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Challenges of the Implementation of the European Charter of Local Self-Government in the Hungarian Legislation

ISTVAN HOFFMAN

Abstract The article reviews the changing approach on the nature of local governance in Hungary. During the Democratic Transition the evolvement of the Hungarian municipal system was based on the paradigm and approach of the European Charter of Local Government. Thus one of the most autonomous local government system of Europe evolved in Hungary. Although the municipal reforms were basically successful, several dysfunctional phenomena could be observed and the request for the municipal reforms was strong from the late 1990s in Hungary. The new constitution of Hungary, the Fundamental Law introduced a new model. The approach of the local governance has been transformed: the autonomy of the municipalities have been limited. Thus the autonomous nature of the Hungarian model changed and new challenges have appeared in the field of the implementation of the regulation of the Charter.

Keywords: • European Charter of Local Self-Government • centralisation • municipal system • local government • paradigm-shift • Hungary

CORRESPONDENCE ADDRESS: Istvan Hoffman, Ph.D., Associate professor, Eotvos Lorand University, Faculty of Law, H-1053, Budapest, Egyetem ter, 1-3, Hungary, email: hoffman.istvan@ajk.elte.hu.

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1 Introduction and methods

The Hungarian regulation on local governance has a long tradition. These tradition was one of the foundations of the local governance reforms during the Democratic Transition after 1989/1990. These reforms were strongly influenced by the European Charter of Local Self-Government (hereinafter: Charter), as well. Thus the Hungarian municipal system is partly based on the regulation of the Charter and it was clear in the early 1990s that Hungary would ratify the Charter. Although the Hungarian accession to the Charter was signed in 1994 the ratification was fulfilled in 1997 (by the Act XV of 1997 of the Hungarian Parliament). Hungary was one of the first states which ratified the Additional Protocol to Charter (it was ratified by the Act XXVI of 2010).

The analysis of the relation of the Hungarian municipal system and the regulation of the Charter became a very current topic after the Hungarian local government reforms in 2011-2014. The former system which was based on the autonomist model of the Charter transformed significantly: the Hungarian municipal system was recentralised, and the responsibilities of the central government have been strengthened. These reforms were strongly criticised by the Monitoring Committee of the Charter. Therefore the analysis of the implementation of the Charter could be very interesting.

The primary method of the review is jurisprudential, but the effects of the regulation will also be partly analysed. Because of the paradigm shift of the Hungarian legislation, the analysis is based on the comparison of the Hungarian municipal legislation of the period from 1989/90-2010 and the period after 2010. By these methods the challenges on the municipal system and the answers of the Hungarian legislation could be observed. Firstly the challenges of the Democratic Transition will be reviewed and secondly the transformation of the municipal system will be analysed.

2 'This is the beginning of a beautiful friendship' – the Democratic Transition and the implementation of the Charter

Hungary has a long tradition of local self-governance but the former municipal system was abolished after the World War II and a Soviet-type system was established. This Soviet-type system became to transform slowly and several self-government element evolved – especially in the 1970s and in the 1980s (Verebélyi, 1987: 108-112). In 1990 a new, local government system was established by the Amendment of the Constitution and by the adoption of the Act LXV of 1990 on the Local Self-Governments (hereinafter: Ötv). The evolvement of the new local-government system was strongly influenced by the Charter. The standards of a modern, democratic municipal system has been defined obviously by the Charter, thus this document was an exemplary for the Hungarian municipal

reforms (Marcou & Verebélyi, 1993: 224-232). Thus a very broad municipal autonomy was institutionalised by the Amendment of the Constitution. The Article 44/A defined the 'fundamental rights' of the local governments which have been guaranteed by the Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter: Constitution). These 'fundamental right' should be protected by the Constitutional Court and by the courts. The municipal structure was regulated by the Constitution, because the Article 41 of the Constitution defined the municipal units (communities, towns, capital and its districts and the counties). Therefore a very autonomous model evolved in Hungary which was based on the concept of 'inherent rights'.[1] This approach was strengthened by the definition of the subject to right to local self-government. The article 42 of the Constitution stated that the subject to this right is the community of the eligible voters of the municipalities. Thus the Hungarian regulation on the subject of the right to local self-governance was consistent with the model of the Additional Protocol of the Charter, thus Hungary was one of the first European state which ratified the Protocol.

The scope of the self-governance was defined by a general clause. The article 42 of the Constitution stated, that '[l]ocal government refers to independent, democratic management of local affairs and the exercise of local public authority in the interests of the local population'. The concept of 'local affairs' was interpreted by the paragraph 2 section 1 of the Ötv as 'local public affairs'. The autonomous nature of the Hungarian model was strengthened by another general regulations of the Ötv. The principle of *subsidiarity* prevailed, the priority of the municipal responsibility in the field of local public affairs. Thus the paragraph 2 of section 6 of Ötv stated, that only '[u]nder special circumstances, a public affair may be delegated to the powers and responsibilities of another organization by an act of Parliament.' The new, democratic municipal system was a two-tier, but local-level centered one. The local-centered nature of the Hungarian local government system was strengthened by the system of voluntary inter-municipal associations. Therefore, the introduction of a compulsory inter-municipal association system was very difficult (Verebélyi, 1999: 30-36), almost impossible, due to the need for a broad political consensus. The inter-municipal system of the Ötv was based on voluntary cooperation. The number of service provider associations was only 120 in 1992. The joined municipal administrations decreased in these years: the number of common municipal clerks was 529 in 1991, 499 in 1994, and only 260 administrative inter-municipal associations were established until 1994. The lack of intercommunal cooperation, the fragmented spatial structure, and the weak, subsidiary intermediate level public service provider role of the county local governments resulted in significant service delivery dysfunctions. The local self-governments – especially the small villages which were the majority of the Hungarian municipalities – were not able to perform a significant part of the municipal tasks. Thus the regulation on inter-municipal associations was changed in 1997. Its rules were originally kept very

scarce to secure a great organizational freedom for municipalities in this field. New, additional state subsidies were introduced to accelerate the formation of voluntary inter-municipal associations after the end of the 1990s (Balázs, 2014: 428). These regulation was consistent to the paradigm and regulation of the Charter: the municipal concentration was based on voluntary associations.

The structure of municipal administration was transformed. The new structure – the municipalities have the freedom of administration within the framework of the central regulation – was based on the decisive role of the councils (in communities, towns and in the districts of the capital it was called *representative body – képviselő-testület* – and in the unitary authorities, counties and the capital city it was called *assembly – közgyűlés).* The administrative body of the municipalities had a dual leadership. The political leader of the administrative body was the *mayor*. The administrative body, the so called *mayor's office (polgármesteri hivatal)* had a professional leader: the municipal clerk *(jegyző)* should have legal or administrative qualifications and practice.

The right to municipal property was recognized by the paragraph 2 article 12 of the Constitution. The municipalities could introduce local taxes but the framework of the local taxation (the types of the taxes and their minimum and maximum) was defined by the Act C of 1990 on Local Taxes (Péteri, 1993: 112-113). The financial status of the municipalities transformed just partially. The broad financial autonomy was just party regulated by the legislation: the act on the municipal bankruptcy was adopted in 1996 and in the 2000s the system of state subsidies were partially reformed (Fábián, 2017: 85).

The relation between the central and local government transformed radically, as well. The regional (and later the county-level) agencies of the central government had only a weak legal control on the decision and operation of the municipal bodies. These agencies could not quash or even suspend the execution of the decisions: if they found them illegal, then they could initiate the process of the Constitutional Court or the courts which have the right to quash the municipal decisions.[2] Therefore a very autonomous and democratic municipal system was established during the Hungarian Democratic Transition (Soós & Kákai, 2011: 547-548).

Thus the Charter was an unequivocal example for the municipal regulation of the Democratic Transition. The Hungarian regulation was based on the general powers competency model of the Charter, the principle of the subsidiarity prevailed, the organization of the local governments were council-centered and the economic rights of the municipalities were recognized.

Thus Hungary accessed to the Charter in 1994 and the Charter was ratified by the Hungarian Parliament in 1997. Because the Charter was the main example of the

local government reforms, it was undertaken by Hungary in 1994 that the municipal legislation has been bound by every article of the Part I of the Charter.

3 The time of (re)centralization – the municipal reforms after 2011 and their challenges on the implementation of the Charter

As it has been mentioned earlier the Hungarian municipal reforms were basically successful, but several dysfunctional phenomena could be observed. The spatial structure of the Hungarian municipal system was very fragmented and the economy of scale was corrected just partially by the system of the voluntary inter-municipal association after the reforms of the late 1990s and early 2000s. It was clear, that several reforms are required to improve the municipal system. But the amendment of the municipal code required a qualified majority in the Parliament which could be assured very difficultly in the late 1990s and in the 2000s. In 2010 the governing parties had a two-third majority in the Parliament, thus the reform bills could be passed by the Parliament. The Constitution of the Democratic Transition – which was formally the amendment of the former Constitution – was replaced by a new Constitution, the Fundamental Law of Hungary (published on April 25th 2011) (hereinafter: Fundamental Law). The new Constitution entered into force on January 1st 2012. by which the constitutional status of the Hungarian municipalities were transformed significantly. The municipalities are institutionalized by the Fundamental Law of Hungary. An independent title (‘Local Governments’) of the Fundamental Law contains the constitutional rules on them. This title contains 5 articles. Although the new regulation is based on the concept of the 'local public affairs' – in accordance with the Article 3 of the Charter. Although the concept of local governance have not changed by the Fundamental Law, several important element of the regulation transformed significantly. The title on local self-governments do not define the municipal entities. Formerly it was regulated by the Constitution that the local governance is a right of the community of the voters of the given municipal entities. Now these rules can't be found in the Fundamental Law. Therefore the types and tiers of the municipalities and the subject of the self-governance can be defined by the (cardinal) act on local self-governments.

The most important transformation of the new Fundamental Law is a paradigm shift on the concept of the nature of self-governance. The self-governance was interpreted by the former Constitution as a fundamental right of the local and regional communities. The main competences and liberties of the local self-governments were interpreted as a 'fundamental rights'. It was highlighted that these municipal rights were not equal to the fundamental rights of the persons, but it was clear, that the Constitution of the Democratic Transition was based on the concept of inherent rights (Bodnár & Dezső, 2010: 220-222). These concept has been transformed by the Fundamental Law. The article 32 of the Fundamental Law contains the major municipal competences. These competences are not

defined as 'fundamental municipal rights', and it is highlighted by the new regulation, that the municipalities could perform these competences only 'within the framework of an act'. Thus the former paradigm – which could be interpreted as an 'autonomous model' – transformed into a model which could be interpreted as an 'integrated model' (after the classification of Kjellberg, 1995). This approach is highlighted by the paragraph 1 article 34 of the Fundamental Law, which states that the '[l]ocal governments and state organs shall cooperate to achieve community goals.' The legal protection of the local government has been weakened, as well: because the municipalities do not have fundamental right they cannot file constitutional complaint against the legislation by which their competences are – perhaps not constitutionally – restricted.[3]

Similarly, it is permitted by the Fundamental Law, that obligatory inter-municipal associations should be established by an Act of Parliament. Such a concentrated model was evolved in the field of the municipal administration: the administration of the small Hungarian municipalities were merged into the *common municipal offices* (Hoffman et al., 2016: 464-465).

The integrated approach is mirrored by the definition of the Fundamental Law on municipal asset. The municipal asset is practically a 'purpose fund': if the municipal tasks are changing, the municipal asset could be transferred to the new body (responsible for the task). Between 2012 and 2017 important municipal assets have been nationalized: for example the former municipal hospitals, residential social care homes, the municipal elementary schools, vocational schools and grammar schools were partly or fully nationalized and maintained by the central government and by its agencies (Szilágyi, 2016: 252-256). The financial autonomy of the municipalities have been weakened by other constitutional regulations. In principle the municipal borrowing requires government permission and restrictive regulation on the deficit of the municipal budget has been introduced, as well.

The supervision of the Hungarian local self-governments have been transformed in 2012: the former legal control of the municipalities became a legal supervision. The county government offices have stronger competences in the field of the control of the municipal decisions (Nagy, 2017: 30-31).

Thus the concept of the local governments have been transformed after 2012. A relatively wide regulatory freedom on the municipal law has been allowed by the new constitutional regulation. The basic structure of the municipal law has not changed. There is a cardinal Act on the municipalities, but a new Act was passed after the publication of the Fundamental Law. The new Municipal Code is the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary *(Magyarország helyi önkormányzatairól szóló 2011. évi CLXXXIX. törvény* – hereinafter Mötv). As part of the transformation of the regulation on municipal system the subject of

the local governance and the type of the municipalities are defined by the Mötv and not by the Fundamental Law. It is defined by the section 2 of the Mötv that the local governance is a right of the voters of the communities and the counties. Thus the two-tier municipal system has remained: the community and the county levels have been institutionalized. Therefore former constitutional rules are regulated now by the Mötv.

The municipal model based on the general powers of the local entities transformed partially. Now the second tier municipalities, the county governments have not practically general powers. After the regulation of the section 27 of the Mötv the regional development, the spatial planning, the rural development and several coordination tasks defined by the Act of the Parliament belong to the competences of the counties (Hoffman, 2014: 405-406).

Thus the characteristic of the new municipal system is a *centralized one:* the provision of the public services have been centralized, the supervision competences of the central government and its agencies have been strengthened and the municipal administration has been concentrated (Szente, 2013: 178-180).

5 Conclusions

The Hungarian regulation on the constitutional and legal foundation for local self-government is based on the article 2 of the Charter. The new constitution of Hungary, the Fundamental Law have a title on the status of the local self-government. The major rules on municipalities are defined by an independent Municipal Code, by the Mötv which is a cardinal act (an act should be passed by the qualified – two-third – majority of the Parliament). The regulation on mandatory municipal tasks should be regulated by Acts of the Parliament. Although the Hungarian regulation is in accordance with the article 2 of the Charter but it should be highlighted that the approach was transformed by the new Constitution. The types of the municipalities and the subject of the right to local governance is now defined by the Mötv and not by the Constitution, thus the constitutional defense of the municipal system has been weakened. Thus the guarantees of the local governance have been weakened by the new constitutional regulations and by the rules of the Municipal Code (Mötv) (Nagy, 2017: 33).

The new municipal regulation was strongly criticized by the Monitoring Committee of the Charter. The revision of the new municipal regulation was recommended by the Recommendation 341 (2013) of the Congress of Local and Regional Authorities[4]. The recommendation stated that the constitutional guarantees of the local governance were significantly weakened, the financial autonomy and the judicial protection of the rights of the Hungarian municipalities is not enough sufficient, the competences of the counties should be strengthened,

and the consultation between the central and local government should be not only formal as it has been institutionalized by the new rules.

Although the rules of the new regulation are basically consistent with the Charter, the new regulation could be interpreted as an actual backward. The role of the municipalities have been significantly weakened which can be observed by the municipal expenditures. In 2010 the municipal expenditures were 12,5% of the GDP and in 2017 only 6,3% (in the EU-28 in 2010 the municipal expenditures were 11,9% and in 2017 10,7% of the GDP) (see Figure 1).

Thus the main challenge of the recent municipal legislation in Hungary the centralization of the local administration. The municipalities should find their place and role in the new, strongly centralized Hungarian public administration.

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Notes:

[1] The concept of the inherent rights was based on the interpretation of Thomas Jefferson. According to Jefferson, the right to self-governance could be interpreted as a collective right of the local communities (Bowman & Kearney, 2014: 230-234).

[2] The municipal decrees could be quashed by the Constitutional Court and the resolutions of the municipal bodies could be quashed by the courts (from 1991 to 1999 by the town courts of the county seat towns and after 1999 by the county courts).

[3] The constitutional complaint can be filed if the fundamental rights of the complainant are offended. Because the municipalities have not fundamental rights just competences guaranteed by the Fundamental Law, they could not successfully file this complaint. See Res. No. 3105/2014 (published on April 17th) of the Constitutional Court of Hungary.

[4] The Recommendation can be found at https://rm.coe.int/168071910d#_Toc371513645.

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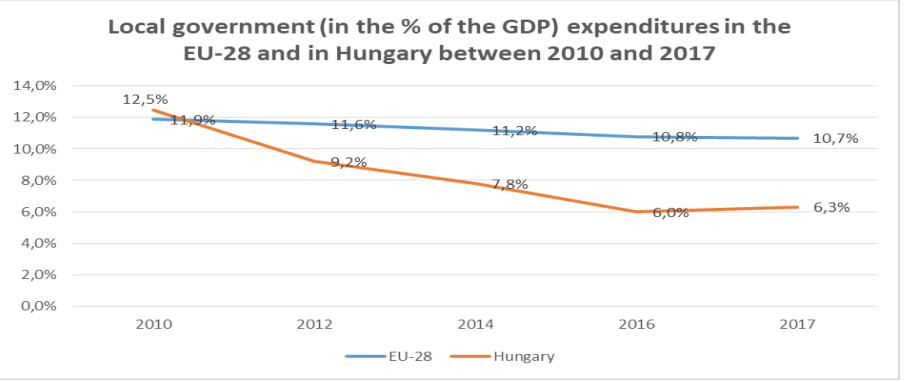
Appendix

Figure 1: Local government (in the % of the GDP) expenditures in the EU-28 and in Hungary between 2010 and 2017



Source: Eurostat, available at: http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00023&language=en (April 15, 2018).