in connection with the legality of local government actions,

1.2.2. System of Local Representation

The basic rules on the right to vote as a political right to participate in government, based on the principle of popular sovereignty, are included in Article XXIII of the Fundamental Law.

Every adult Hungarian citizen and adult citizen of a Member State of the European Union with a residence in Hungary, as well as persons recognised as refugees, immigrants or residents of Hungary has the right to vote and to be voted for in elections of local government representatives and mayors.

In elections of local government representatives and mayors, voters may vote at their place of residence or registered domicile.

The new regulation on right to vote is in compliance with the disposition of Council Directive 94/80 of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

Under Article 3 of the Directive, any person who, on the reference date, is a citizen of the Union but is not a national of the Member State in which he or she resides, but in any event satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals, has the right to vote and to stand as a candidate in municipal elections in the Member State of residence in accordance with this Directive. The new rule of the Fundamental Law on the right to vote in elections for local government representatives and mayors was inaugurated in view of these criteria.

The Fundamental Law also provides that elections for local representatives and mayors be held every five years starting in 2014, the former four-year term served by local representatives and mayors being replaced a five-year term.

The local and territorial representative bodies of local governments gain their legitimacy in local government elections. Pursuant to the principle of representation, the mayor and the local and county government representatives are directly elected by voters in their municipalities and districts. The Fundamental Law gives the people the right to directly elect their mayor and representatives. The chairman of the county representative body is elected by the county representatives among their members.

In the early summer of 2010, the last general election year, the election system for local government representatives and mayors was reformed. Beginning in Autumn, elections for local representatives and mayors have taken place in the changed legal environment in accordance with the provisions of Act No. L of 2010.
The legislative purpose of the reform was “to simplify electoral rules” and “to reduce the number of local representatives of the representative bodies”. The Act contains numerous changes to the rules adopted in 1994. Compared to a system of relative majority aspiring to proportionality, it is an improvement to a system of relative majority.

The single-round electoral system has prevailed since 1994. The electoral system of towns with 10,000 or fewer inhabitants and more than 10,000 inhabitants differ greatly. In towns with 10,000 or fewer inhabitants, representatives are be elected on an individual list. In those towns with more than 10,000 inhabitants, there is a mixed system. This means that representatives could be elected in individual constituencies and nominating organisations can get mandates from the compensation lists based on the surplus votes collected in the individual constituencies.

The Act defines number of local government representatives according to the population of cities and towns.

The number of elected offices possible on individual lists is shown in the following table:

<table>
<thead>
<tr>
<th>Inhabitants</th>
<th>Number of offices</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;100</td>
<td>2</td>
</tr>
<tr>
<td>101-1,000</td>
<td>4</td>
</tr>
<tr>
<td>1001-5,000</td>
<td>6</td>
</tr>
<tr>
<td>5,001-10,000</td>
<td>8</td>
</tr>
</tbody>
</table>

In mixed electoral scheme, prevailing in cities with more than 10,000 inhabitants, the number of possible elected offices in constituencies and from compensatory lists is shown in the following table:

<table>
<thead>
<tr>
<th>Inhabitants</th>
<th>Single elected-office constituencies</th>
<th>Compensatory list</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 25,000</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>&lt; 50,000</td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>&lt; 75,000</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>&lt;100,000</td>
<td>14</td>
<td>6</td>
</tr>
</tbody>
</table>

The number of representatives elected in single elected-office constituency increases by one person for every additional 10,000 inhabitants, and the number of representatives elected from compensatory lists increases by one person for every additional 25,000 inhabitants.

The representatives of the assembly of the capital, Budapest, are elected from the capital list. One representative may be elected for every 50,000 inhabitants.

The mayors and the Lord Mayor of the capital are be directly elected by voters of the cities and towns.

County assembly representatives are henceforth elected by voters on county lists. Pursuant to new rules on local government elections, each county constitutes a single constituency, which does not include cities with county rights and the capital. With the former distinction between municipalities with less than 10,000 inhabitants and those with more than 10,000 inhabitants
eliminated, departments now form a constituency. The inhabitants of cities with county rights and the capital have no rights to vote on county lists.

The number of representatives of the county assembly is based on the number of inhabitants of the county.

<table>
<thead>
<tr>
<th>Inhabitants</th>
<th>The number of representatives</th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 400,000</td>
<td>1 representative for every 20,000 inhabitants</td>
<td>15 representatives</td>
</tr>
<tr>
<td>&lt; 700,000</td>
<td>20 representatives, and 1 representative for every further 30,000 inhabitants exceeding 400,000</td>
<td>20 representatives</td>
</tr>
<tr>
<td>over 700,000</td>
<td>30 representatives, and 1 representative for each further 40,000 inhabitants exceeding 700,000</td>
<td>30 representatives</td>
</tr>
</tbody>
</table>

The new electoral system retains the direct election of mayors and the number of representative bodies. Particular features of Hungarian local government system are also maintained, all municipalities having an independent representative body regardless of the number of inhabitants, as was established after the transition.

However, although the number of representative bodies remains unchanged, the number of local representatives is significantly reduced. The change is particularly significant where the diminution of county government bodies is concerned, but in the case of municipalities with less than 10,000 inhabitants, it is also excessive. The reduction would lead to a negative effect on the operability and quorum of representative bodies, as well as the preservation of diverse political and social interests and the segmentation of local society. In case of towns with 10,000 or fewer inhabitants the number of offices is reduced by more than 30%. The new legislation retained the proportional compensatory list procedure, but in cities of more than 10,000 inhabitants some distortions occurred, with the number of offices being reduced by approximately 35%. This diminution could not be proportional, but even so, the number of single-office constituencies decreased by more than 20% and the offices on compensatory list by approximately 55%. The diminution in the number of county assemblies is even greater than the reduction in the number of municipal-level mandates, more than 50%.

Conditions of nomination as a candidate have become stricter, with the an increase in the number of proposals required to run for office. This increase is particularly noteworthy in the capital, where the number quadrupled.

This increase makes it more difficult to run for office. In county constituencies, lists may be set up by nominating organisations that have collected the proposals of 1% of voters of the constituency. The number of proposals was increased from 0.3 % to 1%, and at least two thousand voter signatures must be collected in order to even be able to set up a list. It is also worth mentioning that the election threshold was increased from 4% to 5%.
Procedural rules for local municipal elections are determined by the Act No. XXXVI of 2013 on electoral procedure. Apart from basic rules of electoral procedure, the Procedural Act includes dispositions on local electoral bodies, such as election commissions, polling station commissions, local election offices and their responsibilities, the districting of single mandate constituencies and polling districts, the proposal of candidates and lists, the announcement and registration process of candidates, lists, and nominating organisations, as well as the rules for determining results.

1.2.3. The Legal Status of Local Representatives and the Internal Political Structure of Local Governments

1.2.3.1. The Legal Status of Local Representatives

The communities of voters exercise their right of self-governance by electing local representatives to a body of representatives. The new regulation on local representatives (Act No. CLXXXIX of 2011 on local self-government in Hungary, abbreviated Mötv.) enters into force on the date of the general municipal elections of 2014. Until that date, the previous regulation on local governments (Act No. LXV of 1990) and certain questions on the legal status of local representatives (Act No. XCVI of 2000) were applied. One of the most fundamental changes is that, according to the new Fundamental Law, local representatives are to be elected for five years instead of four years. No professional standards are required for the post; however, representatives must participate in professional training organised by the Government Office within 3 months after taking his/her oath at the inaugural meeting, which is held within 15 days of the election.

Local representative office is a function of high importance in terms of the public sphere, and being elected means living up to the voter’s trust. Local representatives cannot engage in any activity which threatens the public confidence that is necessary to perform his/her functions. Rules on conflicts of interest are for the division of state and local government functions, and the enforcement of economic independence is meant to achieve an impartial decision-making process. Conflicts of interest must be eliminated within 30 days of recognition or becoming aware of the fact that an incompatible situation exists.

Ensuring the purity of public life and controlling the responsible management of local public funds, local representatives are required to make a declaration of assets every year. As long as they do not fulfil this obligation, they may not exercise the rights arising out of the office or receive any allowance from the local government.

Local representatives perform their duties on a voluntary basis. For the time necessary to participate in the council’s work they are exempted from work at their workplaces, and any loss of income is reimbursed by the representative body.

Councillors represent the interest of their voters for the benefit of the entire locality. They are required to keep in touch with voters and inform them of their activities as a local representative at least once a year.

Normative rules on the obligation to provide information are contained in the new legislation. Local representatives may adapt the means of correspondence and communication to traditions.
Local representatives have the right to and are entitled to get involved in the work of the body of local representatives.

During the session, a local representative may request information on local public affairs from the mayor (vice-mayor), the notary (town clerk), or from the head of the committee. The answer must be given orally during the session or in writing no later than fifteen days following the session. At his/her request, proposals are noted in the minutes; his/her oral remarks are included. The local representative may attend any committee meeting and propose a debate on any question related to committee tasks to the committee chair. The debate based on the proposal made by the local representative is then submitted to the next session to which the local representative is invited. S/he may call for the revision of decisions on local municipal issues made by a committee, the mayor, the body of the local partial government, or by the body of the local minority government under delegated power. Based on authorisation, s/he may represent the body of representatives. The administrative assistance required for his/her tasks is ensured by the Office of the body of representatives.

The remuneration and benefits in kind of the local representative who breaches his/her obligations may be reduced or withdrawn based on the decision of the body of representatives.

The regulation resulted in several changes in issues concerning the legal status of local representatives. Modification of the rules of conflict of interest strengthens transparency and unequivocally clarifies responsibility. It is now a basic requirement that no local representatives pursue any activity that might undermine public trust, which is a basic condition for the performance his/her duties as a local representative.

Indignity has been introduced as new concept, which is closely related to public trust and the authorisation granted for dealing with public affairs. If the local representative behaves in a way that makes him/her unworthy of his/her position, the body of representatives may decide to remove him/her from office. Indignity can result from, among other things, final imprisonment for an intentional crime, failure to settle public debts, concealment of a conflict of interest, and impeding the execution of a final and binding judgement against him/her.

Representatives may be entitled to receive a salary and benefits in kind. Both can only be provided if the local government’s own-source revenues can cover them and the allocation does not endanger the performance of obligatory municipal tasks. A local representative may only claim expenses related to his/her work as a local representative.

1.2.3.2. Functioning of the Internal Structure and the Organs of Local Government

The rules of the functioning of bodies of representatives came into force on 1 January 2013. According to them, the performance of local municipal functions and tasks is the responsibility of the body of representatives and its organs: the mayor (in the capital: Lord Mayor/Budapest Mayor; in county governments: the chairman of the county assembly), the committees of the body of representatives, the body of partial local government, the Mayor’s Office (in county governments: the County Government Office), the joint Mayor’s office, the notary, and associations.
The body of representatives may delegate its powers, except for the non-transferable ones, to the mayor, its committees, the body of partial local government, the notary, and to associations. Delegated powers may not be sub-delegated.

1.2.3.2.1. The Body of Representatives

The inaugural meeting, in which the body of representatives decides upon its own organisational and operational rules in the form of a council decree, is convened in the 15 days that follow the election. The body of representatives holds as many meetings as required by its organisational and operational rules, but it must hold at least six meetings per year.

Usually, it is the body of representatives that decides on local municipal issues; however the use of a local referendum is mandatory for significant issues involving a broader range of the population (such as the unification of villages).

The mayor is the president of the body of representatives, and s/he is entitled and obliged to convene and preside the meetings. If the mayor’s office is vacant or s/he faces an impediment, the vice-mayor acts as his/her substitute.

According to democratic, transparent operation requirements, the session is open to the public. A closed session is ordered for discussing official issues, conflicts of interests, indignity, awards, disciplinary measures, and declarations of assets. At the request of those concerned, a closed session is ordered to discuss and decide on elections, promotions, exemption, granting and withdrawal of leadership positions, initiating disciplinary proceedings, and declarations on personal issues. In addition, the body of representatives may order a closed session in the case of provision of assets, determining the terms of tenders, and deciding upon tenders if publicity would be detrimental to the business interest of the local government or that of anyone else.

The council has a quorum if more than half the councillors are present at the meeting. Decisions are made by simple majority; a qualified majority is required only for issues defined by legislation.

Local representatives who are (or whose close relatives are) personally affected by a matter at hand may be excluded from the decision-making process. The local representative must declare his or her personal involvement, and the body of representatives votes on the exclusion.

The body of representatives regulates social relations not covered by law or adopts a regulation based on a law in the form of decree, and it regulates the activities, partnerships with associations, and operations of organs and organisations under its direction.

Decisions are made by open voting, although it is possible to order a roll-call vote or a secret ballot. Meetings of the body of representatives are recorded minutes that are signed by the mayor and the town clerk. Minutes of open meetings are public for voters; in the case of closed meetings, only the consultation of public interest data is ensured. Initiatives (proposed discussions on local matters) are also public, except for those prepared for closed meetings. In this case, only public interest data are to be consulted.
Local decrees are promulgated in the Official Journal and in the manner customary for the locality or, if the council maintains a website, the decree is published there. The notary ensures the promulgation of the decree. The local government forwards the decree without delay to the Government Office who transmits it to the Minister responsible for legal supervision of local governments.

The council holds a public hearing at least once a year, announced in advance, in which the local population and the representatives of local organisations may ask questions and submit proposals concerning local public affairs. The proposals and questions are to be commented on at that moment or within fifteen days.

The body of representatives decides on dissolution by a roll-call vote and by the majority of local representatives. The legal institution of dissolution allows the management of local conflicts, whereby voters are given the opportunity to provide an operable panel and elect a mayor.

The continuity of local self-governance is ensured because the body of representatives remain in office until the inaugural session of the new one, and the mayor also performs the tasks until the election of his/her successor. If the chief of the Government Office notices that the body of representatives is working in a manner not consistent with the Fundamental Law, and despite warning, the legality of its functioning cannot be restored, the chief of the Government Office announces this fact to the Minister responsible for the legal supervision of local governments, who informs the Government. The Government, after obtaining the opinion of the Constitutional Court, proposes the dissolution of the body of representatives operating unconstitutionally to the Parliament.

1.2.3.2.2. The Organs of the Body of Representatives

1.2.3.2.2.1. The Committees

The freedom to freely manage the organisation of the local council is one of the basic elements of fundamental rights of local governments. The council determines its own committee structure – the number of committees, their composition, duties, and powers, and the main rules of functioning – by its organisational and operational rules.

In villages with a population of no more than 100 people, committee tasks are performed by the body of representatives; villages with a population under 1,000 residents can maintain one committee for all committee tasks.

It is not only local representatives who may be elected as a member of the committee. The rights and duties of these members are the same as for ordinary members of the body of local representatives. The president and the majority of committee members must be elected among the body of local representatives. The president must always be a local representative, but the mayor can never become the president or the member of the committee.

The mayor, the deputy mayor, the chairman of the minority local government of the municipality, and the employees of the council office cannot participate in committees as either chairman or member.
In towns with a population of no more than 2,000 people, the body of representatives must maintain a financial committee, and issues concerning the declaration of assets are also a committee task as provided by law. Legislation can order the establishment of a committee for specific tasks; the body of representatives can also form *ad hoc* committees if it seems necessary.

Within their jurisdiction, committees prepare the council’s decision and organise and oversee the implementation of the decision. The council determines the proposals that are submitted by committees and that may be submitted to the council with the opinion of a committee attached.

The council may empower its committees with decision-making rights, and it may review the decision made by the committee.

Legislation for the functioning of the committee is identical to that of the body of representatives.

1.2.3.2.2.2. Partial Local Government

The local government body may establish a partial local council consisting of local representatives as well as voters of the municipality in order to serve the interests of a specific part of the municipality. The organisation of the partial local government is defined by the body of representatives, along with the powers and functions of the partial local council and its organisational and operational rules. Bodies of representatives may not delegate state administrative tasks to partial local councils. The body of representatives regulates the procedure for forming partial local government, and it elects those members who are not local representatives. The financial sources for the performance of municipal tasks related to that part of the municipality are ensured and made available by the body of representatives.

Operational rules of partial local governments are identical to those of committees. The chairman of the body of representatives for the partial local government is elected from the body of representatives of the municipality. In order to assist the work of the body of the representatives for the partial local government, the body of representatives for the municipality can establish branch offices which are entitled to deal with customer service in public administration.

1.2.3.2.2.3. The Mayor’s Office

The council sets up a single office – under the name of mayor’s office – for carrying out the tasks connected with the functioning of local government, the preparation of state administration matters to be decided upon, and the implementation of such decisions. The mayor’s office performs the duties specified in the Act on the rights of national and ethnic minorities.

1.2.3.2.2.4. The Joint Mayor’s Office

In order to provide quality service and for reasons of economy and expediency, towns and villages with a population of no more than 2,000 people can not maintain a mayor’s office. Instead, they must establish a joint mayor’s office, but they are free to choose whom they are willing to join among municipalities in the same district. Additionally, the establishment of a joint mayor’s office is an option for those local governments which are situated in the same district and are unwilling or unable to maintain an independent mayor’s office. An additional
condition in this case is that the administrative area of these municipalities should not be separated by more than one administrative area of a municipality, and the population of the towns should not exceed 2,000 residents. The city government within the district, as well as the representative bodies of municipalities with population of more than 2,000 people, may not refuse to conclude an agreement to create a joint mayor’s office.

A total population of at least 2,000 people or at least seven towns and villages must participate at the time of the foundation of the joint mayor’s office. The law highlights the need to ensure opening hours in each and every municipality.

If the registered proportion of people belonging to the same nationality was 20 percent or more at census time among nationalities in the municipality willing to join the cooperation, and the total population of the town exceeds 1,500 or the number of local representatives willing to participate is at least 5, and if it is supported by historical, economic, or cultural traditions of the affected towns, the joint mayor’s office is established by the approval of and according to conditions defined by the minister responsible for local government.

The notary manages the joint mayor’s office; s/he attends the representative body meetings of the member municipalities and provide the necessary professional assistance.

Operating expenses of the joint mayor’s office, unless otherwise agreed upon, are covered in proportion to the population of the involved towns and villages.

1.2.3.2.2.5. Associations of Representative Bodies

The representative bodies of local governments may agree to cooperate in an association established for the efficient, economical and effective work. The association of local government representative bodies is created by the written agreement of members signed by their mayors. The law provides a legal, organisational, budgetary and property management framework for the association’s independent operation, which is reviewed by the local governments in order to ensure a high-level municipal functioning. The association is a legal entity.

The associated representative body offers an opportunity to the local governments to perform several duties in a more integrated, economic and professional way. The extent of unification of their budgets depends on the decision of the participants. All property is private, independent, and distinct. Therefore, cases involving exclusively one municipality remain under the jurisdiction of its own representative body.

The association of representative bodies may be formed in two different ways: (1) either it is made up of the representative bodies of the participating municipalities (2) or municipalities send representatives from their body to the to association, in proportion of to their population.

Associated representative bodies also have inaugural meetings, a seat of government, a distinct organisation, and operational rules, and they are convened on the initiative of the mayor or the representative of any participating municipalities.

2.2.6. The Notary

The notary (in the capital and at county governance: chief notary, hereinafter simply: notary) is administrative-professional leader.
In order to ensure the proper preparation and effective organisation of enforcement, and as well as the legitimate exercise of government functions, the mayor’s office or the joint mayor’s office should be directed by an appropriately skilled specialist. In other words, the work of the mayors, the committee, and the body of representatives should be assisted by the notary.

The notary, after completion of a tender process, is appointed by the mayor for an indefinite period.

In local governments with a population of less than 10,000 residents or in joint mayor’s offices of municipalities with a population of less than 10,000 residents, the mayor may appoint a vice-notary on the proposition of the notary; in other mayor’s offices, the mayor is required to appoint a vice-notary.

Under previous legislation (Act No. LXV of 1990, abbreviated: Ötv.) the notary was appointed by the body of representatives for an indefinite period. This solution was based on the idea that the mayor can change with the results of local elections; thus, the indefinite appointment of notaries was meant to ensure the stability continuity of work. On one hand, the notary, as the depositary of administrative powers and responsibilities, was the representative of the state at the local level, and on the other hand s/he has a significant role in the preparation, organisation and enforcement of administrative cases, besides being responsible for the legitimate and lawful operation of the local government.

The powers of notaries were dual, with their official powers being broader than their municipal duties. Paradoxically, they were responsible for both preparing and implementing decisions; their interests were consistent with those of local politicians, but they were also responsible for the legitimate functioning of the body of representatives, committees, and public officials. The lack of trust and cooperation sometimes led to conflict between mayors and notaries – as well as the body of representatives –, which usually ended with the defeat of the notary.

The official powers and tasks of notaries diminished and changed with the establishment of district offices (1 January 2013), at which point their work became strongly focused on ensuring of effective and efficient functioning.

The notary and the vice notary are in a leadership position governed by the provisions of the law on public officials. If the mayor – or, in the case of joint mayor’s offices, the mayors – fails to appoint a notary within six months, the head of the government office temporarily appoints one who fulfils the qualification requirements or chooses another suitable candidate.

The Act sets out the essential functions and decision-making powers of the notary.

“The notary shall:

decide upon administrative official cases referred to his/her competence;
exercise the employer’s rights with regard to the employees and civil servants of the mayor’s office, the joint mayor’s office; furthermore, the notary exercise other employer’s rights with regard to the vice-notary;
ensure the supplying of administrative tasks related to the functioning of the local government;
participate in an advisory capacity to the meetings of the body of representatives, the committee meetings, and notices if the functioning of the decision of the mayor is contrary to legislation;
prepare the official administrative cases within the powers and competences of the mayor;
decide upon cases delegated by the mayor to him/her;
decide upon municipal cases and municipal official cases belonging to his/her competence.”

1.2.3.2.3. The Legal status of Mayors

The mayor is an elected local-government office-holder, chairman of the representative body. The mayor is directly elected by the voters of the municipality since 1994; beginning in 2014, his/her term lasts 5 years. Certain rights and obligations of the mayor arise from the election.

Mayors hold their office as a primary occupation (full-time employment), but in towns with less than 3,000 inhabitants the obligations of the mayor can be taken on voluntarily. The mayor is entitled to a salary, and mayors serving in a voluntary capacity are entitled to compensation. In addition, the mayor is entitled to reimbursement.

The mayor’s duties mainly relate to the functioning of the representative body. As chairman of the representative body, s/he convenes and chairs the assembly session and acts on its behalf. S/he is a member of the representative body.

If the mayor considers the decision of the body of representatives to be injurious to the interests of the local government, s/he may open a second debate on the decision, but only once.

If the body of representatives fails to make a decision concerning the same matter during two sessions, the mayor is entitled to decide. The mayor may also make a decision on urgent municipal matters within the competence of the representative body between two sessions. The mayor may make a decision on financial resources, the value of which must be limited by municipal regulation. In the latter cases, there is an obligation to inform the representative body.

The mayor, on the other hand, plays an important role in the operation of local government bureaucracies and in the organisation of its work. Since 1 January 2013, the mayor appoints the head of the office: the notary. The mayor directs the office in accordance with the decisions of the body of representatives, defines the tasks of the office related to the organisation of the work of the local government, and assists with the preparation and implementation of the decisions. S/he exercises employer’s rights not only in respect to the notary, but also to the deputy mayor and the heads of municipal institutions.

Several case of termination of the mayor’s term are regulated by the Act on local self-government in Hungary, such as election of the new mayor; loss of the right to vote; determining of a conflict of interests; indignity; a court judgement on legal liability, a series of illegal activities, and default, resignation; the declaration of representative body’s dissolution; and dissolution by the Parliament.
The new Act on local self-government in Hungary, therefore, confirmed the mayor’s position on several points, which can be summarized as follows: The mayor’s decision-making rights were widely broadened, in order to improve the operational aspects of functioning, although these rights would be in breach of the requirement of transparency. This includes decisions taken in the stead of the representative body, enhanced veto powers, and broadened financial powers.

A further strengthening of the mayor’s office might be added, which plays an essential role in the preparation and implementation of local government bodies’ decisions. The notaries, as heads of the mayor’s offices, are now appointed by the mayor; thus, the notary becomes the employee of the mayor, and not of the representative body.

Strict rules prevail on conflicts of interests in regard to the legal status of mayors. Different cases of conflicts of interest were defined in order to ensure the irreproachability of public life. The mayor is not entitled to exercise any additional employment activities, and is not allowed to hold certain positions. Under the new legislation, the mayor cannot be simultaneously a member of Parliament, either.

1.2.3.2.4. The vice-mayor

The body of representatives elects a vice-mayor upon the proposal of the mayor. The vice-mayor’s responsibility is to act as deputy to the mayor and to assist his or her work. The vice-mayor fulfils his/her duties under the direction of the mayor. More vice-mayors may be elected, but at least one must be chosen from among the local representatives. The rules on the legal status of the mayor apply to the legal status of the vice-mayor as well.

1.2.4. Problems of Regionalisation

1.2.4.1. Introduction

Municipal reform, along with the reform of the regional system of public administration, is a classic topic in government programs; however, the “how” changes according to the powers that be. While the incumbent government has put its focus on the centralisation of a number of formerly municipal duties and the establishment of the level of district offices, the government in power between 2002-2010 aimed at the regional level in the decentralisation process; this – in the planning period, almost as a side effect – entailed the regionalisation of the territorial level of public administration. However, regionalisation efforts have an even longer history.

1.2.4.2. Region and Regionalisation

1.2.4.2.1. The Meaning of Region
The word *region* has its roots in the Latin word *regionem/regere*. It means “to reign”, “to rule”, “to exercise power”.

Regionalism is a complex concept and process. It denotes those ideas which aim and lead to the creation of regions. It can be interpreted as a common sense of identity of a region’s population, seeking a broader autonomy, as well as a political movement, proposing the realization of regional autonomy, and can even entail efforts to achieve independence.

Lastly, it can be interpreted on the level of governmental or European politics, the source and target of which is also the territorial unit. Regionalism separates or distinguishes an area from others or from the whole of the state or the society; on the other hand, it unifies its population, emphasising common characteristics, and gives regional identity. Its roots are diverse: economy, religion, language, culture, history and traditions, or parties and politics in the frame of ideological movements. In many cases, these factors appear collectively and strengthen each other; furthermore they have an effect on governmental policy, whose strength and result also varies.

The diversity of regionalism also can be shown in its ideological aspect, which has appeared in various forms in different historical periods and locations. Examples are conservative, civil, progressive, rightist, populist, nationalist, and depoliticized technocratic regionalism. Consequently, regionalism can not be categorized as an ideology or as a movement into any traditional ideological political system.

Regionalisation – as a way of building a strong system of regions – was necessary in order to help improve the country’s international competitiveness, its catching up in the EU as well as the ideal use of the EU-tiers.

1.2.4.2.2. County vs. Region

In Hungary, counties (*megye*) were the traditional mid-level administrative areas. In the discussion of “region or county”, the fact of their existence and their historical role were the key arguments on the side of counties. In Hungary, the county public administration – and the district within – also bears strong traditions; the provincial separation emerges only in the specific elements in our history (Croatia-Slavonia and Transylvania). Those regions, which connected major areas together, generally echoed negatively in political opinions that were committed to the country’s independence.

Initially, the solely royal county was already autonomous in the 18th century. The first surviving written record of this was the so-called Kehida Diploma from 1232, in which the servients of Zala County wrote that they had received permission from the king to arbitrate in the cases of those suffering from “the wrongful suppression of powers”. Therefore, in the

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second half of the 18th century, organisations of the nobility were established for self-defence in the place of royal counties, which were striving for self-governance: the noble counties. The history of county governments should therefore be calculated from this time as one of the pillars of Hungarian self-governance; county governments also look back to their nearly eight hundred years of history.  

Counties have always played an important role in the subsistence not only of the Hungarian state, but also of Hungarian self-awareness; the network of counties existed even under Turkish oppression when most parts of the country were lost. It was the 1848 reforms that drove the first nail into the privileged status of the counties. The introduction of popular representation put an end to the counties’ right to send representatives and issue orders; this also meant the loss of the once immense political significance of the counties. As the next step, the establishment of the royal courts in 1871 took away the judicial power of counties; they remained a unit with mere administrative functions.

This administrative authority had been also chipped away at as the result of the establishment of the separate state institution system, that is, the municipalisation of public administration. This civil transformation was interrupted after 1945. In 1948, following the introduction of a state party dictatorship during the parliamentary elections of 1949, democracy became mere pretence for the first time, which; this was followed by the promulgation of a Stalinist constitution and the introduction of the council system in the year of 1950. Beginning in 1971, the four county towns that existed up until that point were also integrated into the organisation of the county. In 1990, the counties found themselves in the role of a scapegoat, and one side of the (liberal) political forces made an attempt to eliminate the entire institution of county self-governance. Nevertheless, it was just as unsuccessful an attempt as in the totalitarian decades of the 18th and 19th centuries, which were unable to break the power of the counties, although an attempt had been made to overcome the nation’s resistance by merging counties and organising them into districts.

Between 1988 and 1990, those movements, which conceived the Hungarian county system as so-called “built-from-under” city district divisions, became more cunning, and it was preferred to organise these city surroundings or city-counties into 7-8 regions.

The shaping of the regions alongside the process of regionalisation is a question that varies in its intensity but is always present. The highest level of the public legal form of regionalization is the configuration of the regional governmental system, because it implements the decentralized exercise of executive power. The existence of a directly elected representative body is the basic criteria for this. The establishment of self-governing regions is what achieves the governance that is closest to the citizen, the principle of subsidiarity.

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31 Agg, Zoltán. *A megyerendszer változó szerepe a magyar közigazgatásban* [The changing role of the county system in the Hungarian administration]. Budapest: MTA Társadalomtudományi Intézet, 2006, 76.
33 Vass, György. *A megye közjogi helyzetének alakulása királyi vármegyétől a modern területi önkormányzatig I.* [Development of the public position of the counties dated from the royal counties until the modern territorial self-governments I.]. Comitatus önkormányzati szemle. 2004: 7-8, 73.
34 Agg op. cit. 10.
35 Agg op. cit. 10.
36 Verebélyi op. cit. 53–55.
According to both the European Union and the Council of Europe, this principle must be respected and must be implemented by all European states (EU and the members Council of Europe). The European Charter of Regional Self-Government determined the form and content requirements established for regions. According to the document, regions basic rights to self-governance should be given constitutional recognition and protection. The Charter defines regions: the largest territorial unit of the state, situated between municipal-level governments and the central government, which also possesses an elected body capable of exercising general authority and has financial autonomy and an executive system.\(^{38}\)

1.2.4.2.3. The Necessity of Regionalisation – Goals of the Government Programs

Ever since the transition, every ruling party has tried to bring about reform in public administration; nevertheless, most only wanted to reform municipalities – mainly the counties – without decentralising substantially the competences of the government and the ministries. In Hungary, the attempts at regionalisation began in 1996. The proposed programme did not deem it necessary to reduce the size of counties and shape smaller units, but rather counted on a structure consisting of fairly large counties in the long run.\(^{39}\) The winds of change in politics arrived in 1998, when the execution of the government plans was transferred to the Prime Minister’s Office and the concerned undersecretary for political affairs.\(^{40}\) The possibility of shaping regionally elected bodies arose as a new objective in 1999.\(^{41}\) The government drew up a new plan in 2001 in the form of a government decree, which was still too cautious to implement specific measures that might have resulted in territorial structuring or regionalisation.\(^{42}\) The Ministry of the Interior formed three working groups within the framework of its IDEA programme in the Autumn of 2002. One of these was the regional working group, which was tasked with elaborating the reform of regional structures. The implementation – as part of a broader government reform – was to take place during the parliamentary cycle of 2002-2006. Among the objectives for reform, the government programme released in 2002 gave a great deal of emphasis to the objectives “Decentralised and politics-free modern executive power and municipalities”.\(^{43}\) According to this programme, one of the government’s main objectives was to sensibly decentralise the highly concentrated executive power. Part of the programme was for the county bureaus to be transformed into regional administrative offices after the shaping of the regional municipalities. In its programme, the new government formed in 2006 emphasised the creation of a new administrative and municipal structure to be financed by a prudent and economical appropriation of public funds. The programme also proposed a gradual loss of counties’ powers, which would be delegated one by one to the local, subregional and regional levels.

\(^{38}\) Varga op. cit. 225.


\(^{42}\) Temesi op. cit. 160-161.

\(^{43}\) Ivancsics, Imre. Hozzászólás a megyei vagy/és regionális önkormányzás körül kibontakozni látszó vitához. [Opinion in the emerging debate on the county or/and regional governance]. Comitatus önkormányzati szemle. 2003: 7-8, 121.
The IDEA working group completed the plans for regional restructuring by 2003. By this time, the wording of the bill had also been prepared. The Ministry of the Interior put a transitional mechanism into place in early 2005, which set the process of regionalisation in motion in the region in question with a pilot that had never before been seen in Hungary.\[44\]

1.2.4.3. Experiences

While the regional partnership is very significant and unique, it can also be regarded a compromise when compared to the chosen regional municipality – as István Varga points out. It either verifies or rebuts the hypothesis that regional reform may be achieved without passing laws requiring a qualified majority.\[45\]

Another reason why regional associations could not be the perfect testing ground for a municipal regional model was that the principles built upon the lacking identity of the regions could not prevail; the foundations of municipal associations were simply stronger. All in all, it is the politicians that should have decided on the role of voluntary regional associations: either a transition toward municipal regions or a lasting role model to be extended to the other regions.\[46\]

After 2010, the plan of the regional reform of the state and local government system was abandoned. Rather the emphasis has been shifted the development of administrative levels, which are lower than county levels.

1.2.5. Monitoring the Legality of Local Government Decisions

In principle, monitoring the legality of local government decisions is fundamentally divided between two different jurisdictions: arbitration on individual local government decisions is the responsibility of the judge, although any action on local administrative general decisions is under the jurisdiction of the Hungarian Constitutional Court or the Curia of Hungary. The Constitutional Court is charged with verifying the constitutionality of local government decrees. The Curia\[47\] is charged with the verifying that local government decrees are in compliance with ordinary laws. Petitioners cannot directly ask the Constitutional Court to rule against a general decision by a local government. However, in the course of a suit already being heard by a judge, the petitioner can gain access to the Constitutional Court. But in regard to the supervision of normative acts, there is no actio popularis.

The county government office examines the legality of decisions taken by local governments. In case of resolutions taken within local discretionary power, the head of the office could only control the legality of the decision, not its effectiveness nor its merits. In other words, it only focused on whether the organisation, activity, decision-making procedure, and decisions

\[44\] Hargitai, János. A térségfejlesztés illúziója, megyék a mintarégióban [Illusion of the regional development, counties in the sample region]. Comitatus önkormányzati szemle. 2009: 9, 60.
\[45\] Varga op. cit. 218.
\[46\] Varga op. cit. 235.
(decrees, resolutions) made by local governments (committees, mayors, general mayors, county general assembly presidents) complied with the law.

Within the scope of its powers in the field of review of legality, the county government office
1. can request a challenge of legality;
2. can call for the convocation of the body of representatives or the partnership council, and in cases determined by this law, convene a meeting of the body of representatives or of the partnership council;
3. can recommend that the minister responsible for the review of legality for local governments ask the Government to propose that the Constitutional Court verify the conformity of a given government regulation with the Fundamental Law;
4. can initiate the review of the government’s resolution in the public administration and labour court;
5. can institute legal proceedings against a local government that does not fulfil its resolution-passing or task-completion obligations, and it can enact a substitute resolution;
6. can recommend that the minister responsible for the review of legality for local governments ask the Government to dissolve the body of representatives whose actions are contrary to the Fundamental Law;
7. can ask the Hungarian State Treasury to withhold or withdraw a certain part (determined by law) of the financial support from the central budget;
8. can file a suit against a mayor who commits serial violations, in order to remove him or her from office;
9. can initiate disciplinary proceedings against the mayor of the local government and against the chief executive before the mayor;
10. can initiate an investigation of the local government’s book-keeping by the State Court of Auditors;
11. provides professional help to local governments in cases arising from its tasks and powers and
12. can impose a review of legality fine on the local government or on the partnership, in the cases determined by the law.

If the government office finds a government regulation of the government contrary to the Fundamental Law – after the unsuccessful application of the legality appeal or the convocation of the body of representatives – within 45 days it presents its proposal for the revision of the local government regulation by the Constitutional Court to the Government, with the draft of the motion being sent to the minister responsible for review of legality for local governments. After having examined the proposal, the minister can call upon the county government office to propose revisions to the local government regulation by the Constitutional Court, in order to complete or modify the motion. The minister informs the county government office which proposed modifications to the government regulation by the Constitutional Court and the government whose regulation is being challenged. After this, the minister files a Government motion to review the conformity of the local government regulation with the Fundamental Law. The government office sends the draft of the motion simultaneously to the minister responsible for review of legality for local governments and to the affected local government.

Within 15 days of receiving the information from the local government or after the unsuccessful expiration of the time allotted for providing information, the government office can file for a review the conformity of the local government’s regulation with the Law by the
Curia. Simultaneously with the launching of the litigation process, the government office sends the motion to the affected local government.

The head of the county government office also has legislative powers and obligations. If the government office states that the body of representatives has not fulfilled its obligation to legislate, it can file – while simultaneously informing the local government – a statement of the local government’s neglect of its obligation to legislate with the Curia. If the local government does not fulfil its obligation to legislate within the deadline given by the Curia, the government office initiates proceedings in the Curia within 30 days of the termination of the deadline with the aim of allowing the government office to repair the negligence by the government office.

The leader of the government office enacts the regulation in the name of the local government, according to the rules for the regulations of the local government, so that the regulation is signed by the leader of the government office and is published in the Hungarian Official Gazette. The regulation enacted by the leader of the government office in the name of the local government has the status of a local governmental regulation, with the proviso that the local government is only authorized to modify it or to set it aside after the next local governmental election; before that time, only the leader of the government office is authorized to modify it.

1.2.6. Inter-Municipal Associations

1.2.6.1. Inter-Municipal Associations

Previous regulations on the inter-municipal cooperation were based on a diversified system. The basic rules on inter-municipal associations were established by the Ötv., but the detailed rules on the types of these associations and the rules on the organisation and finance of these forms were defined by the Act No. CXXXV of 1997 on inter-municipal associations and the cooperation of the local governments. Laws on specific types of the associations existed, such as Act No. CVII of 2004 the inter-municipal associations of the small regions and Act No. XXI of 1996 on territorial development and planning, which contained rules on regional development associations.

This diversified system has been replaced by a unified model. The general rules on inter-municipal associations are regulated by Chapter IV of Act No. CLXXXIX of 2011 on local self-government in Hungary, but there are other legal institutions which have the nature of an inter-municipal cooperation. These legal institutions are regulated by other public law instruments.

As mentioned above, article 34(2) of the Fundamental Law of Hungary allows the Parliament to require the performance of obligatory municipal tasks through inter-municipal cooperation. Parliament can establish a mandatory inter-municipal association by passing a law. Chapter IV of the Municipal Code does not contain rules on these mandatory established associations, but other articles of this Act have such rules.

The amendments to the Act on local self-government in Hungary have a dual nature. Firstly, the previously differentiated system in which there were several institutionalized types of inter-municipal associations has been simplified. Only one type of inter-municipal
associations is regulated by the new Municipal Code: the association with legal personality. Secondly, the applicable legal norms which were formerly separate – regulated by Act No. CXXXV of 1997 on inter-municipal cooperation and associations and by Act No. CVII of 2004 on associations in small regions – were incorporated in the Municipal Code.

Section 87 of the Municipal Code states that representative bodies (councils) of municipalities may form inter-municipal associations with legal personality in order to more efficiently and appropriately perform one or more municipal tasks, or the delegated tasks of the mayor and the clerk. Although only the association with legal personality is mentioned by the Act on local self-government in Hungary, the new rules allow the establishment of different service delivery districts within the associations. Thus, the new associations are mainly umbrella associations which unify more inter-municipal cooperation with different participating local governments.

Associations are established by written agreement between the participating local governments. It is based on the decisions of the representative body. These decisions must be made by qualified majorities of the bodies. A decision voted by a qualified majority is required to join the association, as well. Joining can take place on the first day of the year (1 January), altering the legal personality of the association. Withdrawal from the association can take place – for similar reasons – on the last day of the year (31 December). The representative body decides on the access or the separation at least six month beforehand, and informs the council of the association of their intent to access or withdraw.

The association can establish organisations governed by public law, companies, non-profit organisations, and other forms of organisations for the performance of public tasks. Because of the legal personality of associations, their assets remain separate from those of the local governments that established this cooperation, but these assets are part of the national government’s holdings. In legal disputes concerning associations, the courts of public administration and labour have jurisdiction. In the past, it was ordinary, civil courts that had jurisdiction in these cases, because these disputes were considered by past legislation – which remained in force until 31 December 2012 – as disputes governed by private law (see decisions No. 5.Pf.20.332/2008/4 of and No. Pfv.X.20.104/2009/4 of the Curia).

If no other rule is stipulated in the agreement on the association, the participating local governments offer financial support to the association in proportion to their population. The conditions for cessation of the association and the mandatory elements that must be contained in the agreement on the inter-municipal association are defined by the Act on local self-government in Hungary.

The central organ of the inter-municipal association is the council of the association, whose members are delegated by the representative bodies of the participating local governments. The members of the council have a vote that is defined by the agreement. The decisions of the councils are made in the form of a resolution, because associations do not have legislative powers. If other rules are not defined by the agreement on the association, a simple majority is the majority of participating local governments. If the number of the members is more than 10, a simple majority is the numerical majority which majority covers at least the 30 percent of the population of the associated local governments. To reach a qualified majority, the majority of the population of the associated local governments is required.

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The chairman or chairwoman of the council of the association is elected from the members of the council and a deputy chairman (or chairwoman) may also be elected. The council may establish committees for decision-making and executive tasks. The association may have a separate office. If such a separate office is not established, these tasks are performed by the mayor’s office or the common office of the municipality that acts as headquarters for the association. Professional operation has been strengthened by the rule that the clerks of the municipalities are involved in the session of the councils in an advisory capacity.

Legal supervision tasks are performed by the county (metropolitan government) offices. Thus, the government office can convene the council, and it can initiate a lawsuit in the court of public administration and labour on the grounds of violation of law; the government office may also impose a fine of legal supervision.

1.2.6.2. Other Forms of Inter-Municipal Cooperation

Two other forms of the inter-municipal cooperation are regulated by the Mötv.: full integration of municipal organisation and finance – the associated representative body of the towns – and the integration of the administrative organisation of the local governments – the common office of the municipality.

**Associated representative body.** The associative representative body can be established by the representative bodies of concerned municipalities. The annual budget is combined by this form of cooperation, and a common municipal office and common municipal institutions are maintained.

**Common municipal office.** The common municipal office of the villages (and exceptionally the common office of the towns and the villages) can be considered as a mandatory inter-municipal association. This form of cooperation is the integration of the administrative organisation of small Hungarian municipalities.
1.2.7. Minority Local Governments in Hungary

1.2.7.1. Introduction

Act No. CLXXIX of 2011 on the rights of minorities (herein after referred to as: AMR) replaced the Act on Minorities of 1993, which was already at the time of its adoption regarded as an ambitious law, making it possible for the thirteen recognized national and ethnic minorities to participate in decision-making processes and guaranteed both individual and collective minority rights to these minorities. The constitutional right of minorities as “constituent parts of the State” to establish local and national minority local governments (herein after referred to as: MLGs) exists. The fundamental duty of MLGs is to protect and represent the interests of minorities by exercising the responsibilities and powers of MLGs.

1.2.7.2. Constitutional Bases and Legal regulations of Minority Local Governments

The rights of minorities are defined in the Fundamental Law of Hungary, while the details are regulated in the Act on minorities. The Fundamental Law ensures the right of minorities to use their native languages and to the individual and collective use of names in their own languages, to promote their own cultures, and to be educated in their native languages. The constitution’s drafters defined one of the main tools for accomplishing these basic provisions, stating that “[n]ationalities living in Hungary shall have the right to establish local and national governments.”

Between 1994 and 2005 local MLGs were regulated by Act No. LXV of 1990 on local self-government; this is why it seemed that these organisations were special local governments. However, the regulation which has been in force since 2005 departed from this approach and made it clear that these bodies do not represent each member of a given community, only those citizens living in Hungary who belong to the minority in question, and facilitates the enforcement of their collective rights.

1.2.7.3. Definition of Terms

1.2.7.3.1. Definition of Minority

Article 1 (1) of the AMR defines minorities: “[p]ursuant to this Act, all ethnic groups resident in Hungary for at least one century are minorities which are in a numerical minority amongst the population of the state, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of collective affiliation that is aimed at

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49 The Government’s translation of the Fundamental Law uses “nationalities”, while the relevant new act contains “minorities” for the translation of the same term. We believe that “minorities” is a more precise term, but in citations from and explanations in relation to the Fundamental Law we use “nationalities” in this work.


51 Art. XXIX (2) of the Fundamental Law
the preservation of these and at the expression and protection of the interests of their historically established communities."\textsuperscript{52}

Appendix No. 1 of the AMR lists the Hungarian minorities: Armenian, Bulgarian, Greek, Croatian, Polish, German, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian. This means that in Hungary there are thirteen legally recognised minorities; out of these, before 1 January 2012 there were twelve national minorities and one ethnic minority (the Roma people)\textsuperscript{53}, but due to the regulations of the AMR, the notion of national and ethnic minorities was abolished and has been replaced with the unified expression of nationalities.\textsuperscript{54}

1.2.7.3.2. Definition and Types of Minority Local Governments

Article 2 (2) of the AMR defines MLG by stating that “[m]inority government: an organisation established on the basis of this Act by way of democratic elections that operates as a legal entity, in the form of a body, fulfils minority public service duties as defined by law, and is established for the enforcement of the rights of minority communities, the protection and representation of the interests of minorities and the independent administration of the minority public affairs falling into its scope of responsibilities and competence at a local, regional or national level.”

In terms of levels, local and regional (hereinafter collectively referred to as “local”) and national MLGs may be formed. A local MLG may be set up in localities, towns and metropolitan districts, while regional ones are established in the capital and in the counties.

1.2.7.3.3. Establishment of Minority Local Governments

The AMR changed from a system of electors to direct elections. Elections are held to select the members of a local MLG if the number of individuals forming part of a given minority in the locality reaches thirty according to the data provided in response to the questions of the latest census regarding minority affiliation and aggregated by minorities.\textsuperscript{55} Elections are held for the election of members of a regional MLG if the number of local elections held in the capital or in the county is at least ten. Under the new regulation, the election of a national MLG is obligatory, regardless of the number of local and regional bodies.

The new act set the census date of as a reference point for the holding of minority governmental elections. By using census data, the legislator wishes to prevent elections from

\textsuperscript{52}This definition is largely similar to the one formulated by the UN minorities jurist Francesco Capotorti. See: Kovács, Péter. \textit{Nemzetközi jog és kisebbségvédelem} [International law and the protection of minorities]. Budapest: Osiris, 1996, 36-59.

\textsuperscript{53}In legal literature and among experts, an interpretation has spread according to which a national minority is a group which has a mother country, while ethnic minorities do not have any; therefore, in our case, the Roma people may be considered as such.

\textsuperscript{54}The Ministry for Administration and Justice (the proposer) reasoned this modification, on the one hand, by stating that during its application, the act on minorities will be in harmony with the Fundamental Law, and, on the other hand, they do not wish to consider the “majority-minority” relation any more, but wish to focus on those values with which minorities with their cultural peculiarities contribute to the culture of Hungary, to Hungarian culture as a whole. See T/4997. sz. törvényjavaslat a nemzetiségek jogairól [Rights of Minorities Bill No. T/4997].

\textsuperscript{55}The “thirty persons” rule based on census data must be applied in the 2024 municipal elections for the first time. Until that election, the “twenty-five persons” rule will be applied.
being held in cities and towns where the community to be represented is not present, and the register of voters is “expanded” only for purposes of abuse.

**MLGs established in Hungary between 1994 and 2010**

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<td>1435</td>
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1.2.7.3.4. Transformed Minority Local Governments

An MLG may also be set up indirectly. According to the new regulation, a local government may declare itself a transformed MLG: “[a] local government may declare itself a transformed minority government at its founding meeting held after the general or by-elections if, on the day of the elections, (a) more than one half of the citizens recorded in the register of franchised citizens in the locality are recorded in the given minority’s electoral register, and (b) more than one half of the elected members ran as the given minority’s candidates at the local municipality elections.”

Even though it is not stressed enough, from a broad perspective this institution is the domestic example of the principle of regional autonomy.

1.2.7.3.5. Rights and Obligations of Minority Local Governments

The rights of MLGs stem from the community of electors forming part of the minority, who exercise them rights in the manner determined by law, by way of their elected representatives. Unless the AMR provides otherwise, the rights of a given MLG are equal in respect to all other MLGs.

The board of an MLG may delegate its responsibilities and powers to its bodies (chair, committee, and, in the case of the national level, office) as well as to its association as determined by law. The bodies of an MLG may, in respect to such delegated competence,

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57 Art. 71 (2) of the AMR
give instructions for the exercise of powers and may withdraw such powers. Delegated powers may not be further delegated.

The AMR may establish mandatory responsibilities and powers for an MLG, and Parliament must simultaneously allocate proportionate resources and means for the fulfilment of mandatory responsibilities and powers. MLGs may proceed independently or in cooperation with other agencies in minority public affairs falling within their scope of responsibilities and powers, within the limits of the law. In the course of the administration of minority public affairs, the MLG, within its scope of responsibilities and powers, adopts decisions, administers affairs freely, proceeds in the capacity of owner in respect to its property, independently determines its budget, and financially manages its own public affairs.

1.2.7.4. Tasks and Powers of Minority Local Governments

1.2.7.4.1. Tasks and Powers of Local Minority Local Governments

Within the relevant legal frameworks, local MLGs determine the conditions of their lawful operation with a qualified majority\(^{58}\) within non-transferable powers and within statutory limits, including the detailed rules of their organisation and operation, the name and symbols of the MLG, and the holidays of the minority represented by them.\(^{59}\)

With a simple majority, local MLGs decide\(^{60}\) on the following elements falling within their non-transferable powers: the election of the chair and vice-chair; the establishment of committees; the election of lay judges; the budget and its final accounts; appointments and senior engagements falling within their powers; submission of tenders.\(^{61}\)

The AMR clearly distinguishes between obligatory and voluntary (optional) local government tasks identified as minority public affairs. Hungarian law provides the possibility that the act may make the performance of certain public tasks obligatory for local governments.

Mandatory public duties of local MLGs are the following: (a) maintenance of institutions fulfilling minority duties, (b) at their own initiative, fulfilment of other responsibilities and powers delegated by other local governments or municipalities, including duties related to the maintenance of transferred institutions, (c) duties related to the maintenance of institutions taken over from other organisations, (d) duties related to representing the interests of the minority community and creating equal opportunities, with special regard to the duties of local municipalities related to the enforcement of minority rights, (e) exercising decision-making and cooperation rights serving to reinforce the cultural autonomy of minority communities in connection with the operation and responsibilities of institutions operated by state, local government, or other agencies in the minority government’s jurisdiction, (f) in the interest of reinforcing the cultural autonomy of the community represented, supporting community initiatives with organisational and operational services and acting as a liaison for

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\(^{58}\)In the case of decisions requiring a qualified majority, the “yes” vote of more than half of the elected representatives is necessary.

\(^{59}\)See Art. 113 of the AMR

\(^{60}\)In the case of decisions requiring a simple majority, the “yes” vote of more than half of the representatives present is necessary. The board of a local MLG has a quorum if, at the meeting and at the time of delivering the given decision, more than half of the minority local governmental representatives are present.

\(^{61}\)See Art. 114 (1) of the AMR
local minority civil organisations and initiatives of community-represented and local church organisations, (g) initiating the measures necessary for the preservation of cultural assets associated with the minority community in the jurisdiction of the MLG, (h) participating in the preparation of development plans, (i) assessment of demand for education and training in minority languages.

The voluntary public duties of local MLGs are, in particular, as available resources allow: (a) establishing minority institutions, (b) foundation of awards and defining the rules and conditions of rewarding them, (c) calls for minority tenders, establishment of scholarships.

Similarly to the former regulation, the AMR provides for the takeover of tasks and competences in order to foster cultural autonomy. For example, an MLG – in the order set forth by the AMR – may take over the right to maintain institutions of public education established by another body, and gain the right to administer cultural institutions or receive cultural tasks as well. The Roma minority wanted to take part in managing social issues, but this was not possible, because these are official duties and the AMR does not allow an MLG to exercise authority powers.62

For the implementation of their mandatory and voluntary duties, an MLG may establish institutions, business associations, and other organisations, including the takeover of institutions, within statutory limits; it appoints their heads and managers and exercises founder’s rights as set forth in a separate legal rule. An MLG may only establish or take part in the operation of business organisations in which its liability does not exceed the extent of its financial contributions, and for which the venture undertaken does not jeopardise the fulfilment of its mandatory duties.63

1.2.7.4.2. Tasks and Powers of National Minority Local Governments

In accordance with the relevant legal frameworks, national MLGs determine the conditions of their lawful operation and decide on the following with a qualified majority, all of which represent a non-transferable competence: the location of the head office, the national holidays of the minority represented, the principles and method of utilisation of available radio stations and television channels, and other issues determined by law falling within their responsibilities and powers.64

National MLGs must: (a) fulfil the duties of representing and protecting interests emerging in the locality in connection with the given minority community if there is no MLG in the locality, (b) engage in the representation and protection of interests as defined in a separate law in connection with the municipal responsibilities performed by the county municipality, (c) represent and protect the interests of the minority it represents on a national level, (d) maintain a national network of minority institutions in the interest of developing minority cultural autonomy.

Within its opinion making, initiating and consenting jurisdiction, the national MLG: (a) states its opinion on drafts of legal rules concerning the minorities it represents it in that capacity, (b) states its opinion on the implementation in Hungary of bilateral and multilateral

62 Bindorffer op. cit. 257.
63 Art. 116 (3)-(4) of the AMR
64 See Art. 117 (1) of the AMR
international agreements related to the protection of minorities, and initiates the implementation of measures necessary for the enforcement of the provisions thereof, (c) may request information from public administration agencies on issues concerning the groups of minorities represented, make proposals to them and initiate the implementation of measures in matters falling within their jurisdiction, (d) exercises the right of consent – on issues directly affecting the interest of a minorities – in connection with the development plans, (e) participates in the compilation of information related to the election of the members of minority governments in cooperation with the election committee and the state agency responsible for minority policy.

The national MLG may set up minority lists and voters may vote on these instead of traditional party lists. Act No. CCIII of 2011 on the elections of members of Parliament of Hungary established the possibility of preferential representation of minorities in the Parliament.

The responsibilities and powers of a national MLG arise from its general assembly. The general assembly may delegate its responsibilities and powers, excluding any non-transferable powers, to its chair, committee, office, or to an association as set forth in the act. The officials and bodies of the general assembly are: the chair, one or several vice-chairs, the committee, and the office.

1.2.7.5. Financing System of Minority Local Governments

The sources of MLG revenues are in particular: (a) aid from the state budget, (b) other aid and subsidies, (c) their own revenues, entrepreneurial revenues, (d) the yields of their assets, (e) donations from the native country and elsewhere, (f) liquid assets received.

The state shall provide aid at the rate determined in the act on the central budget: (a) for MLGs for the fulfilment of minority public duties, as part of the duty funding system, (b) for activities and projects pursued and implemented as part of the educational and cultural self-administration of minorities and minority cultural autonomy, (c) for minority organisations within and outside the sphere of state finances to ensure the development of the cultural autonomy of minorities.

1.2.7.6. Relationship with Local Governments

The AMR clearly defines the guarantee of the operating conditions of MLGs and the performance of operations-related tasks as tasks belonging to local governments. In the interest of the fulfilling its obligations, local municipalities must, within thirty days, make premises available for use according to their designated purpose and enter into an agreement with local minority governments to ensure the use of premises, and additional conditions of the performance of its tasks.

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65 To establish minority lists, the recommendation is that at least 1% of voters registered in the list of voters be minority voters, but a maximum of one thousand and five hundred recommendations is be necessary.
66 Article 126 (1)-(2) of the AMR
67 See Art. 80 of the AMR
The provision of support, its rate, its formal or informal conditions, and its withdrawal based on different – sometimes personal – reasons may make the local MLG inferior, even though it enjoys equal public law status. While the AMR clearly states that MLGs are not subordinate to municipal governments, in many towns the MLG is dependent on the local government. This is due to the fact that MLGs do not have an independent administrative infrastructure and rely on the local government to provide for their operational needs.68

Within its obligation to provide support, the local government ensures that the MLG benefits from the use of an office at the seat of the head office of the MLG suitable for the performance of its tasks, on a monthly basis as necessary but for at least sixteen hours, as well as the occasional use of other premises for the purpose of minority events. However, the request for a permanent office may be primarily justified if the MLG exercises its rights to maintain minority educational, cultural, and interest protection institutions requiring continuous maintenance, or provides other minority public services which require the everyday use of an office. The right of the MLG to use the office may therefore vary from occasional to permanent use, but the law does not oblige the local government to ensure exclusive use of such premises.

The AMR unnecessarily limits the rights of MLG because – in contrast to previous regulation – they are not allowed to exercise a right of approval for local government decision-making with regard to fostering tradition and culture, equal opportunity, social inclusion, and welfare services that concern minority populations.

2. LOCAL PUBLIC ACTIVITIES

2.1. LOCAL POWERS AND CONSEQUENCES

2.1.1. Municipal-Level Government Powers

2.1.1.1. Tasks and Powers in General

Concerning tasks and powers, the Act on local self-government in Hungary makes a distinction between local government and state administrative tasks and powers. The Act on local self-government in Hungary – similarly to the previous regulation – does not contain a comprehensive list of individual tasks and competences, but provides a framework for the provision of tasks, the content of which is determined by various specialized laws. The regulation makes a distinction between various levels of the provision of tasks from a territorial perspective, since the provision of tasks at the level of basic municipalities (obliged to carry out all core mandatory tasks laid down by the law which satisfy the basic needs of the population and to provide access to the required public services within the territory of the given municipality); cities and administrative centres of districts (charged with the provision of basic services within their own territory and within the catchment area of the entire territory of the district whose provision it can guarantee in an economical, efficient manner, in compliance with the professional regulations); cities with county status (which implies the extension of service provision beyond the boundaries of the given municipality to the majority or the entirety of the county’s territory); and the capital city and its districts and counties are all treated separately.

Furthermore, local government tasks are differentiated as mandatory (compulsory) and optional (voluntary). Municipal governments may freely undertake optional tasks determined on the basis of the population’s requirements and the availability of financial resources, but voluntarily undertaken local public affairs cannot endanger the fulfilment of obligatory local government tasks and powers prescribed by the law, and they can be financed by the municipality’s income or by separate resources set aside for this purpose (see below in detail).

The core mandatory tasks prescribed by the Act on local self-government in Hungary include:

1. municipal development, municipal planning;
2. municipal management (establishing and maintaining public cemeteries, public lighting, ensuring chimney-sweep services, developing and maintaining local public roads and their accessories, establishing and maintaining local parks and other public premises, ensuring the parking of motor-vehicles);
3. naming public premises and public institutions owned by the local government;
4. providing basic health services and services aiming to promote a healthy lifestyle;
5. sanitation (public hygiene, ensuring the cleaness of the town’s environment, extermination of insects and rodents);

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6. kindergarten education;
7. cultural services, especially public library service; theatres, support of performing arts groups, local protection of cultural heritage; support of local public education activity;
8. social and child-welfare services and supplies;
9. flat- and premises-management;
10. ensuring the provision and rehabilitation of homeless people, as well as ensuring homelessness prevention;
11. local environment and nature protection, water management, prevention of water damages;
12. national defence, civil defence, catastrophe prevention, local public employment;
13. tasks related to local taxes, economic organisation, and tourism;
14. ensuring possibilities for sale – among the products determined by law – by small-scale producers and agrarians, including the possibility of weekend marketing;
15. sport, youth affairs;
16. nationality affairs;
17. contributing to the maintenance of public order in the municipality;
18. local public transportation;
19. waste management;
20. district heating, and
21. public water supplies.

These public services represent the baseline of tasks and must be provided even in the smallest villages.

2.1.1.2. Local Government Tasks and Powers (Optional and Mandatory)

As concerns the optional local government tasks, three main groups can be discerned on the basis of the Act on local self-government in Hungary. The first group is contained in paragraph 10(2) of the Act on local self-government in Hungary, which declares that “local governments are authorized to solve and handle local public affairs autonomously which do not fall within the statutory competence of another body”. The financial basis for administering public affairs on a voluntary basis must be treated separately from mandatory tasks in terms of the origin of financial resources, since the provision of voluntary tasks is financed from the independent incomes of authorities or from separate financial resources devoted to these objectives.

The second group of voluntary task provision is laid down by paragraph 10(3) of the Act on local self-government in Hungary and is based on an agreement (contract) between the state and the local government. In day-to-day practice, this is manifested in the contractual provision of state administrative tasks, but theoretically, other public tasks cannot be excluded from this category either. Authorization by law is required for the conclusion of these agreements, while the Act on local self-government in Hungary prescribes only one mandatory element of content (besides the accurate definition of the tasks taken over, which is a consequence of the nature of the task and not of the provisions of the Act on local self-government in Hungary), i.e. the financing of the provision of tasks.

The final, third, scope of voluntary tasks is the well-arranged taking over of affairs mentioned in paragraph 12 of the Act on local self-government in Hungary, which means that a local government of a larger town with better economic performance may take over the mandatory
responsibilities and competences of other municipal-level governments (or associations of municipalities) in case it is necessitated by the demands of population. The condition of taking over competences and responsibilities is that there must be no deterioration in the professional quality of service provision, which should occur in a more economic fashion without requiring supplementary state funds.

Mandatory tasks contain a wide range of tasks assumed by local governments both in terms of quantity and financing. Compulsory tasks are laid down by law, while in the concrete designation of tasks the legislator must take into consideration the assets of a given local government – primarily its economic performance, population, and territory, but also its role as a district/regional centre and geographical location (or more precisely, the natural, economic and social disparities originating from its geographical position). Guaranteeing the necessary conditions for performing specific tasks is a prerequisite in the case of the designation of tasks and competences, which also imposes certain obligations on individual local governments. These primarily involve guaranteeing adequate professional, personal, objective, and economic conditions. On the other hand, the responsibility of the state is also apparent in this case, since it provides proportional budgetary support and other financial contributions to ensure the execution of mandatory tasks.

The Fundamental Law contains an explicit reference to the institution of the so-called compulsory association of local governments. In light of this, statutes may lay out mandatory tasks and competences of municipal-level governments which must be performed by an association of municipalities.71

2.1.1.3. State Administrative Tasks and Powers

State administrative tasks and powers are activities ordinarily carried out by the state administration, but whose delegation to the city and town governmental level enables the more efficient execution of tasks. This process involves financial decentralisation as well, in the framework of which the state provides financial instruments for the execution of tasks through the central budget. In light of the regulation, a law or government decree authorized by law may define (delegate) tasks and competences for the mayor (chief mayor), the president of the county general assembly, and the chief executive, or may ordain their participation in the local governance and performance of national administrative tasks in various domains (military defence, civil security issues, and disasters). The addressee of the administrative competences and responsibilities is the town-level government clerk, who assumes the legal role of a quasi state-administrative function in the implementation of such tasks: decisions made in the area of state administrative tasks and competences may be legally remedied in the hierarchy of the state administrative bureaucracy (generating a situation in the given case type where the city or town government officer has a state administrative supervisory organ), furthermore, with respect to fulfilling its administrative tasks and competences, the town government clerk cannot be ordered/overruled by the body of representatives.72

71 Smuk op. cit. 177.
72 Smuk op. cit. 177.
2.1.1.4. Municipal-Level Government Tasks

As stated, there are various differences in carrying out particular tasks and competences, depending on the concrete type of municipal government, whereas the above-mentioned list of core mandatory tasks represents the minimum of municipal governmental activity, so they can be described as tasks of ordinary municipalities.

As for cities and administrative centres of districts, they may be obliged to provide other specific public services depending on the size of the city or town, the population, and other conditions – for example, their financial capabilities. Cities with county status carry out several tasks (for example, cultural tasks) over the whole territory of the county they are geographically part of, which therefore represents a slight collision between the tasks and powers of cities with county status and counties.

As for the Capital, there is a two-level system of tasks and powers, whereby city-wide activities are carried out by the local government of the Capital and district-level activities by the district governments. In general, the local government of the Capital fulfils tasks and exercises powers that affect the whole city or more than one district, as well as those related to the special role of the Capital within the nation. Furthermore, the local government of the Capital simultaneously represents a county, therefore ensuring its activities. The exact distinction between the tasks of the local government of the Capital and district government is established by the Act on local self-government in Hungary.

According to the Act on local self-government in Hungary, the county performs territorial development, planning, and coordinating tasks as its main activities, but the tasks of the county are based upon the principle of subsidiarity. In practice, the county local government has a less important role than cities and towns. Also, a certain, but relatively small sphere of the counties’ activity represents the maintenance of institutions providing public services.

2.1.2. Relationships With Other Institutions

The relations between the local governments and the Hungarian Parliament, the Hungarian Government, the members of the Government (the ministers) are detailed regulated by the Mötv.

2.1.2.1. Parliament and Local Government

The main responsibility of Parliament – which has the legislative and the constituent power – is legislation; thus, the status, the duties and powers, the mandatory tasks, the main organs, the finances, the assets, and the legal protection of local governments are all regulated by acts that are passed by Parliament. Because the Fundamental Law of Hungary does not contain the “fundamental rights” of local governments, for the legislature these subjects are therefore defined by the Mötv. Thus these guarantees are now secured by a cardinal Act (formerly, these subjects were defined by the Constitution), which was passed by the two-thirds majority of the Parliament.

Parliament can dissolve those representative bodies whose operation violates the Fundamental Law of Hungary. Such a resolution by Parliament is be suggested by the Government, and the opinion of the Constitutional Court is generally sought before
Parliament decides. It was stated in Res. No. 18/2013 (published on 3 July) of Constitutional Court that if a representative body does not conduct business, it could be classified as a violation of the Constitutional Court.

The territorial structure of Hungary is decided by Parliament, and therefore – after obtaining the opinion of the given municipalities – the consolidation and division of counties, borders, the name and seat of counties, and the formation of the capital districts and the borders of the capital are defined by a Resolution from Parliament.

2.1.2.2. The President of the Republic and Local Governments

Decisions on the municipal level spatial structure of Hungary are the responsibility of the President of the Republic; thus, the formation, the consolidation and the reversal of consolidation of municipalities and the conferment of municipalities with town status is decided upon by the Resolution of the President of the Republic.

Another responsibility of the President appointing the Leader of the County Government Office as the temporary leader of the local government whose representative body was dissolved because of a violation of the Fundamental Law of Hungary. These tasks are performed from the dissolution to the new elections.

2.1.2.3. The Government and Local Governments

After the regulation of the Mötv., the operation of the legal supervision system of local governments became part of the responsibilities of the Government. This task of the Government is performed by the minister responsible for the direction of the legal supervision of municipalities, and the actual legal supervision is performed by County Government Offices.

The Government has certain regulatory powers and tasks: delegated central government tasks can be defined by Government Decrees which are based on the regulatory delegation of laws. The tasks of the local governments can be impacted by other Government Decrees – especially on the rules concerning several administrative tasks and on the rules for delivery of public services.

A new responsibility of the Government is that for certain municipal borrowing and credit transactions, the preliminary approval of the Government is required. Similarly, a new power of the Government is that it can complete municipal investments if the performance of EU obligations is jeopardized by the – delayed – status of them.

2.1.2.4. The Members of the Government (Ministers) and Local Governments

Since 2010, there are two ministers responsible for the major Government tasks on local governments: the minister responsible for local governments and the minister responsible for the direction of the legal supervision of local governments.

The minister responsible for the local governments has mainly decision-making (decision preparation) duties. Thus, this minister
is responsible for the preparation of decisions on legislation concerning the powers and duties of local governments and concerning the tasks of the mayor, the capital’s Lord Mayor, and the president of the county assembly;
- participates in the decision-making process of the Government on the preliminary approval of municipal borrowing transactions;
- coordinates Government tasks and duties concerning urban development, municipal finances, and municipal databases;
- performs resource coordination tasks,
- participates in the decision-making and planning process for task-based state subsidies of local governments;
- can initiate the review process by the Hungarian State Treasury;
- can learn about all data pertaining to municipal finances, and
- may approve the creation of a common (municipal) office when its size is smaller than the minimum size determined by the Mőtv. in cases specified by law.

The minister responsible for the direction of the legal supervision of local governments
- directs the legal supervision activity of the County Government Offices;
- can initiate the dissolution process of those representative bodies which violate the Fundamental Law of Hungary;
- prepares the territorial management decisions of the Parliament and President of Republic, and
- initiates the Constitutional review process of those municipal decrees that violate the Fundamental Law of Hungary.

Since the passage of the Mőtv., the ministers in their powers and duties
- can define the professional rules of the delegated central government tasks of the mayor, Lord Mayor, president of the county assembly, and the clerks, as well as control the enforcement of these rules;
- can define – taking into account the budgetary framework – the professional requirements and detailed rules on local public service delivery;
- can inform local governments of the results of their professional review and initiate the termination of the problems found by it, as well as initiating the legal supervision process of the County Government Office;
- can inform local governments on the sectoral public policies;
- can require data from local governments upon request, and
- can directly subsidize municipalities – taking into account the budgetary framework of the ministers defined by the act on the annual budget of the central government.

2.1.2.5. Advocacy Associations of the Hungarian Local Governments

Advocacy associations of Hungarian local governments are regulated by the Mőtv. as part of the relationship between national and local authorities. The main reason for this paradigm is that members of associations have initiative and advocacy tasks in the field of legislation on the structure of the local governments and local public services. These bodies are defined by the Mőtv. as the main consultation partners of the Government of Hungary; thus, these bodies are classified as special consultative organisations. This paradigm is different from the former one. The Ötv. – similarly to the German approach to advocacy associations of municipalities – defined these associations as a type of inter-municipal cooperation.
The conditions for the formation of these associations are defined by the Mötv., and strict terms of representativeness are required.
2.2. LOCAL HUNGARIAN RESOURCES

2.2.1. Local Administrative Structure and Local Civil Service

2.2.1.1. Local Administrative Structure

The creation of organisational, personal and physical conditions for local government is one of the elements of managing local public affairs. Considering that the Fundamental Law defines that in Hungary local governments must be established to administer local public affairs, local governments autonomy covers governments’ rights to establish their own administrative structure, which at the same time falls under their responsibility. The Fundamental Law entitles local governments to decide on their own administrative structure as well as the rules of their operation, but only to the extent permitted by a cardinal Act and only in the framework of local public affairs. Also, the Fundamental Law entitles local representative bodies to establish offices as defined by a cardinal Act. Consequently, the restrictions given by the cardinal Act should be examined when studying the autonomy local administrative structures.

The legal basis of the local administrative structure of a local government is the Rules of Organisation and Operation that must be adopted in the form of a Decree by the body of representatives. Establishment of local administrative structure can be considered as a right of local governments, but it is an obligation at the same time. The Fundamental Law entitles local governments’ deliberative bodies to establish offices when the Act on local self-government in Hungary already states its existence, enumerating the organs of the representative body, including its administration, under the name mayor’s office, among them. The same Act obliges the body of representative to lay down the detailed rules of its operation in its decree on the rules of organisation and operation and obliges the representative body to outline the organs of local government as well as their status and duties in this decree. Consequently, local bodies of representatives have to ensure the operation of their own administration, but this is a right that is protected because the Act does not allow them to delegate decision-making concerning either the establishment of their administrative structure or the regulation of their operation.

Not all towns and cities have their own administration, due to economic reasons. In small villages with fewer than two thousand residents, the administration of local governments operates in a form and under the name joint local government office if the concerned villages can be found in the same district and their administrative borders are separated by no more than the administrative territory of another town. Villages with more than two thousand

73 See Article 4 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
74 See Section (1) of Article 31 of the Fundamental Law
75 Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
76 See point d) Section (1) of Article 32 of the Fundamental Law
77 See Section (3) of Article 33 of the Fundamental Law
78 See Section (2) of Article 41 of the Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
79 See point j) of Section (1) Article 53 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
80 See Section (2) of Article 42 of the Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
Residents may also be affiliated to a joint local government office.\textsuperscript{81} Towns affiliated with such a joint local government office are required to have at least two thousand residents in total, or the joint local government office must cover at least seven towns in order to create an efficient administration.

Efficient administration can be provided through associations of local governments. The Fundamental Law entitles local governments to associate voluntarily with other local governments, and exercising this right can affect their administrative structure.\textsuperscript{82} Representative bodies may agree to set up partnerships with legal personality in order to perform and exercise one or more of their duties. In the framework of such a partnership organisational structures may be established in different forms.\textsuperscript{83}

The notion of administration of local public affairs includes the performance of public services. Some public services are performed by the mayor’s office – or by the joint local government office – while others are performed by institutions established by the body of representatives.\textsuperscript{84} Institutions may have different statuses, such as budgetary organ, company, non-profit organisation, and other organisations. An institution is a legal entity directed by the local government, but does not belong to it either in its status or in its organisation.

2.2.1.2. Mayor’s Office

The establishment of the office and the definition of its internal administrative structure is the responsibility of the local representative body in its decree on the rules of organisation and operation, as stated in the Act on local self-government in Hungary. Within the framework of this decision, the number of the office’s departments, as well as their denomination and mission, are defined. This means that between the frameworks given by the Act, the body of representatives defines the internal structure, taking into consideration professional requirements and local needs. In practice, the internal structure of the office usually follows sectoral divisions, such as education, law enforcement, welfare, environment, etc. The mayor plays a key role in designing the internal structure of the office, because the decree is adopted on his proposal.

The internal structure and operation of the office can be examined through the features of its tasks as well, but the sectoral division into departments does not necessarily reflect this. Two kinds of tasks are managed by the administration: local public affairs – also called local government tasks – and delegated tasks. The latter can be called state administrative tasks which fall under the responsibility to the chief executive as a general rule and to the mayor in exceptional cases. The responsibility for local government tasks is taken by the body of representatives. Both types of tasks are administered by officials working in the mayor’s office.

One of the frameworks fixed by the Act that concerns the office is its direction. The office is directed by the mayor based on the decisions adopted by the assembly within its own scope of authority. The mayor determines the duties of the mayor’s office – and joint municipal office – in organising the work of the local government, in supporting and implementing

\textsuperscript{81} See Article 85 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
\textsuperscript{82} See point k) Section (1) of Article 32 of the Fundamental Law
\textsuperscript{83} See Chapter IV of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
\textsuperscript{84} See Section (6) of Article 41 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
decisions with a view to the recommendations of the chief executive. The mayor makes submissions proposed by the chief executive to the assembly to determine the internal organisational division, headcount, schedule of work, and schedule of customer hours of the mayor’s office. S/he regulates the procedure of issuing documents in respect of matters within his or her and exercises employer’s rights in respect of the chief executive.85

While the office is directed by the mayor, it is headed by the chief executive (also called clerk). The chief executive exercises employment rights in respect to the officials and employees of the office and exercises other employment rights in respect to his assistants. Appointment, remuneration, management appointment, dismissal, withdrawal of management appointment, and the rewarding of certain public officials and employees of the local government office require the consent of the mayor as specified by himself. The chief executive is obliged to report annually to the body of representatives on the activities of the office.86

As it can be seen, the mayor and the chief executive share the management of the office: the mayor directs the office – in accordance with the resolutions of the body of representatives – and the chief executive manages or leads it.87

The role of the mayor and the chief executive can be distinguished on a different basis as well. The mayor is directly elected by eligible voters of the municipality for five years and his function as executive of the local government is rather political. No educational background is required for the position. The chief executive is appointed by the mayor for an undetermined period on the basis of open competition.88 Qualification – a BA in public administration or MA in law – is required by law, and consequently, the chief executive represents permanence and proficiency in the office. Proficiency includes ensuring the legality of the decisions made by local government organs89 and preparing the decisions of the mayor on state administration matters.

2.2.1.3. Local Civil Service – The Personnel of Local Governments

The notion of civil service can be understood in a broad and in a strict meaning in Hungary. In its broadest sense, civil service covers all the activity directly managed by organs of the State, as well as institutions founded or owned by the State. A different and stricter meaning of it covers public administration, including public authorities and public service providers directed by them, as well as army, police, national security services, civil defence, and the system of jurisdiction, such as courts, prosecution services, and the prison service. The stricter meaning of the civil service only includes the employees employed by organs of public administration and the budgetary institutions directed by them. In order to understand the

85 See Article 67 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
86 See Article 81 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
87 The difference between the function of the mayor and chief executive considering their role in the office can be explained on the basis of the distinction between direction exercised by the mayor and leadership. In the Hungarian legal terminology direction is always a hierarchical relationship between two organisations as entities, while the head of the office is part of the organisation, being the first official in the hierarchy.
88 See Section (1) of Article 82 of Act of Parliament No. CLXXXIX of 2011 on local self-government in Hungary
89 His responsibility is to notify the assembly, assembly organs, and the mayor if any of their decisions violate the law.
stricter meaning of civil service, it is necessary to point out that there is no single and unified regulation on employees in public service in the form of one Parliamentary Act or of a decree.

The notion of civil servant and civil service can therefore be defined as an employee working in public administration and representing the authority of the public. From an organisational point of view, civil servants work for the organs of public administration including the organisations under central subordination of the Government, as well as the organisations having autonomy at local and at central level. The latter are independent central or autonomous authorities not subordinated to the Government. Employees employed by institutes providing public services under the direction of a public authority – for example, a municipality or a ministry – have a different status: they are public employees.90

The status of civil servants was first regulated by a single Parliamentary Act in 1992. In the same year, a different Act was adopted by Parliament on the status of public employees. The Hungarian concept of civil service is then to distinguish the status of employees employed by the public from those employed by the private sector. The status of the latter is regulated by the Labour Code. Another feature concerning the public sector is the distinction of the status of employees working for public administrative authorities from those working for service providers. Both kinds of employees can be found at a local level as well as at a central level.

Legislation on civil service was modified and reformed between 2010 and 2012. The new Parliamentary Act was passed in 2011 and entered into force on 1 March 2012.91 Contrary to the reigning concept in 1992, the new law makes a distinction between civil servants employed by the Government – called Cabinet civil servants – and civil servants employed by autonomous organs such as local governments. Previously, the Act of 1992 stated some particular rules concerning local civil service but did not use different terms. The concept of the actual regulation is that elements of the status of Cabinet civil servants are regulated in detail, including admission and recruitment, promotion, remuneration, training, evaluation, conflicts of interest, labour relations, responsibility, and termination of career, while special rules on civil servants employed by autonomous entities can be found in a particular chapter of the Act concerning exclusively them.

Considering that the same Parliamentary Act regulates the main elements of the status of civil servants, most of the dispositions actually concern both local civil servants and Cabinet civil servants. Consequently, there are considerable differences between the status of civil servants and that of private employees, while the differences between the two categories of civil servants are not so significant.

For example, only Hungarian citizens can be employed as civil servants. The rights and obligations of civil servants produce a more favourable situation for them than for private employees. Remuneration is inferior to the private sector, but it is stable and can be calculated according to the dispositions given by the Act. Promotions are guaranteed even in the case of average performance at work. Further training and examinations are mandatory, but must be ensured by the public administration. Political activity and activity in trade unions are more

90 Legal regulation distinguishes the status of civil servant and public employee. In theory, a civil servant represents the public administration and exercises public authority in his actions, whereas public employees provide a public service without exercising public authority (imperium). Example: officials working in the mayor’s office are civil servants, while employees of organisations maintained and directed by the municipality (such as schools, libraries, hospitals, etc.) are public employees. The status of public employees is regulated by Act of Parliament No. XXXIII of 1992.
91 Act of Parliament No. CXCIX of 2011 on civil service
restricted and they can perform neutrally in service. Liability is also different in civil service. On the one hand, a civil servant’s liability for damages is minor, but on the other hand disciplinary responsibility is recognised in the civil service, contrary to the private sector, due to the hierarchy in place.

Differences between local civil servants and civil servants under the Government’s direction are given by Chapter VIII of the Act. As previously mentioned, employer’s rights over civil servants of the mayor’s office are exercised by the chief executive, and strategic decisions – such as a staff reductions or general pay raises, meaning fixing the base salary, as well as holidays for the administration – are made by the body of representatives.

In local administration, rules of incompatibility might be less strict, given the difficulty of finding the adequate and qualified staff for a post in a small village. The Act forbids relations of subordination, control, or financial accountability between two civil servants if they are relatives. Local administration is an exception, because the body of representatives is entitled to give a special authorization in such a case.

Although it must retain the weekly number of working hours, the body of representatives is entitled to determine a daily work schedule different than the general one fixed by the Act for the civil service as a whole.92

The system of promotion is generally the same, taking into account time spent in service and educational background. The same grades can be achieved in local administration as under the direction of the Government. The denomination of certain titles is different, such as counsellor and general counsellor in local administration.93 Titles can be received parallel with a grade for an undetermined period and can be reversed without giving reasons. Conditions of these titles are graduation at the level of an MA and internal examination.

Remuneration is one of the fields where particularities can be found in local administration in comparison to Cabinet civil servants. Some important decisions are made by the body of representatives in the framework established by the Act.

The salary of civil servants has three main components: the base salary is calculated on the basis of the amount annually fixed by Parliament in the Act on the state budget. The exact amount depends on the civil servant’s grade in promotion. The second element is a salary supplement that may be calculated on the basis of a percent fixed by the body of representatives in a decree. The Act sets a maximum percentage that can be applied to the base salary, and as a result, the body of representative cannot provide unlimited compensation to officials. Lastly, several kinds of bonuses (substitute pay, hazard pay, etc.) are defined by the Act for all civil servants. A so-called “personal salary” bonus can be allocated by the chief executive with approval of the mayor for outstanding performance by a civil servant, if it is proved through evaluation. Personal salary is always awarded for a one year period and cannot exceed the amount fixed by the Act. The Act makes a special salary for management possible in the form of manager’s bonus. Manager’s bonuses can be awarded by the body of representatives in its decree, meaning that this element of the salary cannot be awarded individually. A particular limitation is fixed by the Act, which prohibits awarding manager’s

92 Working time in civil service is 40 hours a week, from 8:00 am to 4:30 pm except Fridays, when it ends at 2:00 p.m. In customer service, the work schedule can range from 8:00 am – 8:00 pm, and not just in local administration.

93 General Government Counsellor and Government Counsellor in the central government administration.
bonuses in the mayor’s office of villages with less than three thousand inhabitants, except for the chief executive. Other benefits for local civil servants can be awarded by the body of representatives in a decree on the basis of welfare, state of health, cultural needs, or for religious reasons.

Contrary to the ideal of the neutral civil servant occupying a position indefinitely, positions of a political nature can also be found in local administration. Political positions can be attached to the mayor, to the body of representatives, or to its committees. This is why the term of this type of civil servants ends with the mandate of the elected officials s/he is associated with. The Act entitles the body of representatives to create such jobs under the names “local government general adviser” and “local government adviser” as grades in the system of promotion. However, since advisers are civil servants of the mayor’s office, employers rights are exercised by the mayor but not by the chief-executive.

All Cabinet civil servants are members of the Hungarian Government Officials Corps ex lege, but local civil servants are not. The Hungarian Government Officials Corps has adopted ethical rules for service entitled: A Unified Code of Ethics. In local administration, such rules must be adopted by bodies of representatives.

Access is possible between the two statuses. The Act states that in case of transfer, the status of Cabinet civil servant transforms into local and vice-versa. Promotion grades are recognised.

The latest data94 on the number of civil servants are as follows: The number of civil servants is 111,300. Among them we can find 77,300 Cabinet civil servants (69.45%) and 34,000 civil servants employed by autonomous entities including local administrations (30.55%) when the total number of public employees is 453,400. It is useful to know that the total number of employees is 2,809,500 in Hungary and 863,600 of them are employed in the public sector.

2.2.2. Local Finances

2.2.2.1. Municipal Assets

Regulations on the local government assets have been transformed over the last few years. The last amendment to the Constitution of the Republic of Hungary modified article 12(2), which was in force until 31 December 2011. This amendment allowed Parliament to nationalise local government assets without any compensation by passing a law, if the powers and duties of the local governments change and the asset is related to a task which does not belong to the new responsibilities of the municipality.

This amendment was in harmony with the new regulation of the Fundamental Law of Hungary. Article 32(6) states that “assets controlled by municipal governments shall be public property, serving the performance of municipal government tasks.” According to this regulation, local government assets are not separate from the assets of the central government, but rather these are to be considered together as national assets. Because local government assets are an integrated part of the national asset, they serve to perform municipal tasks.

Therefore, if the authority responsible for completing tasks that were formerly municipal has now changed, the asset may be freely expropriated. Thus, local government assets can be classified as a kind of trust, which are related to municipal tasks and are not defended against the interventions of central (parliamentary) legislation.\(^{95}\)

Since 1 January 2012, the main rules on local government assets have been regulated by Act No. CXCVI of 2011 on national assets (National Asset Code). The dual system of municipal assets has remained, because local government assets can be classified either as core assets or business assets.

Core assets directly are directly used to perform obligatory municipal tasks. They have two components. The first is the non-negotiable core asset, which is an asset owned exclusively by local governments and which is determined by the National Asset Code and by another Act or local government decree. The second is the limited marketable municipal asset which is defined by law (an Act of Parliament) or by local government decree.

Local roads, local parks and public spaces, international airports, and waters – not including water utilities – that are owned by municipalities are part of the category of exclusive municipal assets. Priority national assets owned by municipalities – which fall into the category of unfit municipal assets – are determined by Annex II of the Act on national assets and by local government decree. Records must be kept on core local government assets.

Public utilities owned by local governments, public buildings maintained by local governments and their institutions, ownership by the local government in public service companies with majority municipal ownership, as local government ownership in the Balaton Shipping Co. are all defined by the Act on national assets as limitedly marketable core assets. This condition is dependent on the performance of public functions: as long as public services are performed by these assets, their marketability is limited.

The free exercise of the right of municipal ownership is limited by the provisions of the National Asset Code, which forbids the business activities of a local government from jeopardising the performance of municipal tasks. Therefore, local governments may only take part in those companies that ensure limited liability for shareholders. Local governments may not take part in companies whose ownership structure is not transparent. Local governments must adopt medium- and long-term asset management plans.

Exclusive economic activities of local governments are determined by the Act on national assets; they can be performed by local government institutions (governed by public law) and by municipal-owned companies. Local governments can also grant concessions.

Trust law can be applied to the local government asset, which is regulated by the Municipal and the National Assets Codes.

**2.2.2.2. Finance and Revenues of Local Governments**

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Although it is a separated subsystem, the budget for municipalities is part of the national budget. The separation does not exclude the subsidy of local governments by the central government.

Local government finances are based on the annual budget of the municipality. The funding of mandatory and voluntary municipal tasks and delegated administrative powers is based on this legal norm. A significant change in the new Municipal Code is that an operational deficit cannot be planned for; thus, expenditures made to ensure the performance of municipal tasks cannot exceed the revenues. As a result, a deficit can only be planned for only if it is used to finance investments and development.

Municipal tasks can be funded by own-source revenues, funds received, and state subsidies. The Act on local self-government in Hungary states that local governments are burdened by the consequences of loss management, and the central government is not responsible for the obligations of the municipalities.96

<table>
<thead>
<tr>
<th>Share of the local government expenditure (in % of the GDP)97</th>
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<tbody>
<tr>
<td>Hungary</td>
</tr>
<tr>
<td>EU-27 average</td>
</tr>
</tbody>
</table>

2.2.2.2.1. Municipal Revenues

**Own-Source Revenues** The following public revenues are considered individual municipal revenues: income, fees, and charges for municipal services and municipal asset management, dividends, profits from municipal business activities, rent, funds received as private income for the local government, and local taxes, fees, and fines. Local taxes are the local business tax, the tourism tax, the municipal tax on individuals and businesses, the land tax, and the building tax.

The main changes concerning regulations on own-source revenues are the new limitations on local borrowing. As mentioned above, the permission of the Government of Hungary for local government borrowing was introduced by article 34(5) of the Fundamental Law. We have indicated that the aim of this regulation is to prevent local government debt. This type of limitation is based on the regulations of several German provinces (Länder). Under this regulation, the Government gives prior consent for the local government borrowing. Detailed rules are established by Act No. CXCIV of 2011 on the economic stability of Hungary. In short, all loans and other transactions with the nature of loan (for example, municipal bonds) are in principle permitted by the Government. There are broad exceptions to this principle. For example, there is a de minimis rule, and illiquid loans do not need permission. Similarly, loans required for projects co-financed by the European Union and reorganisation credits linked to the municipal debt settlement process do not need the consent of the Government.

97 Source: EUROSTAT (http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?sessionid=9ca7d07d30e863f4ed77b258415cb9f3f19df2e0f62f.e340a888ca7b2b7e3a3nchuNah0Le0?tab=table&plugin=1&pcode=tec00023&language=en) (downloaded at 1st September 2014)
Although a great number of other exceptions exist, the financial freedom of local governments remains significantly limited by these regulations.

**Assigned Central Taxes** ● The assigned central taxes have continued to be part of local government revenues, but their significance has been undermined. Assigned central taxes equal 40 percent of the vehicle tax (levied by local tax authorities) and 100 percent of taxes paid on incomes resulting from rental of agricultural property.

**State Subsidies** ● The rules on state subsidies were significantly altered by the new Municipal Code. In 2013, a *task-based financing* system was introduced. State subsidies have since been based on the mandatory (obligatory) tasks of municipalities. Firstly, they depend on the standards for services defined by legal norms. Efficient management, expected own-source municipal revenue, and actual revenues of the local governments are all taken into account for the determination of the subsidies.

The main principle of the task-based financing system is the *additional nature*: own-source local government revenues are complemented by state subsidies, so local communities are interested in collecting their own revenues.\(^98\) Task-based subsidies are earmarked, and money is spent to finance obligatory and voluntary tasks – the latter of which are defined by the Act on the annual central government budget – performed by municipalities.

*Normative state subsidies* for several local public services have remained. Social care services, kindergarten services, and several cultural services are directly financed, and this funding are not integrated into the task-based funding.

*Complementary state subsidies* have remained in place: in exceptional cases, local governments that are disadvantaged through no fault of their own may receive this state subsidy in order to protect their independence and viability.

Local governments are responsible for their economic management, and they can therefore also go bankrupt. The procedure for relieving bankrupt municipalities of their debts is regulated by Act No. XXV of 1996.

<table>
<thead>
<tr>
<th>Year</th>
<th>Yearly amount of the state subsidies (in million HUF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>537,164.0</td>
</tr>
<tr>
<td>2003</td>
<td>726,365.4</td>
</tr>
<tr>
<td>2004</td>
<td>795,144.0</td>
</tr>
<tr>
<td>2005</td>
<td>884,146.5</td>
</tr>
<tr>
<td>2006</td>
<td>815,600.7</td>
</tr>
<tr>
<td>2007</td>
<td>835,708.5</td>
</tr>
<tr>
<td>2008</td>
<td>1,384,635.5</td>
</tr>
<tr>
<td>2009</td>
<td>1,289,970.9</td>
</tr>
</tbody>
</table>

\(^98\) Kecső op. cit. 28.

\(^99\) Source: Acts on the annual budget of Hungary from 2002 to 2013
2.2.2.2. The Control of Local Government Economic Management

First and foremost, the legality of economic decisions is supervised by the county (metropolitan) government office. The economic activities of local governments are controlled by the State Audit Office of Hungary, which controls and monitors the legality, expediency, and effectiveness of these decisions. Subsidies that are co-financed by the European Union are controlled by an independent regime.

Economic control and monitoring within the local government organisation system have been partially modified. The monitoring powers of the finance committee of the representative body have been expanded. Similarly to the former regulation, internal review is conducted by the clerk. The internal audit has been simplified by the new Municipal Code, because audits by independent auditing companies are no longer required by municipal law.

To summarize the subject of the financial independence of local governments and the defence of local assets: both were weakened by the new laws on municipalities. The justification for these changes has been the prevention of local government debt and more efficient national asset management.