

# LOCAL AND REGIONAL DEMOCRACY IN HUNGARY: RECENT DEVELOPMENT

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## *Abstract*

This article explores the evolution of the local and regional democracy in Hungary particularly by the 2011's Constitution and with an analysis of local democracy in light of the European Charter on Local Self-Government. In the frame of the local government reform in Hungary, the Country appears to be engaged in a process of consolidating power at central government level to the detriment of the local authorities, which are portrayed as costly and inefficient. It follows the need of solutions conducive to local self-government, which will provide local and regional authorities with the requisite human and material resources.

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### 1. Political context and development

In the Hungarian parliamentary system established by the Constitution (*Magyarország Alaptörvénye*) of 25 April 2011<sup>1</sup>, the Government is the exclusive holder of executive authority and is answerable for it to the Parliament (*Országgyűlés*).

The tasks and powers of the executive are defined by default<sup>2</sup>. The Constitution lays down the competences of the other organs in concrete and exhaustive terms but, where the Government is concerned, assigns only general tasks of management and organization as well as providing for the sharing of competences for tasks to be carried out jointly with other organs.

The new Fundamental Law expressly stipulates that the functioning of the Hungarian State is based on the principle of the separation of powers. Article 15 of the Basic Law identifies the government as the general body of executive power whose responsibilities and competences includes all matters which are not expressly delegated by the Fundamental Law or by other legislation.

The Fundamental Law contains the principle of the separation of the state powers and identifies all those organs which are endowed with those powers; therefore in Article 15 of the Constitution, it is expressly stipulated that the government is the general organ of the executive authority.

<sup>1</sup> See A. Arato, G. Halmai, J. Kis, *Opinion on the Fundamental Law of Hungary (Amicus Brief)*, in G.A. Tóth (eds.), *Constitution for a Disunited Nation. On Hungary's 2011 Fundamental Law* (2012); papers of Winter Trento European Seminar of 15-16 December 2011, *The new Constitution of Hungary (2012): constitutional identity and conditionality in question*, in: <http://www.jus.unitn.it/services/arc/2011/1215/home.html>.

<sup>2</sup> Article 15, par. 1, of the Fundamental Law: "The Government shall be the supreme organ of the executive branch, whose activity and competence shall cover all those that are not delegated explicitly to another organ by the Fundamental Law or by law. The Government shall be responsible to the Parliament".

The Fundamental Law does not determine the different branches of state authority and names only one of them, stipulating that “the Government shall be the general body of executive power”. In other words, the Fundamental Law does not assign legislative power to a given organ but lists the prerogatives for drawing up and revising the Constitution and adopting laws among the competences of the Parliament, the supreme body of popular representation. As for the courts, the Fundamental Law stipulates that they “shall exercise judicial activity” but does not bestow upon them the capacity of an autonomous branch of state authority<sup>3</sup>.

A monitoring on regional democracy in Hungary by Council of Europe resulted in Recommendation 116 (2002) by European Congress of Local and Regional Authorities (ECLRA). In that Recommendation<sup>4</sup>, the Congress, having noted that provision had been made for regionalization in government programs, regretted the fact that Hungary’s highly complex system of public administration and territorial authorities had not completely fulfilled the requirements of regional democracy in the light of the principle of subsidiarity.

It recommended a clear definition of the allocation of responsibilities and tasks between the State, the regional structures, towns and municipalities, and also of the origins of competences to be entrusted to the regional level.

The Congress asked Hungary to clearly opt for the creation of only one regional level and to create, on this basis, regions catering for the needs of a democratic society and economic development, and to equip the regions with proper competences, autonomous elected bodies and their own and sufficient budgetary resources, according to the criteria outlined in the draft European Charter of Regional Self-Government.

Over ten years from the Recommendation 116 (2002) there is a transition to regional self-government is no longer in the scheme of things. On the contrary, competences from local and

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<sup>3</sup> See S. Benvenuti, *La riforma del sistema giudiziario ungherese tra recrudescenze autoritarie e governance europea*, in “Nomos” 3 (2012); J. Petretei, *Le pouvoir exécutif dans la nouvelle Loi fondamentale de la Hongrie*, in “Revue d’études politiques et constitutionnelles”, 1 (2012) in: <http://www.est-europa.univ-pau.fr/images/archives/2012-Hongrie/jozsef-petretei.pdf> and.

<sup>4</sup> See <http://wcd.coe.int/ViewDoc.jsp?id=888249&Site=COE>.

regional authorities have been moved to the central government level.

Particularly, the Hungarian constitutional process of 2011 was considered, from more interpretations, insufficiently negotiated and participated. The European Commission for Democracy through Law (better known as Venice Commission, used hereafter) criticized the lack of transparency in the drafting and approval process<sup>5</sup> and the doubts about the EU compatibility of the new text were discussed by the European Parliament which passed a resolution asking Hungary to adapt the text to a set of common principles and regulations of the European constitutional heritage<sup>6</sup>.

The Venice Commission flagged up Articles 31 to 35 of the new Constitution, concerning local authorities, expressing concern in particular over the absence of any reference to the principle of local self-government.

Hungary's 386 MPs were elected in 2010 for four years, under the electoral law applicable at that time, in a mixed ballot combining majority voting and proportional representation. 176 deputies were elected in 176 single-seat constituencies, 146 deputies were elected in territorial constituencies (representing the counties and the Capital) and 64 were elected from national lists known as compensation lists presented by the parties.

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<sup>5</sup> Venice Commission, *Opinion on the New Constitution of Hungary*, n. 621/2011, 20 June 2011, in: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e); Venice Commission, *Opinion on Three Legal Question Arising in the Process of Drafting the New Constitution of Hungary*, n. 614/2011, 28 March 2011, in: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)001-e). See: J. KIS, *From the 1989 Constitution to the 2011 Fundamental Law*, in G.A. TÓTH (eds.), *Constitution for a Disunited Nation*, cit. at 1; Z. FLECK *et al.*, *Opinion on the Fundamental Law of Hungary*, 2011, in: <http://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf>.

<sup>6</sup> If the examination of the provisions of a EU member State Constitution not within the competence of the European Parliament, as it is explicitly noted in the resolution, the adoption of a new fundamental text relates to a matter of "common values" to member EU Countries that deserves the attention of the organ Union representative. See European Parliament, Resolution n. P7\_TA(2011)0315, 5 July 2011, in: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2011-0315+0+DOC+PDF+V0//EN>.

The Parliamentary elections of April 2010 were run in two rounds, yielding 263 seats for the *Fidesz-KDNP* (*Kereszténydemokrata Néppárt*, Christian Democratic People's Party). The left alliance Unity (*Összefogás*) led by MSZP (*Magyar Szocialista Párt*, Hungarian Socialist Party) won 59 seats, while *Jobbik* (*Jobbik Magyarországért Mozgalom*, Movement for a Better Hungary), the national-conservative party founded in 2003, entered Parliament for the first time with 47 seats. A recently created party, the LMP (left-wing ecologist party: *Lehet Más a Politika*, Politics Can Be Different) is represented with 16 seats. Accordingly, *Fidesz* has a majority accounting for 68% of the seats, more than two thirds, enabling it to implement its program and also to transform Hungary's institutions via a unilaterally revision of the Constitution without any structural interaction with the political opposition, and even less so with wider society in terms of public debate<sup>7</sup>.

A new electoral law was passed with the Act n. CCIII of 23 December 2011 by Parliament and came into force on 1 January 2012, replacing the 1989's Act n. XXXIV on elections of members of Parliament. This text provides for a radical overhaul of the voting system for parliamentary elections, which will now take the form of a single-round ballot. The number of deputies will be substantially reduced, from 386 to 199. This change in the voting system was accompanied by a major redrawing of electoral boundaries. Holding local office at the same time as a deputy's seat, currently fairly widespread after being previously prohibited in the 1990's, will now be impossible. The Hungarian Parliament is a single-chamber Parliament and the definitely local interests will be taken into account in future by the legislator. The associations of local elected representatives (of which there are a great many in Hungary) will have to be particularly active and effective in putting across their viewpoint<sup>8</sup>.

The Venice Commission expressed a positive opinion on the new electoral Act but also recommend some changes, essentially to ensure that national minority voters are not limited in their choice and to include clearer procedural guidelines and

<sup>7</sup> See P. Blokker, *New Democracies in Crisis?* (2015) 166.

<sup>8</sup> See: F.R. Dau, *L'esperienza costituzionale ungherese e l'equilibrio tra democrazia diretta e principio rappresentativo. Brevi note a margine dell'approvazione del nuovo testo costituzionale dell'aprile 2011*, in <http://www.federalismi.it> (2011) 24.

formulas for the delimitation of electoral constituencies, without defining the constituencies themselves in the Act. The actual delimitations should be done by an independent commission<sup>9</sup>.

The last Hungarian parliamentary election took place in April 2014 and it was the first vote according to the new Constitution of Hungary which went into force on 1 January 2012 and in base of new electoral law. The result was a victory for *Fidesz-KDNP* alliance with an initial two-thirds majority (133 deputies) subsequently lost for passage of some deputies to other parliamentary groups. Indeed, for example, lastly, the seventh constitutional amendment on proposal to bar migrants from being resettled in the country falls just short of two-thirds majority needed<sup>10</sup>. The radical and populist party *Jobbik* is considered as a political winner with his more than one million votes (20,54% of the total)<sup>11</sup>. In contradiction to this phenomenon the Unity coalition which is divided in five left parties (Hungarian Socialist Party, Together 2014, Democratic Coalition, Dialogue for Hungary and Hungarian Liberal Party) can be determined as a political loser. After the precedent election, just now at second opportunity the socialist and liberal-democratic parties didn't able to get votes from the governing party-coalition, which has important influence for the future of opposition<sup>12</sup>.

## 2. Constitutional and legislative foundations of local self-government in Hungary

Thanks to its exceptionally large majority in Parliament, the *Fidesz* has had Parliament pass a new Constitution (the Fundamental Law) which entered into force on 1 January 2012.

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<sup>9</sup> Venice Commission, *Joint Opinion on the Act on the elections of members of Parliament of Hungary*, n. 662/2012, 18 June 2012, in: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)012-e).

<sup>10</sup> See C. Kroeth, *Hungarian MPs reject Orbán's anti-migrant push*, in "politico.eu", 8 November 2016: <http://www.politico.eu/article/hungarian-mps-reject-viktor-orbans-anti-migrant-push/>.

<sup>11</sup> See F. Mandák, *Jobbik on the way to become a people's party?*, in *Dir. Pubbl. Comp. Eur.* 3, 673-693 (2015).

<sup>12</sup> See K. Egresi, *The Hungarian parliamentary election: juridical and political consequences*, in "Nomos" 3, 909-935 (2014).

Within a few months of taking power, the new majority secured the passing of fifty or so laws and in accordance with the new Fundamental Law, many of these reforms are carried out via implementing laws requiring a two-thirds majority. Inversely, a fresh two-thirds majority is required to amend these texts.

Actually in Hungary there is a context of reforms<sup>13</sup>, many of which are still underway, particularly in the area of relations between the State and local and regional government<sup>14</sup>.

The Cardinal Act on Local Government n. CLXXXIX of 21 December 2011, with semi-constitutional nature, has made sweeping changes to the pattern of administrative organization in Hungary and requires implementing texts currently in preparation for its concrete application. The Interior Ministry departments concerned believe that it will take one or two years to implement the local government reform.

In particular, discussion on the fundamental issue of local government funding is still ongoing. This question will call for close scrutiny in the coming years, in a context of economic crisis, falling tax revenues and increased social needs. The equalizing of resources and fiscal autonomy will be key challenges for the future.

When the communist regime collapsed in 1990, Hungary opted for an administrative and political organization that left an important role for local government, seen as an essential outlet for democracy. Hungary's local structures are towns<sup>15</sup> (*városok*) and municipalities (*községek*), counties (*megyék*) and Budapest, the Capital (*f város*), and its districts (*kerületek*); the structures governed by common law are the towns, municipalities and 19 counties.

A sizeable proportion of the powers exercised by the State at that time were entrusted to local authorities and to the

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<sup>13</sup> See the program of reforms published in April 2012: [http://ec.europa.eu/europe2020/pdf/nd/nrp2012\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2012_hungary_en.pdf).

<sup>14</sup> See Z. Pogátsa, *Regionalisation, the Powers of Subnational Entities in Hungary and the Central European Region*, in *Dir. Pubbl. Comp. Eur.*, 2, 782-793 (2004).

<sup>15</sup> There are also 23 towns with county rights (*megyei jogú városok*), sometimes known as "urban counties" in English (although there is no such term in Hungarian). The local authorities of these towns have extended powers, but these towns belong to the territory of the respective county instead of being independent territorial units.

municipalities in particular. According to the previous regulation, municipalities, in specific terms, were given responsibility for primary teaching, water supply and wastewater services, road maintenance, local public transport, local development, environmental protection, land use, fire protection and protection of minority rights, which are all competences that are vital to citizens' everyday lives.

It is noteworthy that electoral legislation provides for separate elections for the mayor and the municipal council, which may result in political cohabitation at local level. Supervision of acts is exercised by the town clerk who is employed by the municipality as head of administration. In the event of finding an unlawful decision which the municipal council or mayor refuses to amend, the town clerk refers the matter to the Office of Public Administration. The town clerk has a formal obligation to indicate if s/he has an objection against the legality of a municipal act. The legal supervision over local governments is the exclusive power of the county governmental offices (earlier the county administrative offices).

A high proportion of Hungarians live in towns within a special institutional framework, as 60% of the population live in the 139 towns whose population numbers over 10.000 inhabitants. Towns with county rights have a specific status combining the prerogatives of a municipality and those of a county. They enjoyed strong expansion in the 1990s. Their inhabitants vote for their council but not for the council of the county in which they are located. Budapest, the Capital of Hungary, is home to around one-fifth of Hungary's inhabitants. It is divided into 23 districts.

Local elections are held in the autumn following the parliamentary elections. Accordingly, the last local elections took place in October 2014. The local electoral legislation - the Act n. L of 14 June 2010 on the Election of Municipal Representatives and Mayors - was amended by the newly elected parliamentary majority, making it more difficult for smaller parties to participate.

The voting system used in local elections depends on the size of the municipality. For municipalities with over 10.000 inhabitants, a parallel mixed ballot geared to proportional representation is used. This is a system combining a majority ballot for one seat per constituency and a ballot for the allocation



of compensatory seats on the basis of the remainders of votes that were not used for the allocation of constituency seats.

The compensatory seats are either those, which could not be allocated by electoral quotient in the constituencies or a predetermined number of seats reserved exclusively for compensation. The constituencies have been drawn up in such a way as to divide up the territory of the locality while respecting ethnic, religious and social diversity.

The composition of the municipal councils varies according to the size of localities<sup>16</sup> and for municipalities with less than 10.000 habitants; a combination method is used, allowing voters to compose their own list, placing in order as many candidates as there are seats. This means that they may vote for candidates from the same party or choose candidates from opposing parties<sup>17</sup>.

To manage European funding, Hungary has set up 7 planning and statistical regions (*tervezési-statisztikai régió*) for development purposes which are merely administrative structures serving the purpose of management<sup>18</sup>. After 2012 the locally

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<sup>16</sup> Between 10.000 and 25.000 inhabitants: 8 members elected by a majority single-seat constituency vote and 3 members taken from compensation lists; up to 50.000 inhabitants: 10 members elected by a majority single-seat constituency vote and 4 members taken from compensation lists; up to 75.000 inhabitants: 12 members elected by a majority single-seat constituency vote and 5 members taken from compensation lists; up to 100.000 habitants: 14 members elected by a majority single-seat constituency vote and 6 members taken from compensation lists; over 100.000 inhabitants: one additional constituency must be defined for every additional 10.000 inhabitants and the number of members elected from compensation lists increases by one for every additional 25.000 inhabitants.

<sup>17</sup> The candidates elected are those having received the highest number of votes: up to 100 inhabitants: 2 members; up to 1.000 inhabitants: 4 members; up to 5.000 inhabitants: 6 members; up to 10.000 inhabitants: 8 members.

<sup>18</sup> These are the NUTS 2, namely the basic regions for the application of regional policies: the Nomenclature of Territorial Units for Statistics or Nomenclature of Units for Territorial Statistics (NUTS) is a geocode standard for referencing the subdivisions of Countries for statistical purposes. For each EU member Country, a hierarchy of three NUTS levels is established by Eurostat; the subdivisions in some levels do not necessarily correspond to administrative divisions within the country. See G. Soós, *Hungary*, in M.J. Goldsmith, E.C. Page (eds.), *Changing Government Relations in Europe: From Localism to Intergovernmentalism*, (2010) 113-114. In 2014, Hungary was the second biggest net recipient of EU funds after Poland with 6,620 milliard Euro, drawing about 6,57% of its GDP from the EU, see: [http://europa.eu/european-union/about-eu/countries/member-countries/hungary\\_it](http://europa.eu/european-union/about-eu/countries/member-countries/hungary_it).

elected bodies' role increased in development instead of the previous administrative system because the Basic Law merely mentions the managing role of local government regarding public affairs (Articles 31 and 32).

The other local level (which corresponds to a regional level according to the Council of Europe's definition) is the county, which, up to 1990, constituted the foundation of territorial administration in Hungary (since the 11<sup>th</sup> Century). Despite the counties before and after 1945 hardly can be compared, they played a central role in Hungary in the ancient Austrian-Hungarian Empire and in the communist era but became somewhat less important after 1990. We can remember that, in the past, counties were competent in public health, but this is not the case anymore, as they are under the responsibility of the central government since 2011.

The county council is elected by direct universal suffrage, from lists presented by political parties or associations, and its members elect the head of the council's executive. As for municipalities, the head of administration is designated and remunerated by the county<sup>19</sup>.

Hungary has 19 counties and while it did not call these structures into question, the Cardinal Act on Local Government n. CLXXXIX of 21 December 2011 did make substantial changes to their competences and the division of powers between local authorities and the State (see *infra*).

### **3. The sphere of local self-government in 2011's Constitution and recent developments**

The principle of local self-government was present in the old Hungarian Constitution and adequately guaranteed by legislative texts. At that time, local self-government was regarded as one of the foundation stones of the Hungarian democratic system, which was intended to be two-tier.

The amended Constitution of 1949 dedicates Chapter IX Local Governments, in which article 42 on the "Right to local government" states: "Eligible voters of the communities, cities, the

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<sup>19</sup> See M. Mazza, *Il livello di governo locale "intermedio" in Ungheria*, in *Ist. del federalismo*, 3-4, 879-906 (2013)

Capital and its districts, and the counties have the right to local government. Local government refers to independent, democratic management of local affairs and the exercise of local public authority in the interest of the local population<sup>20</sup>.

The situation is very different in 2012. The new Hungarian Constitution takes a very dualistic approach: as the Venice Commission has pointed out, it contains no reference to international legal texts, including international instruments of human rights protection. It does not make any reference, therefore, to the Charter, notwithstanding the fact that it forms part of Hungary's international obligations. The Constitutional Court has had to interpret and apply the Charter on seven occasions; but in none of its decisions has it found a contradiction between national legislation and the text of the Charter.

When examining the Fundamental Law of Hungary, the Venice Commission pointed to the lack of references to local self-government in the new text of the Constitution: "Article 31 (1) of the new Constitution stipulates that "[I]n Hungary local governments shall be established to administer public affairs and exercise public power at a local level"<sup>21</sup>. Nevertheless, no explicit mention is made of the principle of local self-government<sup>22</sup>. The Venice Commission recalls that the European Charter of Local Self-Government (ECLS), which is binding for Hungary, requires compliance with a minimum number of principles that form a European foundation of local democracy, including as a starting point the principle of local self-government. According to Article 2 of the ECLS, "the principle of local self-government shall be recognized in domestic legislation, and where practicable in the constitution". It is recommended that the cardinal law entrusted with the definition of local governments rules duly stipulate this and other important key principles laid down in the ECLS: the principle of subsidiarity, the principle of financial autonomy and that of adequacy between resources and competences, the legal protection of local self-government, the limits of the

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<sup>20</sup> See P. Blokker, *New Democracies in Crisis?*, cit. at 7, 122.

<sup>21</sup> See

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e), §116.

<sup>22</sup> See A. Patyi, *Local Government*, in L. Csink, B. Schanda, A.Z. Varga (eds.), *The Basic Law of Hungary: A First Commentary* 219 (2012).

administrative supervision of local authorities. Adequate guarantees should be provided for their effective implementation”.

The Constitutional Court emphasized that Article 31 of the Fundamental Law provides that Hungary should establish local authorities to administer public affairs and exercise public powers at local level. He further noted, with reference to Ruling 22/2012, that the Constitutional Court might refer to rulings made before the entry into force of the new Fundamental Law “related to those basic values, human rights and freedoms, constitutional institutions, which has not been modified basically”. Most important to underline that only a consistent reference to the principle of local self-governance satisfies the legal obligation undertaken by Hungary under the means of Article 2 of the ECLS. In Addition the Article 31 of the Fundamental Law, while it does indeed guarantee the existence of local structures, does not provide any guarantees as to the competences and autonomy of these local authorities.

Particularly the Constitutional Court pointed out that the protection afforded to local authorities by Article 32 of the Fundamental Law, setting out the competences of those authorities, and stipulated in further detail by the organic law, provided a guarantee of that principle of autonomy. Article 32 also stipulates that those competences should be exercised “within the limits of the law”, which creates a risk of undermining local self-government through legislation. However, according to the President of the Constitutional Court, this phrase must be understood as a reference to the concept of the rule of law, which declares state powers, as much as local governments, as subjects to law. Although this formulation is not in itself against the provisions of the ECLS, which itself includes such a formulation, it still does not justify such an intensive centralization of tasks and functions as took place currently in Hungary. In this respect, the author wishes to recall that the ECLS requires the promotion of values and principles, which imply to preserve a genuine local (and regional) democracy. The ongoing recentralization is a negative sign, as far as local democracy is concerned.

This prospect is made all the more worrying by the fact that the supervision of constitutionality exercised by the Constitutional Court over the legislator has been substantially reduced since an

amendment was passed in 2010 and included in the Fundamental Law of 2011. The Court may assess the constitutionality of any law, but the laws concerning the central budget, national taxes, stamp duty and contributions, customs dues and the central requirements applying to local taxes may be reviewed only in case of violation of the right to life and human dignity, personal data protection, freedom of thought, conscience and religion or rights connected to Hungarian citizenship.

The new Constitution has introduced the right of individual constitutional complaint, a fact that the Venice Commission noted with satisfaction. The institution of constitutional complaints should be modified to include a right for local authorities to lodge a complaint to the Constitutional Court as well.

After the ratification by Hungary of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority in June 2010, it expresses regret, however, that this positive step is overshadowed by the recent reforms, which led to a deterioration of the legislative framework on local and regional issues in Hungary. In particular there is an overall trend towards recentralization of competences and the weak level of protection afforded, at constitutional level, to the principle of local self-government. It underlines the fact that the local authorities in Hungary remain strongly dependent on government grants, and that the consultation procedure needs reinforcement, bringing it in line with Charter provisions on timely and appropriate consultation practices. Lastly, local authorities do not have an effective judicial protection as regards their right of recourse to courts to guarantee their rights under the Charter.

It is recommended notably that the Hungarian authorities take steps to guarantee the implementation of the principle of self-government and the financial autonomy of local and regional authorities as set out in the Charter. The recommendation also strongly encourages the Hungarian authorities to clearly define the competences of local and regional authorities and to seek solutions which will provide local and regional authorities with the requisite human and material resources. It calls on the Hungarian Government to put in place an effective consultation procedure for all matters which concern territorial authorities directly as stipulated by the Charter, and to implement effective

remedies which provide a right for representatives of local authorities to lodge a complaint to courts in order to protect their rights laid down in the Charter.

#### **4. The scheme of local self-government in Hungary**

The high level of autonomy for local authorities written into the previous Hungarian Constitution has been compromised by the new Fundamental Law and Cardinal Act n. CLXXXIX on Local Government of 21 December 2011. The difficult economic context is cited by the government, as the reason to rationalize structures and to cut local public spending.

The author understands the political will of the government to reduce the national public debt, and the measures that have been undertaken to this end. This being said, to stress that the principle of local self-government and the fundamentals of local and regional democracy, provided by the Charter which was ratified by Hungary, must not be undermined by these measures.

In the difficult economic context faced by Hungary, numerous cities are heavily indebted, and many small municipalities are struggling to exercise their powers: many of them have had to resort to state aid to balance the books. It is increasingly difficult for them to borrow money, which must be authorized by the government. Inflation remains high in sectors that have a direct impact on their budgets. And the co-funding required by structural policies is also reliant on cities and municipalities. Between 60 and 65% of local government structures are in a difficult financial situation, and between 10 and 15%, according to the figures provided by the Ministry of the Interior (20% according to the local government associations), in a critical situation.

Given the awkward financial situation for local authorities, the new government has opted for a radical solution, which entails taking direct charge of the most costly public services. Health and social care as much as education represent 86% of local government expenditure<sup>23</sup>.

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<sup>23</sup> See National Audit Office, Summary of the 2011 monitoring of local government's financial situation and the management system.

The competences related to primary education effectuated by municipalities, and the powers exercised by the counties in the health sphere were almost completely shifted to the State. Accordingly, local government will no longer exercise its most costly prerogatives now taken over by the State. The counties did lose their main responsibilities where management of the everyday lives of their communities is concerned, while preserving, in Section 7 of Act n. CLXXXIX of 2011, more general competences in the area of spatial development, regional development, spatial planning and economic development for long-term projects. The municipalities will continue to manage school buildings and facilities but will no longer be competent as regards teachers and managers of education establishments. The State will henceforth be taking the decisions, on the appointment of teachers, the opening and closing of classes, and decide on the curriculum, that is, on the content of teaching.

Local organization in Hungary currently hinges mainly on its 3.100 municipalities. As they are often very small, they lack the means to fulfill their local public services mission. There are over 1.700 municipalities with fewer than 1.000 inhabitants, one-third of the 3.100 municipalities have fewer than 500 inhabitants<sup>24</sup>. These very small municipalities are finding it even more difficult than the others to cope with the economic crisis.

To tackle this major fragmentation of municipalities, Cardinal Act n. CLXXXIX on Local Government of 2011 stipulates that the administrative structures of these small municipalities with less than 2.000 inhabitants are to be grouped together.

Further concerns include the autonomy of local authorities. This involves not least the fact that the Basic Law provides the possibility for Parliament to dissolve elected municipal councils on the grounds of a breach of the Constitution, without mediation of the Constitutional Court<sup>25</sup>. Furthermore, the Constitution provides the opportunity to “nationalize” local authorities’ property, while a new law on local government, approved by

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<sup>24</sup> See Z. Szente, *Local government in Hungary*, in A.M. Moreno Molina (ed.), *Local government in the member states of EU*, 283 ss. (2012).

<sup>25</sup> Venice Commission, *Opinion on the New Constitution of Hungary*, n. 621/2011, 20 June 2011, in: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e), 24.

Parliament in December 2011, importantly restricts and recentralizes important competences of local authorities. As stated in a report of the Assembly of European Regions, the new law on Local Self-Government substantially redefines the distribution of competences of central and local self-governments leading to a far more centralized system than the one set up in 1990<sup>26</sup>.

### **5. Institutional arrangements and devolution of powers**

The democratic transition of 1990 established an institutional system where local authorities, and municipalities in particular, held an important role. With their extensive prerogatives, local authorities could be seen, alongside the State, as the second pillar of a democracy geared to a two-tiered system.

After 1990, as the Country made its democratic transition, they were entrusted with numerous powers which they exercised either alone or by delegation from the State.

The municipalities, at the heart of local democracy, were responsible in their own right for many topics: wastewater treatment and water supply; road maintenance; local public transport; public hygiene and social welfare; primary education; local development; environmental protection; land use; fire protection; minority rights protection.

The counties had a major role in the communist era since, despite their councils not being elected, they exercised a prerogative of supervision over the municipalities. They lost a great deal of influence after 1990. It is certain that they have a long history, and their representatives proudly point out that the counties go back to the 11<sup>th</sup> Century.

However, with little in the way of powers, their authority has been further undermined by the emergence of towns with county rights (at the beginning of the 1990's), which often have a far larger budget than that of the surrounding department. The management of health services (and hospitals in particular) accounted for a large part of their budget.

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<sup>26</sup> Assembly of European Regions, *Hungary*, in: [http://www.aer.eu/fileadmin/user\\_upload/MainIssues/Interinstitutional\\_Relations/HUNGARY\\_2012.pdf](http://www.aer.eu/fileadmin/user_upload/MainIssues/Interinstitutional_Relations/HUNGARY_2012.pdf). 1 (2012).



Until January 2012, the counties were competent for: health services; specialized education services; economic development services; spatial planning; environmental protection; promotion of tourism.

One may therefore sum up the situation on the eve of the December 2011 reform by pointing out, that the local authorities consisted of municipalities enjoying substantial powers and very strong democratic legitimacy and counties with core prerogatives of health and economic development and a fairly moderate level of democratic legitimacy even though their councils were elected. But should be clarified the level of decision necessary to maintain the social institutions. Indeed, it was local competence but not their “democratic power” as the former Act on self-government told them to do so and the state budget gave money for that activity. There was really just few own decision.

The above mentioned 116 (2002) monitoring report by ECLRA of Council of Europe emphasized the strength of the municipal level and the need to establish a revitalized regional level in Hungary, possibly based on the counties which, on the scale of Hungary, could be regarded as the equivalent of regions in Europe.

Over ten years after that first report, and in the light of recent or ongoing legislative developments, is important to note that Hungary has chosen a different path, with Cardinal Act n. CLXXXIX on Local Government of December 2011 allocating tasks, previously accomplished by local authorities and which are now in favor of the central level.

The Szell Kálmán economic plan presented in March 2011 resulted in the drawing up of a program of structural reforms for Hungary for the period 2011-2014, which includes a section on local authorities. It states that local budgets are crucial to Hungary’s financial recovery since, in the system still in force in 2011, they assumed responsibility for education and health. Local authority debt doubled between 2006 and 2009, attaining 3,9% of the GDP, and an essential share of that debt must be attributed to those two sectors. Following on from that finding, Cardinal Act n. CLXXXIX on Local Government of December 2011 concentrates competences at national level.

Whereas services had been essentially provided by local authorities since 1990, the new Cardinal act entrusted the State

with two services that are key to citizens' everyday lives, namely schools and health. The new text has been applicable since 1 January 2012, with municipalities no longer being responsible for primary education and counties no longer being responsible for public health.

Beyond the financial issues and the argument for economic streamlining put forward in the explanatory memorandum to the law, is very important the role to be played by the State in ensuring egalitarian distribution of resources and services. Describing the previous distribution of powers in the areas of education and health as a source of inequalities, these powers back into the remit of state departments was a factor in progress and efficiency. The program of structural reforms of March 2011 underlines the fragmentation of health and education services in Hungary, portraying them as one of the least concentrated systems in terms of the average number of inhabitants per local authority. Accordingly, the reform plan highlights the need to align resources and powers and concludes that these tasks must be reassigned to the State.

According to the Ministry of Public Administration and Justice, the savings anticipated from these transfers of powers are considerable. This ministry argues that merging the administrations of small municipalities grouped into administrative micro-regions of at least 2.000 inhabitants would yield expected savings of 15 billion Hungarian Forint (HUF). Limiting local authority borrowing, now subject to state authorization, could, according to the estimates passed on by Parliament, cut the local finance deficit by 20 to 23 billion HUF<sup>27</sup>.

Many of the local authority representatives deplore the fact that these services are no longer handled by democratically elected authorities.

It may be said, then, that relations between the national and local levels are being redefined in Hungary. The powers of the State are highly expanding while those of local authorities are highly contracting. The two-tiered democratic system established

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<sup>27</sup> See T. Vasvári, *The deficit mechanism of the Hungarian municipalities*, in *Crisis Aftermath: Economic policy changes in the EU and its Member States*, Conference Proceedings University of Szeged, (2012) 283-305 in: <http://mpa.ub.uni-muenchen.de/40357/>.

in 1990 is undergoing a substantial overhaul which is probably not yet finished.

### **6. The status of the Capital: Budapest**

The Hungarian Capital enjoys a specific status taking account of its role and population size: one-fifth of Hungarians live in Budapest, it produces one-third of the Country's GDP and over half of foreign investments are concentrated there<sup>28</sup>. Accordingly, the Local Government Act lays down the provisions on Budapest and adapts the Hungarian administrative system to the specific circumstances of the Capital, which has two levels of administration: one central administration and 23 districts, which each have a mayor and a council.

The districts have a status and powers comparable to those of municipalities, whereas the Capital has a status similar to those of counties. There is no hierarchy between the central town hall and the districts.

The powers of Budapest City Council cover local government tasks concerning the whole Capital. This fairly broad definition is not without its problems as regards interpretation and, in certain matters the metropolitan approach is not readily taken on board, since the districts wish to conserve independent policies.

While a global vision and management do exist in the transport sector (even though major financial problems subsist), in the area of construction and land management, it is the districts which continue to lay down building norms, to the detriment of a coherent approach to the urban area. While the trade-off between the interests of the central districts (wealthy and heavily built-up) and the outlying districts less well endowed with infrastructures remains perfectible, a balance appears to have been achieved between the Town Hall of Budapest and the districts. The fact that the districts are no longer represented on Budapest City Council and that the Mayor of Budapest is elected by universal suffrage has certainly contributed to this new balance. Actually, the numerous parallel tasks and functions, and the non-hierarchical

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<sup>28</sup> See K. Keresztely, R. Kovacs, *Dossier capitales de l'Est, sous le feu des lumières*, in: [http://www.regard-est.com/home/breve\\_contenu.php?id=463](http://www.regard-est.com/home/breve_contenu.php?id=463) (2004).

relationship between the Capital City Council and the districts logically lead to a permanent rivalry between the two levels.

The Cardinal Act n. CLXXXIX on Local Government of December 2011 stipulates that the distribution of powers between the Budapest and its districts are to be specified.

Relations between the Capital and its urban district are not always totally clear. The urban district of Budapest is home to one-quarter of the Country's population, with two-thirds of that figure living within the boundaries of the Budapest.

This raises the question as to whether the urban district of Budapest has the necessary means with which to ensure concerted urban development and spatial planning that is commensurate with a regional capital. Cardinal Act of 2011 does not provide for significant improvement in this respect.

### **7. Analysis of local democracy in light of the European Charter of Local Self-Government**

The previous system of local government in place since 1990 went far in implementing the principles of subsidiarity and local self-government. The new Fundamental Law and the Cardinal Act on Local Government of 2011 are recent and many aspects of these texts had a actuation time. Some provisions have been applicable since 1 January 2012, while others will apply only in 2013 or require implementing legislation.

The principle of local self-government shall be recognized in domestic legislation, and where practicable in the constitution.

Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by Statute.

Article 31, par. 1, of the new Constitution stipulates that "in Hungary local governments shall be established to administer

public affairs and exercise public power at a local level” while the principle of local self-government is not expressly mentioned.

The explanatory memorandum to the Cardinal Act n. CLXXXIX on Local Government of 21 December 2011 expressly refers to the Charter (drawing a parallel with the traditions of local government in Hungary) but makes no mention of the principle of local self-government: “The goal of the legislation is to create a local government system, based on the European Charter of Local Self-Government, which is modern, cost-effective, task-oriented and provides the possibility for democratic and more effective operation”.

The general spirit of the text, reiterated in the explanatory memorandum, is that the reduction of Hungary’s debt is the central aim of its legislation. The Government stressed that this objective is to be attained by rationalizing local management. The principle of local self-government is not taken into consideration in the implementation of this particular form of rationalization.

It is noteworthy that - except for the state powers which had been entrusted to local town hall clerks - the Ministry of the Interior rejected the term centralization and preferred to speak of rationalization. Most of the delegated administrative powers were taken back by the central government from local officials (mainly from the town hall clerk). Since January 2013, almost all the local and regional state administrative tasks and functions have been carried out by 198 district offices, which are the subordinate units of the county governmental offices. Although the latter have always been state administrative functions, (earlier delegated to municipal officials), as a consequence of their recentralization, the mayor’s offices have lost a large part of personnel and a large amount of financial resources.

The current division of powers between the State and local authorities does not take account of the Charter’s stipulation that local authorities have “the right and the ability to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population”.

The very notion of public affairs seems debatable: certain spheres referred to as technical or purely administrative by the State are to be recentralized.

Significant cuts in the powers of municipalities and counties were explained by a drive to cut public spending and the need for fair and equal treatment of citizens.

However, is deplorable the fact that neither the Constitution nor Cardinal Act n. CLXXXIX on Local Government of 21 December 2011 refers to the principle of local self-government. It is true that the explanatory memorandum to the Cardinal Act expressly refers to the Charter, but it does so only to strike a parallel with the traditions of local government in Hungary and avoids citing the principle of local self-government. Accordingly, the principle of local self-government is not explicitly guaranteed, which was also criticized by the Venice Commission in its opinion 621/2011 on the New Hungarian Constitution. The Constitution guarantees only the existence of local authorities, not their powers. The local authorities' powers are exercised "within the limits of the law" which leaves the legislature with considerable room for manoeuvre. Local self-government is not presented as a fundamental principle of Hungarian institutions: this is visible in the absence of a general right to self-governance, as was stipulated in Article 42 of the Constitution<sup>29</sup>. On the contrary, local self-government appears as unfair and costly. The Hungarian system, which was by and large a two-tier one is now moving towards a single power-base (or indeed a monopoly) to the benefit of central government, although this shift has not yet become total, as local authorities remain very much a topic of political debate.

The share of public affairs entrusted to local government has decreased very significantly. The financial autonomy of local governments has severely reduced in the last two years, strengthening the control of central government over local government finance. In addition, numerous powers hitherto exercised by local government are described as being naturally recentralized. In particular, health and social care as much as education have now been almost completely centralized. All three sectors, accounting for 86% of local expenditure<sup>30</sup>, which were previously a matter for the municipalities and counties, have been

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<sup>29</sup> See P. Blokker, *New Democracies in Crisis?*, cit. at 7, 124-125.

<sup>30</sup> See National Audit Office, Summary of the 2011 monitoring of local government's financial situation and the management system.

transferred to the central level. Local authorities are therefore losing fundamental powers, with no real compensation, while in the spirit of the Charter, both the adequate finance and the public service functions of local interest should be allocated to them. Health and education will be managed by administrative authorities and not, as was previously the case, by elected authorities.

The manner of electing and organizing local government councils complies with the Charter. The voting system for local elections was changed a few weeks before the ballot of 3 October 2010 in order to tighten the rules on eligibility.

In view of the facts objectively noted above, my opinion is that the situation in Hungary is not in conformity with Article 3 of the Charter.

#### **8. The scope of local self-government**

The basic powers and responsibilities of local authorities shall be prescribed by the Constitution or by Statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

This article of the Charter is at the heart of the debate that is ongoing in Hungary on the subject of local government. The division of powers between the State and the different levels of local government that was established in 1990 is undergoing a major rethink. It is true that it was particularly complex, combining the local authorities' own prerogatives and competences delegated by the State which are exercised not by elected local bodies but by an official, the town clerk, through decisions in which the municipal council is not authorized to intervene.

It is true that spending on health and education accounts for a large part of local budgets whose balance is now compromised by the economic crisis, but this observation alone does not justify a transfer of these competences to the central level. Other alternatives could also have been considered but the government has clearly opted to centralize powers. The wording used by the State's representatives was highly symptomatic in this respect because the local authorities had to be relieved of the burden of this expenditure.

Particularly its important focus the application of Article 4.6 of the Charter which provides that "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly".

This requirement was reiterated by Recommendation 171 (2005) of the Congress of Local and Regional Authorities by Council of Europe: "The Congress, bearing in mind the proposal of the Chamber of Local Authorities, 1. Considers that the right of local authorities to be consulted, which is enshrined in Articles 4.6, 5, 9.6 and 10 of the European Charter of Local Self-Government, is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance; 2. Believes that, in the interests of promoting good governance, consultation of local authorities has to be a required part of policy-making and administrative processes, enabling the wishes of local authorities to be known in good time and properly taken into account in the decisions of central and regional authorities". This requirement has been recently recalled in Recommendation 328 (2012) adopted by the European Congress of Local and Regional Authorities.



Hungary has several associations of local authorities, even compared with countries with considerably larger populations and surface areas. These associations all have differing missions, and their members appear to be keen on maintaining this diversity of representation<sup>31</sup>.

This specific feature was already highlighted in the 116 (2002) monitoring report: “The complexity of the system and the diversity of the interests of the different components are reflected in the large number of national associations of local and county authorities”.

The fact that the government has no single talking partner does not facilitate consultation with local authorities. Examples elsewhere show that a single association per level of authorities gives these authorities real influence in consultation. The counties have their own representative association, which is the only local authority association to cover the entire territory of Hungary.

Besides the difficulties caused by the large number of associations, the local authority consultation procedure merits close examination. A Decree of 2010 established the principle of bi-annual consultation and the concluding of partnership agreements but this text has been rendered null and void by the new Cardinal act.

The dialogue between the State and the territorial authorities needs to be more clearly defined so that it is not of a purely formal nature. Local authority associations must be granted a reasonable period of time to read the government’s proposals and prepare their written replies. Even though in some counties for instance in Csongrád County, the consultation process works well, other examples indicate a more troublesome consultation process. In any event, a deadline of 24 or 48 hours (such a deadline had already been given by central government to

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<sup>31</sup> The seven local authority associations are as follows: National Interest Group of Small Town Local Governments (*Kisvárosi Önkormányzatok Országos Érdekszövetsége, KÖÖÉSZ*); National Local Government Federation of Villages, Smaller Municipalities and Micro-Regions (*Községek, Kistelepülések és Kistérségek Országos Önkormányzati Szövetsége, KÖSZ*); The Hungarian Village Federation (*Magyar Faluszövetség*); Alliance of Cities of County Rank (*Megyei Jogú Városok Szövetsége, MJVSZ*); National Alliance of County Governments (*Megyei Önkormányzatok Országos Szövetsége, MÖOSZ*); National Alliance of Municipal Governments (*Települési Önkormányzatok Országos Szövetsége, TÖOSZ*); National Alliance of Local Governments (*Magyar Önkormányzatok Szövetsége, MÖSZ*).

the local authorities to state their views on a text) cannot be considered as a reasonable period of time for such a purpose within the meaning of the Charter. The conditions in which hearings might take place must also be specified. Finally, they must have all the necessary information (particularly financial data) to give an enlightened opinion.

Consultation is crucial when reforms are carried out one after another within a short timescale and local authority powers and financing methods are at issue. Discussions on local government issues deserve an adequate time in order to achieve a proper maturation.

The scope of local self-government has been significantly reduced. The division of powers between the central tier and local government has been radically modified, to the exclusive benefit of the former.

It is clear to that the movement towards centralization of competences under way in Hungary does not conform to Article 4 of the Charter. The division of powers between the central level and local government has been radically overhauled, to the sole benefit of the central authorities.

Where Article 4.6 is concerned, the consultation procedure is a simply formal one. It is true that the number of associations representing local and regional authorities in Hungary does not make for effective consultation. This situation leads the author to conclude that the situation is also not in conformity with this provision of the Charter.

### **8.1. Protection of boundaries and administrative structures**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by Statute.

It seemed that the Hungarian system respects the principles laid down by Article 5 of the Charter. The new text does not undermine these provisions (Chapter V of the Cardinal Act n. CLXXXIX on Local Government).

As provided for by the Charter, local authority boundary changes may be made only as a result of a local initiative and

following consultation of the communities concerned. The author points out, however, that the current regrouping of municipalities' administration fails to comply with the spirit of Article 5 insofar as this took place without consultation with the communities concerned.

Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 6 of the Charter provides that local government shall be able to determine their own internal administrative structures and to recruit their staff on the basis of merits and competences.

There is substantial municipal fragmentation in Hungary, which has many very small municipalities. This situation called for reform and the setting up of inter-municipal structures, enabling more municipalities to maintain an adequate level of services.

While preserving the principle that each local community may have its own municipality, laid down in 1990, Article 85 of the Cardinal Act on Local Government of 2011 set the figure of 2000 inhabitants as the critical threshold for local administration. Municipalities below that threshold will have to group their administrative services together in a district or micro-region in 2013. Each municipality will keep its mayor and its municipal council but the administrative structures, and the exercise of prerogatives, will have to be pooled.

The question of where the staff who are to work in these new structures will come from remains to be settled, as part of the ongoing reform of the Statute of civil service staff. In this respect, all municipalities concerned had to come to an agreement with the relevant county governmental offices with the transfer of the respective personnel and offices (buildings and rooms) until the 1 January 2013.

According to the author, this form of pooling at the supra-communal level (district) competences of municipalities of less than 2000 inhabitants, which is implemented through an administrative structure, composed of civil servants from the State, seriously infringes the principle of local self-government as provided by Article 6.

There is a substantial municipal fragmentation common in Hungary and is concerned over the purely administrative logic that prevails in the setting up of micro-regions and the distinction drawn between elected authorities within the municipalities and the administrative structures that will manage competences within the micro-regions. A model of inter-municipal cooperation including the one referring to tasks and competences is necessary in Hungary, but it should not be developed throughout non-elected administrative bodies. There is a real danger that the elected councils of small municipalities are stripped of their political substance and their political bodies.

The administrative structures and resources available to the local authorities in Hungary today do not appear to be commensurate with the tasks assigned to them – a situation which, in the my opinion, is not in compliance with Article 6 of the Charter. In the light of the above, the author conclude that the situation is not in conformity with Article 6 of the Charter.

## **8.2. Exercise of responsibilities and administrative supervision**

The conditions of office of local elected representatives shall provide for free exercise of their functions.

They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by Statute or fundamental legal principles.

The status of local elected representatives is established by Act n. XCVI which dates from 2000 and was not substantially amended by Act n. CLXXXIX of 2011.

The remuneration of local leaders is regulated by Act n. LXIV on Local Elections, which dates from 1994. The voting system for local elections was amended a few weeks before the local elections held on 3 October 2010 in order to tighten up the rules on eligibility, which benefited the main political parties.

The conditions under which responsibilities at local level are exercised generally appear to be in conformity with Article 7 of the Charter.

Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the Constitution or by Statute.

Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

The Venice Commission has voiced its concern over the lack of precision of Article 32, par. 5, of the Fundamental Law relating to supervision of local authorities. The new Constitution empowers the governmental offices of the Capital and of the counties to issue municipal Decrees, by court decision, where a local authority fails to fulfill its "obligation to legislate imposed on it by law" (Article 32.5). Individual decisions can also be taken in this way, after the court has empowered the governmental office to do so.

At present, it is the government which ensures that local authorities comply with the law in their activities; it may respond to any shortcomings by prosecuting the authority in question. Articles 137 to 140 of the Local Government Act regulate the procedure. Other procedural rules are determined by the law on the administration of justice.

Particularly the view of the Venice Commission and reiterates its recommendation made in the opinion 261/2011 at paragraph 118: "that the subsequent local self-government legislation provides clarity in this respect. In particular, a clear

distinction should be established between, on the one hand, the local authorities' own competences and those delegated by the central government and, on the other hand, between the control of the local authorities' activities' legality and supervision of their decisions' expediency".

The Venice Commission report also highlights Article 35, par. 5, of the Fundamental Law, which stipulates that Parliament may dissolve an elected body on the ground of a violation of the Constitution, after seeking the opinion of the Constitutional Court. When questioned on this point, the Constitutional Court's representatives told the delegation by Council of Europe that its opinion would be binding on Parliament, meaning that the Country's political authority would not be the only authority involved in this procedure. However, in legal terms, the opinion of the Constitutional Court is not binding either on the Government, or on the Parliament, as the Fundamental Law and the other relevant laws provide that the Government has to consult the Constitutional Court before conveying its proposal to the Parliament (for a dissolution).

According to the information provided by the Ministry of Justice, Article 17(3) of the Fundamental Law states that the Government's regional administrative bodies with general competence should be the metropolitan and county government offices. Based on Article 34(4) of the Fundamental Law, the Government should perform the legal supervision of local governments through the metropolitan and county government offices. In accordance with Section 12, subsection b), of the Government Decree n. 212 of 2010 (VII.1) on the tasks and responsibilities of the Minister of State for the Prime Minister's Office, since July 2010, the Minister of Public Administration and Justice is responsible for the legal supervision of local governments.

The Ministry of Justice has further pointed out that the Government office of the Capital Budapest and the Government Offices of the 19 counties were - previously - entitled to perform the legislative control and legal supervision of the local governments which is now based on their territorial jurisdiction. However, local authority decisions may be annulled only on decision of the judicial authority.

The Fundamental Law provides for compulsory transmission of local authority Decrees to the supervision office in the Capital and the county (Article 32, par. 4) which, where applicable, may take them to court with a request for their revision<sup>32</sup>. There is a procedure for issuing a deficiency report in the event of failure to execute a legal obligation.

Hungarian local and regional authorities are also subject to financial supervision by the State Audit Office, provided in Article 34 of the Fundamental Law, and also in Article 119 of the Cardinal Act n. CLXXXIX on Local Government of 2011.

This supervision has been radically overhauled in recent years with a view to making a correct assessment of the state of local finances and providing local elected representatives with effective means of monitoring and evaluating risks. The points on which the audit was carried out were negotiated with local authority associations.

A vast program of supervision of the management of municipalities and councils has been introduced, operating via desk-checks and on-the-spot checks: local government entities accounting for 80% of total local government debt have been checked using one of these two means.

The Audit Office, in compliance with international practices, does not content itself with a purely financial check focusing on the correct state of accounts and the viability of budgets. It also checks on the efficiency of spending and whether it is commensurate with the aims pursued. It attaches great importance to the internal control and audit mechanisms established by local and regional authorities, and guides them in the introduction of control mechanisms.

The audit report is public. The entity audited must produce an action plan to remedy any shortcomings found. This plan is evaluated by the audit office and, if it is found to be inadequate, may give rise to legal action.

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<sup>32</sup> Article 32, par. 4, of the Fundamental Law states: "Following the promulgation of a Decree, the local authority shall immediately send that Decree to the governmental office of the capital and the department. If the governmental office of the capital and the department finds that the municipal Decree, or a provision thereof, contravenes a legal norm, it may apply to the court with a request for the revision of the municipal Decree".

If the Audit Office finds an irregularity, it makes no judgment itself, as it does not have the necessary judicial competence, but it may refer the matter to an ordinary court judge.

The new auditing system functions satisfactorily, and the rate of non-execution of the Audit Office's observations has markedly decreased. The Office issues an annual report on the execution of its observations.

Beyond the immediate consequences of publishing audit reports, the evaluation and auditing approach has a beneficial influence on the entire system, through the dissemination of good practices, its potential inspiration for the legislature and the overall spirit of making leaders responsible that underpins it.

The introduction of modern auditing methods makes it possible to identify weak points in the system. Firstly, training for local government leaders needs to be improved. The rules are increasingly complex and demand a higher level of professional expertise from those responsible for local finances.

Secondly, the Hungarian rules on public accounting are not suited to modern management, as they are very arbitrary and not geared to reporting the real state of finances, particularly indebtedness. A reform incorporating analytical accounting is desirable. Along similar lines, the audit reports could integrate consolidated balance sheets compliant with International Financial Reporting Standards. Nonetheless, there is progress made with regard to the auditing approach in the supervision of local authority management.

The undeniable progress represented by the introduction of an auditing approach cannot, however, overshadow the widely-held doubts about the financial autonomy of Hungarian local authorities. The author shares the concern expressed by the Venice Commission about the lack of precision of Article 32, par. 5, of the Fundamental Law which concerns the supervision of local authorities for the control of legality to be furthermore privileged.

### **9. Freedom of association and legal protection of local self-government**

Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to



form consortia with other local authorities in order to carry out tasks of common interest.

The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognized in each State.

Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Hungary has several associations of local and regional authorities. Consequently, the situation is in conformity with Article 10 of the Charter. Nonetheless, the large number of representative partnerships at local level does not facilitate the consultation procedure for the national authorities.

Furthermore, Hungary has committed to a 15-year program of transfrontier cooperation involving two Hungarian counties, three local authorities in Romania and one in Serbia. The program comprises numerous projects, each involving several local authorities. The projects are run by the counties, and the municipalities only play an advisory role. Stronger involvement of the municipalities in this scheme would be in greater conformity with the subsidiarity principle and generate more support from communities for a scheme which is very active.

The author underlined the positive aspects of the existence of active transnational programs. Nonetheless, they expressed regret at the fact that the municipalities had only a consultative role in these programs which were essentially run by the counties.

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the Constitution or domestic legislation.

The right of local and regional authorities to appeal to courts to ensure respect for their competences is not guaranteed in the domestic legislation. Local authorities do not have any effective judicial protection to secure the free exercise of their powers or protect their rights as provided in the Charter. Judicial remedies exist in some cases, such as for legal disputes between local authorities.

The Article 5 of the Local Government Act n. CLXXXIX of December 2011 states that the lawful exercise of the constitutional

powers of local authorities is protected by the Constitutional Court and ordinary courts. Local authorities may apply to the Constitutional Court only in case of conflict with another authority concerning their respective responsibilities.

The Article 16 of the above mentioned law provides for the possibility (on the part of local authorities) of appealing to the court against decisions which go against their interests in very specific cases (such as when the government takes away a development project which would have been of local interest for a municipality). This leads to conclude that the right to lodge a complaint, when the interests of local authorities are – or risk to be – undermined, is very limited and that the legal protection of local self-government is not effective in the light of the relevant provision of the Charter.

An effective legal remedy is not available to local authorities and they conclude that, in this respect, the situation is not in compliance with Article 11 of the Charter.

Hungary is also active in the formation of Euro-regions and, more broadly, in transfrontier cooperation<sup>33</sup>. The Csongrád County participates in the Danube-Kris-Tisa regional cooperation program (Euro-region DKMT: Danube, Kris, Mures, Tisa)<sup>34</sup>.

The participation of two Hungarian counties in a program of transfrontier cooperation with Romania and Serbia is a strong sign of the Country's desire for integration into this sub-region.

The program comprises numerous projects, many of which are geared to culture or tourism, as well as a global plan for the prevention of flooding risks and the creation of infrastructures of benefit to the euro-region.

The program was devised in 1997 and has been up and running since 2003. The transfrontier programs enable the counties to assert their presence, within the framework of their new competences. Giving the municipalities a more marked role in devising and implementing the programs would help to strengthen this process.

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<sup>33</sup> The 21 March 1994 Hungary has ratified the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities signed in Madrid the 21 November 1980.

<sup>34</sup> See <http://www.dkmt.net/en/index.php>.

The Ministry of Justice already informed about their strong intention to join the Third Additional Protocol to the European Outline Convention on Transfrontier Cooperation.

### **10. Linguistic rights of minorities**

Hungary has introduced an original system of representation of ethnic and linguistic minorities. Law n. LXXVII on the rights of national and ethnic minorities (also known as the law on minorities) was passed in 1993, revised by the Act n. CLXXIX of 2011 on the rights of national minorities. This law counts all the groups of people who have been living in Hungary for at least a century as national and ethnic minorities. The members of those groups are Hungarian citizens but they differ from the rest of the population through their language, culture and traditions and their desire to preserve them.

The groups regarded as minorities in Hungary under this law are, in alphabetical order, Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians<sup>35</sup>.

The law on minorities grants linguistic minorities very extensive rights, going beyond those granted elsewhere in Europe. Under this law, minority languages may be used by anyone, at any time and anywhere. An interpreter must be provided where necessary. Members of Parliament are entitled to use their own language in Parliament. Minority groups are entitled to found their own schools using the minority language and may also have schools using both languages.

There are numerous Hungarian minorities living outside the borders of Hungary, which explains why respect for cultural and linguistic rights is such a sensitive issue for Hungarians.

This position accorded to linguistic minorities is enshrined in the Fundamental Law, whose preamble proclaims the fundamental rights granted to Hungarian citizens.

Article XXIX of the Fundamental Law states: "Ethnic minorities living in Hungary shall be constituent parts of the State.

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<sup>35</sup> See Euromosaic on the European Commission website: [http://ec.europa.eu/languages/euromosaic/euromosaic-study\\_en.htm](http://ec.europa.eu/languages/euromosaic/euromosaic-study_en.htm).

Every Hungarian citizen belonging to a national or ethnic minority shall have the right to assume and preserve their identity. Ethnic minorities living in Hungary shall have the right to develop their own culture, use their native language, be educated in their native language and use their name in their own language. Ethnic minorities living in Hungary may create local and national self-government bodies”.

These rights are not merely of a formal nature, and Hungarian legislation ensures that they may be safeguarded through the courts or the Commissioner for Fundamental Rights. The National Office for National and Ethnic Minorities, created in 1990, is responsible for coordinating the implementation of government objectives in the area of minority protection. The Office is an administrative body which is independent of the national remit, operating under the supervision of the Ministry of Public Administration and Justice. The Office continuously assesses the situation and implementation of the rights of national and ethnic minorities. It produces analyses to underpin government decisions concerning minorities and also prepares programs and policies aimed at minorities. Its tasks include providing a platform for exchanges of opinions and information between the government and the organizations representing minorities.

Hungary was one of the first countries to sign the Council of Europe's European Charter for Regional or Minority Languages.

The law on minorities entitles the thirteen national minorities to establish self-governing local authorities. These are elected bodies representing the interests of national or ethnic minorities at local or national level. Accordingly, these self-government bodies have special competences for fixing the calendar for their festivals and celebrations, fostering the preservation of their traditions and participating in public education. These special local authorities may manage public theatres, libraries and science and arts institutions, award study grants and provide services for their community (legal aid in particular).

At local and regional level, these self-government bodies are to be found within both municipalities and cities or counties, and most of the minorities are present at these three levels in

addition to the national level. Self-governing councils of different minorities are consulted on texts with ramifications for their members, at both local and national level. They have a right of veto on cultural questions.

For a self-governing council to be formed at local level, it has to be requested by a sufficient number of people. Since that number is proportionate to the number of inhabitants in the municipality, thirty or so people may be enough in a small municipality. It can happen that a group sets itself up as a minority in an attempt to influence municipal debate, which is known as a “cuckoo procedure”. Electoral lists indicating the members of the different minorities were compiled as of 2006, in order to prevent abuses of the 1993's Act.

However, on the whole, this arrangement catering for the cultural rights of minorities’ functions to the satisfaction of the groups concerned. It is funded by the local authorities, or by the State where national bodies are concerned. Budapest City Council devotes 0.25% of its budget to the activities of minorities’ self-governing councils.

This system of recognition for the cultural rights of minorities has no civic and political equivalent and minorities are not represented as such on municipal councils, on county councils or in Parliament. Representation has been considered on several occasions but always ruled out. Some substantial reports from relevant bodies of the Council of Europe are available on this specific issue of Roma community.

The new Fundamental Law replaced three Ombudsmen<sup>36</sup> (Ombudsman for citizens’ rights, Ombudsman for minorities’ rights, Ombudsman for sustainable development and the environment) by the Commissioner for Fundamental Rights (former FR Ombudsman)<sup>37</sup>.

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<sup>36</sup> There used to be a fourth Ombudsman for personal data protection, who was replaced by an independent authority.

<sup>37</sup> Article 30 of the Fundamental Law: “The Fundamental Rights Ombudsman shall undertake activities aimed at protecting fundamental rights; anyone may request intervention by the Ombudsman. The task of the Fundamental Rights Ombudsman shall be to investigate or have investigated fundamental rights abuses brought to their attention and initiate general or specific measures to remedy them. The Fundamental Rights Ombudsman and their deputies shall be elected by the Parliament, by a majority of two-thirds of the parliamentarians’ votes, for a period of six years. The deputies shall uphold the

The possibilities of going to court to challenge local government decisions have been improved since 2010, which has resulted in fewer cases challenging municipal decisions coming before the Commissioner. But, owing to the economic recession and the associated social difficulties, the Commissioner has had to intervene in order to protect the fundamental rights of individuals in particularly vulnerable situations, often against local government decisions. In some of these cases, and always successfully, the Commissioner has sought a Constitutional Court ruling that fundamental rights have been violated by a local entity.

The Commissioner observes that it is often impossible to untangle social issues from issues relating to the protection of fundamental rights; this observation is particularly germane to the protection of the rights of the Roma minority.

The self-governing councils may turn to the Commissioner if they believe that the municipality or council fails to provide them with the material or financial means necessary for their activities, and 60 or so such cases are currently pending.

The great advantage of the Commissioner is being more easily accessible for citizens than a judge; citizens may be put off by the court procedure, whereas the procedure for applying to the Commissioner is more flexible and informal. The Commissioner's report draws on the examination of cases throughout the Country, providing a great wealth of information and source of inspiration for a legislature wishing to work for respect of fundamental rights and towards improved protection for them.

## 11. Conclusions

The Hungarian local autonomies situation is not very in compliance with Articles 2, 3 and 4 of the Charter of Local Autonomies by Council of Europe. Whereas the system of local government in place since 1990 implemented the principles of subsidiarity and local self-government at a particularly high level, as made clear in the 2002 monitoring report, a global movement to

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rights of future generations and ethnic minorities living in Hungary. The Fundamental Rights Ombudsman and their deputies may not be members of a political party or engage in political activities. The Fundamental Rights Ombudsman shall report annually on their activities to the Parliament".

return powers to the centre has since then been under way in Hungary. The Hungarian system, which was generally a two-tier one, is now moving towards a single power-base (or indeed a monopoly) in favor of central government, although it has not yet fully reached this stage.

The new Fundamental Law and the Cardinal Act on Local Government are very recent and many aspects of them are not yet applied. Some provisions have been applied since 1 January 2012, others in 2013 and yet others require implementing legislation. Nonetheless, there is significant measures which are incompatible with the principles set out in the Charter. The reforms currently under way are introduced primarily by cardinal acts, modification of which requires a two-thirds majority, very difficult to reverse from now on, but there is no novelty in this regard because this majority was already required by Act n. LXV of 1990 on Local Governments.

The principle of local self-government is guaranteed by the Charter, the provisions of which Hungary has undertaken to comply with, irrespective of the economic context. This principle should not be interpreted differently depending on the economic context. However, as in a number of Council of Europe member states, it would appear that the economic crisis is used as a recurring argument for taking back powers from the local level, or indeed for introducing a form of supervision of that level. The situation is not in conformity with Article 9 of the Charter.

The large number of associations of local and regional authorities in Hungary is an indication of compliance with Article 10 of the Charter. These associations appear to function well. Nonetheless, the author would emphasize the lack of a single talking partner does not facilitate the consultation process.

On the constitutional level, the author shares the views and concerns of the Venice Commission, particularly as regards the role of the Constitutional Court, whose powers related to a determined scope of budgetary laws have been considerably reduced by recent constitutional reforms<sup>38</sup>. It further expresses its concern regarding the very weak level of protection afforded, at

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<sup>38</sup>See S. Zifcak, *Hungary's Remarkable Radical Constitutional Court*, in J. Const. L. Eastern and Central Eur. 1 (1996); M. Bánkúti, G. Halmai, K.L. Scheppele, *From separation of Powers to a Government Without Checks: Hungary's Old and New Constitutions*, in G.A. Tóth (eds.), *Constitution for a Disunited Nation*, cit. at 1.

constitutional level, for the principle of local self-government, in particular due to the lack of an effective judicial remedy for local authorities, that would allow them to lodge a complaint to a domestic court when a decision undermines their interests or their rights as provided by the Charter. This situation does not comply with Article 11 of the Charter.

Particularly is important for the Hungarian authorities to introduce an effective consultation procedure, providing for the forwarding of the documents required for the local authorities to peruse. Unreasonable deadlines, by definition, are a practical barrier to constructive exchange. The consultation procedure would also be made all the easier if the number of associations representing local authorities were significantly reduced.

A model of inter-municipal structure including maybe tasks and functions is necessary in Hungary, but it must not be constructed for the benefit of non-elected administrative bodies. The elected councils of small municipalities have lost a lot of their political substance clearly endangering their political position. The situation in Hungary, from this point of view, is not in conformity with Article 6 of the Charter.

The author think that an alternative may be found to respond to all stakeholders' need to work on practical issues (such as the delivery of public services) in order to provide efficiency, but without putting into question the basic principles of self-government as provided by the Charter.

The author wishes to emphasize the expediency of laying the foundations of strong and effective structures, but also points out that there is a danger of a breakdown in the dialogue on local democracy<sup>39</sup>. Hungary appears to be engaged in a process of consolidating power at central government level to the detriment of the local authorities, which are portrayed as costly and inefficient. The author would like to see solutions conducive to local self-government which will provide local and regional authorities with the requisite human and material resources. They point out that the signatory States to the Charter undertake to respect not only the letter but also the spirit of the Charter, which

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<sup>39</sup> About the constitutional dialogue in Hungary, see: T. Drinóczi, *Constitutional dialogue theories – extension of the concept and examples from Hungary*, in *Zeitschrift für öffentliches Recht*1, 87-110 (2013).



requires local responsibilities to be undertaken by elected authorities closest to the citizens throughout the Country.

Definitely the Hungarian government needs to decrease the national public debt and has to conceive specific measures to this end. However, in this particular context as well as in the frame of the local government reform in Hungary, the author reiterates that the principles laid down in the Charter must not be ignored or minimized but, should be used as a reference treaty, providing, by means of its provisions, the tools enabling the authorities of a Country to strike a balance between a central government-based approach and local aspirations in order to overcome the national difficulties and economic strangulation.