

## **Conflicts between Legislature and Executive at Local Level in Hungary**

### ***1. Introduction: Challenges of local decision-making in Hungary as a post-communist country***

At the beginning of the process of transition in 1990, with the new Act on Local Governments, the local authorities have, as major achievement, gained a lot of rights and duties. With directly elected councils (legislature) and mayors (executive), the local power division was also fulfilled (Bennett, 1997: 6pp.). In compliance with the philosophy of the established democratic system in Hungary, the local governments have since then been seen as best spots of handling the needs and problems of the citizens, keeping with the subsidiary concept of the European Community.

The new changes, that in many respects created independence for the local bodies, also gave rise to a lot of problems. From the mid nineties, the means and tools, more often the financial sources provided to the new local governments to enable them to carry out the assigned duties, were often perceived as insufficient for managing the locally defined tasks.

In many settlements, especially in the small ones, these were the officials of the former political system who took over the leadership after the first free elections, and in some cases were not able to reconcile with the new responsibilities. In other settlements, the heads of the newly elected bodies could not manage the challenges that a recently introduced system always has to face. By the time the competencies and the tools were set up accordingly, many conflicts and clashes were brought as scandals in the news, and the legitimacy of local governments had to be strengthened from time to time. The first decisions, though, had to be arrived at very soon; in 1991 the first local budgets were set up. This has been since then one of the most neuralgic points of the functioning of local governments.

When talking about the transition countries, the role of the public servants in the current local governments' work has often been pointed out. As for the system of councils (in other words, that of soviets) they preferred to give employment to less competent but rather reliable employees, so that the necessary and most vital professional knowledge of the new local body was lacking. The footsteps of this early situation were handled with a policy that ordered the public servants to get through a public administration exam that confirms that they meet all demands of fulfilling the

duties appearing during the functioning of a municipality<sup>1</sup>. As for now, all the particular employees of the local governments have had to fulfill this requirement.

The new conditions, such as the nearly 3000 local governments with an evident independence, compared to the former system of the 1300 soviets with only executive rights, which meant that the local level competencies were given to local agents of the current territorial units; furthermore, the delegated missions compared to the decentralized execution of the state policy (Szegeváry, 2002: 140), caused a new set of circumstances, to which all the local governments had to adopt their inadequate previous experiences they learnt during the previous regime. Own responsibilities were formulated and the state, on one hand, turned out from the actual work of the local bodies, parallel to fixing the central budget resources and allowing the setting of own further revenues of the local governments. On the other hand, the central government, year in and year out, cut the settlements, in the meantime making their increasing tasks more and more expensive.

While talking about the Hungarian local government system, one must always take into consideration that the frames of both the duties and tasks and of freedoms of the local governments is defined by the law and only decisions in addition and at the same time in accordance with these belong to the competencies of the local governments. According to public servants' most common opinion, there are restrictions, that occur because of the shortage of the sources at disposal and there are tasks that cannot be implemented because of the same reasons. This also results in an ambiguous role of the local bodies that both are supposed to answer the needs of the local population, and correspond to the law regulations of the state itself. This sensitive balance causes grave challenges in the decision-making system of the local governments even nowadays.

## ***2. Local government's legislation ties to the national legal system***

The Act on Local Governments coming into force in 1990 and modified in 1994 set up all the rules for the functioning of the local bodies and is escorted by the Act on the Election of Local Representatives and Mayors Elections, a modified act of 1994 regulating the local government election system.

The Act on Local Governments defines the bodies of the local governments and their tasks, giving the freedom of granting most of the rights of each body to other municipal actors. This means that the local government has to introduce the so-called statute, the institutional and operational regulations to ensure the predictability of the legislature and the executive bodies, as specified in the law. Again, the law builds the frame for a regulation that has to be met locally.

Parallel to the local governments, state administrative bodies have their territorial representatives, according to respective functions. This means, "since 1990, Hungarian

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<sup>1</sup> Studies of the World Bank on Transition Countries often stress that the incompetence of the administration can hinder the work of the municipalities. Most common comments are that the central state should devolve the administrative staff along with the devolution of the duties, or that the municipalities should freely hire staff by making own incentives. (See also *World Development Report 1999/2000*: 122).

public administration consists of two main frameworks. The first includes central government bodies and their organs at the local and territorial levels that are subordinate to the state administration. The second type of structure is the system of local self-government, based on the principles of decentralization and autonomy” (Temesi, 2000:348).

The Ministry of the Interior places a function in the core of the local government, namely the notary<sup>2</sup> of the municipality who is actually one person, the head of the office, appointed by the assembly. The notary is the head of the executive body and an advisor concerning the legality of the decisions and regulations of the local government. The notary also takes the responsibility for the legal carrying out of the assignments that have to be financed from the local budgets. This means that the state administrative body in the municipality supervises the local governments from a legal point of view and thus ensures their “embedding” into the state law system.

If the functioning of the local government violates the law, this is the Constitutional Court of Hungary that initiates the review of the relevant act or decree. In this case the Constitutional Court abolishes those decrees that local governments have not changed despite the notice of the head of the office.

The State Audit Office who controls the utilization and accounting of the budgetary contribution or any centrally allocated resources at the same time provides the financial supervision of the local self-governments.

### ***3. Bodies of the local government, their roles and competencies***

The Hungarian local governmental system functions on the basis of different actors. In order to understand the possible conflicts between them, it is necessary to overview their characteristics.

The referred bodies are the mayor, the body of the representatives, the commissions of the assembly, the citizens and professionals contributing to the work of the commissions, the notary or head of the office, and the municipal office as executive organ. These bodies have different roles and responsibilities and their competencies vary a lot. This part of the paper gives an insight into the main characteristics of the listed bodies.

#### **3.1. The Body of Representatives**

The body of representatives, also referred to as assembly, is the most important organ of the local government, (see also: Temesi 2000).

Procedures of electing the representatives are regulated by the Act on the Election of Local Representatives and Mayors, enacted in 1994. The election of the representatives depend on the size of the settlement. Municipalities with 10.000 or less inhabitants may elect 3 to 13 representatives depending on the size of the population, and each citizen may vote directly for as many candidates as mandates in the assembly<sup>3</sup>.

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<sup>2</sup> Part 3 of the paper will broaden the characterization of the notary's role.

<sup>3</sup> Members of the county assembly are also elected directly.

In case the settlement has more than 10.000 inhabitants, the election system is in large measure different from the election system in smaller villages, since here a certain proportion of the representatives are elected directly and others receive the mandates from the party list. Law fixes the total number of representatives.

The duties of the representatives is defined both in the Act on Local Governments enacted in 1990, and in the local government's statute. The most important aspect of their work is to represent the voter's will and interest whilst taking into consideration not only the specific group of voters but the entire settlement's interests. The representative has to establish and maintain contacts with the citizens and the civil society, and his active contribution to the local government's work is especially desirable. In case a representative would not fulfill his duties, the mayor or the assembly may call him to perform according to the effective regulations.

The guarantees of the body's functioning are set in the Act on Local Governments; its details are defined in the local statute. After the elections, the mayor convokes the body of representatives where the statute is established. The main rule of the functioning is that the body of representatives holds its sittings according to the need, mostly depending on the fact, which duties of the assembly have been delegated to other local bodies. The minimum number of yearly sessions is 6. The assembly has to be called if a quarter of the representatives initiates it or a commission of the assembly demands it. The mayor invites the representatives to the session; the session itself is lead by him. The sessions must be public, except for some specific cases such as sessions concerning personal and administrative matters or business matters of the municipality. The body of representatives is quorate if at least half of the representatives - including the mayor - are present.

The resolutions of the body of representatives are either so called decisions or decrees. The resolutions - with a few exceptions - are made by open ballot. Usually, decrees require a majority of the votes; there are also some that must be decided on with qualified majority<sup>4</sup>. In case the mayor considers a decision conflicting the interests of the settlement or of the municipality, he may take the initiative in rehearing the specific issue on another occasion.

The representatives are allowed to present interpellations and inquire further information on matters to be decided on in the assembly.

The assembly of the local government is the core of the functioning of local democracy. Considering that more than 50% of the Hungarian settlements have less than 13 representatives in the assembly, certain interest groups may have more representatives than most inhabitants are ready to support. This can lead to conflicts between the representatives and the citizens. This issue is going to be referred to in section 4 of the paper.

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<sup>4</sup> Majority of the votes means the half of the votes of the present representatives during a session. Qualified majority means that more than half of the number of representatives of the local government vote for an issue.

### **3.2. The Mayor**

The mayor is the highest official of the local government. Since 1994, he has been elected directly<sup>5</sup>. This electoral system states that he should be a politician of the whole municipality and less of political parties. In settlements with more than 3000 inhabitants, the mayor is only allowed to work full time. He has to represent the body of representatives; besides, he is the employer of the deputy mayor or mayors, the notary and the heads of the municipally owned institutions, e.g. schools and health care services (see also: Kusztoś, 1998: 101 pp.).

For non friction work, it is required that more than a half of the representatives of the assembly support the mayor.

The mayor's role in the local government's decision making is a vital one: he organizes and synchronizes the work of the assembly's commissions; furthermore he introduces the agenda of the assembly. This agenda is based on the commissions' preparatory work and it is the mayor who has to counter-sign the commissions' recommendations so that they can be placed on the agenda. In case the assembly votes through a decision or a decree, it is also in this case the mayor who launches the realization of the matter and instructs the municipality through the head of the office (the notary) to do so.

### **3.3. Commissions of the Assembly**

The Commissions of the Assembly are the actual decision preparatory bodies of the local governments.

There are several commissions that must always be established in a local government, such as the budget commission in settlements with over 2000 inhabitants, the harmonizing commission on county level and the commission dealing with the local minorities<sup>6</sup>. Setting up further commissions is up to the decision of the assembly.

The members of the commissions are elected. Once a commission is set up, its members may define their own internal statute and also invite independent experts from non-governmental organizations to argue the respective issues.

Coordination between the commissions is the mayor's responsibility, and of course the interest of all actors. Thus, before a proposal is introduced to the assembly, the commissions have to negotiate on the matters that would affect the functioning of the municipality, such as financial questions or organizational matters.

The sessions of the commissions are commonly public, since this is also one of the points of contact with the citizens.

The proposal of the commissions regularly has an extensive structure: in order to facilitate the decision making process of the assembly, it contains the starting-point of the certain policy that should be introduced (such as unemployment or economic development needs), the results of the investigation that were carried out in order to get a deeper insight into the background of the incurred situation, the changes that have to be achieved, the tools that must be applied and also the proposed changes of certain current decrees. Such a proposal may have the length of 15 or more pages, which requires a lot of reading from the representatives. Therefore the local statutes

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<sup>5</sup> In contrast with the previous practice of the municipalities with more than 10000 inhabitants that elected the mayor in the assembly.

<sup>6</sup> In case there are minorities in the settlement.

often define the latest date such proposals have to be distributed before the session of the assembly. However, there have always been cases, when this procedure is not complied with; therefore the assembly evades the discussion of the proposal and only puts it to vote.

### **3.4. Head of the Office - The Notary**

As referred to in section 2, the notary plays also a significant role both in the decision making process and in the execution of the matters upon which the assembly has decided.

The assembly appoints the notary through an open competition. Law sets up the necessary qualifications of the notary.

In administrative issues the assembly has no influence on the notary. Above this, since the functioning of the municipality is both the responsibility of the mayor and of the notary, as head of the office, it is evident, that their cooperation is vital for the effective work on local level. The notary may also be invited to the sessions of the assembly and of the commissions.

The notary has to check the legality of the proposed new regulations on local level, and if he notices any friction with the effective rules, he has to inform the commissions or the assembly. If, despite the warning, the assembly does not initiate changes, the notary has to notify the Constitutional Court in order to abandon the respective decree. Furthermore, if a decree or decision meets all defined requirements, the notary as head of the office has to instruct the relevant municipality offices and departments to execute the decisions of the assembly. In case there are expenditures connected to the realization of the issue, the notary has to control, whether there are sufficient resources available in the local budget to fulfill the payments to the potential contractors. His signature approves that the municipality is solvent.

### **3.5. The Municipality**

The municipality is an organ of the assembly, it decides upon all relevant details about the office, such as duties, responsibilities of the departments, delegate's tasks. The office itself has only preparatory and administrative tasks.

The municipality's purposes can be divided into two main groups: administrative matters and local governmental issues. In the latter, the body of representatives is the decision holder and the municipality prepares the background evaluations for the decisions, which are later on going to be carried out by it, too.

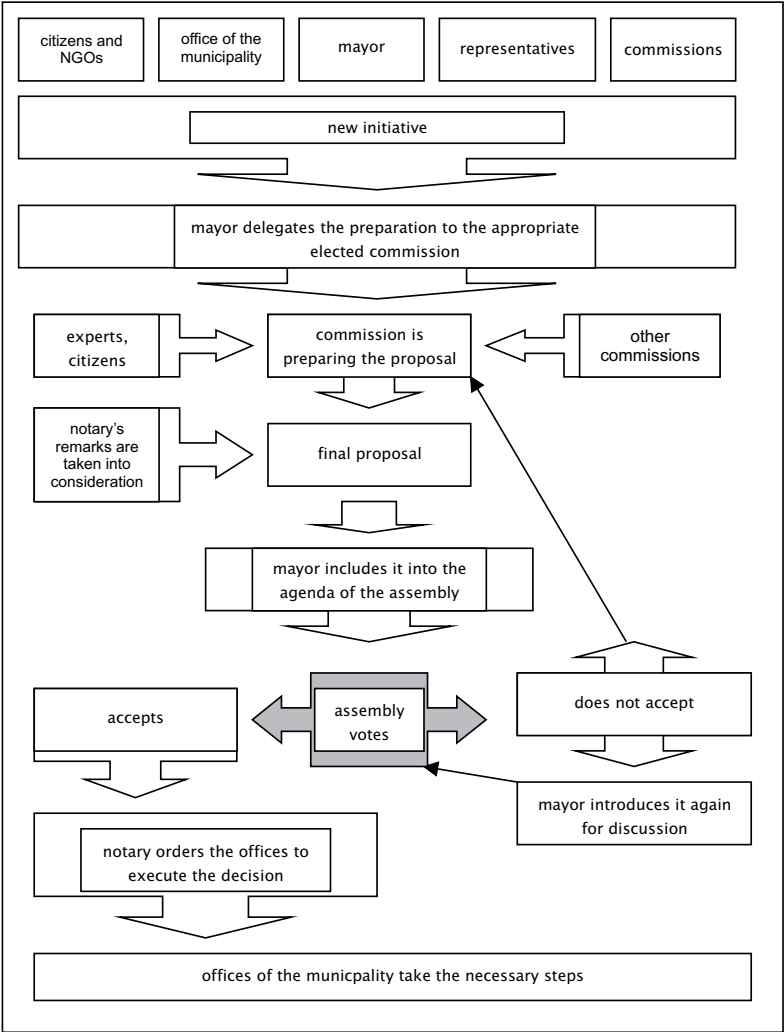
The responsible body for the administrative matters is the notary, who may delegate his signatory right to departments of the office. The notary is in one person the head of the office, which is the employer of the administrative staff; he guarantees the professional level and legality of work.

We must remark, that in Hungary, most citizens appraise the local government's functioning upon the municipality's work, therefore the organization of the business hours is a considerable issue. In recent years, the structuring and venue of the office work with the clients have changed a lot.

**4. Role of the bodies in the decision-making and implementaton process**

In order to follow the decision making process, the relevant bodies of the local government have been shortly introduced. As for the detailed steps, a simplified illustration of the legislating steps and executive duties can be depicted. The following figure also lists the bodies' alternatives in the legislature process.

1. Figure: Decision making process on local level



This figure is visualizing the decision making process on local level. It can be seen that the “destiny” of a local initiative can change course on many stages. The assembly is making the decision after a long process, and is only acting as legislative body within voting. Its commissions' proposals have to correspond to the state administration's (notary's) remarks and also have to have the support of the mayor who guarantees that the proposal is set on the agenda of the assembly session or at least of more than half of the representatives who are able to modify the agenda of the session.

In case there is a state regulation that has to be implemented by the local level, the assembly has to meet a decision and change or establish appropriate decrees. However, the execution of the decision can face some challenges at the office level: lack of financial resources or professional knowledge can hinder the implementation of law. In this case the conflict between the legislative body and the executive organ is always present; the decree of the assembly cannot be executed.

This phenomenon puts the question of the effectiveness of local decision-making. A short outlook of this problem is given in the next section of the paper.

## ***5. Effectiveness of local decision-making***

When talking about the effectiveness of legislation in Central and Eastern Europe, it is considered to be a notorious issue (Verheijen, 2002: 48). Two aspects have to be taken into consideration; first, the legal effectiveness, which means the appropriate behavior of the respective actors, second, the social effectiveness, which means the realization of the processes aimed at the introduction of new regulations (the further part of this section is based on Visegrády, Cziboly, 1999: 152).

We must also remark that the competencies of the local decision making always depends on the contents of the central legislation, since only those issues can be regulated on local level, that have not already been defined in details by any state acts.

There is an immense difference in the legislation potential of the different settlements in Hungary. Certain issues may gain a great public support in one city, although citizens of another city would not even notice similar new regulation. The financial situation of a settlement would also influence the topics of the local decision making to a great extent: in a settlement with no animal farming the local government would never even pass a decree on driving out animals. On the other hand, not only the topics but also the possibilities of the implementation of a local decision would determine the legislature's ground. Low budgets would only allow low social assistance. In the recent year an additional aspect became obvious: not only the realization of local incentives can be hindered by low financial resources, but also the fulfillment of a state order to establish local decrees on local development and construction that have to be prepared with an extraordinary expensive professional support.

The measures of effectiveness of local decision-making are not easy to be defined. An additional indicator for the achievements of the legislature and executive could be the currency of the respective regulation among the addressed citizens. The municipalities are not obliged to set forth the local government's decision-making processes, only the decrees. It has also not been set which organs are to be used for this



purpose. This means that public participation in the local authority's life - depending on the size of the settlement - is trifling.

Concerning the execution of the local decisions it is somewhat common, that the delegation of the tasks is not effective and accurate. In some settlements the local government would not delegate any tasks to the mayor or to the commissions, therefore, the representatives are overloaded and can hardly fulfill their task of thorough examination, thus, the proposing body predominates over the legislative body.

## 6. Conclusion

After introducing the position of the local government's legislation capabilities in Hungary, the local government's bodies were briefly characterized. Their role in the context of the decision making process was emphasized and the separate steps of the implementation of local incentives was reflected. Major problems were pointed out regarding the ambiguity and complexity of roles, besides; experiences connected to the effectiveness of local decision-making were introduced.

To sum up, a final remark has to be added to the above. There is a fragile balance in the decision-making system of the local governments between implementing the state orders and own initiatives. On one hand, the representative body wants to use the competencies the law provides, on the other it is bound from many respects, last but not least by the - presumed - support of the voters. Therefore the assembly as legislative body has to meet many demands: the representatives must show themselves responding to the needs of the citizens, act legally and legislate in the nearly vast forest of laws, and, as most important issue, find the way for effective legislation in the sense of implementing the regulations through the executive body and achieving social, financial and cultural aims in the settlement, also according to the policy of the party that supports them.

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