Urbanisation and Local Government(s)

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Maribor, 2021

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Urbanisation and Local Government(s)

ISTVÁN HOFFMAN, KRISZTINA F. ROZSNYAI &MARIANNA NAGY

Abstract The book is based on the presentation of the conferences *Public Services in the Member States of the European Union* (2017) and *Urbanisation and local government(s)* (2020) which were organised bv the Eötvös Loránd University (Budapest), Faculty of Law, Department of Administrative Law. The 2017 conference has been supported by the Ministry of Justice of Hungary and the 2020 conference has been supported by the Municipality of Budapest. The main aim of the book is to examine and analyse the urbanisation of local governments – especially in the light of the recent challenges of the urbanisation in the Eastern Central European countries. The scope of the book is a wide one: the methods – which are applied by the different chapters – are not only the methods of jurisprudence, but the wide range of administrative sciences (e.g. economics, sociology). First of all, the recent challenges and transformations of the urban areas and the government of the urban areas in several countries will be analysed. The general analysis of the urban governments and the organisational framework of these area will be followed by presentations by which the provision of urban services and several major issues of the urban life, especially the urban finances and the local taxation will be analysed. The impact of the recent COVID-19 pandemic will be analysed, as well. The challenges, solutions and transformation of Germany, Hungary, Poland, the Czech Republic, Slovakia, and Portugal will be shown by the presentations.

Keywords: • urbanisation • local governance • public services • public finances • local taxation • public procurement • NGOs and municipalities • markets and municipalities • impact of COVID-19

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Content

Foreword

The local governance and municipalities have always been an important system of the national administrative systems. Therefore, their analysis has had a long tradition in the European social sciences and administrative sciences. Modern municipal systems have evolved after the mid-19th century. This period was not only the beginning of the modern public administration and administrative law in Europe, but even this was the era of the industrial revolution, which transformed Europe. One of the major effects of these rapid economic and social transformation were the urbanisation. Therefore, urbanisation and modern local governance were born together, and this change can be interpreted as a permanent challenge of the modern local and regional administrative systems.

The different approaches of urbanisation and local governance are examined by this book. The different regulations on the urban administration have been compared by it, but the approach has been changed by the evolvement of the administrative sciences: comparative local governance and the comparison of the different local socio-economic systems became recent topics of the monographs. Thus, the multi- and interdisciplinary analyses have evolved during the last decades: it became clear, that the separated legal, economic, social etc. analysis could not show the whole picture of these phenomena. This interdisciplinary approach is similar to the kaleidoscope: if the kaleidoscope is standing, we can see several colourful parts. When the kaleidoscope begins to move, beautiful pictures are outlined by it.

Thus, the urbanisation and the local governance cannot be analysed by a one-sided work. Important transformations could be observed during the last decades. The revolutionary progress of ICT, and the fourth industrial revolution, and the Industry 4.0 transformed the socio-economic environment. The economic crisis in 2008/2009 hit the European systems, as well. And new challenges and threats have emerged: the last decade have been ended by the start of a pandemic, by the start of COVID-19.

This book could be interpreted as a kaleidoscope: it focuses on the different approaches and phenomena of local governance and urbanisation. The book contains traditional legal analyses, but even sociological, political, geographical and economic analysis can be found in it. Not only the methods used by the chapters are different in this book. It analyses different elements and phenomena, as well. Therefore, four major parts are distinguished by the book. The general questions on urbanisation and municipal administration are analysed by the first part. The questions on public services and mainly

on the frameworks of the provision of public services are focused by the second part. The financial resources are important for the effective and high-quality provision of urban services, therefore the financial background, especially the urban taxation is examined by the third part of the book. The closing part focuses on the greatest threat – which could be interpreted as a challenge, as well – of the urban systems of the early 2020s, the impact of the COVID-19 pandemic is analysed by the last two chapters, in the light of the Hungarian transformation.

The interdisciplinary methods are shown by the authors of the book: (administrative) lawyers, economists, sociologists, and even political scientists can be found among them. Thus, the wide scope of the administrative sciences is mirrored by this edition. The chapters of the book have been based on two conferences, which were organised by the Department of Administrative Law of the Eötvös Loránd University (Budapest), Faculty of Law. The first conference was held in 2017, and the major focus of that conference was the recent questions of the local public service provision in Europe. This conference was supported by the Ministry of Justice of Hungary. The majority of the chapters are based on the conference *Urbanisation and local government(s)',* which was held on November 27th, 2020. Because of the pandemic situation, the second conference was held on an on-line platform – as part of the resilience of the public service provision. The second conference was supported by the Municipality of Budapest. We would like to express our gratitude to the patrons of these conferences and to the Municipality of Budapest, which supported the publication of this book, as well.

We wish to the Readers of this e-book to see the colourful picture of the 'kaleidoscope' of the European urban systems, which shows different but still similar view of the transformation of the European urban governance.

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Part I

General questions on urbanisation

Urbanisation and Local Government – An Introduction

THORSTEN INGO SCHMIDT

Abstract This introductory essay is structured as follows: First of all, several forms of urbanisation (I.) are introduced and the processes of urbanisation and dis-urbanisation (II.) are defined. Then four fields of law which are deeply affected by urbanisation are put into the focus. These are, local government law (III.), but also public building law (IV.), civil service law (V.) and public finance law (VI.). Afterwards the effects of the corona pandemic on these fields of law are contemplated, taking account of the process of urbanisation (VII.). Finally, the main results are summarised (VIII.).

Keywords: • urbanisation • de-urbanisation • municipal law • public finance law • building law COVID-19 pandemic

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1 Introduction

This introductory essay is structured as follows: First of all, several forms of urbanisation are introduced, and the processes of urbanisation and dis-urbanisation are defined. Then four fields of law which are deeply affected by urbanisation are put into the focus. These are, local government law, but also public building law, civil service law and public finance law. Afterwards the effects of the corona pandemic on these fields of law are contemplated, taking account of the process of urbanisation. Finally, the main results are summarised.

2 Forms of urbanisation

There are at least three forms of urbanisation (Chaolin, 2020: 141-142), namely physical, functional and social urbanisation. Physical urbanisation describes the growth of cities in terms of inhabitants, buildings and surface area covered. Functional urbanisation on the other hand is characterized by mutual interlinks between a city and its surrounding countryside: Urban forms of production and services spread to the villages around the city. Finally, social urbanisation means that the attitudes and opinions of people living in the countryside become more and more similar to the ideals and moral concepts of the urban population. This essay focuses on the effects of physical urbanisation but will also take into account functional urbanisation and sometimes touch on social urbanisation.

3 Process of urbanisation

Urbanisation is a process, which leads to a different status. Although there seems to be a general tendency towards urbanisation, this process does not work only in one direction but can be reversed or started over again (DeLange et al., 2014: 41 and Zhang, 2016: 242-245). Therefore, apart from urbanisation there are also processes of dis-urbanisation (Mithchell & Bryant, 2020: 433-434 and Heineberg et al., 2014: 49) and re-urbanisation. Within a state, different regions may be in different phases of these processes. While in one part of the country, cities grow in inhabitants and further urbanisation takes place, in another part the population of cities decreases, and dis-urbanisation takes place. In the federal state of Brandenburg, for instance the regions around Berlin are growing while the number of inhabitants in towns bordering Poland decreases. The legal system has to cope with these simultaneous processes of urbanisation and dis-urbanisation and has to offer a wide range of solutions for a diverse set of challenges.

4 Local government law

First of all, the local government law should respond to these challenges. There are five dimensions of local government law which are important. These are the constitutional status of local governments (1.), the relation of the municipality to its inhabitants (2.), the relation of the municipalities to the supervising state authority (3.), the cooperation between municipalities (4.) and finally the municipal companies (5.).

4.1 Constitutional status of local governments

Most European constitutions grant the right of local self-government to the municipalities and some even to the counties (Panara, 2013: 369-370). If a constitution lacks this twofold guarantee there remains at least the European Charter of Local Self-government which has been adopted by most member states of the Council of Europe. But when towns have grown into large cities, they do not fit into this scheme any longer. Therefore, urbanisation questions the homogeneity of local communities which is an implicit assumption of local self-government and its laws. Frequently, state law makes such cities leave the county and form a county of its own. So, the tensions between the city and the county can be mitigated at the expense of distancing from the constitutional model.

4.2 Relation of the municipalities to its inhabitants

Next, urbanisation has an impact on the relation between the municipality and its inhabitants. The bigger municipalities get, the more services they provide to their inhabitants. This also leads to less reliance on personal relationships: Citizens depend more and more on local public services and do not know each other as well anymore (Chaolin, 2020: 150) and therefore cannot rely on each other as they used to. In summary, as urbanisation takes place the relationships between local communities and their citizens become more impersonal over time.

4.3 Relation of municipalities to the supervising state authority

Also, urbanisation affects the relation of municipalities to their respective supervising state authority. If a town is growing, new challenges arise. Therefore, the administrative capacity of a growing city has to increase as well. As a consequence, the higher-ranking state authority tends to be needed less as a counsellor but more as a supervisor.

4.4 Cooperation between municipalities

Furthermore, urbanisation influences the cooperation between municipalities. Physical urbanisation can lead to functional urbanisation: Small communities and towns have to cooperate by means of administrative treaties or special purpose associations to fulfil all public services. Major cities may offer their services to surrounding villages as well to make use of scale effects (Bel et al., 2007: 510). In such cases the special purpose union may be a preliminary stage of incorporation into the large city (Frenzel, 2013: 120).

4.5 Municipal companies

Finally, urbanisation puts into question the division of responsibilities between the core administration and municipal companies. The sheer amount of public problems in a large city cannot be solved any longer by its core administration on its own. Instead, that administration has to be supported by municipal companies. Those enterprises typically

provide electricity and gas as well as fresh water. Moreover, they dispose of sewage water and clear the waste (Ferreira de Cruz & Marques, 2011: 98). Sometimes, they even make public housing available. Due to the process of urbanisation, the importance of these companies increases in comparison with the core administration of the city. Those companies tend to transcend the borders of the local community in order to compete successfully with private companies. They develop into organizations of their own and become difficult to control and to steer by the local self-government body.

5 Public building law

The effects of urbanisation are not limited to local government law but also influence public building law. They have an impact on the procurement of land (1.), the process of planning (2.), the creation of the necessary infrastructure (3.), the erection (4) and finally the use (5.) of buildings.

5.1 Procurement of land

In the process of urbanisation, the central question of public building law is the procurement of building land. In the first decades after the Cold War former military areas could be conversed but now that resource has dwindled. On the one hand, local governments can try to increase the density of buildings, but such actions usually collide with the interests of the inhabitants already living in that area. On the other hand, former agricultural areas may be used and changed into zones of living (Home, 2007: 460-462). However, the farmers then need other areas as compensation. Ultimately, all these measures are limited by private property of land. As long as private landowners are not willing to sell, urban development comes to a rest.

5.2 Process of planning

Urbanisation also influences the process of planning new building zones. The necessary procedure can take several years and is further complicated by environmental requirements which often stem from European Union law.

5.3 Creation of necessary infrastructure

Physical urbanisation cannot be realized without the necessary infrastructure. New zones of living require new roads and new train lines, water supply, electricity and gas. Furthermore, the disposal of waste and sewage water must be ensured. If this infrastructure is not created in time, physical urbanisation must either come to a halt or slum-like quarters develop (Kötter, 2004: 3).

5.4 Erection of buildings

Moreover, public building law has to respond to the demands of urbanisation in terms of the erection of buildings. High environmental standards and strict labour regulations impede the fast construction of houses. If the challenges of urbanisation shall be met and those standards shall not be reduced the public building law has to find new answers such as the approbation of types of buildings instead of single buildings or the setting of targets to be met instead of means to be used.

5.5 Regulating the use of buildings

Finally, lawmakers have to decide whether public building law shall also regulate the use of buildings (Gruis & Nieboer, 2007: 49-52). For instance, a certain quota of apartments in a large building project can be reserved for lower-income households. These social housing quotas could be applicable to newly erected buildings only or to older structures, too. If such quotas shall be used one has to keep in mind that they represent a deep interference into the fundamental rights of property owners.

6 Civil service law

The process of urbanisation also affects the civil service law. Urbanisation and dis-urbanisation have an influence on the recruitment of public servants (1.), their qualification (2.) and their motivation (3.). In this context, the payment of the civil servants proves of crucial importance (4.).

6.1 Recruitment of civil servants

Urbanisation massively influences recruitment. In large cities, there are many job-offers for qualified workers (Chaolin, 2020: 148), and the local government administration usually is not the most desirable employer. Often the private sector offers higher wages (Christofides & Michael, 2013: 22), but even if employees choose to stay in the public sector, they mostly prefer working for the state administration instead of the local government. In the countryside, however, local governments are a much more attractive employer in comparison, but there is still a lack of applicants, as aspiring young talents tend to study in the large cities and stay there afterwards instead of returning to their home region.

6.2 Qualification of public servants

As urbanisation makes it more difficult to attract personnel, local governments have to invest in training their existing employees. It becomes a necessity to incentivise employees to obtain further qualifications, although not every staff member wants to improve.

6.3 Motivation of public servants

This leads to the question of motivation. Basically, there are two ways of motivating employees (Min Park & Word, 2012: 707): On the one hand, they can be motivated extrinsically by money and similar benefits which are restricted by the limited amount of public funds. On the other hand, they may be motivated intrinsically by their important function serving the public good (Brewer, 2003: 20). It is an important task for every local government to foster this intrinsic motivation.

6.4 Payment of public servants

The best intrinsic motivation will not suffice however, if the compensation for civil servants is inadequate (Min Park & Word, 2012: 715). In this context, the amount and the structure of compensation play a role. It is obvious, that higher compensation attracts more and better qualified employees, but the composition of payments also affects the recruitment of personnel. Traditional compensation systems differentiate according to the formal qualification of civil servants, the seniority of public service and social aspects such as marriage status and the number of children. Therefore, working in the public sector is especially interesting for long-serving, married employees with children. Generally speaking – of course there are exceptions – those are not the most flexible and motivated public servants. Therefore, modern systems of payment should take other factors into account as well, such as individual performance and willingness to work over-time.

7 Public finance law

After considering the effects of urbanisation on civil service law, one also needs to look at public finance law which has to provide the means without which other branches of the public sector would not be able to pursue their goals. Public finance law forms a connection between the responsibilities of local governments (1.), the expenses to meet those responsibilities (2.) and the revenues to finance these expenses. Financing may come from public charges (3.), systems of financial transfer (4.) or loans (5.). Moreover, new methods of budgeting strive to reform the budget system (6.).

7.1 New responsibilities of local governments

Urbanisation leads to new public responsibilities. Inhabitants of large cities demand more and better public services, for example large-scale projects like subways are only needed in rather large cities. Besides, urbanisation increases social problems (Zhang, 2016: 246-248) which leads to a higher demand for social services like childcare or coping with unemployment and immigration. These new functions are mainly performed by local governments as state agencies often lag behind.

7.2 Expenses to fulfil the tasks

Therefore, urbanisation leads to higher financial demands so that local governments can fulfil necessary tasks related to infrastructure and social services (Richardson, 1987: 578). Generally, this results in higher public expenditures per inhabitant.

7.3 Revenue by public charges

In order to compensate for these higher expenses local governments have to rely on revenues generated by public charges in form of taxes, contributions and fees (Kitchen et al., 2019: 110-115). In the process of urbanisation, tax revenues often increase[1] as well, but usually not at the same speed as expenditures. This time lag leads to a financial gap. In general, contributions, for example for new roads, cannot fill this void. They are difficult to justify as the advantages of new infrastructure for the public often outweigh the advantages for the neighbours of these projects. Moreover, the sum of contributions may not exceed the costs of the infrastructure project they are paid for. The same is valid for fees. Ideally, they cover the costs of an administrative activity for which they are charged but don't transcend them.

7.4 Systems of fiscal transfers

Therefore, urbanisation increases the need of local governments for allowances coming from systems of fiscal transfer (Schroeder & Smoke, 2003: 24). However, those systems often do not take into account the real costs of infrastructure or social services but are only orientated at the raw number of inhabitants. Although they sometimes upgrade the numbers of inhabitants progressively, the main cost factor is not only the absolute figure of residents but the rate of increase or decrease in their numbers. As a result, not only urbanisation but also dis-urbanisation leads to higher costs of local governments which should at least partially be compensated for by systems of fiscal transfer.

7.5 Public debt

If neither higher taxes nor more funds from systems of fiscal transfer suffice to compensate the higher expenses due to urbanisation, cities have to take out more loans (Kitchen et al., 2019: 124-127). Those credits usually have to be approved by the state supervisory agency (Kitchen et al., 2019: 236), which leads to the question whether the state has to guarantee the loans of its municipalities. Those credits form a short-term gain but a long-term loss. Often, they cannot be paid back by local governments and so municipalities find themselves in a debt trap they cannot escape from without help from the state government.

7.6 New developments in budget law

Social urbanisation influences budget law as well. Its effects can be detected not only in the process of budget-making but also in the results. Participatory budgeting is process orientated. Citizens who become more interested in financial questions get a direct say in the use of at least a small part of the fiscal means of a municipality (Holtkamp, 2008: 223-226). Gender-budgeting however is focused more on the results of the budget-making process. It asks whether public services are primarily used by men or by women or by members of both sexes alike and tries to draw conclusions from these data (Himmelweit, 2018: 94).

8 Influence of the corona pandemic with urbanisation in the background

Against this background of urbanisation, the corona pandemic is hitting Europe and the rest of the world. It is not only a medical threat, but it also poses new challenges for local government (1.), public building (2.), civil service (3.) and public financial (4.) law.

8.1 Local government law

In the face of the current pandemic quick reactions are necessary. Municipal authorities have to coordinate and execute countermeasures. As a result, the importance of mayors increases, whereas local self-government bodies, the "local parliaments", have difficulties to convene and to make decisions. Therefore, it is of great importance for the state parliament to change the local government code and for the local parliaments to adapt their standing orders, to guarantee the functioning of local self-administration. For example, the period for transmitting the agenda before a session may be shortened or the quorum for valid decisions reduced.

8.2 Public building law

Public building law has to strive to accelerate all planning and building processes for structures urgently needed to counter the pandemic such as vaccination centres or emergency hospitals.

8.3 Civil service law

Civil service law has to point out that there is a duty for public servants to work in different departments of the local government administration and for instance accept being transferred to the health division. Moreover, one might discuss whether there is an obligation for civil servants to be extremely careful in order to protect themselves from the pandemic and be able to continue their work. Finally, when a vaccination will be available one may consider their obligation to become vaccinated.

8.4 Public finance law

Although several fields of law are concerned, the pandemic puts the greatest burden on public finance law. Local governments have more functions to perform which lead to more expenses. At the same time tax revenue decreases dramatically (Dorn et al., 2020: 14). If local governments do not receive more funds from systems of financial transfer, they are obliged to take out more loans. Thus, their former efforts to consolidate their budgets have been rendered useless within just a year.

9 Conclusions

Summing up, it becomes clear that urbanisation takes place in different forms and varying, often overlapping phases. It affects many sectors of law, especially local government law, public building law, civil service law and public finance law. The corona pandemic poses new challenges to these fields of law and will decide whether the general process of urbanisation will continue or whether we will enter a new phase of dis-urbanisation.

Notes:

[1] Zhang (2016: 246 and 249) describing an erosion of the tax base due to the rise of the informal sector.

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The Role of Inter-municipal Cooperation in the Process of Urbanisation in Poland

JAROSŁAW KOSTRUBIEC

Abstract The aim of this study is to determine the role of legal forms of inter-municipal cooperation in the process of urbanization in Poland. Characteristics of institutions which are forms of inter-municipal cooperation on the basis of Polish legal regulations were made. In the context of urbanisation such legal forms of inter-municipal cooperation as: municipal unions, metropolitan unions, municipal agreements, associations of local government units and commercial law companies were analysed. Special attention was paid to metropolitan unions, which have the greatest potential impact on the urbanisation process. The study takes into account statistical data related to those spheres of activity of local self-government units within inter-municipal cooperation, which are most related to the urbanisation process. The study formulates a thesis according to which Polish legal regulations in the field of forms of inter-municipal cooperation create optimal conditions for the implementation of public tasks related to the urbanisation process. However, in the case of metropolitan unions, it is necessary to amend legal regulations in terms of the territorial applicability of the provisions of the metropolitan law, whose legal force should be extended to the entire territory of the state, thus creating favourable conditions for urbanisation processes in other regions of Poland.

Keywords: • urbanisation • inter-municipal cooperation • local government • municipal law • Poland

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1 Introduction

The main aim of this study is to determine the role of legal forms of inter-municipal cooperation in the process of urbanisation in Poland. In order to answer the question which of the forms of inter-municipal cooperation existing in the Polish legal system play the greatest role in the urbanisation process and why, the author of this study had to cover the following issues. Firstly, the author had to review the legal forms of inter-municipal cooperation in Poland. Secondly, in order to determine which forms of inter-municipal cooperation play the greatest role in the urbanisation process in Poland, empirical research had to be carried out using official data and available statistical survey results. It is worth noting that the vector of relations between legal forms of inter-municipal cooperation may have a two-way orientation. On the one hand, the urbanisation process may give rise to the need to initiate cooperation between local government units to a greater extent. On the other hand, the already functioning institutions of inter-municipal cooperation may influence the acceleration of urbanisation processes themselves. This study does not take into account legal forms of cross-sectoral cooperation, such as: agreements of local government units with so-called other partners, consortia, clusters, local action groups and local tourist organizations, which also have a significant impact on urbanisation processes in Poland (Kostrubiec, 2020: 196-199). However, research in this area would require a separate study.

In the study, two elements of substantive character can be distinguished. The first element is a legal analysis of the provisions regulating the organisation and functioning of institutions that are a form of inter-municipal cooperation. There was made a review of those legal forms of inter-municipal cooperation which have or may have a significant influence on the urbanisation process in Poland. Therefore, such legal forms of inter-municipal cooperation were characterised as: municipal unions, metropolitan unions, municipal agreements, associations of local government units and commercial law companies. The second element of consideration is constituted by statistical data related to the functioning of entities being a form of inter-municipal cooperation. The aim was to expose those spheres of activity of local government units within particular forms of inter-municipal cooperation, which have a direct or indirect influence on the urbanisation process in Poland.

The urbanisation is generally understood as the development of cities associated with the concentration of industry and trade, which encourages the influx of population. This urbanisation process is accompanied by the expansion of urban areas and an increase in the number of urban inhabitants as a proportion of the total population (Hoffman et al., 2020: 14). It is worth mentioning here that, as the urbanisation process is accelerating worldwide, it is estimated that by 2050 two thirds of the world's population will live in cities (Wang, Liu & Zhang, 2021: 1). Consequently, the urbanisation process determines the development of residential space, the expansion of technical infrastructure, including telecommunications (Karpiuk, 2019: 39) and local public transport. The urbanisation also

results in an increase in the demand for energy and water, the need to create an optimal municipal waste management system (Borucińska-Bieńkowska, 2015: 89), and even ensuring cybersecurity, in which local government bodies play no less important a role (Karpiuk, 2021a: 616-617; Karpiuk, 2021b: 241). Meeting the needs of the population related to the process of urbanisation may to a large extent take place precisely with the use of legal forms of inter-municipal cooperation. Therefore, the thesis that will be verified in this study is the claim that Polish legal regulations in terms of forms of inter-municipal cooperation create optimal conditions for the implementation of public tasks related to the urbanisation process, but in the case of metropolitan unions it is necessary to amend legal regulations in terms of the territorial validity of the provisions of the metropolitan law, whose legal force could be extended to the entire area of the state, thus accelerating the urbanisation process in other regions of Poland.

2 Methodology

In the study first of all classical research methods and techniques characteristic of legal sciences (law) were used. The main method used was the formal-dogmatic method. Consequently, the rules of linguistic interpretation of law were mainly used to analyse and evaluate the binding legal regulations on forms of inter-municipal cooperation in the Polish legal system. The analysis of legal regulations binding in the above scope allowed to formulate de *lege lata* and *de lege ferenda* conclusions. In addition, the author used the method of analysis of official statistical data and surveys in order to determine which legal forms of inter-municipal cooperation are most often applied to achieve the objectives related to the urbanisation process in Poland, in particular such as: local public transport, municipal waste management, activation of the local labour market, road management, collective water supply and sewage disposal, which is structurally linked to the water supply and sewage sector (Czesak, 2014: 134).

3 Legal forms of inter-municipal cooperation in Poland

The first legal forms of inter-municipal cooperation, such as: municipal unions, municipal agreements and associations of municipalities, were introduced to the Polish legal system in 1990. At first they referred only to municipalities, as the local and regional self-government units operating in Poland today were established only in 1998 (Karpiuk & Kostrubiec, 2017: 19; Hoffman, 2018: 16-17). The applicable legal forms of cooperation between local government units are as follows: municipal unions, metropolitan unions, municipal agreements, associations of local government units, commercial law companies. The cooperation of local government units in the above-mentioned forms is voluntary. Polish legal regulations provide for freedom both in the choice of the form of cooperation and in the creation and liquidation of specific forms of inter-municipal cooperation (Kotlińska, 2017: 20). Depending on the goal that local government units want to achieve by undertaking joint activities, inter-municipal cooperation may take different legal forms. When its objective is the implementation of public tasks,

cooperation can take the form of inter-municipal or inter-district unions, agreements or associations of local government units. The execution of activities by local government units other than the execution of public tasks allows for the choice of other forms of cooperation. Particular forms of inter-municipal cooperation find application in urbanisation processes to a different degree. The examination of their legal construction and the results of empirical research will allow for a gradation of forms of inter-municipal cooperation in the context of their role in the urbanisation process in Poland.
The table below presents various possible forms of inter-municipal cooperation at all levels of the self-government structure in Poland.

Table 1: Legal forms of inter-municipal cooperation in Poland

	Communal government	District government	Regional government
Legal forms of inter-municipal cooperation	1. Inter-communal union 2. Commune-and-district union 3. Metropolitan Union in the Silesia Province (Silesian Voivodeship) 4. Inter-communal agreements 5. Agreement with a district 6. Agreement with a region 7. Association of local government units 8. Commercial law company	1. Inter-district unions 2. District-and-commune union 3. Agreement between districts 4. Agreement with a commune 5. Agreement with a region 6. Association of local government units 7. Commercial law company	1. Agreement with a commune 2. Agreement with a commune 3. Agreement with a district 4. Association of local government units 5. Commercial law company

Source: Authors' own study

3.1 Municipal unions

Municipal unions in Poland may occur in horizontal and vertical arrangements. This means that a municipal union may take the form of an inter-communal union, an inter-district union or a district-and-commune union (Articles 64-73b of the Act of 8 March 1990 on commune government, Journal of Laws of 2021, item 1372, hereinafter: the Act on commune government; Articles 65-72 and Articles 72a-72c of the Act of 5 June 1998 on district (poviat) government, Journal of Laws of 2020, item 920, hereinafter: the Act

on district (poviat) government). However, Polish municipal law does not allow for the creation of unions of voivodships (regions), vertical unions with voivodships (regions) and unions with entities that are not local government units. Municipal unions are formed in order to perform jointly public tasks. They have legal personality and carry out public tasks in their own name and on their own responsibility. The municipal union may perform legal acts in the sphere of public law and civil law. The rights and obligations of local government units related to the performance of specific public tasks within a municipal union are transferred to the union. The decision of local self-government bodies to cooperate within a municipal union is voluntary. Polish law has also not introduced restrictions on the number of entities forming a municipal union (Zioło & Oliwa, 2016: 125). Local self-government units may be participants in several municipal unions at the same time. The creation and operation of municipal unions are not subject to territorial or temporal restrictions. Polish municipal law does not define in detail the rules concerning the system and functioning of a municipal unions, so the relevant regulations should be included in the statutes of such unions (Karciarz & Kiełbus, 2016: 69-70).

Currently, there are 314 inter-communal unions, 7 district unions and 15 district-and-commune unions registered in Poland (Source: Registers of unions of local self-government units: https://www.gov.pl/web/mswia/zarejestruj-zmien-statut-lub-wyrejestruj-zwiazek-miedzygminny-zwiazek-powiatow-zwiazek-powiatowo-gminny).

It should be remembered that in Poland there are 2477 communes and 314 districts. One of the largest and oldest still operating inter-communal unions is the Union of Municipalities of Opole Silesia with its seat in Opole, which was established in 1991. The Union comprises 38 municipalities, and according to its statute, the aim of its activities is "social and economic development of municipalities and the Opole Silesia region", which may also be considered in the context of urbanisation (Kiełbus & Ziemski, 2020: 84). The analysis of the data available in the registers of unions of local self-government units, which are kept by the minister responsible for public administration, shows that in the case of inter-municipal unions, environmental protection, municipal waste management and local public transport dominate among the registered public tasks. In the case of district (poviat) unions, the main tasks carried out are those related to the computerisation of the land and building records. In the case of commune-and-district unions, which can only be established from 2015 onwards, the tasks relating to the organisation of local public transport, first of all, are realized.
The scope of activity of municipal unions in the light of the studies carried out is presented in the table below.

Table 2: The scope of activity of municipal unions

Tasks	Inter-communal unions	Inter-district unions	Commune-and-district unions
Local public transport	23	1	11
Common handling of the district's and commune's organisational units	-	-	1
Activation of the local labour market	1	-	1
Computerisation of the land and building records	-	6	-
Environmental protection	122	-	3
Water and sewage management	18	-	-
Municipal waste management	86	-	1
Gasification	14	-	-
Renewable energy sources	11	-	1
Road management	5	-	1

Source: Authors' own study

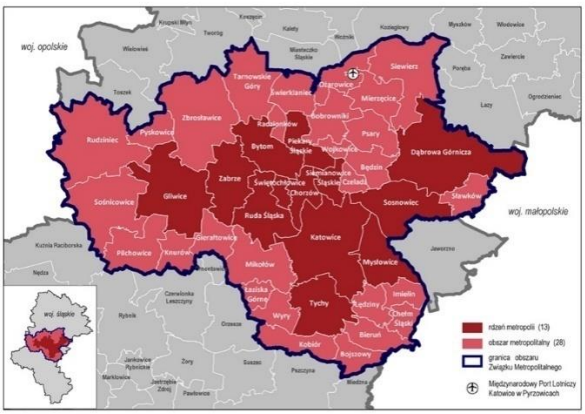
3.2 Metropolitan unions

Under the current legal status, a metropolitan union is an association of municipalities in the Silesian Voivodeship (Province), characterised by the existence of strong functional links and advanced urbanisation processes, located in a spatially coherent area with a population of at least 2.000.000 (Article 1(2) of the Act of 9 March 2017 on the Metropolitan Union in the Silesian Voivodeship (Province), Journal of Laws of 2021, item 1277). The previously applicable Act of 2015 on Metropolitan Unions contained regulations that in practice prevented the effective establishment of a metropolitan union. In light of the Act of October 9, 2015 on the Metropolitan Unions, spatially coherent sphere of the city development, which is the residence of the voivodship governor or the regional council, could be considered the metropolitan area. The metropolitan area should have been characterised by the existence of strong functional links and advanced urbanisation processes. The Metropolitan Unions, as in France, could be created in the area where the population was at least 500.000 residents (Bosiacki & Kostrubiec, 2018: 365). The Act on the Metropolitan Union in the Silesian Voivodeship (Province) of 2017 was a response to the need to establish a metropolitan union in the Upper Silesian area, as the previous act contained solutions that did not consider the specifics of the region and the already existing forms of cooperation between local governments.

A metropolitan union has legal personality and may be established to carry out public tasks on its own behalf and on its own responsibility. Only municipalities can be members of a metropolitan union established in a Silesian agglomeration. The metropolitan union's status is regulated by its statutes, the draft of which is subject to consultation with the Prime Minister at the request of the minister responsible for public administration. The Council of Ministers decides on the establishment of a metropolitan union in the Silesian Voivodeship (Province) by way of a regulation which defines its name and the seat of its authorities, as well as its area and borders by indicating the communes which are part of the union. When issuing the ordinance, the Council of Ministers should take into account the existing forms of cooperation between the municipalities comprising the metropolitan union, functional links and the advancement of urbanisation processes, as well as the settlement and spatial arrangement taking into account the social, economic and cultural relations in the area (Article 4(1) of the Act on the Metropolitan Union in the Silesian Voivodeship). On this basis, on 26 June 2017 the Council of Ministers issued the ordinance on the establishment of a metropolitan union in the Silesian Voivodeship called "Upper Silesia and Zagłębie Metropolis" (GZM Metropolis), which is the first metropolitan union to be established on the basis of the new law. This union consists of 41 municipalities with a population of approximately 2.280.000 people, which is almost 50% of the inhabitants of the Silesian Voivodeship (Province) (Marchaj, 2018: 10).

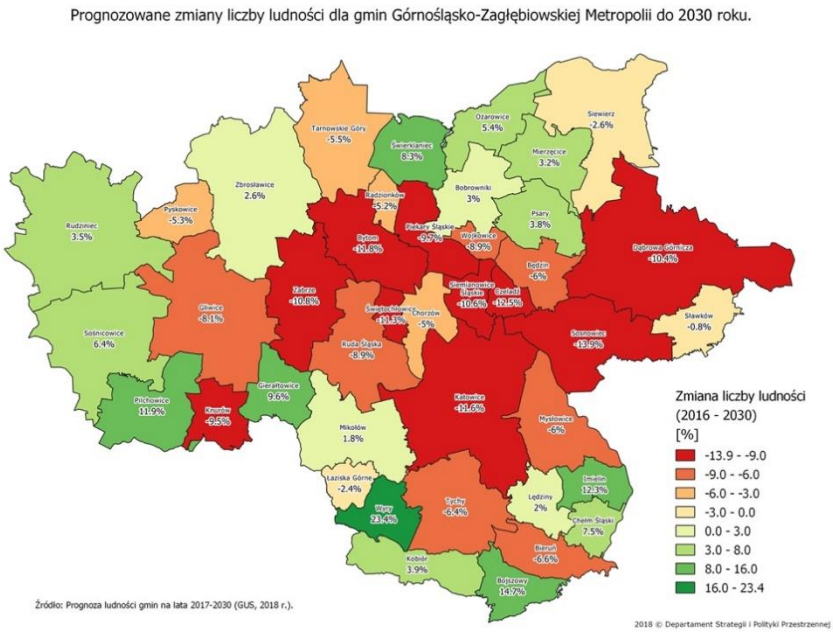
The metropolitan union shall perform public tasks (metropolitan tasks) within the scope of: 1) shaping spatial order; 2) social and economic development of the area of the metropolitan union; 3) planning, coordination, integration and development of local public transport, including road and rail transport, as well as sustainable urban mobility; 4) metropolitan passenger transport; 5) cooperation in determining the course of national and voivodeship roads in the area of the metropolitan union; 6) promotion of the metropolitan union and its area. In addition to the above, the metropolitan union may carry out public tasks on the basis of agreements and commissioned tasks of government administration. As it can be seen from the above, metropolitan tasks correlate closely with urbanisation processes and are subsidiary to local and regional tasks performed by local government units (Marchaj, 2019: 114). The role of the metropolitan union in the urbanisation process is particularly evident against the background of the forecast changes in population number for municipalities in the Upper Silesia and Zagłębie Metropolis up to 2030 (Figure 2).

Figure 1: Upper Silesia and Zagłębie Metropolis



Source: http://infogzm.metropoliagzm.pl.

Figure 2: Forecast changes in population number for municipalities in the Upper Silesia and Zagłębie Metropolis up to 2030



Source: http://infogzm.metropoliagzm.pl.

3.3 Municipal agreements

Municipal agreements in the Polish legal system may be concluded between all local government units. The basis for their conclusion is a resolution of the legislative body of the local government unit to agree to cooperate under the municipal agreement. The agreements may be only cover public tasks specified by applicable law, which belong to the jurisdiction of local government (Cieślak, 1985: 114). The essence of agreements being concluded is "entrusting" the execution, or in the case of inter-communal agreements - the transfer of specific public tasks, to another local government unit, while other units are required to contribute to the costs of these tasks. The conclusion of an agreement does not lead to the creation of a new entity having legal personality, as in the case of a municipal union. The agreements of local government units in Poland are based on the principle of voluntary participation. The analysed agreements are a public law, external and non-sovereign form of activity, although the content of the agreement depends on the will of the parties, which brings them closer to civil law contracts (Sikora, 2019: 78). As a rule, the Polish legislator has not introduced any territorial limitation, apart from agreements concluded with the participation of voivodeships (provinces). In the case of provinces, an agreement may only be concluded with communes or districts from the area of that province. Certain restrictions appear only in the case of vertical agreements. For agreements between communes and a district or province, and between districts and a province, the transfer of tasks may take place only in one direction, i.e. downward (Karpiuk, 2014, p. 41). The municipal agreement is flexible form of inter-municipal cooperation. The Polish legislature has not introduced procedural requirements for the conclusion of these agreements. In particular, there is no need to adopt organisational documents such as, for example, a statute (Jagoda, 2019: 61). However, the agreement must be published in the regional official journal.

Municipal agreements in the Polish legal system may occur in horizontal and vertical arrangements. The group of horizontal agreements includes: 1) inter-communal agreements (Article 74 (1) of the Act on communal government); 2) agreements of districts (Article 73 (1) of the Act on district government) and 3) agreements of provinces (regions) (Article 8 (2) of the Act on regional government). The group of vertical agreements includes: 1) agreement on the transfer of tasks to a district or commune by the province (Article 8 (2) of the Act on regional government); 2) agreement on the transfer of tasks to a commune by the district (Article 4 (5) of the Act on district government).

There is no register of municipal agreements in Poland. In the light of the surveys, in the framework of which questionnaires were sent back by 849 communes (34.25% of all communes in Poland) and 140 districts (44.59% of all districts in Poland), among the dominant fields related to urbanisation, within the framework of which communes and districts concluded agreements, it should be indicated in the case of communes: public

transport (21%, 100 inter-municipal agreements); education (19%, 94 inter-municipal agreements); social welfare services (12%, 59 inter-municipal agreements); waste management (10%, 48 inter-municipal agreements); water and sewage management (9%, 44 inter-municipal agreements). In the case of districts, most agreements were concluded in the fields of: social welfare services (43%, 101 inter-district agreements); public transport (20%, 47 inter-district agreements); education (8%, 19 inter-district agreements); entrepreneurship and labour market (7%, 16 inter-district agreements) (Source: Porawski, 2013: 25).

3.4 Associations of local government units

Associations can be established in Poland within communes, districts and provinces (Article 84 (1) of the Act on communal government; Article 75 (1) of the Act on district government; Article 8b (1) of the Act on regional government). In the case of communes, the legislature set out the condition that associations may be created by communes in order to support the idea of local government and defend common interests. Associations formed by districts and regions can be established primarily in the sphere of culture, economy and environment protection (Kostrubiec, 2020: 194). An association obtains legal personality upon entry into the National Court Register and is a separate legal entity. Local government units have the freedom to decide on participation, seceding or termination of the association. Local government units may independently define the association's goal, structure and programme. In addition, the goals of associations created by local government units must be long-term. The organisation, tasks and manner of operation of associations are to be set out in their statutes. Under Polish law, associations of local government units are not corporations of public law. It is not possible to transfer to them any powers of a sovereign nature. Associations may not be established to jointly perform public tasks. The local government units may entrust the association with performing the unit's tasks, but it still has the possibility of independent fulfilment of these tasks and is held responsible for this. Associations of local government units may pursue an economic activity on general terms and allocate the income for the achievement of statutory objectives.

In the light of the surveys, in the framework of which questionnaires were sent back by 849 communes (34.25% of all communes in Poland) and 140 districts (44.59% of all districts in Poland), the leading area of cooperation within associations of local government units includes local social and economic development: communes (14%, 77 associations), districts (13%, 17 associations) (Source: Porawski, 2013: 42).

3.5 Commercial law companies

In the Polish legal order system, commercial law companies are a form of inter-municipal cooperation mainly in the sphere of municipal management. In this form of cooperation, public utility tasks are implemented which aim to meet the collective needs of the

population in a current and uninterrupted way by providing publicly available services (Article 1 (2) of the Act on municipal management, Journal of Laws of 2021, item 679). The category of public utility tasks includes matters of real estate management, water supply, sewerage, municipal sewage disposal and treatment, maintenance of cleanliness and order, landfills, municipal waste disposal, heat supply, local public transport, health care and social welfare (Wojtkowiak, 2018: 74). In the sphere of public utility, local government units may create limited liability companies or joint stock companies and join such companies. Beside the sphere of public utility, a commune may establish or accede to commercial law companies only in strictly statutorily defined cases, which in particular are the unmet needs of the community on the local market, or the pursuit of banking, insurance or education activities (Article 10 (1-3) of the Act on municipal management). As regards districts, the possibility of creating or accession to companies outside the sphere of public interest was excluded. The province (region) may, in turn, establish commercial law companies outside the public sphere only in the area of promotional, educational, editorial and telecommunications activities for the development of the region (Article 13 (2) of the Act on regional government).

In the light of the surveys, in the framework of which questionnaires were sent back by 849 communes (34.25% of all communes in Poland) and 140 districts (44.59% of all districts in Poland), the leading areas of cooperation in the framework of commercial law companies are, in the case of communes, waste management (13%, 107 commercial law companies), water and sewage management (12%, 105 commercial law companies) and entrepreneurship and the labour market (15%, 124 commercial law companies). However, in the case of districts, the leading areas of cooperation within commercial law companies may include local social and economic development (23%, 21 commercial law companies) and entrepreneurship / the labour market (20%, 18 commercial law companies) (Source: Porawski, 2013: 35).

4 Conclusions

The considerations contained herein allowed drawing conclusions that have formed the basis for a positive verification of the main thesis. In accordance with the thesis, Polish legal regulations regarding forms of inter-municipal cooperation create optimal conditions for the implementation of public tasks related to the urbanisation process. However, in the case of metropolitan unions, it is necessary to amend the legal regulations in terms of the territorial applicability of the provisions of the metropolitan law. Its legal force could be extended to the entire territory of the country, thus accelerating the urbanisation process in other regions of Poland.

The conducted research shows that in the case of a municipal union, the task that appears in all configurations of this form of inter-municipal cooperation is the organisation of local public transport. The fulfilment of this task is undoubtedly connected with the urbanisation process. As can be seen from the conducted research, the local public

transport is the basic public task in the case of 73% of registered district-and-commune unions. In the case of both inter-communal and inter-district agreements the tasks that appear are public transport, education and social welfare services. The leading area of inter-municipal cooperation within associations of local government units is local social and economic development. On the other hand, commercial law companies are most frequently used in the context of urbanisation processes in the case of communes in the fields of waste management, water and sewage management and entrepreneurship and the labour market. In the case of companies established by districts, activities in the sphere of local social and economic development as well as entrepreneurship and the labour market come to the fore in connection with the urbanisation process. Nevertheless, the Polish legal system does not give freedom in choosing the purpose of business activity undertaken by local government in the form of a commercial law company, which makes it difficult to independently identify the needs of the local government community.

However, irrespective of the above-mentioned forms of inter-municipal cooperation, it should be stated that the urbanisation process is influenced to the highest degree by the process of metropolisation. From this point of view, the metropolitan union should be the most desirable and play the greatest role as one of the most momentous examples of a legal form of inter-municipal cooperation. This is because metropolisation is the most dynamic process that contributes most effectively to the urbanisation of communes within the metropolitan area. In view of this, it would be appropriate to postulate amendments to the provisions of the Metropolitan Act to give it such content as would be appropriate for the majority of provinces. Implementing the above proposal *de lege ferenda* would enable local authorities to pursue an appropriate policy of sustainable development, which would contribute to the urbanisation of other regions in Poland.

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URBANISATION AND LOCAL GOVERNMENT(S)
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The Effects of Spatial Structure for Regional Units and Organizations in Hungary

PÁL SZABÓ

Abstract This paper focuses on the relationships between the spatial structure and the development regions in Hungary. In the first part the theoretical foundation is summarised. One important foundation is the spatial structure, which includes essential elements of physical and social, economic geography of an area, and it means the regional development inequalities also. Other foundation is the top-down and bottom-up development policies, which have different territorial formations in practice. In the second part the main characteristics of Hungarian spatial structure are described, and we analysed the counties and the territorial development councils based on the elements of spatial structure, and interpreted the difference: the regions have problems or the problems have regions? The results show, some elements (or lack of elements) of spatial structure have important effect for the territorial systems of development regions in Hungary, but mainly for the bottom-up system.

Keywords: • spatial structure • regional policy • counties • territorial development councils • Hungary

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1 Introduction

The territorial divisions and the borders are important issues of the regional geography, regional science, regional policy and territorial administration. To make a subdivision is always problematic, because the natural, social, economic phenomena in the geographical space do not cover each other, these have different territorial formations. This a challenge and a problem not only in the territorial analyses, but for the regional policy also, because localized problems often do not fit the units of regional policy. As a result of this two kinds of regional policies are existing: one of them is based on the official regional units, on the administrative subdivision, and the other is focusing to the localized phenomenon, the spatial problem, and it may get a special territorial form. On regional scale in a country the latter one is often one element of the spatial structure.

In Hungary there are a lot of official territorial levels (including the five NUTS and LAU levels), and they have different roles and functions. Actually three of them are used in regional policy: NUTS 2 (the 7 regions are the objects of EU regional policy since 2004, but in Hungary in this EU-period (2014-2020) these are not units of Hungarian regional policy), NUTS 3 (the 19 counties ("megye") and the capital have development councils since 1996, and since 2013 they have much more money for regional development), and LAU 1 (in 2015 this new level ("járás") with 194 units became the microregional level of Hungarian regional policy, but for the time being these have not tasks and budget). In this study we analyse the level of counties, because in this EU-period this is the main level of Hungarian regional policy. The counties are nodal regions from theoretical viewpoint, and the units of public administration (units of state administration, and they have self-government also) from the practical viewpoint, and they have more than 60 years old boundary lines. Because of these features, the first question is: how diverse are they from a spatial perspective? The regulation of Hungarian regional policy (XXI./1996) gives possibility to the self-governments of counties to establish a territorial development council for a continuous and cross-(county)border area, so other question is: which elements of spatial structure have generated new development regions with a council? But at first we summarise the theoretical background.

2 Spatial structure

The spatial structure means, on the one hand, a generalized figure, a spatial model of a geographical phenomenon (Elissalde & Saint-Julien, 2004), on the other hand, a generalized illustration of a geographical area, a schematic territory representation of one region, country etc. (Szabó, 2008). In this study, our interpretation is the second one. There are different opinions about the content of spatial structure, and we can distinguish three viewpoints based on the interpretation of the phenomenon (Szabó, 2008): the spatial structure is a group of components, or the positions and arrangement of components, or the components and their arrangement together. In this paper our interpretation is the third one. In the analyses there are three ways to describe the spatial structure (Szabó, 2016).

In the first case, the spatial structure refers to the elements of geographical space, to the presence of elements and their territorial concentrations, and it is often related to the core-periphery relation: focusing on the nodes and the physical connections between them (axes, corridors). In the second case, the spatial structure refers mostly to the qualitative inequalities or sometimes to the quantitative differences between regions, and in the focus are the more and less developed areas (zones). These two approaches are not separated, they sometimes appear together in territorial research; in our study, we follow this path.

3 Top-down and bottom-up regional policy and regions

The main objective of regional policy is to achieve a harmonious and balanced spatial structure. There are two frameworks in which this target could be realized: the top-down and bottom-up development policy. According to Pike et al. (2006) in case of the top-down system it is determined centrally, which regions are in need of intervention, after which developments are financed and governed centrally being decentralized bodies, and a sectorial approach is dominant. As opposed to this, in the case of bottom-up system the formation of regions that are to be developed happens according to endogenous demand, thus in the coordination of developments horizontal co-operations and decentralization is dominant within the framework of local or regional development policies. Top-down and bottom up development policies have been generally sold as two irreconcilable ends of the development intervention spectrum (Pálné Kovács, 2001), the foundations of top-down and bottom-up development policies can be reconciled in a joint "meso-level" conceptual framework (Crescenzi & Rodríguez-Pose 2011). The role, relationship and operational effectiveness of the two systems are determined by the establishment and organization of the given state (Rechnitzer & Smahó, 2011).

The regional aspect and the territorial projections of the phenomenon is a duality of territorial divisions. In the first case (top-down) the policy is linked to a regional administrative system: the territorial administrative division of the country is the basis. In this case central development concepts are carried out through decentralized administrative entities in regional units, or the leaders of regional administrative units develop their own development strategies and endorse them on higher levels, then follow them in officially delimited administrative units. In the second case the formation of the region to be developed is not connected to an existing administrative unit, but the new regional formations are developed based on the territorial concepts of those concerned. In this case it can be talked about regions assigned from above according to the top-down approach, or those formed at lower levels with specific objectives, the formation of which is governed by statutory regulations. In the first case we see perfect territorial division, in the second case there are overlaps and there can be empty territories as well (one unit belonging to more places, or to none of them).

The character of the development strategy is determined by which regional formation it is developed for. Lengyel (2003: 75) formulates the issue of the connection between the

regional units and development the following way: "Do the regions have problems or the problems have regions?" We can distinguish three types of regions: the homogenous region and the nodal (polarised) region from a social and economic perspective and the programming and/or administrative region from a social organizational perspective (e.g. Vanhove & Klaassen, 1983, Lengyel & Rechnitzer, 2005). The homogenous region: the separate spatial units can be linked together by certain common (physical, economic, social) characteristics. The nodal region: a set of units maintaining more connections with one pole order than with any other pole. In the first case it is uniformity, in the second it is difference that connects the region from within, thus in the first case it is formed based on similarity, while in the second the supplemental characteristics are decisive. A separation from a territory with adjacent and similar features/similar organization is a significant characteristic (Szabó, 2005). The administrative regions are mainly nodal regions, because the main function is to serve the inhabitants of the area from the centre of the region. The planning (or development) region may be a nodal region (if the regional policy is one function of the regional administrative council) and may be a homogenous region (if it is based on a common spatial problem).

After all, from theoretical aspect we have two types of development regions. The first is the top-down region, which is usually a nodal (there is a centre and its catchment area), public administrative region, and which has more different (spatial) problems. The second is the bottom-up region, which is usually a homogeneous region, because of the local society and economy has common (spatial) problem(s), and it is based on this important element (or elements) of spatial structure. (This duality in the EU regional policy: the NUTS 2 regions are the part of the top-down system (because the NUTS 2 regions could have regional operational programmes), and the new macroregions (based on Baltic-sea, Danube river, Alps etc., where the landscape is the source of the common spatial challenge or problem), and the EGTC (European Grouping for Territorial Cooperation, where the borders of the countries may be barriers), are examples for the bottom-up formations.)

4 Spatial structure of Hungary

The geomorphological landscape is an important element of the spatial structure. Hungary is a landlocked country, and it is located in Carpathian Basin, and most of the area is plain and hills. This basin in the biogeography system of European Union is one separate region because of unique phenomenon, and Hungary has ten national parks, and about 20% of the area (more than EU-average) is classified into the Natura 2000 (natura.2000.hu). Other important feature is the dense network of rivers, but most of them small, only the Danube, the second longest river in Europe, and Tisza are determinative, by reason of the flooding and limited crossing possibilities (lack of bridges). Hungary has a lot of lakes, and the Balaton is the largest lake in Hungary and in the Central-Europe, and Velencei, Tisza and Fertő lakes stand among them.

The social, economic and political geography of the country is the other side of the spatial structure. The area of Hungary is only 93 thousand km^2, but it has seven neighbouring countries, and their status are different in the EU-system: five of them are the members of the EU, and three of them are in the Schengen area. Due to the political events of 20th century about 2,5 million Hungarian people live in the neighbouring countries.

The concentration of society and economy is determinative also. Hungary has a "big head": the 30% of population and 47% of GDP is located in the Central Region (Budapest and Pest county) (ksh.hu). There is a lack of regional cities (poles) and megalopolis: after the Budapest, which has 1,7 million inhabitants and a large agglomeration, the large cities have only 0,2-0,1 million inhabitants and they are separated from each other. Hungary has a fragmented settlement-network: there are 3155 settlements with local self-government (including 346 cities) (ksh.hu), and there are a lot of small cities without central functions. In the rural area there is an even distribution of settlements and population due to a lot of plains and hills.

The other side of the concentration depends on the networks. Hungary has a monocentric (Budapest-centred) road and rail network, and there is a lack of diagonal motorways and railways. There are eight regional airports, and five of them is international, but only Budapest has a large passenger traffic. From the rivers only Danube is a shipping route, with moderate traffic. The unique places may be important elements of spatial structure if their role and impacts are significant in the country (or in the continent). In Hungary there are twenty-two wine-growing regions, nineteen large thermal baths and eight World Heritages, and these are relatively evenly distributed in the country. (The settlements where large companies have sites may be also important nodes of spatial structure.)

The third side of the spatial structure is the figure of regional development inequalities: Central Region and North-western part of Hungary are more developed, and Southern Transdanubia and North-eastern part of Hungary is less developed area in the country (Tóth, 2013, Pénzes, 2014).

The elements of the spatial structure may be problems or possibilities for the regions, which depends on a lot of factors, mainly the actual political, social, economic situation and the level of development of the country. In the 21th century in Hungary the lack of regional poles, lack of motorways between the large cities and the lot of small less developed microregions are the main problems in the spatial structure. There are some elements which are problems or possibilities, for example the border, which in the western part of the country is permeable (commuting etc.), but in the southern part it is problematic (migration etc.), or the plains, where the agriculture, natural environment are benefits, but in some areas the flooding and in others the drought is a problem, or the rivers, which are serious barrier if there is lack of bridge, and the flooding may be a problem, but the drinking water, irrigation water, the recreation area etc. are benefits.

Some elements are actually principally possibilities for the regions in Hungary: for example, the lakes or the National parks, which are utilized in the tourism.

5 Top-down and bottom-up development regions in Hungary

In Hungary the administrative division of territory was always raised as a supreme governmental and political question (Hajdú, 1989), and the creation of units of territorial decision-making depends on countless factors from historical traditions, landscape, settlement geography to the most pragmatic political interests (Pálné Kovács, 2001). In this chapter we analyse the impacts of the elements of spatial structure for two territorial systems.

The first is the level of counties (which is the NUTS 3 level in the EU-system). In Hungary there are 19 counties and the capital, and this level is included in the constitution (Fig. 1.). The counties are 1000 years old, but of course, the borders and functions have changed a lot. The actual version of the borders is existing since 1950, and the counties have regional self-governments, and these has been units of regional agencies of the central administration since 1990, as well. The regional policy is one of the functions of the counties since 1996, but they have adequate instruments and budget for this policy only after 2013 (in the new EU-period). For this EU-period (2014-2020) they have prepared the documents of regional development (concepts and programs), which include their problems and challenges ("the problems of the region").

Figure 1: The counties in Hungary (2017) (Source: www.ksh.hu)

Source: www.ksh.hu

In the Table 1. the counties are sorted based on eight important elements of the Hungarian spatial structure. At first the natural elements: we suggest to have two types of geomorphological landscape together (plain and hill (or low mountains)) is a spatial challenge (column LA), and in Hungary 12 counties (60%) are affected by this phenomenon. The four big lakes lie in six counties (30%) (column GL), and 12 counties (60%) are crossed or affected by big river (column GR). The ten National Park lie in 16 counties (80%) (column NP). At second the social-economic side: the national border is the part of the boundary line in 14 counties (70%) (column NB), and in five cases two countries are in the neighbourhood. The lack of large cities (where population more than 100 thousands) is problem for 11 counties (55%) (column LLC) and there is the lack of motorway in 5 counties, and in 2 counties the regional centre is not affected by motorway (35%) (column LMW). In Hungary 36 microregions from the 194 are qualified less developed areas by a regulation (105/2015), and 13 counties (65%) have minimum one from these problematic areas (column LDR).

The results show most of the counties (80%) have more than three spatial challenges, and three of them (Somogy, Komárom-Esztergom and Veszprém) have six elements (or lack of elements) of spatial structure. On the other hand, beside Budapest, three counties from the Hungarian Great Plain (Hajdú-Bihar, Szabolcs-Szatmár-Bereg and Csongrád) have only three spatial challenges (in our system). Based on our viewpoint the previous ones are more heterogenous and the latter ones are less heterogenous nodal regions. The results show that also, the counties are different from each other in the spatial challenges (there are not similar units), and if we look at the seven regions of NUTS 2 level (which are includes counties), we can establish there is only one or two common spatial "problems" from the eight elements. (That is important, the level of development of the counties is not correlated with the number of elements of spatial structure, because of the different roles (problem or/and possibility) of the elements.) Finally, we establish in the case of counties that, this statement is true: "the regions have (more spatial) problems".

Table 1: Distributions of some elements (or lack of element) of Hungarian spatial structure in the counties (2017)

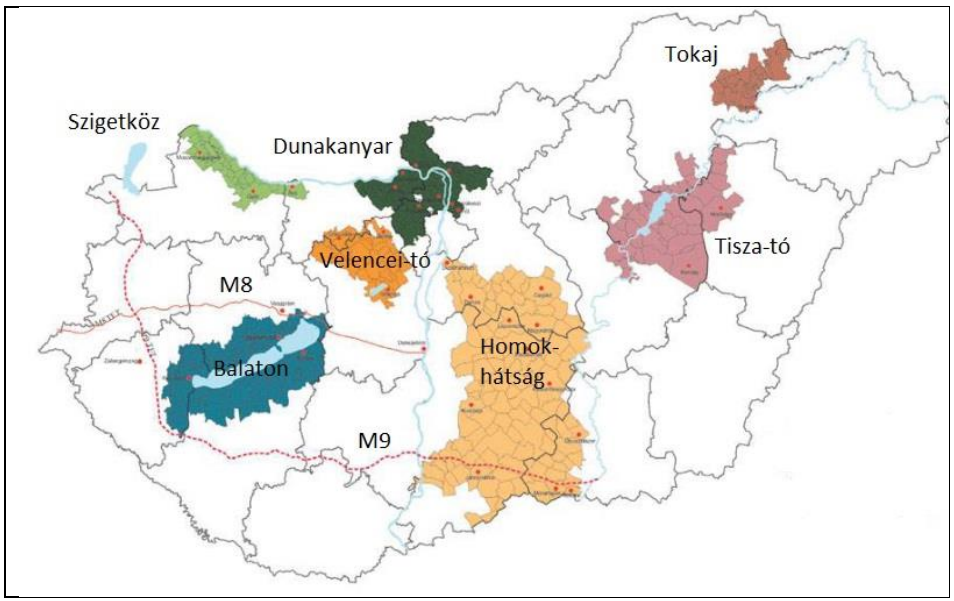
COUNTIES	NP	NB	LDR	LA	GR	LLC	LMW	GL	TOTAL
SOMOGY	1	1	1 (2)	1	-	1	[1]	1	6
KOMÁROM-E	1	1	-	1	1	1	-	-	6
VESZPRÉM	1	-	1	1	-	1	1	1	6
BARANYA	1	1	1 (2)	1	1	-	-	-	5
BORSOD-A-Z	1	1	1 (8)	1	1	-	-	[1]	5
NÓGRÁD	1	1	1	-	-	1	1	-	5
BÉKÉS	1	1	1 (2)	-	-	1	1	-	5
VAS	1	1 (2)	-	1	-	1	1	-	5
ZALA	1	1 (2)	-	1	-	1	[1]	1	5
PEST	1	1	-	1	1	1	-	-	5
TOLNA	1	-	1	1	1	1	-	-	5

COUNTIES	NP	NB	LDR	LA	GR	LLC	LMW	GL	TOTAL
HEVES	1	-	1	1	[1]	1	-	1	5
BÁCS-K	1	1	1 (2)	-	1 (2)	-	-	-	4
GYŐR-M-S	1	1 (2)	-	-	1	-	-	1	4
JÁSZ-N-SZ	[1]	-	1 (2)	-	1	1	1	[1]	4
FEJÉR	-	-	1	1	1	-	-	1	4
HAJDÚ-B	1	1	1 (4)	-	[1]	-	-	-	3
CSONGRÁD	1	1 (2)	-	-	1	-	-	-	3
SZABOLCS-SZ-B	-	1 (2)	1 (9)	-	1	-	-	-	3
BUDAPEST	-	-	-	1	1	-	-	-	2
TOTAL	16	14	13	12	12	11	7	6	91
TOTAL (%)	80%	70%	65%	60%	60%	55%	35%	30%	-

[1] = little part of the county is affected; (2) = there are more than one in the county

The regulation about the regional policy in Hungary gives possibility to the regional self-governments (of the counties) to establish common territorial development council for the solving the spatial problem(s) of a continuous area (but the borders may cross the boundary lines of the counties). In 2017 nine councils are existing (Fig. 2.). In Table 2. we summarised the information about these councils.

Figure 2: The Territorial Development Councils in Hungary (2017)



Source: FVR 2016

We can establish that five of the councils based on rivers or lakes. The area of Danube has different possibilities and problems, and in two cases these generated territorial organizations. The Szigetköz is in the north-western part of Hungary, where the Danube has several river branches, and this is a unique place in Central and Eastern Europe. It has a chance to develop the water tourism, but formerly the lack of water, later the changeable water level is a problem, because a hydropower-plant is working in the neighbouring region in Slovakia. The Dunakanyar is a popular resort area near to Budapest, but the most of the tourists are daily tourists, and the lack of ports and bridges are problems in the life of the area.

Three lakes are bases of councils. The council of lake Balaton resort area has the largest area (180 settlements) among the bottom up regions, but the common development is limited by the administrative fragmentation (3 counties and 3 NUTS 2 regions are affected) (Kabai & Szabó, 2016). The mixed local society (inhabitants, holiday home owners, tourists) means a big challenge, and the limited economic potential and decreasing tourism are problems. This council is included in the regulation of Hungarian regional policy, because this is the most important Hungarian touristic region after Budapest. The Tisza-lake is a 40 years old artificial lake, but despite the new functions (mainly tourism) it is a less developed area, with vulnerable ecological system. In this area four counties are represented. The Velencei lake together with a low mountainous area (Vértes) is near to Budapest, and it gives a possibility to the daily tourism, but the scarce traffic network and the insufficient touristic infrastructure are problems in this area. The territorial development councils of these five "water-areas" have formulated development objectives, and the tourism got high priority.

Two of the councils were based on the lack of motorway. In the construction of the shorter planning diagonal (south of Budapest) motorway (M8) across Transdanubia three counties, and in the construction of longer planning motorway, across southern and eastern part of Hungary (M9) eight counties are interested.

Homokhátság is a special area in Great Plain, between Danube and Tisza river: the climate change, with increasing drought and decreasing of ground-water level, is a big problem on this agricultural area. The low settlement and population density with a special form of settlements (tanya – farmstead) is a typical problem also here. The council of this area would like to ensure the suitable water supply, and to renew the settlements.

A unique and famous place is Tokaj (probably the most famous Hungarian wine-growing area and one of the Hungarian World Heritages). The different economic possibilities coupled with difficult accessibility, and the political interests are important features of this area. This area and council, beside Balaton, is included in the regulation of regional policy.

Between 1998-2013 a development council worked in the agglomeration of Budapest. After 2013 this area is an official statistical area only, and between the separated regional self-government of Pest and local self-government of Budapest, only a moderate territorial institution (a forum of the coordinations) works and has role in the common territorial development, although this is the largest concentration of society and economy in Hungary.

Table 2: The features of territorial development councils in Hungary (2017)

ELEMENTS OF SPATIAL STRUCTURE	TERRITORIAL DEVELOPMENT COUNCIL	COUNTIES (NUMBER OF SETTLEMENTS)	PROBLEMS (Source: FVR 2016)
DANUBE	Szigetköz Felső Duna-mente	2 (34)	lack of water in the river branches, changeable water level, few tourists
	Dunakanyar	2 (90)	most of the tourists: daily tourist, lack of ports and bridge, flooding
BALATON	Balaton (in the reg. XXI./1996)	2 (180)	decreasing tourism, limited economic potential, lake is in 3 counties (and regions) etc.
TISZA-LAKE	Tisza-tó	4 (43)	vulnerable ecological system, few tourists, less developed area
VELENCEI-LAKE	Velencei tó és térsége, Váli-völgy, Vértes	2 (37)	few tourists, scarce traffic network
HOMOKHÁTSÁG PART OF GREAT PLAIN	Duna-Tisza közi Homokhátság	3 (117)	climate change, ground-water level is decreasing, water resupply
TOKAJ – WINE-GROWING AREA, WORLD HERITAGE	Tokaj Borvidék (in the reg. XXI./1996)	1 (27)	difficult accessibility (political interests)
LACK OF M8 MOTORWAY	8-as főút	3	lack of motorway between large cities
LACK OF M9 MOTORWAY	M9	8	lack of motorway between large cities
(AGGLOMERATION OF BUDAPEST)	(Budapesti Agglomerációs;	2 (Budapest+77)	(coordination of connections

ELEMENTS OF SPATIAL STRUCTURE	TERRITORIAL DEVELOPMENT COUNCIL	COUNTIES (NUMBER OF SETTLEMENTS)	PROBLEMS (Source: FVR 2016)
	between: 1998-2013) Statistical area		between capital and agglomeration)

A big difference between two types of development regions (counties and bottom-up regions) is the financing. The counties are the beneficiaries of EU supports by Operational Programs, so that they have a broad financial framework to deal with the spatial and natural, social, economic problems (but the targets of EU 2020 strongly restrict the projects, mainly in the case of spatial problems). At the same time, the territorial development councils work based on the institutions and budget of counties, and they do not have independent financial resources. In this system the elements of spatial structure are rarely specifically in the focus, and the common spatial project (for more counties) may be only in the priority projects of the government. From the two main components the lake Balaton – after many decades – in 2017 has become a priority area, not only in the regulations, but financially also. However, the central region (which is not a convergence region in the EU, because the GDP per capita is higher than 75% of EU-average, so there is little territorial financial support from EU) has problematic institutional system by a view-point of regional development.

6 Conclusion

Hungary has not a complicated spatial structure, but there are some determinative elements: the big role of the natural waters (rivers, lakes), the central region with large concentration of society and economy, and the lack of regional poles and rare network of modern transport. Some elements (or lack of element) of spatial structure have important effect for the territorial systems of development regions in Hungary. The analysis of level of counties and the territorial development councils showed that not only one or two determinative elements of the spatial structure is appeared in the administrative (top down) development units (counties), because these are nodal, administrative regions with historical boundaries, so they have usually four, five, six spatial problems. At the same time the territorial units of bottom-up organizations are based on the important elements (or lack of element) of spatial structure, which is advantageous to deal with the problem, but in the case of these formations the problem is the lack of money. In the future it would be useful to strengthen the bottom up system of regional policy in Hungary.

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Part II

Urban areas and urban services

LEX LOCALIS

Role of Civil Society Organizations in Repurposing of Unused Property

MÁRIA MURRAY SVIDROŇOVÁ

Abstract We often divide economics into two camps: the public economics based on government organization and the profit-motivated private sector. Not every solution in a community can be found through profit motivation nor the local government. Local citizens often become the only logical choices for finding remedies to unused or abandoned property. In this paper we explore the potential of civil society organizations in finding innovative solutions when dealing with abandoned properties. The main findings point out that civil society organizations can play an important role in urban management.

Keywords: • unused property • civil society organzations • NGOs • urban management

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1 Introduction

Civil society organizations create the so-called third sector of the economy. We follow the latest definition of Salamon & Sokolowski (2016a, b) which builds on many years of research by Salamon & Aneheir (e.g. 1997 and 1998). The "new" definition broadens up the scope of traditionally used term third sector as set of organizational and individual activities that meet the following three underlying philosophical notions frequently evoked in Europe (and very likely beyond it):

- Privateness—i.e. forms of individual or collective action that are outside the sphere and control of government;
- Public purpose—i.e., serving the broader community and not primarily to generating profit or otherwise creating something of value primarily to the persons undertaking the activities or those persons' family members; and
- Free choice—i.e., pursued without compulsion Salamon & Sokolowski (2016a).

More specifically, this conceptualization includes organizations characterized by the five operational features:

a. It is an organization, that is, institutionalized to some extent, though not necessarily legally registered or constituted;
b. It totally or significantly limits through some binding provision distributing any surplus generated from their activities to its directors, employees, investors, or others;
c. It is self-governing, that is, it is institutionally separate from government, is able to control its own general policies and transactions and has the capacity to own assets, incur liabilities, or engage in transactions in its own right;
d. It is non-compulsory, that is, involving some meaningful degree of uncoerced free choice on the part of individuals working for, or participating in, its activities; and
e. Private, i.e., not controlled by government Salamon & Sokolowski (2016b).

In a nutshell, this conceptual framework for third sector includes registered and non-registered non-profit and non-governmental organisations, civic initiatives and social movements, except political parties, religious communities, educational and scientific institutions, trade unions, and employers' organisations (EU-Russia Civil Society Forum, 2019). In further text we will use term civil society organizations (CSOs).

2 Literature overview

Civil society organizations are now widely acknowledged to "play a variety of social, economic, and political roles in society. They provide services as well as educate, advocate, and engage people in civic and social life" (Boris & Steuerle, 2006, p. 66; Kuhlmann, 2010). These innovative CSOs initiatives are of particular importance at the present stage of civil society formation in CEE countries. A new role of CSOs is emerging - through their activity and social innovation, CSOs have taken the initiative of the public

sector to regenerate unused property. These are dilapidated properties in the municipalities that originally belonged to the state. With the fall of the Communist regime, this property was transferred to municipalities free of charge. However, the newly born municipalities at the municipal level were not able to effectively manage these assets and return them to the citizens for use, which greatly affected the urban development of the municipalities. The problem started to be solved through the initiative of CSOs and their social innovation in the form of co-creation.

Social innovations as innovative activities and services that are stimulated to meet social needs and which are predominantly developed and dispersed through organizations whose objectives are primarily social (Mulgan, 2007). Social innovations represent new solutions to social problems that are more effective, more efficient, and more sustainable than other current solutions offered. The generated value affects, in particular, society as a whole, not just individuals. Social innovations focus on ideas and solutions that create higher social value, as well as the processes through which they are generated (Phills, Deiglmeier and Miller, 2008). Social innovation as a concept and a set of tools includes a broad spectrum of activities. The widest possible definition specifies social innovations as all the new strategies, concepts, ideas, and organizations that expand and support the improvement of the working conditions of civil society functioning. Generally speaking, it embraces any activities that result in qualitative changes in the basic social structures of society or innovations that have a targeted social impact (Murillo & Buckland, 2015).

Social innovation of public or collective services is possible in the environment of a new concept of government that is defined as the sum of interactions between cooperating actors from the public and private sectors solving social problems (Osborne & Brown, 2005). The emphasis is on the citizens and on building a civil society (Pollitt & Bouckaert, 2011). This type of social innovation is called a co-creation. Co-creation seeks a solution of production and financing of public services through collaboration with different stakeholders. The innovation in the production process is considered as:

1) an open process, with the involvement of end-users in the design and development of goods and services and
2) a change of the relationships between involved stakeholders (Voorberg et al., 2015).

One of the central elements in the concept of social innovation is the active participation of citizens and grassroots organizations (i.e. CSOs) to produce social outcomes that really matter (Bason, 2010). Participation of citizens in the development and subsequent implementation of an innovation (co-creation) is of great importance in terms of the success of the public service innovation process because they are final consumers of the public service (Borins, 2008; Fuglsang, 2008; Von Hippel, 2007). The role of local self-government in co-creation based innovations in the fields of welfare and the environment in Slovakia is rather limited; service delivery innovations are predominantly initiated by non-profit organizations or citizens themselves (Nemec et al., 2015).

Literature increasingly acknowledges stakeholders' voluntary involvement in formerly internal processes and structures of civil society organizations, i.e. stakeholders get involved in and co-create brand strategy, a core intangible asset for CSOs (Vallaster & Wallpach, 2018).

Voorberg, Bekkers and Tummers (2015) conducted a systematic review about 1) the different types and definitions of public co-creation, 2) the influential factors to the co-creation process and 3) the outcomes of co-creation processes. They concluded that authors use a variance of definitions to address the concept of co-creation. This may refer to citizens as value creators (Briscoe, Keränen, & Parry, 2012; Díaz-Méndez & Gummesson, 2012), citizens as collaborative partners (Baumer, Sueyoshi, & Tomlinson, 2011), or to a role of citizens as active agents in public service delivery (Cairns, 2013; Gebauer, Johnson, & Enquist, 2010). Furthermore, it seems that related concepts, such as co-production, community participation and social community enterprise, are often defined in a way that makes them very similar to the concept of co-creation. From this variety in definitions and the conceptual confusion with related concepts, the most typical is the type of relation between citizens/CSOs on the one side and public organizations on the other. Different ideal-types of citizens/CSOs involvement can be distinguished:

1. *Citizens/CSOs as co-implementer*: citizen involvement in which citizens carry out public service tasks which are in the past carried out by public organizations.
2. *Citizens/CSOs as co-designer*: citizens determine to a large extent how services are being designed and implemented
3. *Citizens/CSOs as initiator:* citizens take the initiative for public service delivery and public institutions are invited to join (Voorberg et al., 2015).

3 Research

In this study, we rely on the above mentioned type of social innovation called co-creation. We are inspired by the idea of "repurposing" by Scharoun & Hoyos (2012), Satola (2015) and Nemec et al. (2015).

Rossi (2004) described how citizens took the initiative to renovate the city centre of Naples, after the local government decided to close it for the public. The city council recognized the priority given by the local citizenry and they decided to support the initiative. As a result, the historic centre of Naples was restored and reopened for the public. Here, the municipality participated in the initiative of citizens, instead of the other way round.

Nemec et al. (2015) investigated co-creation initiative called PrieStory. This program aimed to involve people in improvement of the public spaces, increase the public participation and to strengthen the communities. This program allows realization of low cost investment projects executed by volunteers living in the area. The examples of products might be parks, sport places, green places, etc. The PrieStory program involves

the provider of the public service, in this case public spaces (municipalities/local governments), the co-designers of the public service (citizens), the public service innovation initiators (Ekopolis Foundation and Partners for Democratic Change Slovakia PDCS – both CSOs), and the public service innovation co-financer (CSO Bank – private corporation). There were 33 redesigned public spaces between years 2005 – 2011 but none of them dealt with an unused property.

The way public space is used is changing: there is a push to make optimal use of the space already available in cities in creative ways. Indeed, cities are confronted with limited urban spaces, and ensure a sustainable urban development. In this sense, urban abandoned spaces are becoming key strategic places for sustainable urban development, -combining a potential functional, ecological, cultural and aesthetic role in the urban landscape (https://urbact.eu/abandoned-spaces).

A special project "TUTUR" (Temporary Use as a Tool for Urban Regeneration 2013 - 2015) aimed at introducing the method of temporary use in urban regeneration to cities participating in the network. Temporary use is a planning tool effectively bringing together various stakeholders: it engages an important number of municipal and private economic development agencies and property owners, as well as cultural organisations, to elaborate potential uses of existing infrastructure and resources. In a time when cities are not growing but transforming themselves, especially when in crises, we need to find new and agile ways to respond to local needs. Temporary uses can be a source of life for neighbourhoods in order to promote a sustainable urban regeneration promoted by public administration and citizens (https://urbact.eu/tutur).

Within the TUTUR project, Patti and Polyak (2017a) analysed the urban regeneration in Bremen, Rome and Budapest. They pointed out the lack of financial resources across Europe which leads municipalities to reinterpret their existing infrastructure and to reactivate it by involving new functions and new actors. The responses given to the problem of empty properties appear at various levels of urban planning and governance. The inflexible planning system characteristic of the modernist era has been gradually replaced by "soft urbanism", allowing for experimentation and for trying possible functions at test-sites, before fixing them by large investments. This open-ended planning system also gives more emphasis to the temporal dimension of developments, enabling temporary uses and successive phases in the development process. However, conditions for temporary use vary significantly in different cities. What all cities have in common, is to establish cooperation between municipalities and CSOs. Creating appropriate frameworks is crucial in establishing temporary use practices. They can function as structures of a more inclusive planning system, where civic initiatives are invited to take part in the regeneration process without being instrumentalised or exploited. They can be platforms where spatial needs and resources are matched, where bottom-up initiatives meet public development strategies of administrations, forced by the decline of urban economies to rethink their development processes. (Patti & Polyak, 2017a).

In Bremen, the ZwischenZeitZentrale (ZZZ) is one of the first temporary use programs established by a municipality in cooperation with an CSO, born from the recognition of the need for new tools to revitalize its vacant sites and building stock and to keep young professionals and creatives in town. In the 1980s and '90s, Bremen went through a similar post--industrial transformation as many other cities in Europe: with the closure of shipyards and the old port, empty industrial areas occupied all the riverfront of the River Weser. A high rate of unemployment and the change of shopping behaviour led to empty shops in various parts of Bremen. In the late 2000s, the city of Bremen came up with the idea of a temporary use agency for the whole city as a pilot project of the Nationale Stadtentwicklungspolitik, a program of the Federal Ministry of Building. The impulse for a temporary use of agency in Bremen came from the Department of Economics, Labour and Ports in 2007. Between 2009 and 2012, ZZZ supported around 50 projects in different scales, from 30m2 to 4500m2. Within these three years, over 500 initiatives turned to ZZZ to request for empty offices, ateliers, workspaces, event locations, cultural hot spots, and for-profit economic activities which are granted the temporary use of the spaces on the grounds of covering all operational costs. The supported projects included initiatives from a diversity of target groups: neighbourhood-oriented social projects, activities supporting children or the elderly, local organizations working on education, history, art, gardening, unemployment, migration, schools. (Patti & Polyak, 2017a, b).

Vacant properties in Rome are the result of factors common to many other cities, such as the economic crisis and demographic changes, but also of the mismanagement of publicly owned real estate portfolios and excessive construction without corresponding demand (Caudo, 2014). In 2013, the Rome Municipality set itself to enumerate its own properties by creating an unprecedented database of public properties. The creation of the database was complemented by additional mapping initiatives. As part of the TUTUR project, the already existing architects-run online platform "City--Hound" helped the identification of vacant properties within Rome's 3rd district: within the pilot area, the platform hosts information of over 70 abandoned properties including schools, industrial premises, shops, infrastructure and green spaces, some of which have become test--sites of the municipality's temporary use program. (Patti & Polyak, 2017a)

Also other countries have applied temporary use method, e.g. in the UK a Community Interest Company (CIC) was founded in 2009, called Meanwhile Space. The CIC began as the delivery arm of the Department for Communities and Local Government-funded Meanwhile Project which aimed to boost community uses of empty properties and sites. The project has built a 'library' of ideas and information as a resource to make it easier for both the landlord and the project sides to realise Meanwhile opportunities. As a result of the project, several British municipalities like Glasgow or London published standardised temporary use contract samples facilitating the agreement between owners and users, by defining terms of purpose, duration, rent and liabilities. Besides cooperating with central and local administrations to reduce barriers of the temporary use of vacant spaces, Meanwhile Space also works landlords, landowners, developers and local

authorities to advise and deliver projects that relieve them temporarily of liabilities (insurance, rates, security etc.) associated with holding redundant shops, offices, cleared land etc. whilst an appropriate commercial solution is being sought. By advising, training and collaborating with local communities and other stakeholders, temporary uses are deployed to reanimate the space and provide opportunities for community benefit and social enterprise. One of the flagship projects of Meanwhile Space is the Cottrell House in Wembley, where the lack of local services made it important to open spaces for new initiatives. By inviting local residents to reflect on the new services needed, and initiatives to offer functions for the spaces, Meanwhile Space engaged over 600 people in discussing, redesigning and reusing the former gas station as offices, artist studios, co-working spaces and cafeterias. The work of Meanwhile Space is helped by property taxes where prospects of exemption of business rates encourages property owners to allow charity organisations to use their properties. In its first 5 years of existence, Meanwhile Space built a network of over 10.000 people who own or are interested in using vacant properties, gave space to over 300 start-up companies and created over 100 jobs (Patti, 2015).

In the Netherlands, Stipo, a Rotterdam-based boutique urban strategy and innovation firm, specialising in co-creation city redevelopment and user-based, organic, and bottom-up urban initiatives, combines spatial planning with economic development, culture, education, welfare, sport, recreation and tourism. Stipo advises, develops, coaches and supplies training. Its operating area consists of combinations of spatial planning and strategy with economic development, culture, welfare, sport, recreation and tourism. Stipo developed its own methodology to tackle spatial and social problems, focusing on value-based regeneration models based on linking physical, social and economic components, and experimenting with networking, temporary events and differentiated rental agreements. Cooperating with housing associations and members of the creative industry, Stipo regenerated 40 buildings in the past years. In the Central-Rotterdam area of „Zoho" (the Summer Hofkwartier) Stipo works with the Havensteder housing association as a public developer to strengthen the area. Through negotiations with property owners and attracting members of the creative sector as well as local entrepreneurs and residents, Stipo approached the neighbourhood as a whole with connecting spatial, social, economic, and cultural components (Patti, 2015).

Back to Slovak civil society and their co-creation initiatives, Murray Svidroňová (2019) researched collaboration practices to map the relations between government and CSOs in Slovakia. The selection of cases presented was based on the focus group experts' judgment, which might be biased, however, the finding helped to identify characteristics on government – CSOs relations in Slovakia. One of the cases was the case of Public Amphitheatre in the municipality of Banská Bystrica. Public Amphitheatre was once a vibrant cultural place for outdoor cinema and special events. With the arrival of a multiscreen cinema in the local shopping mall it was abandoned. After the municipality put it on the list of non-usable property, which was only a step away from being

demolished, a group of young enthusiasts formed an CSO to save the Amphitheatre. They signed a co-operation memorandum with the municipality and in cooperation with a private company they revitalised the Amphitheatre. The main activity of the CSO remains the support of the Amphitheatre in the form of organising a summer movie theatre or other events with the aim of helping the Amphitheatre to become a vibrant cultural and social place, with an emphasis on sustainability, content diversity and preservation of its genius loci.

Mazur (in Patti & Polyak, 2017b) interviewed Aliancia Stará Tržnica, an CSO managing the Old Market Hall, a historic building in the centre of Bratislava. The building closed down after years of unsuccessful attempts by the municipality to keep the market alive. Years later, the market hall reopened with a redevelopment plan proposed by the Aliancia, combining a food market every Saturday with cultural events on other days, as well as two cafés, a grocery shop, a cooking school and a soda water manufacturer. Rethinking the opportunities of the Old Market Hall allows the organisation to run the building in an economically sustainable way, while gradually renovating it and creating a new event venue and meeting space in the heart of the city.

Murray Svidroňová et al. (2020) describe more cases of CSO active in "saving" a municipal property in Banská Bystrica. One of them, a civic association Laputa was founded in order to create a literary residence house for authors and a literary café and library in Banska Bystrica by renovating the old city bastion, formerly a part of the old city fortification system. The city has leased the building to the CSO Laputa for 30 years for a symbolic 1€/year provided that by 2020 there will be created a new culture venue. OZ Laputa's initial steps were to clean the space and obtain all the necessary technical documentation, archaeological research, approvals and fundraising to start with the reconstruction. In 2015, the founders of the Artforum bookshop joined the initiative and its main objective was reformulated as to make Literary bastion a brand and the place where the good quality literature is being created, published and presented, as the old bastion has the genius loci ideal for such literary endeavours. The initiative started to promote literary life in Banska Bystrica and the Bastion became an integral part of the project in both the symbolic and material level. In 2017 they started their publishing activity with their first publication, The Songbook of Dezo Ursiny. Since then, the publishing became a strong part of their activities. By using the historic building for the events and as a symbol for other activities it builds local identity and historic awareness of both the city dwellers and its visitors. Although the main aim of the initiative at the beginning was to reconstruct the object and build a residence for authors, recently the attention has been redirected more on the events and publishing activities under the logo and name of Literary bastion.

The second case described by Murray Svidroňová, et al. (2020) is an old cinema turned into object used by young people. Hviezda cinema (the star cinema) was opened in 1955 and enjoyed many years of great popularity. The fate of this and other smaller cinemas in

Slovakia have been sealed by modern multiplexes that offer efficient cinema operations. The building thus fell into disrepair until in 2012 a group of young people came to the town who needed to find suitable premises in Banská Bystrica for a large indoor concert of rap legend ONYX from the USA. As the municipality did not have a suitable venue for ONYX in the centre of town, they offered the former culture house in the city centre, which was totally unacceptable as it was in a more advance state of disrepair. They kept looking for a space and found the former cinema Hviezda building as a possible alternative. At that time, it had already been sold to a private investor after being declared a non-usable property for the municipality. Before the sale the town invited other institutions to remove anything of use from this building as the plan was for the private investor to demolish it, however, this plan did not materialize and the building in private ownership decayed further and was a frequent site for squatters and the homeless. The sponsors for ONYX had to remove 25 large trucks of waste before installing new electrical connections and water installations, among other things. The concert was a great success attracting many visitors. After two months of continuous work in extreme conditions, the first stage of new "Urban Spot" was finished in cooperation with CSO EXTREME, a volunteer organization. The success of the concert was the reason why the initiative kept on organizing concerts and other events at the place, while continuously upgrading it. Currently, the space is used as an alternative venue to the municipal House of Culture that hosts various events like concerts and art exhibitions of alternative forms and self-expression. Extra money earned by the events are re-invested into the facility.

4 Conclusions

Based on the abovementioned, it is clear that CSOs played an important role in repurposing the unused (public) property. They voluntarily generated co-creation initiatives, initiated and produced new activities: repurposing, revitalization and reconstruction of an unused property. In some areas, voluntary efforts appear to be more effective than public administration activities, which is a great service for the municipality. Needless to say, all the initiatives have been successful in providing attractive services and content so that they found their stable audience. What the initiatives have in common is their initial and continuing enthusiasm about their projects that was sufficient to generate volunteer work and support of experts and to some extent private companies. This enabled renovating and up-keep of the previously unused properties. Moreover, all the places have become unique and special places for their visitors, either due to their historic or nostalgic value. Another thing the initiative share is that the local government does not actively support or take interest in their projects even in cases where their buildings are involved and have a chance of being fully reconstructed. This is in line with research of Nemec et al., 2015 who point out that initiators of the co-creation are mostly CSOs or citizens themselves, self-governments only partially participate. Though the initiatives that were outline in this chapter were rather urban oriented, we feel that it is possible to create active participation in smaller communities and in so doing, could even have great impact for the locality.

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LEX LOCALIS

Quality of Public Services at the Local Level in Slovakia

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Abstract The aim of the paper is to summarise the results achieved in the area of public administration reform in Slovakia and to evaluate the development and reform measures of the past administrations aimed at increasing the quality of public services at the local level. This includes changes in the provision of public services to citizens through the ESO reform project (2013-2020) and the changes that have taken place at regional and local levels under the influence of the European Regional Development Fund (ERDF). This programme has significantly influenced the formation of inter-municipal cooperation and the functioning of public-private partnerships, which led to the improvement of public services in municipalities and regions. The paper addresses the question of how these new policies have contributed to changing the quality of public services provided at the local level.

Keywords: • local state administration • self-government • quality of public services • inter-municipal cooperation • multi-level governance • public administration reform • Slovakia

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1 Introduction

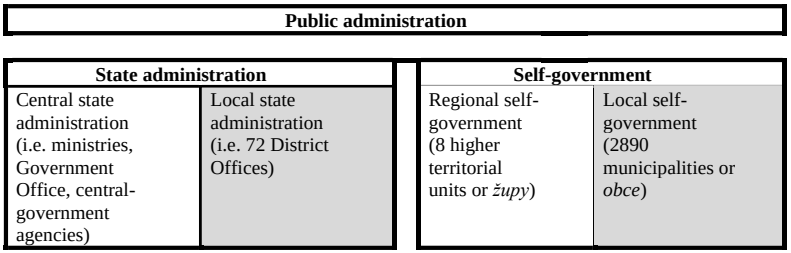
The paper aims to summarise the results achieved in the area of public administration reform in Slovakia and to evaluate the development and reform measures of the past administrations aimed at increasing the quality of public services at the local level. The authors will answer the question of how new policies coming from different levels of decision-makers (European, national, regional, local) have contributed to the development of public services provided at the local level. The key argument is based on the fact that citizens often do not differentiate between the institutions and the different government levels but they consider them as generally being run by the state. Furthermore, for an ordinary citizen what really matters is not who the provider of a specific public service is but rather what quality of service the citizen receives. Slovak experience shows that quality of public services at the local level depends on numerous factors. The paper will focus on institutional structure and efficiency of policy making process, on development programmes, strategies and their implementation.

2 The Slovak Model of Public Administration

The paper will first provide an overview of the Slovak model of public administration and public administration reform process from 1990 till now in order to better understand the different factors affecting the quality of public services at the local level. There have been a number of studies published regarding the Slovak public administration reform process, including Verheijen's comparative study of the EU8 countries (i.e. the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) in which the author argues that the new member states of the European Union, including Slovakia, face significant challenges that require a strong public management system (Verheijen, 2007). Moreover, Verheijen contends that 'Slovakia [is] showing some interesting ministry-based reforms, without having achieved progress across the system (Verheijen, 2007: X). It could be argued that this trend has largely continued. and it has had an impact on quality of public services both at the national and local scale.

The Constitution of the Slovak Republic sets the system of public administration in Slovakia as a two-tier self-government system with dual power model of the administrative functions of the state. Public administration of the Slovak Republic is divided into state administration and self-government. State administration comprises central government institutions such as ministries, other central state administration bodies (e.g. the Supreme Audit Office, the Public Procurement Office); and local state administration bodies (72 District Offices). There are two tiers of self-government at the subnational level: regional self-government (higher territorial units or *vyššie územné celky*) and local self-governments (municipalities or *obce*) – see Figure 1 below.

Figure 1: System of public administration in Slovakia



This model shows that compared to the Western European transformation process of public administration, fundamental changes at the local level in Slovakia were made during a short period of time. Between 1990 and 2004, Slovakia went through institutionalisation of new formal structures and procedures for the recently created democratic system. Little attention has been devoted to developing the quality and potential of human resources of changing values in the system of public administration. It was a top-down reform process that followed political and budgetary logic rather than practical issues and citizens' needs. Slovakia similarly to other new EU member states made administrative changes in the system of public administration largely due to preparation for EU membership and the EU access criteria (Jacko & Malíková, 2013). However, since the accession in 2004, there has been an increasing focus on the quality of public service provision, in particular through regional and local self-government.

2.1 Public Administration Reform Process and Changes at the Local Level

Public administration in Slovakia underwent a fundamental transformation after 1990, when local self-government was restored and the state administration was separated from the self-government (Malíková & Vávrová, 2011)[2]. The central government could since then only intervene in the municipal government by law. Gradually, a number of basic competencies were transferred to the municipalities, in particular the transfer of property to municipalities as well as the transfer of decision-making powers over the budget and municipalities' own revenue. Act no. 346/1990 on Elections to Municipal Bodies[3] unlike similar legislation in the Czech Republic, introduced a direct election of mayors of municipalities and towns. Hence, a strong mayor model was implemented into the environment of local self-government in Slovakia. Gradually, interest groups were established to promote and protect the rights of towns and municipalities in Slovakia – mainly the Association of Towns and Communities of Slovakia, and the Union of Towns. A complex process of decentralization of competencies and responsibilities continued in 1999 when the government of the Slovak Republic adopted the Strategy of Public Administration Reform[4] and approved the Concept of Decentralization and Modernization of Public Administration[5].

Since the very beginning in 1990, Slovak decentralisation has included basic decentralisation principles – 'decentralisation of political power, decentralisation of governing roles and responsibilities, and decentralisation of the overall financing system' (Malíková & Vávrová, 2011: 77). The first wave of public-administration reform was in the form of decentralisation and creation of genuine self-governing local governments (i.e. local self-governments) (Jacko & Malíková, 2018). Municipalities and local citizens in particular were given the right to elect their own mayors based on the strong mayor form of local government. Later on, a similar principle was applied when regional decentralisation took place and citizens could also directly elect the Chairmen of regional assemblies (i.e. *župan*). This system can vary even in neighbouring countries. For instance, in the Czech Republic mayors are still voted on and elected by council members who pick someone among themselves. In Hungary, a similar system of directly electing mayors is present but in case of county elections, the chairman of the County Council is elected by the members of the County Council rather than by a popular vote of citizens.

Jacko and Malíková (Jacko & Malíková, 2013 and Jacko & Malíková, 2018) further argue that the extreme level of fragmentation leads to inefficient use of resources, lack of economic growth, limited quality of public-service provision, etc. However, some municipalities instead of merging into bigger units have since then started to create *micro regions* which not only promote tourism but also lead to other means of cooperation, for instance in terms of sharing municipal property in order to save and use resources more efficiently. The three tiers of government each have their specific roles and functions, which however, in some cases overlap. This often results in the lack of coordination between central government (including local state administration) and regional and local self-governments. However, it also allows for great opportunities in terms of local and regional development and cooperation.

Public administration reform has also affected new territorial-administrative division of Slovakia which was approved in 1996. Act no. 221/1996[6] created eight regions and 79 districts (Žárska & Šebová, 2005). These reallocated competencies between the state (i.e the central government) and the regions – i.e. regional offices. However, the regional level of self-government with its own competencies and democratically elected representatives, who would represent local and regional interests and pursue regional programmes, was not established until July 2001.[7] Since this time, regionalisation has been recognised as a shift from merely administrative and territorial regionalisation to political regionalisation. In September 2001, the National Council of the Slovak Republic approved another piece of legislation[8] which concerned more than 400 competencies that were to be transferred from the state administration to the municipal and regional self-governments during the next three years. In October 2001, additional legislation was adopted by the National Council of the Slovak Republic, which initiated the provisions regarding the independent activities of municipalities and the process of transferring competencies and property from the national state administration to the municipalities and regional self-governments. Most importantly, these included financial and economic matters, which should have led to a diversified system. Later, in October 2007, regional

state administration offices were dissolved, and their competencies transferred to 50 area offices (*obvodné úrady*)[9]. Finally, the remaining Regional Offices of Specialised Public Administration were dissolved on 1 January 2013 and regional state administration de facto ceased to exist – see Figure 2 below.

Figure 2: Overview of the public administration reform process since 1989 (Jacko & Malíková, 2013)

Period	Process	Events & measures
1989		Fall of communist regime in Czechoslovakia
1990-1998	Decentralisation & deconcentration	Creation of local self-governments (2900 municipal selfgovernments), dissolution of Czechoslovakia and creation of Slovakia (1993). Territorial change and reconstruction of state administration (1996) - new districts [okres] (79 in total) and regions [kraj] (8) with own district and regional offices representing and carrying out tasks by civil servants.
1998-2004	Decentralisation & Modernisation	New public administration reform strategy, creation of 8 regional self-governments (i.e. higher territorial units).
2004		**EU accession**
2005-2012	Politicisation	Abolition of Regional State administration Offices and fiscal decentralisation to regional and local self-governments.

Period	Process	Events & measures
2012-	*Modernisation II & Quality improvement*	Public administration reform *ESO* (efficient, reliable, open) commenced. Reduction of the number of local state-administration offices from 613 to 79 until 2016. Newly joint 72 district offices established. Implementation of Rural development program, Leader (2017-2013). Emphasis on quality of public services.

Changes at the regional level have also taken place within a relatively short space of time. As a result, functioning rules which would have coordinated activities linked to the transfer of competencies were largely missing. Furthermore, there was arguably a lack of planning, strategies and road maps which would set out the creation and implementation of regional policy by new actors in the newly created self-governing regions. The decentralisation of power from the state to the regional level and the strengthening of the competencies of local and regional self-governments had the potential not just to strengthen the interests of political parties to enhance their specific political policies and interests. It could have also ultimately helped revitalise regional socio-economic development and create a regional regulation system which would benefit the entire population of the respective region. Much of the political discussion was, however, concerned with competencies, political positions and budgetary squabbling and despite numerous efforts since the early 2000s, the 8 HTUs face a number of problems to this day, including low voter turnout, lack of public participation, political mistrust and the rise and electoral success of extremist political parties. Also, non-functioning relationships between central, regional and local levels of government lead to other profound socio-economic effects such as deepening regional differences, regions with high unemployment rate and rising population of people living in socially excluded areas. These problems signify that the process of public administration reform was largely dependent on political changes at the central level of power and the pre-accession criteria rather than true motivation for reform and improvement of public services.

After 2012 a new one-party government was created which led to a window of opportunity in terms of further development and in particular amalgamation and modernisation of state administration. This was also an opportunity to implement New Public Management-style managerial principles into the otherwise Weberian-like system. One of the aims was to create new managerial posts for staff who would be able to implement and carry out necessary changes despite political pressures and other obstacles.

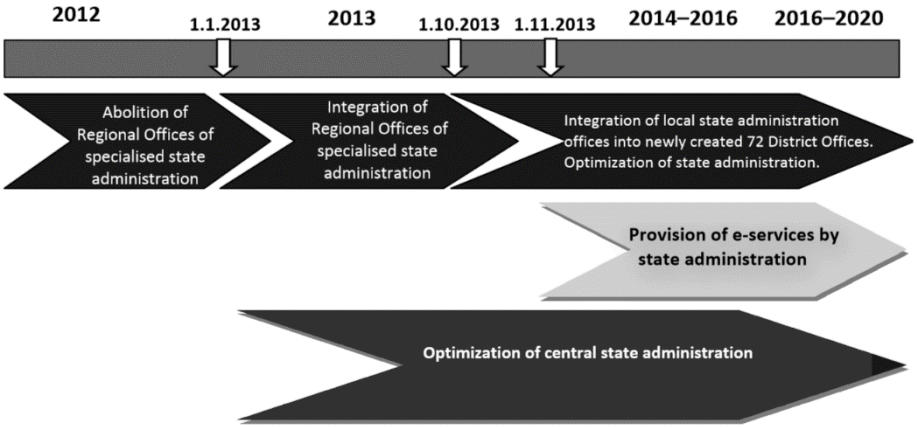
2.2 Modernisation and Quality Improvement Period

Even 20 years after the public administration reform process commenced, the system of public administration was still lacking high quality managerial elites not only at the central but primarily at the municipal and regional level. In the 2012 Government's Manifesto[10], the one party government committed itself to take measures that should have contributed to overall government's spending through efficient and modern state administration at the local level. One of the main steps towards meeting these objectives was the introduction of the ESO reform programme.

The ESO programme or effective, reliable and open state administration was approved by the Resolution of the Government of the Slovak Republic no. 164/2012.[11] This document essentially introduced changes mainly in local state administration. The ambition of the ESO reform has been to make functioning of the state administration offices more efficient, transparent, accessible, and to increase overall quality of public services, while reducing the cost of running the system of public administration (Jacko & Malíková, 2018).

In a country of 5 million inhabitants, the system of public administration in Slovakia and state administration in particular had become too fragmented, complicated and perhaps most importantly too expensive to run (Jacko & Malíková, 2018). As a result, one of the clearest government reform goals of 2012 was to decrease the number of most state-administration offices from 613 to 72. The government promised and has already delivered dissolution of 64 regional offices of specialised state administration and merged most remaining local state administration offices officially under one roof (see Figure 3 below). The main idea was to copy the already existing territorial division in Slovakia (i.e. 79 districts) and to create a corresponding number of one-stop shop offices. On October 1, 2013, 72 new District Offices came into existence[12]. Interestingly, the government used similar public administration structure that had already been used in Slovakia in 1990s and even before during the Communist era. Such reorganisation has not been intended to limit the power of central government. Instead, the Ministry of Interior became the only central state administration body in charge of entire local state administration. Furthermore, the Ministry of Interior created Support Centres and Support Units in order to outsource and take certain purely administrative tasks away from the newly created District Offices.

Figure 3: The ESO public administration reform stages (Saková , 2012)



On November 1, 2013, the e-Government Act was put into practice which set the ground for all electronic communication both with and within public administration and government bodies[13]. Most recently, in January 2014 the Ministry of Interior formally established the Analytical and Methodological Unit of Public Administration which has been in charge of developing Client Centres at selected District Offices and was given a number of other analytical and methodological tasks.

The Minister of Interior, who is responsible for the ongoing reform, argued that it would make public services and state-administration staff costs cheaper, more efficient and accessible (Jacko & Malíková, 2013). The reform programme and government representatives also emphasised in a rather PR-exercise way values such as transparency, quality, client approach, accountability, citizen involvement in decision-making and a 'system of strategic planning and management' in civil service[14]. If the reform had been fulfilled as planned, it would have arguably delivered a significant public administration reform, primarily in terms of its modernisation but also in terms of a considerable drop in central government spending. The reform also promised to bring a major enhancement to the quality of public services provided. However, because the current public administration reform is still ongoing, a thorough analysis is possible only after the process will be finished.

In terms of criticism, the government and the Ministry of Interior in particular are still not willing to release all internal documents including own and external analyses regarding the current public administration reform processes. Their release would make work of researchers and commentators much easier. Furthermore, some critics contend that the reform lacks plans and effort towards depoliticisation and further decentralisation. Also, the overall amount of public resources to be saved, and a number of political scandals have been reported in the past years. Critics also argue that the ESO reform is too narrow and lacks a more complex approach – especially misses the opportunity to improve running of municipal and regional self-governments.

The dual system of public administration (i.e. state administration and self-government) in Slovakia often lacks cooperation and willingness to implement reform measures. This then easily leads to inefficient decision-making which has an impact on the quality of public services provided at the local level. Most Slovak municipalities are members of the Association of Towns and Communities of Slovakia, a strong interest group which represents the interests of local self-governments. They have a strong say in principal questions of self-government development and central government decisions concerning self-government. The authors of the paper personally interviewed a number of civil servants, employed at the Ministry of Interior, who administer self-government agenda. They confirmed that the Association of Towns and Communities of Slovakia is politically strong and all government initiatives have to be prior consulted and approved by the Association. As a result, central government initiatives to make local self-government more efficient are difficult to implement.

In Slovakia, practically since 2010, various strategy documents have called for the integration of the fragmented self-government system. However, it is not an easy task to solve this issue. The main reason why this issue is so challenging is the sheer number of mayors and councillors who realise that any reform attempting to deal with fragmentation would lead to severe cuts in their numbers[15]. Thousands of local and regional politicians and their families would lose a significant source of their income. Hence, finding political will and support for such a reform at the local level seems mission impossible. It is clear that this issue needs to be resolved via consensus between the central government and representatives of local self-governments. The current government coalition makes a number of pledges in the current Manifesto of the Government[16] regarding improvement of public services, mainly through eGovernment tools and measures. However, the document fails to mention anything regarding a more systemic self-government reform.

3 Quality of Local Public Services

The European Union played a crucial role and has had a significant influence on the local government reform in Slovakia. Slovakia is one of the EU member states which is a net recipient of the EU funds. Until 2004, the EU provided help during the pre-accession period through various pre-accession funds, e.g. Phare, SAPARD, ISPA. After Slovakia's accession in 2004, structural funds continued to provide financial aid and support regional development (e.g. European Structural Fund – ESF, European Fund for Regional Development – EFRD).

In 2003, the National Development Plan of the Ministry of Construction and Regional Development was adopted. It stated that regional structures are unprepared to handle the process related to spending of the EU structural funds. They did not have sufficient capacity to manage the projects. They lacked information and trained personnel to deal with project preparation and its implementation. Resources from the EU structural funds, however, generally represent only additional funding for regional development policy. The emphasis should be placed on the use of its own, internal resources and on the central

government. Therefore, the Slovak Parliament adopted in 2008 a new law on regional development that defined the conditions for effective adjustment and implementation of regional policy. Moreover, this law more widely allowed regional and local self-government to use their powers for the benefit of their development[17].

Although there was a political consensus on public administration reform process – especially in terms of its general direction, policy-making process of decentralization has been fuelled by commitment to implement special interests of political parties which have been often put before the interests of the public. An example of such political squabble was the issue of the size and boundaries of the newly created regional self-governments. Political parties in some cases wanted to draw the boundaries in order to secure and maintain political influence in the newly created regional units of the country.

Frequent changes of central government coalitions as well as the intransigence of the dominant party groupings does generally contribute to effective solutions. What is more, high level of local self-government fragmentation can lead to further inefficiency of government's expenditure and to the complexity of service provision and competencies at the local level.

Especially small municipalities (68% of the municipalities in the Slovak Republic have less than 1000 inhabitants) often struggle to provide sufficient level of public services to their citizens. Two reasons stand out among a number of them. First, small municipalities very often lack professionals with specific skills and experience and second, they struggle financially due to the fact that cost of administration in a small municipality takes over half of its total budget expenditure. In 2006, the government set out a strategy for modernization of public administration in Slovakia and has commissioned a concept of municipal reform – i.e. the modernization of local self-government. According to this concept, government should focus on economization, computerization and development of human resources as the key objectives of a modern public administration.

4 Inter-municipal Cooperation

Slovakia has a highly fragmented structure of local self-governments and so many choose to collaborate in order to achieve greater socio-economic development and improve quality of public services. Fragmentation has led to cooperation of local self-governments (i.e. municipalities) in the form of *inter-municipal cooperation*. It has become one of the ways to contribute to the development of regional policies and to create a stable and efficient system of decision-makers' networks in the regional environment – for the EU operational programmes defined as NUTS levels.

NUTS division predetermines the need for cooperation of regional and local self-governments. However, the 8 higher territorial units are at the NUTS 3 level, so in order to apply for specific EU funds and to use them more effectively, it is necessary for them to apply within the larger NUTS 2 level units. As a result, Slovak self-governing regions

still need to cooperate with other regions in order to meet the minimum regional population criteria and apply for EU funds. This generally leads to extra transaction costs, which then contributes to Slovakia's record on EU-funds absorption.
Inter-municipal cooperation takes place in a number of forums:

a. Joint municipal office – association with common administrative agenda established by agreement between municipalities which cooperate in problems connected with administrative and technical affairs of municipalities (mostly small ones). These offices (234) are the most common form of collaboration between municipalities in Slovakia.
b. Voluntary associations of municipalities (370 in 2016), i.e. microregions. Cooperation takes place in the provision of specific public services (e.g. infrastructure, water pipes, tourism, communal waste management, sewerage). This form of cooperation started to operate with support of EU projects (SAPARD, Phare, ISPA).
c. Local action groups (LAG; 29 from 2007 to 2013). Cooperation occurs in social-economic development of regions.

Local action groups are direct recipients of EU support and funding. Local action groups evolved from networking of actors from the public, private and civic sectors in the regions with the aim of developing the region; created according to the EU criteria. Their activity is designed to support mutual cooperation and increase the responsibility of local and regional authorities and their direct links to the powers, resources and capacities of local and regional authorities. They are legal entities which are to contribute mainly to the development of the regions and to the solving of problems identified by the actors concerned. A local action group is not only an administrative unit but also a model of organization or policy network, which should positively influence implementation of multi-level governance at the regional and local level. This should then ultimately lead to new and improved public services at the local level. Local actions groups are the result of the LEADER programme (EU investment aid for rural development).

In the 2007-2013 programming period, the LEADER programme, a tool for rural development support which encourages involvement and cooperation of local partners, was implemented for the first time in Slovakia. One of the specific LEADER principles is the establishment of a local action group - LAG (a public-private partnership) where actors from different sectors (private, public, civic or non-profit) cooperate on multi-sectoral partnerships in development projects to improve the quality of regional and local services for citizens. Public-private partnerships work on a voluntary basis, while creating their own institutional structure and bringing together representatives from all three sectors of society in their bodies (the general assembly or the members' meeting, the presidency)[18]. The purpose of the partnership is to establish a common integrated territorial development strategy, the institutional structures of the LAGs and, in particular, to benefit from the LAG system. During the 2007-2013 programming period there were 29 LAGs in Slovakia. The majority of them was established based on cooperation of all three sectors of society – public, private and the third non-profit or civic sector.

The LEADER method requires a number of principles to be met: homogeneity of the territory (traditions, common needs, identity, cohesion, human and economic potential), bottom-up policy development (from local actors), public-private partnerships (LAG creation), the right to use innovative approaches to modernization), to involve all sectors of society (public, private, civic); to share experience through networking and to provide information to other LAG groups not only within a single country but within all states of the European Union (this is ensured by the Slovak National Rural Development Network); and cooperation. It means more than networking, as it represents the cooperation of one LAG with other LAGs in the form of joint projects of different types (cooperation in tourism, preservation of cultural heritage, promotion of LEADER group marketing) within a single state or at a transnational level. These individual elements that form a single entity are overlapping and are dependent on each other. Maintaining the purpose and the spirit of LEADER is conditioned by to the implementation of all seven key principles at the same time (Thuessen & Nielsen, 2014).

There are a number of risks and destabilizing factors shaping regional policy. Cooperation between municipalities in Slovakia has so far shown that this only works in individual municipalities that really want it. This means that municipalities and their officials can also end cooperation whenever they want. The problem is that many municipalities find it difficult to reach joint decisions with common goals in the long term. Furthermore, the preconditions for creating coalitions of groups (i.e. stakeholders) and municipalities with *sustainable long-term cooperation* are lacking (Sabatier, 1999). High degree of independence and fragmentation of the self-government bodies from central government in terms of the decision-making process acts both as an opportunity but also as a threat. Problems arising from small fragmented municipalities are often intertwined and can create a vicious circle. For instance, lack of suitable human resources (both leadership and ordinary municipal staff) can lead a number of problems: initiating and implementing successful public policies, providing adequate public services, lack of control mechanisms and, last but not least, rise of extremism and support of populist fringe parties and/or candidates.

5 Conclusion

Slovak experience shows that there are a number of lessons to be learnt from this process. Slovak public administration reform process ever since it commenced in 1990 has led to an increase in the quality of public services at the local level. However, Slovak experience shows that there are a number of lessons to be learnt from this process. There are a number of ongoing initiatives, programmes and tools which could significantly improve the public service provision at the local level. For instance, joint municipal offices, voluntary associations of municipalities, and local action groups are examples of inter-municipal cooperation which could help to improve the scale and quality of public services at the local level.

The public administration reform of the 1990s concerned mainly the institutional transformation of the system, and the democratization of the management of public administration on the principle of subsidiarity. After the year 2005, a new period of quality improvement and better functioning of a new structure of state administration and self-government was introduced. The intention of policy makers was to use various management methods and tools that would affect the development of the territory, increase the quality of life of citizens (especially regarding self-governments), and increase the quality of public service provision in the target groups of citizens (e.g. healthcare services, education, social services, community services, etc.).

Slovakia has witnessed changes and improvement in the provision of public services to citizens through the still ongoing ESO reform (2013-2020) and the changes that have taken place at regional and local levels under the influence of the European Regional Development Fund (ERDF). ERDF was implemented at the national level as the Slovak Rural Development Programme through the LEADER programme (2007-2013). This programme has significantly influenced the formation of inter-municipal cooperation and the functioning of public-private partnerships, which led to further improvement of public services in municipalities and regions.

Lastly, the authors would like to emphasise the view of an ordinary citizen who does not generally differentiate between public service providers at the local level but instead focuses on the quality of the public services provided as a whole. Hence, local self-governments together with local state administration, regional self-governments and other relevant local stakeholders including private companies and civic initiatives should all work together towards one common goal which is the satisfaction of citizens.

Notes:

[2] Act no. 369/1990 on Municipalities.
[3] Act no. 346/1990 on Elections to Municipal Bodies.
[4] Resolution No. 695/1999 to the Strategy of Public Administration Reform in the Slovak Republic, Government Office of the Slovak Republic (18 August 1999).
[5] Resolution No. 230/2000 to the concept of decentralization and modernization of public administration, Government Office of the Slovak Republic (11 April 2000).
[6] Act no. 221/1996 on Territorial and Administrative Organisation of the Slovak Republic.
[7] Act no. 302/2001 on Regional Municipalities.
[8] Act no. 416/2001 on Transfer of some Competencies.
[9] Act no. 254/2007 on the Dissolution of Regional Offices.
[10] Manifesto of the Government of the Slovak Republic 2012-2016, Government Office of the Slovak Republic (2012).
[11] Resolution No. 164/2012 to the ESO programme (Effective, Reliable and Open Government), Government Office of the Slovak Republic (27 April 2012).
[12] Act no. 180/2013 on the Organisation of Local State Administration.
[13] Act no. 305/2013 on e-Government.
[14] Manifesto of the Government (n 18) 33.

[15] Each of the 2890 municipalities has a mayor and from 3 to 41 councillors. The total number of elected local public officials is around 22 thousand. Slovakia has a population of 5.4 million people.
[16] Manifesto of the Government of the Slovak Republic 2016 - 2020, Government Office of the Slovak Republic (2016).
[17] Act no. 539/2008 on Regional Development.
[18] Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (20 September 2005).

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URBANISATION AND LOCAL GOVERNMENT(S)
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Competition in the European and Portuguese Public Procurement

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Abstract Universal access to markets, in particular, the emergence of new economies, is a consequence of the productive and cognitive increase societies and the emergence of new means of communication and information which have emerged from the second half of the twentieth century. The legal framework for public procurement in Portugal is provided in the Public Contracts Code, approved by Decree-Law 18/2008, of January 29, which transposed, to the National Public Procurement System, the EU Directive 2004/18/EC, of March 31, 2004. On February 26, 2014, the European Parliament and the Council of the European Union adopted EU Directive 2014/24/EU on public procurement, repealing EU Directive 2004/18/EC, and allowing the Member States until April 18, 2016, to transpose the new Directive to their national legal frameworks. In Portugal, the legislative procedure to amend the Code of Public Contracts was concluded in 2017, entering into force in January 2018. As for competition, it aims to ensure market balance and efficiency.

Keywords: • market regulation • public contracts • public procurement • competition • free competition

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1 Introduction

Universal access to markets, in particular, the emergence of new economies, is a consequence of the productive and cognitive increase societies and the emergence of new means of communication and information which have emerged from the second half of the twentieth century. Such developments contributed to generate an authentic globalised, networked information system aiming at wealth creation and internationalisation. Societies and organisations started leading the world economy by operating in a different context from what took place throughout the previous century.

By embracing the whole world as a field of action, today's international trade inevitably ends up having to submit to the sphere of intervention by international organisations, whether universal or regional, from the outset, it makes it impossible for the national legislature itself to be able to establish, with complete freedom and autonomy, its market conception and the way of operating, both of public entities and private entities of that same State, thus being subject to legal parameters and principles whose contours, characteristics and rules already transcend its scope of competence.

Concerning the conclusion of public contracts, it is essential to respect the fundamental principles of the internal market, as set out in the Interpretative Communication of the European Commission, published in the Official Journal of the European Union No. C 179/2, of August 1 2006, which states: *"(...) the principles of equal treatment and non-discrimination imply an obligation of transparency, which consists of guaranteeing, for all potential competitors, an appropriate advertising to guarantee the opening of contracts to competition"*.

It results, however, from the provision set in Directives 2004/18 / EC and 2004/17 / EC, a distinction between contracts should be conducted by a public entity of a Member State depending on whether or not the value is above the thresholds therein imposed. Thresholds are updated every two years by the Commission, taking into consideration economic factors.

The legal framework for public procurement in Portugal is provided by the Code of Public Contracts, approved by Decree-Law 18/2008, January 29, which transposed, to the National Public Procurement System, the EU Directive 2004/18/EC, of March 31, 2004. On February 26, 2014, the European Parliament and the Council of the European Union adopted EU Directive 2014/24/EU on public procurement, repealing EU Directive 2004/18/EC, and giving the Member States until April 18, 2016, to transpose the new Directive to their national legal frameworks. In Portugal, the legislative procedure to amend the Code of Public Contracts is on-going.

The Code for Public Procurement (CCP) regulates the procedures required for the formation of contracts. It provides for the creation of an Internet portal dedicated to public

procurement, aggregating information on public procurement. The CCP includes six paramount principles efficiency, simplification, rigour, innovation, monitoring and transparency. One of the Code application corollaries is precisely to promote openness in transactions carried out by the contracting authorities. They are good allies in this objective, the obligation to use electronic platforms in the formation of contracts that, once signed, its publication in the portal BASE.

Some Portuguese Procurement System features are at the forefront of international best practices, namely, electronic tendering and centralisation. The National Public Procurement System (SNCP – *Sistema Nacional de Contratação Pública*) is based on a central purchasing body, ESPAP (*Entidade de Serviços Partilhados da Administração Pública*), in an interrelated system with ministerial purchasing units and a network of contracting authorities and entities. Integration in this network is mandatory for Central Administration and Public Institutions. Municipalities, Regional Authorities, Local Entities and State-owned undertakings may join the SNCP voluntarily.
Direct adjudication and cartelisation are the biggest threats to competition in Public Procurement.

2 The Three Principles of Public Procurement

Regarding the fundamental principles, three stand out, starting precisely with that of competition, followed by transparency and advertising.

The Directives fail to address the first principle as a valid principle but rather as an objective (goal) underlying public procurement and which is, moreover, quite evident when it comes to the lettering of the COMMISSION INTERPRETATIVE COMMUNICATION on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02).

As outlined in point 2.1.1 of the Communication above, *"According to the ECJ, the principles of equal treatment and non-discrimination imply an obligation of transparency which consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the market to be opened up to competition"* referring to the case-law of the ECJ in Telaustria (C-324/98), paragraph 62:
That obligation of transparency which is imposed on the contracting authority consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed.

and Parking Brixen (C-458/03) paragraph 49:
The principles of equal treatment and non-discrimination on the grounds of nationality imply, in particular, a duty of transparency which enables the concession-granting public authority to ensure that those principles are complied with. That obligation of

transparency which is imposed on the public authority consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the service concession to be opened up to competition and the impartiality of procurement procedures to be reviewed.

The principle of competition is "*the true backbone of the Public Procurement, a kind of umbrella principle" that* shapes and informs the remaining (Oliveira & Oliveira, 2016: 186). The Principle of Competition in Public Procurement occupies a procedural and non-material plan, as a canon or normative criterion that directs the contracting authority to resort to open, competitive procedures, which allow interested parties, economic operators, equal conditions of access and participation and equal treatment (Gonçalves, 2012: 489).

Transparency is unequivocally one of the legislator's main concerns when it comes to the conclusion of public contracts. With the creation of Directives 2004/18 / EC and 2004/17 / EC, the principle of transparency's role was enhanced. Following the EU legislator, the national legislator refers explicitly to this principle in the Code of Public contracts.

Transparency implies, from the outset, the publication of the tender notice in the JOUE, in the case of an International Public Tender, when the contract value is above the community thresholds. With regard to the evaluation model designed and fixed on the pieces by the contracting authority, it should allow interested parties to obtain necessary information in order to determine *the quid* to be taken into account when evaluating the proposal, namely the "weight" and the "measure" that is attached to the award criteria chosen by the contracting authority.

In the case of a tender procedure, it must be advertised by notice in the National Gazette (Diário da República), in the case of a national public tender, for contracts below the Union's thresholds (135,000 euros for the State, 209,000 euros for other contracting entities, in the case of Acquisition of Goods and Services, and 5,225,000 euros in the case of Public Works Contracts) – as outlined in Article 4 of the "classic" Directive.

The right to information is enshrined in several international agreements, including Article 19 of the Universal Declaration of Human Rights. The right of citizens to access public authorities' information is called freedom of information. This information plays a crucial role in informing the population so that they can make accurate political choices (Vilela et al., 2017: 728). The same applies to undertakings.

There is a close link between the principle of transparency and advertising, and it is moreover challenging to address one without reference to the other as "the advertising principle represents the external face" of the transparency principle. As already mentioned, there is a required degree of publicity right from the training phase's start. Contract to be signed, which must be made in the Diário da República (DR) and / or in

the JOUE, under the Directives' thresholds, and whose non-compliance can generate, depending on the case, nullity, annulability and even ineffectiveness.

In the light of the advertising principle, a corollary to the principle of transparency, the Administration is prohibited from taking any action or omission that may cause the favouring or disadvantage of any of the competitors (Sousa, 1994: 64-75).

Advertising for the conclusion of a contract has a much wider circle of recipients and broader than transparency, restricted to those involved in the procedure. It should be noted that in Portugal, there is an obligation to publicise contracts signed by entities contractors on the public procurement portal at www.base.gov.pt, which is accessible consultation of any citizen, which is, therefore, an excellent example of the importance that the principle advertising takes on public procurement, whose ultimate purpose is undoubtedly transparency. However, it should be clarified at this point that there are different moments of publicity, being that that carried out on the public procurement portal takes place at a stage subsequent to the conclusion of contracts, whether or not they have been previously published in the DR and / or the JOUE.

3 Competition and Public procurement and Government contracts in Portugal

According to the OECD, *"Public procurement refers to the purchase by governments and state-owned enterprises of goods, services and works. As public procurement accounts for a substantial portion of the taxpayers' money, governments are expected to carry it out efficiently and with high standards of conduct in order to ensure high quality of service delivery and safeguard the public interest"*, being one of the most highly legislated and regulated fields of government (Lloyd & McCue, 2004: 3).

Competition aims to maximise consumer welfare and economic efficiency according to the own legislation of the ECJ in Case C-468/06 GlaxoSmithKlein, being considered a "backbone" of market efficiency (Oliveira, 2018: 85), guaranteeing the confidence of competitors allowing the pursuit of public interest based on impartiality and a globalised economy.

Competition may be divided into two aspects: subjective and objective. While the subjective element guarantees that each subject exercises freedom of economic initiative; the second consists of a market that is characterised by the presence of a plurality of economic operators, each of whom buys or sells such a negligible portion of the total product exchanged that he is unable to influence the market price with the conduct (Raimundo, 2013).

Public procurement aims to pursue non-discrimination, transparency and equal treatment, and value for money at the national level. The rules concerning this principle are open,

being confident that they lead to its application, hence leading to pro and anti-competitive results. Still, they are never enough to guarantee effective competition. Public procurement law allows contracting entities to meet their needs efficiently and "is grounded on two starting assumptions: that competition goes first, and that there is room for more competition in public procurement", and also, it is interesting to mention the fact that "that public procurement is currently not as pro-competitive as it could (or ought to) be — or, put otherwise, that current public procurement rules and practices generate distortions in market competition dynamics— and, consequently, that there is room for significant improvement in this area" (Sanchez Graells, 2015).

These two rights (competition law and public procurement law) are related and complementary realities. At a certain point, public procurement law is considered to be a competition law applied to public procurement. The case-law of the ECJ in *Fenin* T-319-99 states that *"according to settled case-law, in Community competition l a w t h e concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed" and* together with other decisions of the Court of Justice of the European Union on the matter such as *Höfner and Elser, Poucet and Pistre, Federation française de societies d'assurances, Job Centre, Albany* and *Dansk Pelsdyravlerforening*, amongst other as well as the subsequent amendments to European directives 23/2014/EU: 24/2014/EU: 25/2014/EU, have reduced the gap between public procurement law and competition law.

It is intended, now, that there are public procurement rules based on the principle of competition (the broader aspect of competition law) in a double perspective: as a factor that demands market appeal and the equal treatment of companies and as a criterion for the position of abuses of agents participating in market relations.

4 Laws governing Competition and Public procurement, and Government contracts in Portugal

Public procurement represents a mechanism of significant importance for any State's economic and social development, constituting an instrument for constructing economic and social policies, emphasising its confrontation with competition law.

It should be noted that this represents that for Portugal, 19.5% of total public expenditure and 10% of GDP, and, if we refer only to the year 2018, public procurement in Portugal reached 6,824 billion euros. As a result, 128,351 were contracts signed.

When inefficient, public procurement leads to the waste of public funds, which could be redirected to other purposes of social interest, being, in this way, competition, fundamental for the promotion of this same efficiency.

The first time the national legislator developed a unique code to deal with public contracts dates back to January 29, 2008, employing the Law Decree 18/2008. This first attempt to codify the national rules on public contracts derives from the EU legislation in the matter; in particular, the EU Directive 2004/18/EC. It is relevant to mention that the Directive was already in force in the national legal order since 31.01.2006, the foreseen deadline for its transposition, as arises from the Principles of EU Law, as Portugal was in breach of its obligation to transpose.

With the entry into force of EU Directive 2014/24/EU on public procurement, repealing EU Directive 2004/18/EC, and giving the Member States until April 18, 2016, to transpose the new Directive to into national legal frameworks, EU Directive 2014/25/EU and EU Directive 2014/23/EU as well as EU Directive 2014/55/EU and in order to increase the efficiency and decrease the waste, in 2018 the New Public contracts code came into force, aiming to the efficient allocation of the governmental funds and the respect for the already mentioned principles of competition, transparency and advertising. Once again, Portugal did not meet the transposition deadline.

The last amendment in the National Legislation concerning Competition law came into force in 2012, Law 19/2012, after the Assembly of the Republic's approval, which revoked Law No. 18/2003.

Even though it imported several amendments to competition law, no changes were made to the articles pertaining to the unlawful competition. The amended sanctions remained purely pecuniary.

After the entry into force of the "New Legislation", The Competition Authority acquired new powers (Vilela & Gomes, 2017: 124): investigative powers would specifically include the possibility for searches and apprehensions of homes, vehicles or other sites belonging to a member, administrative bodies, workers or any other company/association collaborators. Supervision powers were also extended, enabling inspections and audits of company premises, even without a Public Prosecutor's Office or a judge's order, subject to a 10-days' notice, and the collected evidence could be used in other cases, including sanctioning procedures against the company in question. This field of action would be formally guided by a principle of opportunity, which could assign different priorities in the treatment of the issues that were called for analysis.

With the last amendment of the PCC, public contracts were, now, under the scrutiny of Competition Law.

5 Conclusions

The importance of competition for cost-effective public procurement is corroborated by the considerable efforts that undertakings typically devote to business-to-business

commercial transactions to ensure that their procurement departments effectively use competition to reduce the cost increase the quality of inputs (Anderson, 2011).

Regardless of the significant attempts, both by the European legislator and its national peers, *in casu*, the Portuguese legislator, and the considerable amount of legislation, case law, recommendations, etc., issued to tackle the issue of competition in national and EU comprehensive, public procurement, several weaknesses are still identified in this field.

The Portuguese legislator has failed to implement a free competitive market in public procurement regardless of having developed subsequent texts and institutions that aim to tackle the issue.

More legislation can be expected to be developed in the near future. Regardless the authors are convinced that a total swift in paradigm, as well as the imposition of severe penalties to those in breach o competition rules, is necessary.

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URBANISATION AND LOCAL GOVERNMENT(S)
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The Effects of Public Procurement on Sustainability in the EU: A Mixed-Method Analysis

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Abstract Public procurements account for nearly one fifth of the European gross domestic product. Recently, policy-holders in the EU have propounded the use of public procurements for green and sustainable purposes. The aim of this paper is to examine the relationship between public procurements efficiency and sustainability outcomes. The study is based on a mixed method approach. In the quantitative analysis, the paper explores the statistical relationship between public procurement efficiency and sustainability outcomes, such as Natural capital, Social capital, Intellectual capital, Governance, and Resource Intensity for 30 European countries. In the qualitative analysis, we provide in-depth explanation for the relationship between sustainability criteria and public procurements in the selected sample of countries.

Keywords: • public procurement • sustainability • green public procurements • public procurement efficiency

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1 Introduction

Public procurements are at the forefront of public administration scholars' and practitioners' agenda in the last few decades (Knight, 2007). The main reason for such an intensive attention is due to the fact that approximately one fifth of the European GDP is related to public procurements (Milosavljevic, Milanovic & Benkovic, 2016). Accordingly, public procurements utterly affect the way in which taxpayers' money is used. Thus, the central issue for the efficiency of public procurement system is related to the value-for-money purchases of goods, works and services for public purposes (Jovanovic, Zarkic Joksimovic & Milosavljevic, 2013). However, public procurements are used not only to improve the market efficiency of the public sector. They also contribute to the implementation of a myriad of different nation-wide policies. For instance, they are used to spur the innovation outcome, to balance regional and national development and to achieve various desirable social and sustainability-related outcomes (Milosavljevic, Dobrota & Milanovic, 2018). The subsequent one is the focal point of this paper.

The very interaction between public procurements and sustainability might not be a novel topic. A current body of knowledge is anchoring the sustainability impacts of public procurement (Uyarra, et al., 2017). Not even the financial crisis has slowed down the development of environmental initiatives in public procurement policies (Nikolaou & Loizou, 2015). Witjes & Lozano (2016) have proposed a framework for linking sustainable public procurement and sustainable business models. Sönnichsen & Clement (2020) conducted a comprehensive literature review, and conluded that 'literature primarily covers three areas with regard to circular public procurement: organizational aspects, individual behavior and operational tools.' Nevertheless, most of the prior work is related to the national, subnational or institutional levels (i.e. Mélon, 2020). A paucity of studies have examined the influence of public procurement policy effects on sustainability in comparative means. To the best of authors' knowledge, the only systematic large-scale international study of sustainable public procurement practices was conducted by Brammer & Walker (2010). However, the study is based on objective measures rather than respondents' perceptions.

The aim of this paper is to examine whether public procurements affect the achievement of sustainability goals. In particular, we used a mixed method approach to: 1) quantitatively asses the relationship between public procurement efficiency and sustainability indicators (such as Natural capital, Social capital, Intellectual capital, Governance, and Resource Intensity) and 2) conduct in-depth analysis of the interplay between sustainability and public procurements for the selected set of European countries.

The remainder of this paper is organized in the following order. Section 2 reviews the extant literature related to sustainable public procurements. Section 3 depicts on the methodology used in the study and provides an explanation of the approach used for the analysis. Section 4 elaborates on the results of the study. Section 5 provides a discussion for the main findings,

contributions and implications. This section also deals with the main limitations and further recommendations. The last section is reserved for the concluding remarks.

2 Literature overview

Public procurement refers to the acquisition of goods, services and works by the public sector organizations through public contracts (Kiiver & Kodym, 2014). Over the years, there has been an increase in the utilization of public procurement as a mean to achieve policy objectives that stand outside the simple act of buying a good or service in the EU (Telles & Ølykke, 2017). As public procurement makes a notable portion of the GDP of each EU member state, they are seen as an important mean to reduce environmental impact of purchased products through the whole life cycle (Parikka-Alhola, 2008). By inputting environmental management practices into public procurements, both economic and environmental performance can be improved (Schaltegger & Synnestvedt, 2002).

Sustainable procurement has been receiving an immense attention lately. The growing need for the inclusion of environmentally sensitive issues in public policies has forced policy-holders and decision-makers to include more of the sustainable and "green" elements into the public procurement processes. In the European Union, for instance, contracting authorities in most cases have at least one 'green' criterion for awarding the contract to procurers. The 'older' member states with the longer tradition in public procurements have nearly a half of all criteria related to environmental factors (Dragos & Naemtu, 2013).

Sustainability of public procurements has attracted the attentions of scholars as well (McCrudden, 2004; Brammer & Walker, 2011). Several terms are used interchangeably to address the elements of public procurement sustainability, such as Green Public Procurement (Michelsen and de Boer, 2009), Sustainable Public Procurement (Preuss, 2009), and Environmental Responsible Public Procurement (Li & Geiser, 2005). In the broadest sense, the concept of sustainable public procurement is related to the contexts in which environmental issues are taken into account within the procurement process. However, there are some distinct features of these interchangeably used terms. Green public procurements assume that contracting authority is supposed to procure goods, services and/or works with decreased negative effects to environment throughout the life cycle compared to the goods, services and/or works with the same primary function that would be procured (EC, 2016). On the other side, sustainable procurement refers to the process in which contracting authority should reach the balance between three dimensions of sustainable development – economic, social and environmental - during all the phases of procurement process (EC, 2016).

Terminology aside, green and sustainable procurements are still at its infancy when from a scholarly perspective. The European Commission Directions from 2014 envisaged more strategic use of public procurements for various environmental, social and

industry/innovations goals. This is a strong political basis for any further development of sustainable public procurements. However, skepticism is still present among the experts. For instance, scholars have been emphasizing potential non-legal barriers to sustainable public procurement (Faracik, 2018). Even when included in calls for tenders, "it is not necessarily the case that they [environmental concerns] are integrated into the final contract clauses" (Palmujoki, Parikka-Alhola & Ekroos, 2010). A question is also raised with regards to the capacity of the public procurement experts and clerks to implement environmental measures when initiating and conducting tenders (Carlsson & Waara, 2006). Furthermore, the most important bias is a potential trade-off between the efficiency and incorporation of new green elements which can path the way for misuse and discriminatory practices (Semple, 2012).

Environmental factors can be taken into account at each stage of a procurement process (Parikka-Alhola, 2008), including the selection of award criteria. In this sense, environmental factors can feat only MEAT and 'if they are linked to the call for tender objective, they do not provide the contracting authority an unrestricted freedom of choice and, finally, they are expressly mentioned and comply with EU principles' (Testa, et al., 2012). In the Fifth generation of EU public procurement directive, environmental characteristics are explicitly listed as an important non-price related criterion for the procurement award (SIGMA/OECD, 2016).

Simultaneously with the growth of the scholarly and practical body of knowledge, the awareness of the effects of governments' buying on environmental development continues to grow. Tátrai (2015) claims that that market players today apply a substantially broader interpretation of sustainability in public procurement than at the beginning of this century. There are at least three major rationales for the inclusion of environmental aspects into the procurement processes. First, government expenditures make a great portion of total consumption in each and every European country. As public procurements hold for nearly one fifth of GDP of European countries – varying from 10.5 per cent in Cyprus to 30.6 per cent in Netherlands (Schulten, et al., 2012), governments can directly affect the environmentalism in purchasing for a substantial portion of total national consumption. Second, citizens' pressure for environmentalism considerably shapes governmental spending. As for the case of the EU countries, recent study shows that citizens still find cost-effectiveness and domestic favoritism as important factors, but the most important one is the support for the objectives of sustainable procurement (Keulemans & Van de Walle, 2017). Even from a grand scheme of things, citizen-centrism plays a pivotal role in shaping public policies around the Old Continent (Kostic et al., 2013) Third, governments can use their immense purchasing power to influence behavior and attitudes of suppliers (Walker & Brammer, 2009), thus spilling over the culture of environmentalism to the private sector organizations. However, this might be a two-way street, since a number of legal entities have already adopted some concepts of corporate social responsibility (Vlastelica et al., 2018).

Although the need for the inclusion of sustainability criteria in public procurement in Europe is evident, a number of interrogatives have been hitherto posed. From a grand scheme of things, Ollson & Öjehag-Pettersson (2020) claim that unsustainability as a market failure makes sustainability only a voluntary ambition of procuring organizations. In line with the aforementioned, Gelderman, Semeijn & Bouma (2015) find that the inclusion of sustainability criteria in tendering procedure is just a mean of creating public visibility and electoral support for party-political councilors, and a mean to support different stakeholders for procurement managers. Having this mind, sustainability is seldom unnaturally imposed to contracting authorities. On the other side, most of the concurrent strategies and guides for the inclusion of sustainability criteria are based on the ambition rather than real decision-making and policy-holding tools (Montalbán-Domingo, et al., 2018). Finally, some concerns have been raised even on the supply side. Public procurement law might be an effective tool for EU to achieve the objective of sustainable development, but it can only be as effective when corporations and SMEs who supply contractors recognize the importance of sustainability (Sjåfjell, 2018). Accordingly, we still lack the real evidence on whether and how green public procurements affect sustainability (Lăzăroiu et al., 2020).

3 Methods

This study uses mixed method approach to analyze the relationship between sustainability and public procurement efficiency. First, we elaborate on the methods of quantitative analysis. However, we recognize that it is difficult for governments to reach sustainability objectives with their present-day public procurement system-related decisions (Pot, 2020), which might impact the short-term relationship between the public procurement efficiency and sustainability. Accordingly, we extend our study with some findings on sustainability outcomes of public procurements in selected European countries. Following other mixed-method (Benkovic et al., 2011) and comparative (Milosavljevic, Milanovic & Milosevic, 2016) studies in the area of public administration research, we aim to benefit from both quantitative and qualitative analysis.

3.1 Methods for the quantitative analysis

As the aim of the study was to analyze the relationship between public procurement efficiency and sustainability, the first step was to develop the variables.

The first set of variables in the study were the dimensions of the national sustainability. Perera, Chowdhury & Goswami, (2007) find that sustainable public procurement »is about integrating environmental and social criteria into public procurement processes and decisions«. Alongside raising the economic efficiency, public procurements are also supposed to consider environmental and social factors throughout the process. Accordingly, we assume that Natural capital, Social capital, Intellectual capital,

Governance, and Resource Intensity are the main factors of country's sustainability (SolAbility, 2019).

The second set of variables is aimed at defining the public procurement efficiency. Efficiency of public procurements is vividly debated topic. The most important public procurement efficiency factors prescribed by the European Commission are number of bidders, number of calls for bids, aggregation, award criteria, decision speed and reporting quality. Extant literature offers similar indications of public procurement efficiency. For instance, Gupta (2002) finds that the number of bidders affects the price efficiency and finds that 6 to 8 candidates are needed in order to reach highest competitiveness. Also, Grega & Nemec (2015), based on their empirical study conducted in Slovakia, reported that the award criteria significantly affect the efficiency. Although the Single Market Scoreboard metrics is the most reliable source of public procurement performance indicators, the integration of partial indicators has been criticized in the scholarly literature. For instance, Milosavljevic, Milanovic & Benkovic (2016) argue that this matrix is 'based solely on the outputs', thus capturing only a portion of determinants affecting the efficiency. Also, the composite value based on individual measures is weighted using subjective coefficients. For the purposes of this study, the data on public procurement efficiency from the |Single market Scoreboard is decomposed in order to create an unbiased composite rank for the examined countries. Although a wide spectrum of approaches has been used for the aggregation of individual indicators into a single measure or rank, most of the extant approaches rely on subjective weighting of factors. The subjectivity is inherent even to the Single Market Scoreboard approach as the original weights rely on a highly biased and one-sided approach. In order to solve this problem, this study is based on Composite I-distance Indicator approach (Dobrota & Dobrota, 2016). An objective measure of public procurement efficiency on the national level is given in Milosavljevic, Dobrota & Milanovic (2019). Using the same Composite I-Distance Indicator for public procurement efficiency, we composed value-for-money indicators of the Single Market Scoreboard into a singular measure.

The variables and measures presented above are entered into Statistical Package for Social Science and analyzed accordingly. For the analysis of individual variables, we used descriptive statistics – means and standard deviations. For the Composite I-distance indicator, we used Pearson moment two-tailed partial correlation coefficient. Interdependence of variables was analyzed with non-parametric Spearman's correlation coefficients.

3.2 Methods for the qualitative analysis

Quantitative analysis can depict some specificities and peculiarities of the interplay between public procurements and sustainability. However, we extend the analysis by delineating some experiences with incorporating environmental factors into public procurement processes. The focal point of this section is an overview of cases for the use

of sustainable criteria in the public procurement processes of a handful of European countries. We selected few countries from three strata based on the public procurement efficiency. For these countries, we provided in-depth explanation of the relationship between public procurements and sustainability achievements.

4 Results

4.1 Findings from the quantitative analysis

The Global Sustainable Competitiveness Index (GSCI) measures the ability of national economy to generate and sustain inclusive wealth without diminishing the future capability of sustaining or increasing current wealth levels. The model is based on 5 factors of equal importance: Natural capital, Social capital, Intellectual capital, Governance, and Resource Intensity (SolAbility, 2019). The starting idea is that there is strong, statistically significant, positive correlation between those factors and Public procurement efficiency. Original data on sustainability dimensions (i.e. numerical score for each factor) are taken from The Sustainable Competitiveness Report for 2019. The CIDI score is taken from Milosavljević et al. (2018). Based on described sources, the data used for quantitative analysis are presented in Table 1.

Table 1: Original data on sustainability dimensions and public procurement efficiency

Country	Natural capital	Social capital	Intellectual capital	Governance	Resource Intensity	Public procurement efficiency [CIDI score]
Austria	43.4	57.0	56.1	60.9	53.5	62.52
Belgium	30.3	56.2	58.0	57.8	54.5	66.43
Bulgaria	53.5	46.0	45.7	60.2	40.4	36.56
Croatia	57.0	47.2	48.5	58.5	59.8	29.36
Cyprus	28.1	50.9	46.6	52.1	51.4	28.09
Czechia	35.6	52.0	58.5	66.3	53.3	33.46
Denmark	46.8	55.3	63.6	59.3	59.8	73.79
Estonia	63.3	51.9	50.4	62.5	46.5	39.07
Finland	62.3	58.8	59.3	61.3	55.6	56.09
France	46.4	51.9	54.6	53.7	53.1	68.16
Germany	36.4	56.4	60.6	64.1	50.1	60.33
Greece	40.8	43.6	46.9	54.7	51.3	35.61
Hungary	44.4	45.0	50.9	58.3	47.4	36.48

Country	Natural capital	Social capital	Intellectual capital	Governance	Resource Intensity	Public procurement efficiency [CIDI score]
Iceland	58.0	58.4	55.4	58.6	56.0	85.7
Ireland	46.4	49.7	47.2	66.5	58.4	69.54
Italy	41.1	52.2	48.8	55.4	52.1	37.73
Latvia	56.7	47.2	44.1	63.0	61.1	40.78
Lithuania	52.3	48.1	43.0	52.8	56.8	44.55
Luxembourg	40.2	57.2	49.7	61.6	63.5	64.21
Malta	28.7	51.4	47.1	55.0	50.8	57.1
Netherlands	34.4	56.8	56.4	58.1	46.9	77.33
Norway	59.1	58.6	64.3	52.3	50.3	73.27
Poland	43.7	50.2	51.1	64.2	50.4	34.55
Portugal	45.5	52.6	51.6	55.4	50.6	51.22
Romania	51.2	47.5	40.8	58.8	55.7	29.82
Slovakia	40.5	50.6	47.8	60.5	58.8	26.37
Slovenia	43.0	53.4	59.0	64.3	49.3	33.98
Spain	44.2	50.6	42.6	55.7	49.2	47.41
Sweden	63.7	58.3	66.1	51.1	63.8	78.29
United Kingdom	34.6	48.9	62.1	55.8	62.5	76.6

Natural capital score varies from 28.10 to 63.70 with average value of 45.72. Highest ranking countries are characterized by water availability, rich biodiversity, available agricultural land and reach energy resources. High natural capital is present in Scandinavian countries while Cyprus and Malta are at the bottom of analyzed group of countries. Social capital index is less dispersed than natural capital index, but it is still dominated by Scandinavia while Greece is at the bottom. This is not surprising having in mind that this index measures availability and affordability of health care services, quantitative equality within society, crime levels and similar aspects of social cohesion. When it comes to intellectual capital, Sweden is characterized by highest availability of intellectual capital what means that it has strong basis for innovation capability, development of entrepreneurship and sustainable balance between service and manufacturing sectors while Romania is at the bottom. The governance ranking is leaded by Ireland, followed by the Czech Republic, Slovenia, Poland and Germany meaning that ranking is dominated by Central and Eastern Europe countries. Finally, high quality resource management (resource intensity) is immanent to Sweden, Luxembourg and UK.

The countries in the lower ranks will, generally, suffer substantial higher costs and challenges to maintain their economic growth.

The results of CIDI score indicate that the best ranked country is Iceland, followed by Sweden, the Netherlands, the United Kingdom and Denmark. Very huge difference between minimum (26.37) and maximum (85.7) value shows that analyzed countries are very different in terms of public procurement efficiencies.

Table 2: Descriptive statistics

	Min	Max	Mean	STD
Natural capital	28.10	63.70	45.7200	10.21160
Social capital	43.60	58.80	52.1300	4.37872
Intellectual capital	40.80	66.10	52.5600	7.03570
Governance	51.10	66.50	58.6267	4.31660
Resource Intensity	40.40	63.80	53.7633	5.56364
Public procurement efficiency	26.37	85.70	51.8133	18.26674

The results of correlation analysis are presented in Table 3. From purely quantitative perspective there is statistically significant correlation between social capita and CIDI score and between intellectual capital and CIDI score. In general, this is in line with other studies that find positive relationship between the efficiency and innovations in the public sector (Radonic & Milosavljevic, 2019). Surprisingly, we did not find statistically significant relationship between public procurement and governance. This is particularly odd since the EU has been envisaged as a diffusion agent for public procurement governance in a number of concurrent studies (Ladi & Tsarouhas, 2017).

Table 3: Correlation matrix

	2	3	4	5	6
Natural capital	.046	.028	.015	.136	.135
Social capital		.701**	.002	.064	.578**
Intellectual capital			.062	.073	.543**
Governance				-.006	-.199
Resource Intensity					.218
Public procurement efficiency					

4.2 Findings from the qualitative analysis

As mentioned in the methodology section, we selected few countries from three strata based on the public procurement efficiency. The first-tier sample are the cases of Sweden

and France, the second-tier countries encompass Spain and Finland, and from the third tier we selected Poland, Slovenia and Croatia.

Sweden. The office for public procurement in Sweden – the National Agency for Public Procurement (NAPP, 2020) dedicates a lot of attention to the issue of sustainable procurement: a) environmental procurement ("green" procurement criteria which could or must be used in the evaluation of tenders, divided into three categories: "basic", "advanced" and "spearhead"), b) innovation procurement (good examples from practice), and c) social procurement. The key challenges encountered during promotion and implementation of socially responsible public procurement principles are lack of capability and experience among contracting authorities and other participants in procurement process, lack of clear guidelines and support, lack of supporting infrastructure (e-tools, platforms for planning and follow-up) including reluctancy of private sector and bidders. Also, the big challenge is measurement of benefits resulting from application of predefined criteria what might have, negative, counter effects and even harmful impact on competition (The Swedish procurement monitoring report 2018).

France. The latest publicly available statistics concerning public procurement dates from 2013. Environment related clauses ("green procurement") were used in 6.7 % of procurement procedures (in 8.6 and 8.7 % of procurement procedures conducted at, respectively, the state and local authorities' levels) and considerably less frequently by utilities which used those clauses only in 0.2 % of their public procurement procedures. National Action Plan for Sustainable Public Procurement is implemented through 52 actions with the aim to fully incorporate practice of sustainable public procurement by top management through better planning, anticipation of professionalization of public procurers. The objectives set by the State Procurement Direction for 2020 for all state buyers and agencies are that 30% (in number) of purchases above EUR 90,000 include environmental clauses and 15% (in number) of purchases above EUR 90,000 include social clauses. Using e-procurement platform and other specialized software the Economic Observatory of Public Procurement (OEAP) monitors annually the inclusion of sustainability clauses in contracts above EUR 90,000.

Spain. There is no aggregated statistical data concerning application of environment and innovation related criteria but anecdotal information available in the Internet indicates that the issue of application of sustainable criteria is getting more and more relevance both at the level of the State as well as autonomous communities. For example, the government of Aragón set the target of 3 % of innovation in public procurement in 2020. For example, analysis of sustainable public procurement in Valencia region showed that environmental criteria are used in 19.7% of the works tendered. The usage of this criteria is higher in the civil engineering subsector for projects tendered by regional administration compared to high volume projects with large budgets (Fuentes-Bargues et al., 2019). Also, Fuentes-Bargues et al. (2018) show that use of environmental criteria in the works tendered by Spanish universities is low (19,2%) and they are, mostly, related

to improvements in the energy efficiency of the property and equipment but there is no objective approach for evaluation of impact on the environment.,

Finland. In 2009, Finland has issued resolution according to which environmental standards have to be included in all purchases made by central Government by 2015, and in at least half of all purchases by municipalities and local governments by the end of 2015. Therefore, Finland is considered as pioneer in implementation and promotion of principles of sustainable public procurement. In addition, in 2013, Finnish Government announced that 1% of total public procurement will be allocated to sustainable environmental and energy solutions while Smart Procurement program, launched in the same year, helped SMEs to offer their products and services and encouraged them to bid. According to the survey carried out by Keino (2018), around 30% of public procurement in Finland included sustainability perspective. In most cases, sustainability targets are related to energy efficiency, reducing waste, and reducing emission. Analyzed by procurement type service procurement (40%), material procurement (40%) and building contract procurement (39%) are the most common types with sustainability targets. The most common verification method is provider's statement (57%) while independent certificate provided by a third party is the least used verification method in the material procurement (19%). The goal of environmental policy, adopted by Helsinki, is that by 2020 all purchases made by the City will contain environmental criteria. Other sustainable procurement targets are very ambitious and Helsinki should become carbon neutral city by the year 2035.

Poland. In 2016 the Public Procurement Office of the Republic of Poland (UZP, 2020) conducted fairly detailed research among contracting authorities concerning application of environmental considerations and innovation in public procurement. The results were published in the annual report of the PPO concerning functioning of the public procurement system in Poland in 2016. Accordingly, environmental considerations (aspects) were used by 209 contracting authorities in 599 public procurement procedures. Ecological aspects, requirements, conditions were applied at various stages of public procurement (starting from the description of public procurement until the selection of the best tender). The more detailed statistics concerning green procurement is as follows: a) in 54 public procurement procedures the contracting authorities made reference, in the conditions for participation in public procurement procedures (the selection criteria) to systems and measures of environmental management, b) in 199 procedures the description of the object of public procurement contained environmental requirements (conditions) concerning execution of contracts, c) in 116 public procurement procedures environmental labels were applied in the description of the object of public procurement and in 40 cases in the criteria for evaluation of tenders (award criteria), and d) in 200 cases the contracting authorities made reference in the award criteria to other environmental criteria (including energy efficiency).

Slovenia. The Public Procurement Directorate in Slovenia publishes in its annual reports very detailed information about application of environmental and social considerations in public procurement (http://djn.mju.gov.si/resources/files/Letna_porocila/Stat_por_JN_2016.pdf). According to annual report for 2016 environmental aspects (at least one) were used in 30.37 % of public procurement procedures. The PPD published also detailed statistics concerning stages (elements) of the procurement process where those considerations were used in 2016. Accordingly, environmental aspects were present in the technical specifications (59.8 %), the object of the public procurement (7.14 %), selection criteria (conditions for participation) (23.91 %), award criteria (23.89 %), conditions for execution of contracts (terms of contracts) (1.19 %) and other aspects of public procurement process (7.14 %).

Croatia. According to the annual statistical report of the Public Procurement Office the contracting authorities awarded, in 2016, 65 contracts in which green public procurement criteria were used (57 contracts by public contracting authorities and 8 by utilities). As for public contracting authorities, they awarded 3 public contracts concerning waste disposal works, refurbishment of the facades and road maintenance facilities. 45 "green" public contracts were awarded for the procurement of IT equipment, office supplies, office furniture, electricity, motor vehicles and 9 contracts for cleaning services and the printing service. With regards to the utilities, they awarded "green" contracts for the purchase of electricity, chemicals for the treatment of cooling water, equipment for the desulphurization of a pumping station and procurement of fuels.

5 Discussion

5.1 Key findings and contributions

In this study we used mixed method approach to analyze the relationship between sustainability and public procurement efficiency. According to the results of quantitative analysis, there is no strong correlation between analyzed public procurement efficiency and sustainability indicators (Natural capital, Social capital, Intellectual capital, Governance, and Resource Intensity) and Composite I-Distance Indicator (CIDI) that is used as a proxy for public procurement efficiency. Statistically significant correlation exist only between social capital and intellectual capital while other indicators are not correlated with CIDI.

After quantitative analysis, we extend our study with some findings on sustainability outcomes of public procurements in selected European countries. As expected, there are significant differences between sustainable public procurement practices and current stage of their development even between EU countries. The main findings are that training, the strength of social entities, political willingness and dedication to the whole process are key factors to put in place strategies that will led to desired public procurement process.

5.2 Policy implications, limitations and further recommendations

Sustainable public procurement has become very popular over the last decade. With the growing need to address a number of environmental challenges, the agenda of policy makers in developed countries is increasingly incorporating elements of sustainable or "green" public procurement. In the European Union, for example, contracting authorities in most cases have at least one "green" criterion for awarding contracts to tenderers, and in older members with a longer history of environmental tradition, almost half of all contracts are awarded on the basis of environmental criteria.

Green and sustainable public procurement are concepts that are still evolving. The European Commission directives from 2014 introduced provisions on greater strategic use of public procurement in terms of environmental, social and industrial / innovation goals, which is the basis for further development in the field of sustainable public procurement. However, skepticism about real ranges is still present. Namely, there is a doubt that sustainability is in conflict with the traditional goal of efficiency and that the application of green criteria will pave the way for new forms of discrimination.

This study has a number of flaws which may affect the generalizability of the findings. As for the quantitative part of the analysis, we used highly aggregated data on both public procurements and sustainability. Follow-up studies should concentrate on tender-specific documentation, particularly from the Tender Electronic Database (Milosavljevic, Milanovic & Benkovic, 2017), and building on specific case studies (i.e. Benkovic, Krivokapić & Milosavljević, 2015). Second, the quantitative study should take into account other variables related to sustainability dimensions. An avenue for further research might be in the inclusion of additional variables, such as the behavior of public procurement officers (Grandia, 2016), or cultural constructs and peculiarities (Fuentes-Bargues, González-Cruz & González-Gaya, 2017), and many others. Accordingly, the real impact would be made with a holistic approach and general framework for the sustainability practice in public procurements (see Benkovic, Milanovic & Milosavljevic, 2017).

6 Conclusion

Green and sustainable public procurements have become an important instrument with a potential to correct the market inefficiencies related to unsustainable behavior of contracting authorities. This paper demonstrates that we still lack of clear conclusions on whether policy-holders can make significant impacts on sustainability outcomes by improving public procurement system. Even though the advances such as the inclusion of green criteria in tendering procedures seems to be a straightforward solution to the reduction of negative effects on sustainable development, this is rather process-based improvement than a holistic solution to economic, societal and environmental challenges.

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LEX LOCALIS

Challenges for Hungarian Local Self-Governments Connected to the Use of Publics: To be Governed by Public or by Private Law?

KRISZTINA F. ROZSNYAI

Abstract After the fall of the Wall in Hungary administrative law and legal thought was somewhat eclipsed. The article, focused on the concrete example of the usages of public space presents how the dominance of civil law and its concept of self-governments as the owners and not as the regulators of public land distorted the legal framework given for local self-governments to regulate the forms, as well as to manage the uses of public land themselves. The article will also trace back the developments of the last 25 years to show by which means in the case of some uses the governance of public law could be restored and how in other fields the entrepreneurial concept could be neutralised. From these developments, it will be evident that the governance (rule) of public law is vital to ensure equal access to these collective resources, safeguard the public interest and ensure effective legal protection.

Keywords: • use of public space • local self-government • municipal regulation • administrative law • effective judicial review

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1 Introduction

Whereas in socialist times it was clear that any private use of public space is principally forbidden and consequently only allowed if a legal norm or a single permit allows it, this concept was principally flawed during the transition to democracy and rule of law, causing inter alia major deficits in legal protection and corruption. The eclipse of administrative law had several grounds, but focus is now on the consequences for the regulation and management of the private use of public land. The article traces back the developments of the last 25 years to show on the one hand to what distortions this led and on the other hand means by which the governance of public law could be restored in particular relations as well as how the entrepreneurial concept could be neutralised. The aim of the article is to point out by this analysis that the governance (rule) of public law in relations connected to the private uses of public space is vital to ensure equal access to these collective resources, safeguard the public interest and ensure effective legal protection.

The article is primarily based on doctrinal legal research, analysing legal texts and the case law interpreting it. Flowing from the longer span of time of the developments analysed, the comparative method, as well as the qualitative empirical method was applied, too, to analyse the case law of the courts. As this type of cases rarely end up at the higher judicial fora, this method could be only used with constraints.

2 The concept of the notion of public space and its possible usages

2.1 The two types of notions of public space

There are two sorts of notions of public space in Hungarian law. The static notion was first defined in the Construction Act: "public space is land owned by the state or local government which is registered in the Land Register with this quality." (ConstrA s. 2 p. 13.) There is another, a dynamic notion, e.g. in the Act on the Surveillance of Public Space or in the Act on Petty Offences (s. 29) where public space is all ground in state or local government property intended for public use which can properly be used by anyone. The notion of public space is extended by these laws to the parts of public space which function as public roads and also the parts of private space which are opened and designed by its owner to the public, as well as to private space that can be used by anyone on equal terms. This latter definition is necessary for maintaining the order of public spaces, whereas the static definition of the Construction Act is better usable in relations with building / construction law and public planning.

Free public use and public ownership were elements of the notion of public space that were equally acknowledged by both kinds of definitions. In 2010 however, the legislator modified the definition of public space in the Construction Act and removed the element of free proper use of the definition ("which can properly be used by anyone") to connect

the proper use with the functions of public space stressing, that proper use is the use in line with the functions of public space. This was due to the developments of the uses of public space, namely the quest for the criminalization of homelessness (F. Rozsnyai, 2014). The legislator thus on the one hand explicitly stated, that local self-governments have a competence for regulating the use of public space according to local specialties. On the other hand, a distinct rule was created on the function of public space stating that the proper use is possible to everyone. These two regulations are preceded by the enumeration on the function of public space: it is to grant

- spatial connection and approach of lands
- traffic on roads and for pedestrians (road, catwalk, etc.),
- recreation, amusement, sport, leisure time activities,
- marching, assembling, collective action,
- place for statues, creation of memorial places, place for pieces of art,
- the placement of utilities,
- the creation of green spaces.

However, the clarification of the relation of these functions to the private types of use is missing from s. 54 of the Construction Act.

2.2 Ways of using public space

There are basically three legitimate uses pointe out in the notions of public space: common or public (proper) use, and special or private use (improper use) – typically indirectly enhancing the public use, like do food trucks or mobile shops. Between these two forms of use we can identify a third form, the usage by residents, mostly connected to traffic regulations (driveways, resident parking zones, etc.) While in the case of public use, in fact, anyone is free to use the public space, in the case of a private use, concurrent use is not possible. This is usually the case with illegal behaviors as well.

Perhaps the most important characteristic of public space is the designation that it is intended for public use. Public use is always collective: either it is a use of space by a larger, not defined group of persons, or it is a use which serves a larger, not defined group of persons, i.e. collective interests. Thus, the uses which serve dominantly private interests are not proper utilizations. These forms of use are restricted, mostly regulated by the local self-governments, empowered by the Construction Act as we have seen above and the Act on Local Self-Governments. If we look on the regulations of the use of public space by the local self-governments, we see that these are utilisations which serve particular – mostly economic – interests. The restrictions to the use of public land are primarily categorised by its duration and the nature of these interests. The longer it shall prevail and the more it serves economic interest, the greater is the possibility that besides a permission of the local government, also the payment of a fee is necessary for the exercise of such a use. For example, the decree on the use of public space of the Local Government of Budapest categorises uses which are not allowed, uses which are

temporally allowed on notification and those which are only allowed with permission. These latter uses are mostly of commercial or cultural nature, like the selling and the promotion of goods, festivals, fairs, filming, advertising devices, terraces of restaurants and cafés, but also phone-boxes, mailboxes and vending machines. The uses connected to construction and reconstruction works, including the protection of trees and other plants on public land also need a permit.

We find a different intensity and different types of regulation for different types of public space usages. This also flows from the fact that there are different types of use within each type. Some require very detailed central regulation, such as road transport, while for others we hardly find any. It also varies depending on the possible public service nature of the use of a given public space (such as public parks or playgrounds) and the potential risks associated with its use.

Thus, most of the rules are necessarily found in the municipal norms, so the order of the use of public space is decided by the local governments within the legal framework. This includes on the one hand deciding what activities are principally prohibited and which are those from this category, which are nevertheless possible upon a permit. On the other hand the fees to be paid for the use of public land upon permit have to be determined, as well as the sanctions of the violations of the prohibitions. There are however some forms of use of certain special public spaces where we find a statutory law framework in the sectoral rules. This is the case with road traffic or passenger transport services, as well as the main rules for trade on public space. Of course, the legal framework also stems from the laws regulating the general part of administrative law, such as the Act on Local Self-governments or the Act on Administrative Offences. The general framework of the public authority's activities, legislation and application of law is determined by law. Theoretically, the Administrative Procedure Act should be part from this framework, too, when local governments issue permits for the special use of public space, but this was not evident for almost three decades in Hungary. It is worth shedding some light on the reasons and consequences of this "disturbance" which could have been easily dissolved through the central legislator or the case law of the higher courts, but nevertheless was present for more than 25 years.

3 Is public space merely a piece of national property or a public good?

3.1 The permission for private (improper) use to be governed by civil law or public law?

A heavily discussed question of the last decade is the legal nature of the decision of the local government which permits the improper use of public space. The Constitutional Court had several occasions to decide on this and developed a legal reasoning that was not free of contradictions. This was also due to the fact, that the concept of law

enforcement was severely touched by the transition and there were a lot of uncertainties (Nagy 2007).

When the Constitutional Court had to decide from the angle whether the local government has a right to regulate the use of public space, it stressed that it is its constitutional competence to address the needs of the inhabitants by imposing administrative rules and saw no problem in the fact that the local self-government used the institution of civil law contracts instead of an authoritative permission. It stated, that this does not prevent the local self-government from fixing the fees to be payed upon the contracts in its municipal decree on Public Space Protection Order (CC Decision 46/B/1996). When it had to decide on the legality of applying wheel-locks because of the non-payment of the parking fee, it accepted the underlying concept of the municipal decree, that the obligation to pay the parking fee flows from a civil law relationship, and annulled the Public Space Protection Order, municipal decree of the council of Budapest Capital because of the illegality of sanctioning this civil law obligation with an administrative sanction (CC Decision No. 31/1996.). The new municipal decree already stated that the wheel-lock is applied out of reasons of the order of traffic which was accepted consecutively as conform with the constitution and statutory law by the Constitutional Court (CC Decision No. 1256/H/1996.). It stressed out that the local government acted not as owner, but as an authority when it had to decide on the application of wheel-locks as a sanction for wrongful parking. The concept of the civil law obligation flowing from using a parking slot was not questioned at all. Some years later, when the municipal decree of Budapest Capitol on the use of public space again was questioned before the Constitutional Court, the concept of permitting the private use of public space through civil law contracts was again accepted. Albeit the concept that the issuing of permits should be governed by public law was declared by the Constitutional Court to be the optimal, it did not regard this to be the unique way of regulation constitutionally possible. The Constitutional Court stressed that the main point is the possibility of legal remedy against the decision – if it is given, the form of the decision brought by the local government itself will not be a question of constitutional nature (CC Decision No. 41/2000.). The Constitutional Court did not tackle the questions arising from the principle of contractual freedom in view of the effectivity of legal remedy, although it was clear that the turning down of an application for a contract could not be sued effectively before civil courts. So, there was a somewhat inconsistent approach where the private law perspective was overruling the public law perspective.

This was even more striking in the case where the Constitutional Court stressed out the quality of ownership in connection with public space when deciding on whether the electricity supply companies had to pay a fee for the line poles placed on public land like they had to when placing the poles on private land. At this moment, the definition of the Construction Act did not incorporate the providing for the installation of public utilities as a function of public space, so the Constitutional Court decided that as the property of local self-governments and private property have equal protection according to the

Constitution, the companies have to pay a fee to the local self-governments for placing the poles on public land (CC Decision No. 3/2000.).

The main problem was that the civil law perspective applied focused on public space as a piece of local government property and not on the quality of public good of public space, resulting in a blurred concept where the local government was not only acting as the regulator of the use of public space but dominantly as the owner of public space. This two-fold concept allowed for regulating the use of public space through civil law instruments, which led to unequal possibilities of use thus a distortion of competition in this sphere, as well as discrimination and severe deficiencies in legal protection. The collisions emerging in the different relations of public space (public vs private use, public vs public use, public vs resident use and private vs private use) could not be settled with this approach. That is only possible through a public policy concept in which public space is a public good that must be regulated through public law means. To underline this statement, it is worth exploring a specific improper use of public space, which is quite important in daily life of many: parking on public space.

3.2 A special solution: parking as a public service

The introduction of paying parking zones citywide in Budapest and other cities made the question of improper use of public space emerge again in another legal context. Drivers who did not pay the fee for parking were imposed an additional charge, and those who still did not pay were sued before courts partly in civil procedures, partly in administrative court procedures. This led to a divergent practice as the civil and the administrative courts both saw the matter falling into their respective competence. Finally, the Supreme Court issued a decision for the uniformity of case-law (No. 5/2005 KPJE) which opted for private law. This was coded into the decision as the proceeding bench was set up with a majority of civil law judges. The starting point of the Supreme Court was the classification of the road as property of the municipality, and from this fundamental right to property it classified that relationship as a private law contract.

Of course, the question of the legal quality of parking fees was also brought before the Constitutional Court. The applicants questioning the constitutionality of the parking decree of the Local Self-government of Budapest argued, that the additional fee was extremely high in comparison to the parking fee, the possibilities of wheel-lockers and the towing off all were characteristics of a public law relationship, and not those of a civil law one. The Constitutional Court, although it did not completely abandon his former views of preferring the public law solution, deemed the solution of the contract in principle as constitutional. The difference in the evaluation of the relationships stemmed previously from the various starting positions. While the Constitutional Court started its considerations earlier from the fundamental right of freedom of movement, which is limited here through an authority (the municipality) by legally binding unilateral means, later the starting point shifted to a more civil law based concept: the municipality was

primarily regarded as an entity which is using its property to provide public services. The decision introduced the perspective of overuse of public space, which also made it necessary to create frames and limits to this kind of use of public space (Horváth 2010, 51.). The shift in perspective was certainly partly due to the development of administrative law, mostly the New Public Management. In the outcome, the Constitutional Court annulled some regulations of the Road Traffic Act as well as the municipal decree on parking of Budapest Capital because of the missing guarantees, for example in the question of fixing the sum of fees and fines. The analysis of its arguments makes it evident – although the Constitutional Court did not explore this question and made no explicit statement to it – that the Constitutional Court theoretically classed this contract as an administrative contract. These implications do however not alter the explicit, official classification as civil law contract, which was ruled to be constitutional by the Constitutional Court.

This concept of the Constitutional Court was then codified into the Road Traffic Act, which is a tripartite legal relationship: the local self-government regulates the use of the public space in its decrees by his public powers and creates obligations for the citizens (in this case car holders). The outsourcing of the provision of this public service is an administrative law contract, but the use of the public service (i.e. when a car holder is using a parking lot) creates a contract between the car holder and the service provider to whom the municipality outsourced the provision of this public service. This solution was further developed by the Local Self-government Act, which defined the provision of parking lots and other parking possibilities on public space as the provision of a public service and created rules for the outsourcing of it. As the outsourcing led to heavy corruption, since 2013, the provision of the public service of parking can only be effectuated by companies owned totally by the state or a local government, by the Public Space Protection Office (Officers) of the local self-government or the association of local self-governments.

Classification as a public service in the case of parking is unfortunate in terms of the coherence of the legal system, as the different improper usages should be handled to the same patterns. The special scheme might be explained by the fact that opposed to most private usages, it is a non-permanent and non-individualized use.

To conclude this circuit, we can see that up until the beginning of the 2010s, the contract has become and remained the dominant form of permitting the improper use of public space. The law enforcement of parking fees via civil procedural means has certainly become easier for the municipalities, as there are fewer possibilities of recourse against it and their procedure underlies now lesser – but still sufficient – guarantees. There was nevertheless a reminiscence of public law as the process of contracting is designed like the procedure for issuing authoritative permits. It is not easy to choose the time of the verbs as at present a slow return to public law takes place.

4 A slow return to public law institutions

The reminiscence started to turn to statutory law again after 2011. A very important step in this direction was the new Basic Law which broke with the concept of basic rights of local self-governments and introduced the German concept (which was already present in the case law of the Constitutional Court principally from the beginnings) of municipal tasks and competences (Nagy, 2017: 24.). The right to property of the local self-governments, moreover its protection ceased, the Basic Law declared their unity in the notion of national asset, containing both state property and municipal property. This made the way free not only for taking away assets together with the tasks from local self-governments (Hoffman et al., 2016: 460), but also to other – mainly politically driven – interferences regarding municipal property, like public space. However, this also had positive side effects as the returning to public law institutions. A first step in this direction. In 2013 in contrast to the civil-law-based solution, the statutory legislator introduced again the classic public law authorization of the use of public land as a for certain special forms of use of public space. Taking the authorisation out of the hand of the property owner's municipality, but typically a state administration body that decides on the usability of the public space, so these rules also mean the limitations of the municipality's regulation of public space. Such an institution is the permit for the use of public space for filming, the regulation of which was necessary because there were some Budapest district municipalities, that required excessive fees for filming before. Amendments to the Motion Picture Act announced in 2013 "to rationalise and develop administrative authority procedures, to establish the public credibility of official registers and to expand the public service", established an interesting repartition of competences. The county (capital) government office concludes an authoritative contract with the applicant after the approval of the local government for filming on public space. The government also fixed the tariffs for filming in a government decree, based on which the fee payable to the municipality is calculated. Similarly, the Act on the Protection of Townscape also uses such a division of competences between local government administrative bodies and state administrative bodies in relation to the placement of advertisements and advertising media on public space and in areas to be seen from public space.

Beyond the public law regulation of these special uses some lucky processes have begun in judicial case law. These are partly connected to the gradual emerging and strengthening of the administrative law branch of the judicial system. The reclassification of the public land use legal relationship as a public law -administrative legal relationship in individual cases became dominant in judicial practice. The other very important factor was that the judicial review of municipal decrees was transferred from the Constitutional Court to the Curia, the supreme judicial forum in Hungary. The Municipal Senate, instituted by the Act on Court Organisation, adheres to the administrative branch of the Curia and developed over the somewhat more than nine years a case law deeply rooted in public law. These two tendencies develop synergies due to which the proceeding administrative judges are more and more using the possibility of turning to the Municipal Senate if they

have to apply illegal municipal decrees (Hoffman and F. Rozsnyai 2015). So did it come, that the Senate annulled some rules of the Public Space Protection Order of Budapest Capitol and stated that the use of public space must be decided on in an administrative legal relationship, by authoritative means (Curia Köf.5010/2020/6.). Since then, other municipal decrees on Public Space Protection have also been annulled on similar grounds (e.g. lately Curia Köf.5010/2020/6.). In the absence of central regulation, the results of these decisions are only particular now, but the direction to be followed is clear (not to say: binding) for all local self-governments – and of course also for the county (capital) government offices as legal supervisory organs.

The central legislator is however still far from being able to sit back as the case law of the Curia has done the work. Although it may be argued that the central legislator was not negligent, as it should for the municipalities and the Constitutional Court always have been clear that administrative procedural law has always provided a sufficient framework, this line of argumentation is very weak from the perspective of the case law of the Constitutional Court and the legislative reactions given to it. And our actual administrative procedural law does not give sufficient answers to the new challenges emerging in connection with some private uses which are endangered by overuse. It becomes increasingly important to create a legal framework for the allocation of scarce resources, public goods as public space. These types of problems emerge more and more as cities get more and more urbanised and congested: who can operate sightseeing electric trains, how many lots should there be at taxi ranks, how many cafés and bistros can operate in a public park, and for how many years, and so on. There are many such challenges local self-governments have to face in connection to the use of public spaces actually without a statutory legal framework. Allocation in view of scarcity amidst a competitive environment is of course not only an increasingly pressing issue in relation to the use of public space, but the lack of answers also causing significant damage to many.

5 Conclusions

As this time travel clearly shows, the civil law perspective applied focused on public space as a piece of municipal property and not on the quality of public good of public space resulted in a blurred concept where the local government was not only acting as the regulator of the use of public space but dominantly as the owner of public space. This two-fold concept allowed for regulating the use of public space through civil law instruments, which led to unequal possibilities of use thus a distortion of competition in this sphere, as well as discrimination and severe deficiencies in legal protection. The collisions emerging in the different relations of public space (public vs private use, public vs public use, public vs resident use and private vs private use) could not be settled with this approach. That is only possible through a public policy concept in which public space is a public good that must be regulated through public law means.

Even given this framework, the balancing of the rights of individuals or groups of individuals and the proper use of public space encounters many problems. Local self-governments face challenges they are not able to supersede without a firm public law framework. The effects of the COVID-19 pandemic on the regulation of the use of public space also showed that the central legislator must not leave local self-governments alone with these issues. Albeit in Hungary these questions were partly handled on a political level, causing a lot of tension and hindering effective municipal action, vice versa it also made clear that local governments can have a strong influence on central action when they act promptly, according to the principles of public law. Several solutions developed by local mayors were taken over by the government and showed the resilience of Hungarian municipalities in these hard times (Balázs & Hoffman 2021 and Cseh et al. 2021).

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LEX LOCALIS

Some Regulatory Challenges for Hungarian Local Self-Governments Connected to the Use of Publics: To be Governed by Public or by Private Law?

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Abstract The Porto Metropolitan Area (Área Metropolitana do Porto, AMP) is a framework of cooperation between 17 municipalities and several districts. This metropolitan area has a specific, inter-municipal model of urban governance. In our research, we found that cooperation is significant mainly in sectors where the central legislature has essentially made this mandatory, by designing the AMP and defining its powers. In addition to AMP, only partial cooperation has been established in the field of waste management, and in the field of human public services and in the performance of public authority, there is essentially a set of autonomous organisational solutions. However, despite all this fragmentation, the above system ensures the satisfactory functioning of the metropolitan agglomeration. This also underlines the importance of transport management in urban areas, since this functioning system is based on an integrated and intermodal transport system.

Keywords: • comparative analysis • inter-municipal cooperation • urban governance • municipal law • public services • Portugal

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1 Subject and scope of the research

Since urbanization played a significant part in the transformation of the role of the cities and gave rise to the evolvement of agglomerations, it has been crucial for the researchers of both legal and administrative sciences to understand the functioning and coping mechanisms of such establishments. There are various administrative frameworks that may be applied to metropolitan agglomerations, each of them having their own advantages and disadvantages. The research has concentrated on the examination of both the intermunicipal cooperation between 17 municipalities of the Porto Metropolitan Area *(Área Metropolitana do Porto,* hereinafter *AMP)* the general administrative framework thereof, and the metropolitan area of Budapest. The aim of the research was also to examine the possible management solutions regarding the provision of human and economic public services. This article mainly focuses on the administrative model and the major challenges of AMP; however, additional references will be made with regard to the concepts and issues of the Budapest area.

The examination shall be concluded with a short summary, in which - based on the results of the research - the legal construction of the intermunicipal cooperation and the urban governance will be evaluated. The most important question of the examination was whether the construction of AMP could be more likely to be approached as a successful field of cooperation or as a legal necessity.

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2 Methodology

The research – with regard to the subject of the examination and the challenges thereof - is multidisciplinary. One will find its basis on law sciences on one hand, and administrative sciences on the other hand, however, incorporation of the instruments of economics, political science also played a great part in the research.

The research has been carried out by professors, PhD students and MA students of the Department of Administrative Law of Eötvös Loránd University, Budapest. The subjects of the analysis – metropolitan agglomerations of Porto and Budapest were chosen due to their similar social and economic background, while the differences were also considered. The comparison provided an ideal field to evaluate the legal concepts, the practical solutions, and the challenges of the examined areas at the same time.

It also has to be stated that quantitative and qualitative approaches have been both essential and key elements of the research, since the purpose thereof is to acquire a picture as complex as possible regarding the subject of the examination. It is strongly based on qualitative, empirical, comparative, semi-structured interviews and investigations.

The research has been undertaken in four significant local municipalities in Porto, namely in Porto, around which AMP centres in the first place, Vila Nova de Gaia, the biggest local municipality which also seems to grow the most intensively and progressively, Maia, the most important industrial centre, and Valongo, which represents the smaller and less active residential area.

3 Administrative frameworks of the urban governance in the AMP

3.1 Organisational frameworks

The constitutional basis of Portuguese local governance is found in Part III of the Portuguese Constitution. As the Constitution states, 'local authorities are territorial legal persons, have representative organs and seek to pursue the interests of their populations.' [1] Although the Constitution sets out the principle of decentralization, Portugal remains one of the most centralized states in Europe.

The Portuguese Constitution sets out three types of local and regional authorities: regions, local governments, and part-local governments.[2] Therefore, it can be established that Portugal operates a three-tier municipal system in line with the French model (Hoffman, 2017: 252-253).

The regional level of local governance has quite a fragmented character, since there are several territorial units which partially overlap each other. These include the regional development and coordination councils (*Comissão de Coordenação e Desenvolvimento Regional*, CCDR), several type of voluntary and compulsory local government associations (*comunidade intermunicipal*) and the metropolitan areas (*áreas metropolitanas*, AM) (Magone, 2011: 404-405 and Teles, 2016: 67-69). The metropolitan areas were established by the parliament in 2015 with the aim of creating a local government unit that is able to provide solutions to the problems and challenges that are generated by the rapid urbanization of the agglomeration of Porto and Lisbon.[3] As far as we are concerned, these areas can be best described as compulsory local government associations of the municipalities of Porto, Lisbon and their agglomeration.

The middle level is comprised of the municipalities, which are the most stable and well-established units of the Portuguese local government system. There are altogether 308 municipalities, which have extensive competences regarding the provision of public services (Magone, 211: 390-391 and 395).

Part-local governments embody the third level of local governance in Portugal. These were originally territorial units of the ecclesiastical administration, however nowadays they are considered to be a part of the Portuguese civil local government system, which

have a vital role in providing certain public services to the citizens (Magone, 2011: 390-391).

Our research was aimed specifically at the Metropolitan Area of Porto (*Área Metropolitana do Porto*; AM Porto), therefore it is necessary to examine some aspects of this unit of local governance. This metropolitan area consists of 17 municipalities with a population of 1.7 million citizens, extending over an area of almost 2,040 km^2.[4] The AM Porto was established by the parliament in 2013.[5]

3.2 Decision-making in the AMP

The abovementioned act regulates the process of decision-making in the AM Porto as well. The inner administrative structure of the AM Porto can be best classified as a dual-council model. The operative bodies of AM Porto include a decision making council (*conselho metropolitano*) and an executive council (*comissão executiva metropolitana*). The former is responsible for adopting the necessary decisions,[6] while the latter is tasked with executing those.[7] It is important to note that although the law provides that the *conselho metropolitano* passes its resolutions with a majority vote, in practice the councillors endeavour to reach a full consensus. Furthermore, the AM Porto has a consultative body as well, which is responsible for urban development (*conselho estratégico para o desenvolvimento metropolitano*). It shall be noted that the municipalities of the AM Porto, as well as the part-local governments that they are comprised of also implement the dual-council system (European Court of Auditors, 2018).

To summarize, it is clear that the municipalities comprise the most important level of local governance in Portugal. However, as the process of urbanization started to get more and more rapid, the municipalities of Porto (and Lisbon for that matter) found that they are in desperate need of cooperating with each other, as well as the municipalities of the agglomeration in order to meet the challenges that faced them as a result of this process. As opposed to Hungary, Portugal concluded that the most effective administrative framework for this cooperation and for providing public services to the citizens of the ever-growing metropolitan areas would be a compulsory local government association. Hungary chose a completely different path, as the Hungarian local government system strictly separates the two-tier local government of Budapest from its agglomeration. It can be concluded that local government associations play a significantly greater role in urban governance in Portugal than in Hungary (Silva, 2017).

4 General aspects in respect of the provision of services

The provision of public services can be structured in numerous different methods, both public and private solutions are available. One of these solutions is the provision of public service through a public authority, by the state acting within its own competence, while another solution is to establish a separate organisation for the performance of its tasks. Other options may be provided by legal entities independent from the public administration, specifically the state may entrust them with the implementation of public services. The latter can be viewed as the real cooperation between the private and public sectors (Kovács, 2017: 78-79).

The cooperation between the public and the private sectors could take several forms, such as usual outsourcing, vouchering or Public-Private Partnership (PPP). PPP – by the definition of literature – is a long-term contract between the state and a private undertaking, where special rules ensure the distribution of liability between the parties. PPP schemes can take numerous forms and have no generally recognised conceptual elements. There are PPP constructions that concentrate on the public sector features of the cooperation, while the private elements dominate in other PPP constructions. As a result of this, the area in which public services are operated shows a very colourful picture, with a number of different solutions. This statement is also true for Porto.

The infrastructure must be mentioned first. Water management is purely a municipal task. The municipality of Porto – at its choice – implements its water management responsibilities through a public company. Besides the form of public company, the form of private company also exists, other municipalities use private companies to carry out these tasks. On closer inspection of the private companies in this field, it is also possible to distinguish between the companies according to the structure of their ownership. While some companies are wholly municipality owned, private companies with mixed ownership can also be found. Moreover, it can be observed that in some cities the structure of the system is owned by the municipally, while it is operated by a private company. This scheme could be carried out in the framework of a concession.

As for the waste management, the "LIPOR" waste management association[8] should be concerned, even though only eight municipalities are involved in the joint operation of the organization.[9] Other municipalities in the area, which do not participate in the waste management association are, on one hand, engaged in contracts with private bodies and, on the other hand, perform their tasks using merely public solutions.

Regarding the public transport in connection with public-private cooperation, the so called "Andante" should be mentioned, a single ticketing system in a common corporate form. This common entity is made up of STCP, the Transport Company of Porto, but private operators have also been involved.[10] The relationship between private service

providers and this joint entity is established on the basis of a contract or in the framework of a concession. In this context, that is of great importance whether private companies are able to remain independent thanks to the contractual relationship, apart from the single ticketing system.

Finally, it should be noted that PPP schemes are not used in the field of energy and district heating.

In general, it can be concluded that larger municipalities, such as Port, prioritise solutions under public law. It typically establishes entirely state-owned companies and provides public services through them. Smaller municipalities – e.g. Vila Nova de Gaia or Valongo – prefer to apply concession contracts. Besides the above-mentioned scale, the ideological aspects cannot be neglected. Supporters of left-wing ideologies prefer solutions to public law, such as the independent, green, left-wing mayor of Porto.

The involvement of the private sector in the infrastructure industry has undoubtedly had many benefits in recent decades. PPPs are also a very effective way of overcoming infrastructure deficits in countries where the State does not have enough resources to carry out the necessary construction work. In addition, it can be pointed out that this involvement could also have helped the applying countries to recover from the 2008 economic crisis. Following the crisis, the European Union itself called for the use of this method of organising public services. This claim is particularly true for Portugal. The most significant investments and developments could not have been made under a traditional public procurement procedure.

Although PPPs are an essential element in the financing of infrastructure in Portugal, they also present at least as many risks as advantages, in the long term. To avoid the disadvantages, a professional complex management system must be established in advance. The Portuguese Government, on the other hand, has launched too many PPP projects at once. Both legislative and know-how frameworks have not been able to keep up with the numerous projects. In Portugal, there was no structure for managing all projects coherently.

On the other hand, the execution of Metro do Porto demonstrates that a PPP construction can be fundamentally successfully to implement infrastructure developments. For the purpose of carrying out their tasks municipalities should choose either a public or private solution, and it is important to point out that the establishment of an appropriate institutional and legal framework are essential for a successful project (European Court of Auditors, 2018: 11). While applying PPP schemes, due care should be taken with regard to their large volume, value and long-term performance phase (European Court of Auditors, 2018: 10).

5 Regional development

5.1 Regional development in Portugal and the Porto Region

Portugal's regional development is rather specific from a historical perspective: following the accession of Portugal to the European Union in 1986, a highly centralised regional development regime has been established, creating five NUTS II regions (Northern, Central, Lisbon, Alentejo and Algarve regions).[11] These were so-called "planning regions" controlled by the Central Administration.[12] The tasks involved were carried out by the so-called Regional Development Agencies (RDAs). The RDAs were considered atypical public administration bodies as they had a unique legal status. At the beginning of the 21st century, the Portuguese system underwent a decentralisation process, in which the RDAs were reorganised in a way that the regional development tasks are performed by unique public administration bodies which are, in nature and status, between atypical public administration bodies and associations of municipalities. It was also during the period of decentralisation that the two metropolitan areas, the "Área Metropolitana", were created in Porto and Lisbon.[13]

The main pillar of our study is the partnership agreement named "Europe 2020 – Portugal 2020", as the purpose of the agreement is to focus on the economic, social, environmental and territorial development policies for the period 2014–2020. The programming and implementation of "Portugal 2020" were organised in four thematic areas: competitiveness and internationalization; social inclusion and employment; human capital; sustainability and efficiency in the use of resources. In order to achieve the expected results, Portugal has received €25 billion by 2020.[14] The regions benefiting from the development are as follows:

- Less developed regions where the GDP per capita of the region is less than 75% of the average GDP per capita of the Union. These include the North and Central region, Alentejo and the Azores.[15]
- Transitional regions where the GDP per capita of the region is more than 75%, but less than 90% of the average GDP per capita of the Union. Portugal's sole transitional region is Algarve.[16]
- The third category consists of the more developed regions where the GDP per capita of the region is more than 90% of the average GDP per capita of the Union. More developed regions are Lisbon and Madeira.[17]

Portugal 2020 is implemented through 16 Operational Programs and Territorial Cooperation Programs. Of the 16 operational programs, we would like to focus exclusively on the ones running in the Northern Region (in particular, North 2020), as we conducted our empirical research in Porto, the centre of the region. The budget allocated to North 2020 (Norte 2020) for the 2014–2020 period is €3.4 billion. Portugal 2020 has set up four Thematic Operational Programs in addition to the Territorial Opportunity

Programs, which are in line with the objectives set out in the Partnership Agreement. These thematic operational programs can be found in varying proportions, but in each of the five regions.[18]

The Northern Region is one of the less developed ones, so North 2020 is primarily aimed at eliminating inequalities through creating jobs and increasing competitiveness. In the period 2000–2014, the population of the region has migrated to or near the AMP area, thus aging, job shortages and a sharp decline in the proportion of students enrolled in public and higher education are characteristics of the inner areas close to the border in this particular region.

Cooperation between municipalities is of particular importance in this region, as one of the central metropolitan agglomerations of the country, Porto, is located here. With this in mind, the Union financially encourages AMP member municipalities, such as Vila Nova de Gaia, Maia, Porto and Valongo – in the areas in which our research was conducted – to cooperate, especially in the performance of tasks that are in the common interest of the municipalities.[19]

In addition to thematic operational programs in the region, 'integrated territorial approaches' have also been introduced. Integrated territorial approaches are models used in the design and implementation of North 2020 that take into account the unique characteristics of the region's territories and involve actors in the management of public policies.[20] The most dominant model of the different integrated territorial approaches is the so-called "PROVERE" approach, which is an economic appraisal program for endogenous resources and aims to advance less developed areas of the northern territories.

In the northern region, four PROVERE collective efficiency strategies are officially recognised:

- "Minho Innovation" – targeting Alto Minho, Ave and Cávado with a thematic focus on tourism.[21]
- "Aquanatur" – targeting Alto Tâmega and focusing on the water. [22]
- "Douro" – which aims to provide a multi-sectoral economic assessment of the Douro Valley based on identity, cultural heritage and creativity.[23]
- "Terras de Trás-os-Montes" – aimed at promoting tourism in Terras de Trásos-Montes.[24]

These approaches are aimed at eliminating territorial inequalities and developing the eight sub-regions by focusing on only one area, such as tourism or even water quality.

5.2 Portugal 2020 and Széchenyi 2020? Differences between the Portuguese and Hungarian Partnership Agreements, 2014-2020

The first „element" of the comparison is the amount of money that can be spent until 2020, as defined in the Partnership Agreement. Interestingly, both countries (Portugal and Hungary) received € 25 billion to spend on their thematic objectives. In 2014, Hungary adopted five national development priorities, which – like the Portuguese system – are accompanied by thematic objectives. national development (support) priorities, which cover the whole of development policy, including rural development objectives and contributions.[25]

The 5 main priorities are as follows:

- Improving the competitiveness of economic actors and increasing their international role ,
- Increasing employment (through economic development, employment, education, social inclusion policies, taking into account territorial differences),
- Increasing energy and resource efficiency,
- Increasing social inclusion and addressing population challenges,
- Implementing local and regional developments that support economic growth.[26]

The target system relied on Hungary's comprehensive national development plan document, the National Development and Spatial Development Concept (OTFK), and its highly system-oriented target system, which also integrates social and environmental aspects. The objectives of the EU development policies for 2014–2020 were important factors in the development of the OTFK target system, which was also transposed into the Partnership Agreement. It is not surprising, therefore, that each of the main national development priorities supports the Europe 2020 strategy and together encompasses the 11 thematic objectives proposed for support by the European Union, which have also appeared in Portugal.[27]

6 Public transportation – a successful field of the cooperation

AMP evidently has great population and geographic area. It is one of the most industrially developed areas in Portugal, therefore it attracts both capital and workforce. As the population is growing dynamically and as people are moving to cheaper, more affordable outer municipalities in the Porto area, the economic and social needs for a more effective public transportation system have grown largely. The main actors in the area of public transportation are Metro do Porto, the STCP company and the Trains of Portugal (CP) complemented with the private bus operators.

Metro do Porto has begun to operate in 2002, and its lines – 6 lines are in operation at the moment - cover the area of seven municipalities. MP is a public limited company, in

which the main shareholders are the Portuguese state and the AMP, besides the STCP, the CP and the municipalities hold shares in the company.[28] Regarding the metro lines, the legal construction of concession is used for the service provision.

The STCP is a state-owned public limited company, which operates three tram lines in Porto and buses in altogether six municipalities. The Portuguese state has delegated the operative management of the STCP and transferred the operation thereof to the AMP for 7 years.[29] The Trains of Portugal (CP) is also a state-owned company, operating its lines in the whole country. The CP Urban Services connects four nearby cities with the AMP.[30]

It has to be emphasized that one of the most important fields of the cooperation between the municipalities of the AMP is public transport, which may also be considered the most successful one. The municipalities and decision-makers hereof have decided that a collective, integrated ticket system shall be introduced, one that not only provides easy accessibility to the services to the residents and visitors of the area, but also offers affordable prices, while promoting the concept of intermodal transportation. Soon enough, on the 20 December 2002, Metro do Porto, STCP and CP created a new entity, Intermodal Transport of Porto (TIP).[31] TIP has been established in a company form called a complementary grouping of companies (CGC), which legal entity has a separated legal personality that enables the company to acquire rights and receivables as well as property, and which is responsible for the operation of the ticket system. [32] The integrated ticket and fare system operates under the name 'Andante'. It is present in all municipalities of AMP, taking into consideration that the municipalities with no access to the network of MP, STCP and CP, may also connect to the ticket system through concession contracts.[33] These contracts are signed between privately held bus companies and the legal entity of TIP. As it can be seen, this form of cooperation is in conformance with the previous expectations that were articulated during the negotiations before the establishment of Andante, regarding the integrated ticket system and the concept of intermodal transportation.

Issues regarding system of Andante or the public transport fall under different competences of different bodies in financial aspects and decision-making. The decisive competences of the seventeen municipalities – as it has been elaborated previously -are held by the metropolitan council of AMP. This legal solution provides that regarding political, social, economic and operative issues, the decisions may be made by the body being most familiar with the needs of the area and its residents. [34] On the other hand, municipalities lack resources that would possibly allow the responsible and effective operation of a well-structured, extensive, and costly public transport system. Therefore, beside the co-financed projects governed by European Union, it is the Portuguese state that is responsible for the financial aspects of the operation of the public transport system,

even though representatives of the central government only take part in the decision-making process through exercising their consulting rights.[35]

The members of the metropolitan council are *de iure* not obliged to reach full consent during the decision-making process, the tendency of the past years provides otherwise in terms of the issues related to public transport or any other financial aspect in connection with AMP.[36] De facto, consensus is a great mean of prevention regarding the distraction of resources given to the AMP, which may be carried out through the extensive financial support of the TIP.

7 Housing and social security

In Portugal, the issue of social security is evidently emphasized and taken great care of both in respect of the legal regulation and in practice (OECD, 2020). Social security and the questions of housing have a strong constitutional basis, since the right to housing is explicitly set out in the Constitution as a fundamental right, rather than a constitutional state aim, as it can be observed in Hungary.[37] The welfare system of Portugal is highly centralised, therefore the local municipalities contribute to social spending less intensely. In order to understand the mechanisms of the Portuguese social security system, it has to be emphasized that self-care of smaller communities such as families, traditional civil communities and church organizations has great relevance, therefore the provision of personal services – carried out very heterogeneously - falls into the competence of the local municipalities, while the central government remained the provider of the cash benefits that have the greatest significance among all social benefits.

Although the social spending of the Portuguese state are significantly higher than the OECD average, it cannot be forgotten that housing poverty is a serious issue in Portugal as well, taking into consideration that 5.8% of the population may have difficulties paying out a home loan, renting or paying overheads. Regardless, there is no cooperation between the local municipalities of AMP in respect of housing issues. Porto puts great emphasis on housing matters, which can be observed through the examination of the housing stock, 13% of which is owned by the municipality, serving 30,000 inhabitants. The examination of the city budget also provides that – despite central cash benefits and the importance thereof – Porto approaches the maintenance of the municipal housing system as an issue of the social welfare system with great significance.[38] It is however evident that the Porto municipality itself is not able to operate the whole housing stock, therefore a public company – Domus Social – is entitled and obliged to do so. In Maia, the similar method is applied, the public company, Espação Municipal shoulders the same tasks as Domus Social does. According to the interviews, Maia has been carrying out investments regarding the municipal housing stock, due to which a great percentage of the social expenditure consists of the repayment of loans. It is also quite clear that social security

and housing is possibly the most controversial field between the municipalities of AMP, burdened by various conflicts of interest on a daily basis that are not easy to mediate.

8 Conclusions

The framework of the cooperation may be outlined as follows: strong, partial and weak cooperation can concurrently be obtained during the examination of AMP. The cooperation is significant mainly in sectors where the central legislature has essentially made this mandatory, due to which the most successful field of the cooperation is public transportation. Only partial cooperation has been established in the field of waste management (LIPOR), and in the field of human public services. Local municipalities established separated constructions and found separated solutions regarding housing. The results of the examination provided that the system of the intermunicipal cooperation - despite all fragmentations - ensures the satisfactory functioning of the metropolitan agglomeration. Integrated solutions undeniably play a crucial part in the economic and social growth of the area – as the example of the public transportation provides, but traditional coping mechanisms and possible differences regarding ideas and perspectives may hinder the engagement in establishing mutual solutions.

Notes:

[1] Constitution of the Portuguese Republic, Art. 235.
[2] Constitution of the Portuguese Republic, Art. 236.
[3] Act 75. of 2015.
[4] Retrieved April 29, 2021, from http://portal.amp.pt/pt/.
[5] Act 7. of 2013.
[6] Act 7. of 2013, Art. 69, 71.
[7] Act 7. of 2013, Art. 73-74, 76.
[8] Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto, https://lipor.pt/pt/.
[9] Espinho, Gondomar, Maia, Matosinhos, Porto, Póvoa de Varzim, Valongo és Vila do Conde
[10] See: http://autoridade.amp.pt/pt-pt/home/transporte-na-amp/transportes/.
[11] CEC [1989]: Quadro Comunitário de Apoio – 1989-1993 para o desenvolvimento e o ajustamento estrutral das regiões menos desenvolvidas (objectivo no^{0}1) Portugal
[12] https://www.oecd-ilibrary.org/sites/fea62108-en/index.html?itemId=/content/publication/fea62108-en.
[13] https://www.oecd-ilibrary.org/sites/fea62108-en/index.html?itemId=/content/publication/fea62108-en.
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[24] https://norte2020.pt/sites/default/files/public/uploads/programa/CCDR-N_brochura_Ingles_FINAL_NOVO.pdf.
[25] https://ec.europa.eu/info/publications/partnership-agreement-hungary-2014-20_en - Partnerségi Megállapodás - Magyarország – 2014-2020.
[26] The 5 priorities are available at the link below: https://www.palyazat.gov.hu/download.php?objectId=52032.
[27] https://www.palyazat.gov.hu/download.php?objectId=52032.
[28] https://www.metrodoporto.pt/pages/320 (accessed: 2021.05.01.).
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[31] https://www.linhandante.com/quemsomos.asp (accessed: 2021.05.01).
[32] Further see: https://www.linhandante.com/SAMA.asp (accessed: 2021.05.01.).
[33] https://www.linhandante.com/noticias-det.asp?noticiaid=150 (accessed: 2021. 05. 01).
[34] Lei n.º 75/2013 Article 69.
[35]https://www.compete2020.gov.pt/admin/fileman/Uploads/20200109_Lista%20de%20Aprovados%20C2020_31DEZ2019_site_1.pdf (accessed: 2021.05.01.).
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Part III

Municipal finances and urbanisation – in the light of the local taxation

LEX LOCALIS

Urbanization and Local Taxes – the Case of the Czech Republic Focused on the Infrastructure Charge

MICHAL RADVAN

Abstract The urbanisation is connected with the higher costs of cities for the management, because they are responsible for local infrastructure and services. The legal regulation of local taxes and especially the infrastructure charge in the Czech Republic is not sufficient. The sources for local budgets might be found in the recurrent property tax. There are already instruments connected with the urbanisation. The location rent reflects the fact that the more inhabitants are living in the municipality, the higher are the costs for local transportation systems, education, communal services incl. the infrastructure, public security, healthcare, culture, etc. The local coefficient can be applied for all types of immovable property in the municipality's territory, except for agricultural land, and it might multiply the final immovable property tax by 2, 3, 4, or 5. With regard to the urbanisation and related infrastructure investments, it would be useful if municipalities get the right to apply the local coefficient only at specific parts of the municipality or for specific types of property. Such a recurrent property tax regulation connected with the planning contracts between municipalities and private developers might be an ideal approach in the area of local taxes, infrastructure financing, and urbanisation.

Keywords: • urbanisation • infrastructure charge • property tax • local tax • planning contracts

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1 Introduction

Urbanisation is the process through which cities grow as higher percentages of the population comes to live in the city. It has something to do with human nature: for different reasons, we tend to form groups to get advantages in our lives. Groups are creating settlements, and some of these grew into what we now call cities. The world population has been growing significantly and the economies have become more industrialized over the past few hundred years. As a result, many more people have been moving into cities. Nearly half of all people now live in urban areas. They are attracted by jobs in manufacturing and services, by increased opportunities for education and entertainment, etc. (National Geographic, 2020)

The increasing number of people living in cities – the urbanisation – is connected with the higher costs of these cities for the management. Municipalities are responsible for the local self-administration, local transportation systems, education, communal services incl. the infrastructure, public security, etc. They provide services for social living, social security, protection of the environment, healthcare, culture, etc. The local budget revenues might be transferred from the State, or the cities have their own sources; they may dispose of the municipal property to have revenues from rents and sales, they may run the business to get profits. In Continental Europe, most local budget revenues are transfers of centrally collected taxes, mainly personal income tax, corporate income tax, and value-added tax. The local taxes usually have just an additional significance.

The partial aim of this contribution is to define the local taxes in the Czech Republic, by using the analyses of existing definitions, comparative approach, and synthesis. Later, using the critical analysis methods, the role of Czech local taxes in urbanisation is described. Urbanisation is closely connected with the need for housing construction. While the construction of houses or blocks of flats is financed privately, the related infrastructure (roads, pavements, streetlights, gas and power lines, water conduit, sewerage, etc.) is very often financed from public budgets. It is evident that the infrastructure charge should (if it is collected) play a crucial role in these circumstances. That is why the Czech Republic's infrastructure charge and its regulation de lege lata must be critically analysed. Nowadays, however, it is collected only in several municipalities in the Czech Republic. There are no theoretical works or published practical experience explaining such approach. In my opinion, based on the lectures for the local officials, this is because of unclear and insufficient legal regulation of the infrastructure charge. I will work with this hypothesis while analyzing the structural components of the infrastructure charge. The main aim of the contribution is (synthesizing the gained knowledge) to set the ideal construction of the infrastructure charge or other possible alternatives. It should be stated that such research was never been done in the Czech Republic and there is no adequate literature background for the contribution. This fact is surprising, not only because of increasing urbanisation tendencies but especially in the era of decreasing fiscal sources caused by Covid-19 pandemics. This statement is valid for both central and local levels.

2 Literature overview

In the Czech Republic, there has never been published any scientific contribution focused on urbanisation with regard to local taxation. However, there are discussions connected with suburbanisation: people are especially moving from big cities to smaller municipalities and villages close to these cities because of a more comfortable, quieter, and healthier environment. As centrally collected shared taxes are the essential revenues of local budgets, it could mean that the suburbanisation is suitable for these smaller municipalities. However, shared taxes are distributed to the municipalities according to the permanent residence of the taxpayers. And many of these taxpayers are not officially changing their place of residence from big cities to the new places. Such behavior means for the small municipality a lack of financial sources and higher demand for local services. (Macešková & Ouředníček, 2008: 28)

Outside the Czech Republic, it is possible to find interesting scientific sources dealing with urbanisation and local taxation. E.g., Andersson (2018: 111) argues that the effect of democratization on taxation depends on the distribution of tax preferences in society. These preferences are not uniform: rural farmers prefer different policies than urban workers. His results show that democracy decreases property taxes in rural countries but instead increases income taxes and decreases excise and consumption taxes in more urbanized states. Ji & Zhang (2019: 1) state that local governments in China choose land urbanisation rather than population urbanisation from the perspective of fiscal incentives. According to their research, both the local tax revenue and fiscal self-financing rate have a significantly negative effect on the gap between land urbanisation and population urbanisation. The larger the proportion of business tax, the smaller the gap, and vice versa for value-added tax. The greater the local governments' tax losses, the greater the gap. The structure of the Italian property tax and the devolution process that began in the '90s induced local municipalities to adopt less tight (accommodative) urban policies to offset budgetary needs. (Bimonte & Stabile, 2015: 100)

Concerning the definitions of a local tax, there are many approaches. Interestingly, scientific articles rarely deal with the definition of local tax. According to Kagan (2020), a local tax is an assessment by a state, district, or municipality to fund public services ranging from education to garbage collection and sewer maintenance. Local taxes come in many forms, from property taxes and payroll taxes to sales taxes and licensing fees. They can vary widely from one jurisdiction to the next. Similarly, and widely, Marková (2007: 2) recognizes local tax, if it is considered the instrument of the adaptation of the revenue base of local self-government, the objectives and priorities of local people. She defines the criteria that local taxes should have. As an essential criterion, she indicates the possessive criterion (tax revenue is the municipality's income) and the criterion of rate (the amount of tax rates is set by the municipality). The additional criteria are the criterion of revenue (the municipality administers tax; that is why we should better talk about the administration criterion) and the criterion of decision-making (the municipality defines

the tax base). Babčák (2005: 1-6) uses even five aspects crucial for the designation of local taxes: a. the municipality must be authorized to decide on the establishment or cancellation of local taxes; b. the municipality must be authorized to decide on certain structural elements of the tax (the taxpayer, subject, tax base, tax rate, the date of the tax return, payment conditions); c. the municipality must be able to significantly influence the revenue of local taxes (the power to increase or decrease basic rates, exemptions, relieves); d. the revenue must be the original income of the budget of the municipality, without any possibility to use the revenue for the needs of other budgets; e. local tax must come from local sources. Mrkývka (2003: 156) gives three possible models in constructing local taxes: a. local taxes are all taxes with the revenue to the local budgets; b. local taxes are introduced and administered by local self-government units; c. local self-government unit is required to collect all local taxes, and municipalities have the option following local conditions to adjust the taxation of corrective elements (exemptions, reductions, increasing taxes).

For most of the authors dealing with local taxation, the most typical local tax is the recurrent property tax (Franzsen & McCluskey, 2017: 3; Románová, Radvan & Schweigl, 2019) and municipal charges (fees/taxes) imposed by the municipalities (Radvan, 2016: 72-74; Románová, Radvan & Schweigl, 2019), incl. the infrastructure charge. According to Boháč (2013: 113), infrastructure charge is a typical local charge (and not a tax, because it is irregular and for consideration). Other authors are dealing with the structural components of the infrastructure charge (e.g., Jantoš, 2017; Jirásková & Šneberková, 2004: 50-55; Kadečka, 2005: 98-105; Pelc, 2013: 116-125; Radvan, 2012: 123-128).

3 Research

The research necessary to achieve the aims of the contribution and confirm or disprove the hypothesis is focused on legal issues. Three areas should be analysed: a. the definition of a local tax; b. the infrastructure charge collected by municipalities in the Czech Republic; c. other possibilities for Czech municipalities to get revenues for building and financing infrastructure.

3.1 Local Tax

Concerning the local tax, Kagan´s definition (2020) is extensive. However, a local tax might be assessed not only at the local level but on the central level, too, if the revenue goes to the local budget to finance local needs. Taking all criteria as defined by Marková (2007: 2), there is no local tax levied in the European Union. Therefore, the question is how many criteria must be met to consider a levy as a local tax. If we opted only for the first criterion (tax revenue is the municipality's income), all shared taxes would be local taxes. While the second criterion (the municipality sets tax rates) would be consulted, local taxes are, e.g., all vested taxes, with some, though limited fiscal powers (e.g., local taxes, and partly property tax). Using the third criterion (the municipality administers

tax), local taxes in the Czech Republic are all local charges, but not the property tax. This conclusion also applies to the fourth criterion (the municipality defines the tax base). Local taxes, as defined by Babčák (2005: 1-6), seem not to exist. E.g., the Slovak local fee on municipal waste, known as the local tax, is obligatory by law. Mrkývka´s (2003: 156) first model (local taxes are all taxes with the revenue to the local budgets) is referred to at least rigid, respectively freest. According to that, as the local tax, we could consider the Czech property tax. The second model of local taxes (local taxes are introduced and administered by local self-government units) defines the Czech local charges. The third characteristic (local self-government unit is required to collect all local taxes, municipalities have the option following local conditions to adjust the taxation of corrective elements) describes municipal taxes proposed in the Czech Republic in 2000.

Unfortunately, the regulation *de lege lata* in the Czech Republic misses the definition of the local tax. The question of defining local taxes is the issue purely theoretical and not much practical. There is no doubt that the municipality must be able to assess some local taxes; however, their right will be limited by law with regard to Art. 11(5) of The Charter of Fundamental Rights and Freedoms. In this case, it is more a political question as to whether and in what form and to what extent the municipalities will receive options to assess and/or collect local taxes. From the definitions mentioned above and on their basis, I created and previously published my own definition, that the local tax would be a financial levy, determined to a municipal budget that can be influenced (by specifications of the tax base, the tax rates or the correction elements) by the municipality. Local taxes include both the tax in the strict sense and the fees (charges), i.e., it is not crucial whether the taxpayer obtains any consideration from the municipality or whether it is a regular or a single levy. (Radvan, 2016: 72-74)

Local taxes are *conditio sine qua non* for the economic autonomy of local self-government, and there is no doubt that the municipality must be able to introduce some local taxes. Even though the Czech Republic, when notifying the European Charter of Local Self-Government, stated it does not consider itself bound by provisions of the Art. 9(3) guaranteeing the Czech municipalities the right to impose local taxes and charges. Still, there are several local taxes in the Czech Republic. The most important one is the recurrent property tax. Even this tax is not administered by the municipality itself, it has several possibilities to influence the revenue: there are three possibilities of exemptions (exemption of property attached by extraordinary (natural) disaster, exemption of agricultural lands, and exemption of property as an investment incentive), and three possibilities to apply or change coefficients that can influence the tax rate (location rent and municipal coefficient) or the tax itself (local coefficient). (Románová, Radvan & Schweigl, 2019: 605)

3.2 Local Taxes in the Czech Republic

3.2.1 Property Tax

The recurrent property tax collected in the Czech Republic is the tax on immovable property. The taxpayers are generally the property owners; the objects of taxation are land, buildings, flats, and non-residential premises; the tax bases are generally influenced by the area. There are the basic correction components and the basic tax rates, and the rights of municipalities to set additional tax exemptions and specify the tax rates. The tax is administered by the state tax offices, and all of the revenue is accruing to the municipal budget, depending on where the property is located. Generally, municipalities only have the right to exempt immovable property affected by extraordinary, mainly natural disasters, certain agricultural land (arable land, hop-fields, vineyards, orchards, and permanent grass pastures), and immovable property in special industrial zones. Municipalities are allowed to adjust those coefficients that influence the tax rate (the location rent, the municipal coefficient) or the tax itself (the local coefficient). In such cases, municipalities have to adopt a generally binding ordinance (local bylaw) following the competence given by the Act on Immovable Property Tax (Radvan, 2009: 178-193; Románová, Radvan & Schweigl, 2019: 606-607).

With regard to the urbanisation – the increasing number of people living in cities connected with the higher demands of citizens for public services provided by municipalities and higher costs of these cities for the management, the most essential tools in the property tax regulation are the location rent and the local coefficient. The more inhabitants live in the municipality, the higher are the costs for local transportation systems, education, communal services incl. the infrastructure, public security, healthcare, culture, etc. This fact is reflected in the construction of the coefficient called location rent, graphically described in Table 1.

Table 1: Location Rent

Number of inhabitants / Municipality	**Coefficient**				
	Basic	**Reduced**			**Increased**
≤ 1,000	1.0	–	–	–	1.4
> 1,000 ≤ 6,000	1.4	–	–	1.0	1.6
> 6,000 ≤ 10,000	1.6	–	1.0	1.4	2.0
> 10,000 ≤ 25,000	2.0	1.0	1.4	1.6	2.5
> 25,000 ≤ 50,000	2.5	1.4	1.6	2.0	3.5
> 50,000 + Františkovy Lázně, Luhačovice, Mariánské Lázně, Poděbrady	3.5	1.6	2.0	2.5	4.5
Prague	4.5	2.0	2.5	3.5	5.0

The basic value of the coefficient is laid down in the Act on Immovable Property Tax respecting the number of inhabitants with a permanent residence in the municipality. It multiplies the standard tax rate for the specified immovable property (development land, residential buildings, and other structures providing facilities for residential buildings, flats, and non-residential premises not used for running businesses and garages). The basic value of the coefficient provides seven levels of value within the range of 1.0 and 4.5, and municipalities have the right to increase (up by one level) or reduce (down by three levels) it. The location rent has a long tradition, and many Czech municipalities use it to increase the revenue. (Radvan, 2020a: 54; Románová, Radvan & Schweigl, 2019: 607)

From the fiscal point of view, the most crucial tool to increase the immovable property tax and the revenues is the local coefficient. It can be applied for all types of immovable property, except for agricultural land. It multiplies the final immovable property tax by 2, 3, 4, or 5. However, and to a certain level surprisingly, the local coefficient is used in only 7 percent of municipalities in the Czech Republic, primarily because of its political nature. (Románová, Radvan & Schweigl, 2019: 607)

3.2.2 Local Charges

Every municipality in the Czech Republic can levy local charges (local fees, local taxes). Nevertheless, not every single municipality levies every local charge; the town council has an opportunity to decide whether the municipality will levy the local charge and it can define the amount of this charge. Local charges also have, except the fiscal function, regulative and protective function. Local Charges Act contains authorization for municipalities to assess local charges by the ordinance. In this ordinance, conditions for levying, charge rate, charge maturity, and eventual immunity must be given. The ordinance may not exceed the conditions defined by the Local Charges Act (e.g., the absolute charge rate or varieties of charges). Czech municipalities have an opportunity to levy the following local charges:

1. Dog charge;
2. Charge for stay;
3. Charge for using public places;
4. Charge on entrance;
5. Charge on communal waste;
6. Charge for permission to enter selected places by motor vehicle;
7. Charge on evaluation of building land - the infrastructure charge.

This list is complete and the municipality cannot levy any other charge. (Radvan, 2020a: 79-80)

Almost every local charge has a particular connection to urbanisation. E.g., the dog charge paid by the holder of the dog has a maximum rate of 1,500 CZK for a dog per year (200

CZK for retired people). However, small villages apply minimal rates or do not collect this charge at all. At the same time, big cities usually use the highest possible rates, because they have to clean pavements and build paddocks for dogs. Very often, there are different rates for dogs bred in family houses and (higher rates) for dogs from flats.

The charge for stay is a kind of a tourist tax. It is usually collected in larger urbanized municipalities. The charge fully covers all types of accommodation for tourists (and congress participants), all possible kinds of contracts, and especially Airbnb types of accommodation. The taxpayer is generally the guest – a person with permanent residency in any other municipality – staying for a limited period no longer than 60 days. The charge is collected by the quartermaster, who, as a payor (paying agent), sends it to the municipal office. The only problematic issue might be the maximal rate: 21 CZK per night in 2020 or 50 CZK from January 1, 2021, is not adequate compared to other cities in the world. (Radvan, 2020b; 1103-1104) For the tourist tax, it is irrelevant whether there is a special "tourism fund" in the municipal budget, i.e., whether the tourist tax revenues are spent on tourist purposes only or generally on all people in the municipality's territory. The task of the municipalities is to ensure good services for both tourists (maps, orientation signs, etc.) and locals (not to be disturbed too much by tourists) at the same time while most of the services are provided for everybody (cleanliness of public areas, security, etc.).

The charge for using public places can be levied by the municipality only if a. positioning of temporary constructions for building or advertisement, selling goods or services; b. positioning of amusement parks, circuses; c. creating and running dumps; d. reservation of parking place; e. using the public place for culture and sport or for shooting movies; f. pursuing site excavation. The charge for using public places is obviously levied mostly in urbanized cities. The charge rate is 10 CZK for a square meter per day; in some cases, it can be even 100 CZK for a square meter per day (sales, advertisement, amusement parks, etc.).

The charge on entrance is obliged to be paid by every person who organizes cultural, sport, sale or advertisement action and collects an entrance. The charge rate is 20 % from the entrance. It is possible to state that the charge is collected mostly in large urbanized municipalities. The same applies to the charge for permission to enter selected places by motor vehicle paid by everybody who has permission for access by a motor vehicle to chosen places and parts of towns (and nobody else cannot get there because of a road sign). Only big cities need to regulate the number of cars in city centers. The charge rate is 200 CZK for one day at maximum.

It is possible to conclude that the collection of almost all local charges is a sign of urbanisation. There are two practical reasons. Firstly, small rural municipalities do not need to levy local charges to regulate or stimulate the behavior of taxpayers while the fiscal effect of the charges is limited. Secondly, the administrative costs would be much higher than the revenues because of maximal rates set in the Local Charges Act. The only

exception is the local charge on communal waste or other possibilities according to the Waste Act: the charge on communal waste according to the Waste Act or contracts with persons producing communal waste. Because the costs connected with communal waste disposal are high, almost every municipality in the Czech Republic uses any of the three aforementioned possibilities.

3.3 Infrastructure Charge

Urbanisation is closely connected with the need for housing construction. While the construction of houses or blocks of flats is financed privately, the related infrastructure (roads, pavements, streetlights, gas and power lines, water conduit, sewerage, etc.) is very often financed from public budgets. It is evident that the local charge on evaluation of building land – the infrastructure charge should play a crucial role in these circumstances.

The charge on evaluation of building land is paid by the lot's owner if he has a possibility to connect it to municipal water conduit or sewerage. The initial condition is that the water conduit and the sewerage are built (i.e., financed) by the municipality. It is not decisive whether there is a building on the land, who is the owner of the building on the land (as the principle *superficies solo cedit* was not respected by the communist regime in the 20th century), or if the owner wants to connect his land to the water conduit or sewerage. The crucial moment to set the charge duty is the moment when the land´s owner can connect the land to the municipal water conduit or sewerage. It must be a new water conduit or sewerage, not a reconstruction of the existing one. The generally binding ordinance must be adopted till the end of the year in which the municipal water conduit or sewerage was approved. This rule causes problems in practice, especially if the water conduit or the sewerage is approved at the end of the calendar year. It would be more convenient to set a one-year limit after the approval of the structure.

The charge rate can be the difference between the prices before and after the possibility to connect the lot to water conduit or sewerage at maximum. The charge rate must be published in the generally binding ordinance. The price of land varies for different types of development, i.e., it depends on the purpose of construction built on the land (e.g., family houses, apartment buildings, buildings with social care services, hotels and restaurants, buildings for services and trade, buildings for industry and storage, sports buildings or agricultural buildings). Therefore, the charge rate can be set differently according to the individual categories of building land. However, within one category (of the same type of development), it must be set in the same way. While maintaining the principles of equality, the charge rate may be set a. differentially – separately for each plot of land, provided that such a rate determination would be evidenced by the exclusivity of the valuation of the plot in comparison with the valuation of the other plots; b. with different rates for sets of plots of land having the same or similar qualitative character; c. with one rate for all land affected by the construction of a water conduit or sewerage. However, for land valued in the same way, a charge rate must be always

uniform. If the municipality decides to set the charge at one rate for all land affected by the construction of water conduit or sewerage, it must set the charge rate according to the valuation of the land with the lowest price with respect to the purpose of development. (Jantoš, 2017)

According to ASPI (2020), the infrastructure charge is collected in 45 Czech municipalities. (There are almost 6,300 municipalities in the Czech Republic.) In 18 municipalities, the infrastructure charge was collected in history and later cancelled. The only larger city (district city) where this charge is being collected is Žďár nad Sázavou, with 20.700 inhabitants.

4 Discussion

In spite of the fact that the infrastructure charge was intended to help municipalities building new infrastructure in their territories, the charge is not very popular, because it is used only by 45 Czech municipalities. There are several reasons for that fact. The main one is that it does not cover all types of infrastructure, but only water conduit or sewerage. It does not cover the reconstruction of existing water conduit or sewerage, not the wastewater treatment plants necessary for all cities. Many of them had to increase the capacity of the wastewater treatment plants; however, the infrastructure charge is not applicable to this situation. The charge cannot be used as a financial source when building any other infrastructure, such as roads, pavements, street lights, gas and power lines, etc. The crucial moment to set the charge duty is the moment when the land´s owner can connect the land to the municipal water conduit or sewerage. However, municipalities need money to cover the construction cost before the project begins. The generally binding ordinance must be adopted till the end of the year in which the municipal water conduit or sewerage was approved. However, if the water conduit or the sewerage is approved at the end of the calendar year, there is a lack of time to adopt the local bylaw. The legal rules to set the charge rate are too complicated and many municipalities resign from the intent to adopt the local ordinance as they do not want to break the law.

Some of these problematic issues could have been resolved in 1999 if the Parliament adopted a new Municipal Taxes Act (Chamber of Deputies, 1999). One of the presumed local taxes was an obligatory infrastructure tax. The object of taxation was the infrastructure built at the expense of the municipality. For the purposes of this Act, the public infrastructure was defined widely. It covered the construction of local roads, construction of water mains and waterworks, including water treatment plants, construction of sewers and sewerage facilities, including wastewater treatment plants, public lighting, and other structures that provide this area in terms of of fire safety and other types of security. The taxpayer was the owner of the land. The task of the municipality was to post the information on the issuance of the approval decision and the amount of the actual costs of the built infrastructure on the official notice board of the municipal office for a period of fifteen days and further communicate it in the usual

manner on the spot. The last day of this period was the day of delivery. Within fifteen days from the delivery date, the taxpayer was obliged to file a tax return. The tax administrator had to assess and prescribe the tax by payment order or a collective prescriptive list. The range of the tax rate was between 10 and 20 % of the actual costs per m^2 incurred by the municipality on the built infrastructure, multiplied by the area of land owned by the taxpayer (i.e., the infrastructure tax was planned as an obligatory tax collected in every Czech municipality). The tax was payable within fifteen days from the date of delivery of the payment order or collective prescriptive list if it does not exceed 10,000 CZK. For an amount exceeding 10,000 CZK, the tax was payable in two equal instalments (the first instalment within fifteen days from the date of delivery of the payment order or collective prescriptive list, the second instalment after six months from the date of the obligation to pay the first instalment). However, the Municipal Taxes Act, including the infrastructure tax, was not adopted by the Parliament. In the following 20 years, there was no other initiative in the Czech Parliament concerning local charges or taxes on infrastructure.

That is why, nowadays, the more favourable way to get adequate infrastructure at the municipality is the private law contract with a private investor. In these circumstances, the term public infrastructure is more comprehensive than discussed until now in this contribution. It copies Art. 2(1/m) of the Building Act and covers a. transport infrastructure (roads, railways, waterways, airports and related facilities;
b. technical infrastructure (lines, constructions, and operationally related technical equipment: water conduits, reservoirs, sewerage, wastewater treatment plants, constructions to reduce the risk of natural or other disasters, constructions and facilities for waste management, transformer stations, energy lines, communication lines, product pipelines, and gas storages); c. civic amenities for education, social services and family care, health services, culture, public administration, protection of the population;
d. public places established or used in the public interest. Very often, when the municipality is issuing permission for a private investor to build new houses or flats, there is a private law contract between the municipality and the investor. The investor is bound to build adequate infrastructure for future inhabitants, typically technical infrastructure, roads and pavements, streetlights, kindergarten and school, public parks, playgrounds, trees, etc.

However, there are no legal rules for this in Czech law. Some municipalities (e.g., Jihlava, Říčany u Prahy, Mnichovo Hradiště, Hrušovany u Brna, etc.) are trying to be as transparent as possible. They have prepared publicly available principles (rules) for private investors' financial compensations (e.g., Prague 22, 2020a). The contract is then based on these principles (Prague 22, 2020b). Recently, the principles have been adopted by the capital of Prague (Krýžová, 2020). Still, this practice is only voluntary and there are no specific rules, not even for the legal form (act, local bylaw) of the principles. It is interesting to see that not only municipalities but even the developers are unhappy with current situation. According to the research done by CEEC Research, more than one half

of them prefers to define the financial cost for infrastructure in the Act or local bylaw. They are ready to finance one-third of the infrastructure costs, especially parking lots and parks. On the other hand, the municipality and the State should be responsible mainly for schools, kindergartens, roads, and public transportation. (ČTK, 2020)

These requests are at least partially reflected in the draft of the new Building Act (Chamber of Deputies, 2020). The bill includes the public infrastructure definition without significant amendments compared to the valid and effective Building Tax. However, it brings a new institute of the planning contract. A planning contract is a public contract concluded between a builder and a municipality or region or the owner of public infrastructure. Its content is the mutual obligation of the parties to provide co-operation in the implementation of the stated intention in the contract and to proceed in its implementation in the agreed manner. The planning contract may also contain an adjustment of the rights and obligations of persons in the field of private law. In the planning contract, the municipality, region, or owner of the public infrastructure may undertake that it will participate in the preparation, construction, or financing of public infrastructure or public benefit constructions or other measures necessary for the implementation of the project, and it will take over the construction completed by the builder. The builder may undertake to participate and assume the costs in the construction of public infrastructure or other structures or measures caused by the project, participate in the remediation of the territory affected by the project, and provide financial or material performance for the appreciation of the land by issuing spatial planning documentation.

5 Conclusions

Planning contract included in the draft of the new Building Act is definitely a good step and it seems to be an excellent instrument for municipalities. However, if the Czech Parliament adopts the bill, it will be in force since January 1, 2023. For the next two years, the municipalities should prepare the principles for private investors' financial compensations and draft contracts to offer the same conditions for all possible investors and to fulfil the principles of equality and predictability.

Concerning the taxes or charges on infrastructure, the legal bases in the Local Charges Act are not adequately precise for municipalities to create a generally binding ordinance of good quality. Municipalities do not have the experience nor the knowledge to create the bylaw and to administer the infrastructure charge. That is why only 45 Czech municipalities out of almost 6,300 municipalities in the Czech Republic collect the infrastructure charge. The other reason is that the charge covers only new water conduit or sewerage and not the other types of infrastructure or the reconstruction and the increasement of the capacity of existing ones. The charge cannot be used as a financial source when building roads, pavements, street lights, gas and power lines, playgrounds, kindergartens, etc. The generally binding ordinance must be adopted till the end of the year in which the municipal water conduit or sewerage was approved. However, if the

water conduit or the sewerage is approved at the end of the calendar year, there is a lack of time to adopt the local bylaw. The legal rules to set the charge rate are too complicated. All these negatives, unclearness, and insufficiencies lead to the conclusion that many municipalities resign from the intent to adopt the local ordinance as they do not want to break the law. The hypothesis of the contribution was confirmed.

I do not believe that any other legal regulation of the infrastructure tax or infrastructure charge might help. It is complicated to decide whether the land is affected by the new or more modern infrastructure, respectively how much it is affected and how it influences the land price.

If we accept that there is no infrastructure charge/tax, the solution might be found in the recurrent property tax – the tax on immovable property. I believe that this tax revenue should be used on behalf of the owners of land, houses, flats, structures. All types of infrastructure and related services (transport infrastructure, technical infrastructure, education, social and health services, culture, protection of the population, public places, etc.) and its maintenance must be financed from the property tax revenues.

Although the Czech property tax legal regulation is not ideal, there are already instruments connected with the urbanisation – with the increasing number of people living in cities connected with the higher demands of citizens for public services provided by municipalities and higher costs of these cities for the management. The location rent reflects the fact that the more inhabitants are living in the municipality, the higher are the costs for local transportation systems, education, communal services incl. the infrastructure, public security, healthcare, culture, etc. The most crucial instrument for increasing the immovable property tax and the revenues is the local coefficient. It can be applied for all types of immovable property in the municipality's territory, except for agricultural land, and it might multiply the final immovable property tax by 2, 3, 4, or 5. With regard to the urbanisation and related infrastructure investments, it would be useful if municipalities get the right to apply the local coefficient only at specific parts of the municipality (with new, better, modernized infrastructure) or for specific types of property (depending on how the infrastructure influences the quality of the usage). The other benefit of property tax is the fact that it is administered by the state tax offices.

Such a recurrent property tax regulation connected with the planning contracts between municipalities and private investors (developers) might be an ideal approach in the area of local taxes, infrastructure financing, and urbanisation. It might be helpful for municipalities to decide if they prefer new inhabitants, new suburbs with modern infrastructure, where these suburbs may be situated, and under what conditions.

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LEX LOCALIS

Local Taxes in Large Hungarian Municipalities

GÁBOR KECSŐ

Abstract Hungarian structure of local governments consists of two tiers. Municipalities have had power to tax within the confine of the central acts according to the closed-list approach since 1990. The open list method of local taxation for municipalities was introduced in 2015. There are no differences in the substantive law with respect to how municipalities – even if small villages or large towns – can exercise their taxing power. Counties gained power to tax in the Covid19 legislation in 2020. This new power is limited within their territory. The jurisdiction to tax covers only the area of the special investment zone over which the original taxes imposed by the respective municipality shall be replaced by the new taxes of the respective county. Contrary to the tax revenues, public services were not reallocated among local governments. Effective fiscal equalization should be implemented by the legislator to achieve balanced budget in the new pattern.

Keywords: • division of power to tax • local taxation • fiscal equalization

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1 Introduction

One can easily argue that the topic of this paper is almost hypothetical, because there are no large municipalities in Hungary except Budapest. Indeed, nine cities[57] have almost or more inhabitants than 100 000 people, and these local governments can be considered as "large" municipalities, if the fragmented spatial pattern of the Hungarian localities (Vigvári, 2011:54) is taken into account. The capital is a big city even on international level. In spite of that Budapest power to tax is beyond the scope of this paper, because its legal regime is special (lex specialis).[58] Its analyses would require a separate research. I deal with the general central rules (lex generalis) on local taxing power focusing on recent changes in Hungary. As written below, counties' opportunity to impose local taxes made the fiscal equalization between the two tiers of local governments as important as ever. That is why the vertical and horizontal fiscal equalization is stressed here via the method of legal analyses blended with public finances. The extent of this paper does not allow to analyze the whole issue deeply, but it makes possible to highlight some thoughts. This article relies on an associated paper which was published just recently in the topic of Hungarian local taxation.[59] Repetitions are avoided except a short text on the special investment zone.

2 Literature review

The power to tax derives from the sovereignty which is strongly connected to the concept of state. (Troper, 2012: 354-356) This power, however, can be divided by the constitution or by the ordinary law with constitutional mandate among the governmental layers in three different ways. (Norregard, 1997:51; Ter-Minassian, 1997:9) Firstly, full tax centralization means that all taxes shall be imposed by the highest governmental level. Secondly, full tax decentralization exists when the lowest governmental layer shall levy all taxes, but this is not more than a mere theoretical version of taxation. It lacks the reality. Thirdly, taxation power may have under the competence of multiple governmental layers within the state. This is a very common arrangement in federal states in which the regulation on taxes is exercised in parallel by the legislative bodies of the federation and of the member states at the same time. This third version has been applied also in many unitary states. Hungary is an example of that.

What does local tax mean internationally? The international "minimum" definition which is suitable for comparison of different tax jurisdictions derives from the European Charter of Local-Self Government (hereinafter referred to as Charter). Article 9 Para (3) of the Charter[60] represents the essential (sine qua non) condition of local tax to comply with. (Messere, 2000:133) This is a tax imposed at the rate decided by the local government. The definition does not include for instance that local governments should administrate the local tax, or they should have alternatives to levy the tax or not. This guarantees only the local decision-making policy over the tax rate within the limits of law. Yet this is more than nothing. At least one element of the power to tax shall be decentralized to create a

local tax. This makes the local tax own tax. This minimum definition can be supplemented by the national law with further conditions.

Shared taxes are different to local taxes. The precise distinction between the two concepts is a complex issue (Blöchliger, Petzfold, 2009; Bahl, Wallace, 2007). It is enough to note here that tax sharing is a distinct arrangement from the decentralization of power to tax. Tax sharing only means that the budget revenues from certain tax is distributed by law among the layers of governments, but the given tax as such is imposed fully by the legislative body of one governmental level that is the central in most of the cases. In other words: shared tax is one of the transferred resources to local governments; local tax is an own resource to them.

According to the theory of public finance elaborated by Richard Musgrave, the functions of government can be separated into three parts such as 1) resource allocation 2) macroeconomic stabilization 3) redistribution of income. (Musgrave, 1959: 21-33) Regarding allocation, responsibility for providing local public services should be decentralized to local layers of government based on the so-called decentralization theorem written by Oates. (Oates, 2008: 314) Oates argues that potential welfare gains derive from decentralization, because it can increase efficiency by improving the fit between services provided and demands by people residing in a jurisdiction. The theorem applies to public services without substantial economies of scale and intergovernmental externalities associated with provision of a particular public service. (Musso, 1998: 355)

Equal well-being of citizens within a country depends on plenty of interrelated factors. In comprehensive approach for instance, over income and wealth other indicators such as average life expectancy, graduation, working condition, place of accommodation, and public services received have to be taken into account when enquiring about inequalities among people. (Ferge, 2008:4) It can be recognized without long reasoning that inequality can cause disturbance in the society. Consequently, a well-fare state aims at equalizing the conditions of life and on that score aims at redressing territorial disparities to hold the nation together. This function of state is of paramount importance owing to the socio-economic crisis during which centrifugal forces increased. (Bird, Ebel, 2007:7-11)

Decentralization of power to tax may cause inequalities. Fiscal inequity arises when persons in comparable situation, but in two different territorial units (e.g. municipalities, counties) within a country are treated differently by the fiscal system. (Boadway, Shah, 2009:323) The fiscal residua[61] of the citizens may vary to a large extent. Furthermore, decentralization of governmental responsibilities might result in individuals receiving a different level of public services for the same fiscal burden. (Dafflon, 2008:288) The point is that public services provided by the local layer of government to residents affect their living standard. There is a need for equal access to the provision of certain local public services at comparable level within the country. Therefore, fiscal capacity of local governments is to be equalized in order to balance their potential for providing equal public services.

Horizontal fiscal imbalance refers to the situation when own fiscal capacity of various sub-national governments at the same level differ. Horizontal fiscal equalization can be defined as transfer of fiscal resources among units at the same level of government to mitigate horizontal fiscal imbalance. Fiscal disparities can be evolved for two reasons such as differences in revenue raising capacity and differences in costs of services. Therefore, one of the main rationales for horizontal fiscal equalization is the presence of unequal economic conditions – narrowly unequal tax base – that produces disparities in the capacity of local governments to generate fiscal revenues. Next rationale is attached to costs. Costs of providing public goods and services can be unequal because of differences in geographic location and population size. The costs also vary due to differences in demographic characteristics and trends. Policy to compensate both kinds of differences is justified by equity concern. Namely, all citizens of the country should have approximately the same quantity and quality of public services independent the place where they live. Unlike regional development policy, equalization is a corrective fiscal policy with no direct growth and development strategy behind it. In other words, fiscal equalization aims at equalizing local governments' public revenue, not GDP. However, it does not mean that fiscal equalization has no effect on the GDP anyway. (Bird, Vaillancourt, 2007: 259-269; Ahmad, Craig, 1997:73-90)

3 Research

This paper intends to answer two questions in connection with the decentralization of power to tax in Hungary. Do large Hungarian municipalities have different status in taxation compared to their small counterparts? What is the effect of the new amendment allowing counties to levy taxes on fiscal equality?

With respect to the first question, the two-tier structure of the Hungarian local governments (municipalities and counties) should be presented firstly, but it has been published in an other paper referred above (Kecső, 2020a:332-334). The Fundamental Law of Hungary says that in connection with local public affairs local governments shall decide on the types and rates of local taxes within the framework of law. Hungarian Parliament adopted the Act C of 1990 on the local taxes (hereinafter referred as to Local Tax Act). This is in force from the 1st of January 1991. According to the original concept, Local Tax Act empowered the representative body of the municipalities to levy none, one or more local tax(es) from a closed-list containing the building tax, plot tax, communal tax, tourism tax and local business tax. An amendment to the Local Tax Act introduced the open list approach of local taxation for the municipalities in 2015. Over the five closed-list local taxes, the so-called municipal tax can be imposed by the municipalities on any basis of assessment, provided that it is not covered by mandatory public duties of any kind. Consequently, double taxation within the country is avoided. Municipal tax may not be imposed on the state, any local governments, any organizations, or on any entrepreneurs. Consequently, natural persons can be the subject of the municipal tax. Local Tax Act provides equality for all municipalities as to their power to tax. It does not

make any distinction how they can exercise their constitutional mandate to tax. Thus, at first glance inequalities in taxation power are avoided among Hungarian municipalities.

With respect to the second question, the special investment zone is to be scrutinized.[62] Hungarian counties did not have power to tax from 1990 till summer 2020. Covid19 legislation made counties possible to impose any local taxes from the closed list. Counties did not gain power to introduce municipal taxes. Counties' local taxation is restricted to and connected to the so-called special investment zone. The Government can declare by decree a territory of one or more municipalities partly or fully as special investment zone, if the economic activity within that area is very significant and has a decisive effect on the county's economy (Act LIX of 2020). The Government shall decide on the list of "the municipalities more directly affected by the investment" in the decree.

The establishment of a special investment zone has many legal consequences. Changes in taxing power is one of those. The county gets right to impose taxes in this special area and if does so the county tax replaces the respective tax of the municipality or municipalities. If a local government where the special investment zone is located levied a local tax, the county government should not increase the burden of taxpayers during the fiscal year. The decree of the local government where the special economic zone is located on local taxes apply until the county government adopts a decree relating to local taxes, not exceeding 120 days after the date of entry into force of the Government decree on the establishment of the given special investment zone (Local Tax Act Section 42/G). Two special investment zones have been established so far. These are situated in the area of Göd [Government Decree 136 of 2020 (IV. 17.) superseded by Government Decree 294 of 2020 (VI. 18.)] and in the area of Mosonmagyaróvár [Government Decree 44 of 2021 (II. 5.)].

It is of paramount importance that no additional public services are given by law to the counties when special economic zone is established. Public services stay at municipal level. Despite this fact, if the zone is done by the Government, county win all local tax power and all local tax revenues generated in the territory of the zone. What this "free" budget source can be spent on? Local Tax Act Section 8 Para 4 states that the county government where the special economic zone is located shall use tax revenue – by way of the means specified in its decree – for supporting investment projects in the county where the special economic zone is located, in particular in municipalities more directly affected by the investment according to the government decree on special economic zones, as well as organizations and municipalities in that county, and not more than 3 per cent of such revenue may be used for covering its operating expenses arising in connection with carrying out the delegated tasks of the county government.

The Hungarian Constitutional Court found that the abstract rules on the special investment zone and the establishment of such zone in the territory of Göd are not in conflict with the Fundamental Law.[63] Nevertheless, it laid down a constitutional requirement stated that local governments have constitutional right to intergovernmental

grants and to other fiscal resources in proportion with their mandatory public services. These sources can be decreased by the Parliament – and by the Government in extraordinary legal order –, but the reduction shall not endanger the exercise of the local competences enshrined in the Fundamental Law Article 32 Para 1.[64]

4 Discussion

It is written above that at first glance inequalities in taxation power are avoided among municipalities in Hungary. Is it true at second glance? The differences come from the economic situation in which the municipalities operate. For instance, the most important Hungarian local tax is the local business tax that represents approximately 80% of the whole local tax revenues nationwide. Nevertheless, the legal opportunity to impose local business tax is not enough to acquire budget revenue. Local business activity within the jurisdiction of the municipality is an indispensable economic factor to make the legal opportunity real. Narrow part (about 10%) of the municipalities disposes big share (about 80%) of the whole local business tax revenues nationwide. The beneficiaries of the local business tax revenues are the municipalities where multinational and medium-sized enterprises have been established, because those taxpayers have big(ger) tax base. Typically, these municipalities are not villages or small towns, but medium-sized (between 20 000 and 100 000 inhabitants) and large towns. The diverse spatial distribution of the local business tax revenues makes the equalization scheme among municipalities necessary.

Horizontal fiscal equalization regime to mitigate the effect of the economic imbalance of local taxation power is in force in Hungary. Its legal source is the annual budget act. The equalization rules provide extra funds for municipalities with low taxing power. Net method of fiscal equalization is applied since the extra fund comes from the municipalities with high taxing power. Nevertheless, it should be noted that equalization regime is not only meant to finance municipalities with low taxing power, but to finance the central budget. In other words, the Hungarian regime blended horizontal (local-local) and vertical (local-central) fiscal equalization.[65]

The counties' power to tax is too immature to arrive at a final opinion about to what extent it causes fiscal inequalities in Hungary. The abstract rules are younger than one year old and based on these rules just two special investment zones have been established so far. The first one (zone Göd) was established in April 2020, the second one (zone Mosonmagyaróvár) was established in February 2021. As far as I am concerned the point is how counties will reallocate the local tax revenues among municipalities "more directly affected by the investment". Thus, equalization between the respective county and the municipalities are going to be a hot topic in the Hungarian local finance. If the reallocation of the local tax revenues managed by the county was just, the fiscal equality among the affected municipalities would be guaranteed.

5 Conclusions

The tight scope of this paper allows brief conclusions. Hungarian municipalities have equal power to tax from the aspect of the law. From the very small villages to the large towns – except Budapest – have the very same rules to levy local and municipal taxes. Taxation, however, heavily depends on economic conditions and from this aspect the Hungarian municipalities are not equal, but diverse. Counties' brand-new power to replace local taxes in the territory of the special investment zone redraw the old pattern. Especially because the fiscal revenues do not follow the expenditure needs. Counties have local tax revenues without additional public services responsible for. Municipalities lost local tax revenues retaining all public services. These tendencies raise the significance of the fiscal equalization vertically (county-municipality) and horizontally (municipality-municipality). Comprehensive and just regulation should be made for the equal well-being of the Hungarian citizens regardless what the zip code of their home is within the national border. This is how national solidarity would come true.

Notes:

[57] In descending order: Budapest, Debrecen, Szeged, Miskolc, Pécs, Győr, Nyíregyháza, Kecskemét, Székesfehérvár. Last city has less inhabitants than 100 000 people (96 529). Hungarian Central Statistical Office: Detailed Gazetter, available at https://www.ksh.hu/apps/hntr.telepules?p_lang=EN&p_id=14827 (10 March, 2021)

[58] Budapest has a dual self-government system, the districts and the capital as a whole. Budapest is treated as a municipality and as a county at the same time. Local taxing power is divided between the districts and the capital as a whole. It has to be highlighted that the general assembly of the capital is entitled by law to impose the local business tax.

[59] The basic information on the structure of Hungarian local governments and on local tax system – including closed-list and open list approach to local taxation – can be read here: Kecső, 2020a.

[60] Charter Art 9 Para 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

[61] Fiscal residua means the difference between the sum of the levies paid to the government and the returns in cash and in kind got from the government. (Buchanan, 1950:583-599)

[62] The text of this paragraph and of the next paragraph comes from Kecső, 2020a:343-344.

[63] Decison No. 8/2021. (III. 2.) AB of the Constitutional Court of Hungary

[64] Fundamental Law of Hungary Article 32

(1) In connection with local public affairs the municipal government shall, within the framework of law:

a) adopt decrees;

b) pass resolutions;

c) autonomously administer its affairs;

d) determine its organizational structure and rules of operation;

e) exercise ownership rights with respect to the property of the municipal government;

f) determine its budget and autonomously manage its financial affairs on the basis thereof;

g) have the option to engage in business activities using its assets and revenues, these activities, however, may not jeopardize the performance of its statutory tasks;
h) decide on the types and rates of local taxes;
i) have the right to create its own symbols and institute local honors and titles of merit;
j) have the right to request information from the competent organ, initiate the delivery of a decision, and express its opinion;
k) have the right to freely associate with other municipal governments, set up associations for the representation of its interests; cooperate with municipal governments from other countries in matters falling within its competence, and seek membership in international organizations of municipal governments;
l) perform other tasks and exercise other competencies laid down by law.

[65] The Hungarian equalization scheme is discussed in an other paper. (Kecső, 2020b)

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Part IV

Recent challenges of COVID-19 pandemic

LEX LOCALIS

The Challenges of COVID-19 Pandemic in Large Hungarian Municipalities – A Short Overview of the Legal Background

ISTVÁN HOFFMAN

Abstract Hungarian municipal system has been significantly impacted by the COVID-19 pandemic. The urban governance has been impacted by the COVID-indicated reforms. The transformation has had two, opposite trends. On the one hand, the Hungarian administrative system became more centralised during the last year: municipal revenues and task performance has been partly centralised. The Hungarian municipal system has been concentrated, as well. The role of the second-tier government, the counties (*megye*), has been strengthened. On the other hand, the municipalities could be interpreted as a 'trash can' of the Hungarian public administration: they received new, mainly unpopular competences on the restrictions related to the pandemic. Several new benefits and services have been introduced by the large Hungarian municipalities, but it has had several limitations, for example, the urban municipalities have been the primary target of the central government (financial) reductions. Although these changes have been related to the current epidemic situation, it seems, that the 'legislative background' of the pandemic offered an opportunity to the central government to pass significant reforms.

Keywords: • urbanisation • Hungary • large municipalities • COVID-19 • public services • urban governance • socio-economic crisis • Hungary

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1 Introduction

The Hungarian municipal system has been significantly impacted by the COVID-19 pandemic. First of all, in Hungary the state of danger has been proclaimed two times after March 2020, as an answer to the two waves of COVID-19 in Europe. Not only the municipal system, but the whole administrative law has been influenced by the legislation which reacted to the challenges of the COVID-19 pandemic. Therefore, the administrative procedural law, the legal regulation on health care, partly the welfare services and the development and economic regulation issues were affected by this regulation (Balázs & Hoffman, 2020: 1) The municipal systems has been impacted by the COVID-19 pandemic, as well. The different aspects of municipal regulation, tasks and decision-making has been influenced by the COVID-19 situation, which challenges have been partly based on the regulations related to the state of danger in Hungary.

The impact of the COVID-19 crisis will be examined primarily by the methods of the jurisprudence: especially the legal regulation will be analysed. The paper will focus on the national legislation, but the municipal decision-making and the practice will be analysed shortly.

First of all, before the analysis it should be defined the 'large municipality' in Hungary. Hungary has a fragmented spatial structure: the majority of the Hungarian communities have less than 1000 inhabitants. The decentralization reforms during the Democratic Transition resulted a fragmented municipal system. The democratic regulation declared that every communities became independent municipal units. Therefore, Hungary has a fragmented municipal structure, as well (see Table 1).

Table 1: Population of the Hungarian municipalities (1990-2010) (Source: Szigeti, 2013: 82)

Year	0-499	500-999	1,000-1,999	2,000-4,999	5,000-9,999	10,000-19,999	20,000-49,999	50,000-99,999	100,000-	All
	Inhabitants									
1990	965	709	646	479	130	80	40	12	9	3,070
2000	1,033	688	657	483	138	76	39	12	9	3,135
2010	1,086	672	635	482	133	83	41	11	9	3,152

In my research, the Hungarian towns with over the population of 100 000 have been examined. Because of the fragmented municipal systems these municipalities can be interpreted in Hungary as 'large municipalities' (there are only 9 towns which have more than 100 000 inhabitants in Hungary).[1] The capital municipality, Budapest, has special status and a two-tier municipal model (Budapest is divided into 23 districts and one directly administered unit (Margitsziget) (1st tier) and the 2nd tier is the Capital (or Metropole) Municipality of Budapest (Nagy & Hoffman, 2016: 130-133). Although the districts of Budapest have different population (6 of them has more than 100 000

inhabitant – the 11th, 3rd, 14th, 13th 17th and 4th districts) but there are 3 districts which have populations around 25 000 inhabitants (1st, 5th and 23rd districts). Therefore, I would like to analyse the situation in Budapest capital and even in its districts, as well.

2 Urban areas, pandemic, and legal regulation

It can be considered as a commonplace, that urban areas are more at risk of epidemics. This statement has justification. The plague after 1347, the 'Black Death' had greater impact on European large cities, therefore the urbanised regions of Europe had larger losses: in Italy the population of several cities decreased by more than 50 percent at that time. (Christakos et al., 2005: 224). It is stated by the literature, that the higher density of population and the higher socio-economic activities, and especially the extensive transportation links, and – in the 21st century – especially the air transport links promote the faster spread of infections (Reyes et al., 2013: 131-133). It is interesting, that the urbanisation has a wider impact on the infectious diseases. As a result of the urbanisation, the rural environment of the urban areas has transformed: the suburbanisation became a pattern in several countries. It has been emphasised by several research that the infectious diseases can spread easily even in suburban areas.[2]

The tasks and the opportunities of the given municipalities are influenced by the legal regulation (Kostrubiec, 2020: 190 and Kostrubiec, 2021: 114-115). First of all, it should be analysed, whether the legal regulation in the given countries have been prepared for a pandemic and the challenges of this situation. It is highlighted by the literature, that such a pandemic has been a shocking event for the legislation. The last major, widespread and worldwide pandemic which was comparable to the SARS-CoV-2 infection was the H1N1 pandemic during the 60s. However, there has been several regulations in the national legislation on public health issues of the pandemic, but before the SARS-CoV-2 (COVID-19) pandemic, these rules seemed to be as 'last resort' regulations (Petrov, 2020: 71-72). Therefore, it should be analysed, how the given legislations – especially the legislation on municipal systems – reacted to the new situation, because the major problems required quick solutions and answers (Hantrais – Letablier, 2021: 54-55).

It is emphasised by the literature, that centralisation tendencies increase during socio-economic crises (Pálné Kovács, 2020: 48-49). Similarly, it is stated by the literature, that the legislation and the service provision systems became more centralised because of the COVID-19 pandemic (Hambleton, 2020: 96). However, the centralisation tendencies are emphasised by the literature, it is highlighted, that the municipalities can have important role, as smaller and more flexible bodies than the central government bodies. Therefore, the municipalities can introduce new and innovative services and benefits and the municipal tasks appreciate in the time of pandemic (Plaček et al., 2021). Even during centralisation progress the municipalities can receive important competences: the unpopular powers and duties (for example, restrictions, fines, taxation) can be outsourced

to the local governments by the central regulation (Goldsmith & Newton, 1983: 217-219), thus the municipalities can be the 'trash cans' of the administrative systems.

Therefore, I would like to examine whether the Hungarian municipal legislation and the Hungarian large municipalities have been prepared for a pandemic. I would like to analyse the main challenges of the urban administration in Hungary and the centralisation tendencies and the 'trash can' effect in Hungary. As a part of the centralisation and decentralisation issue, my paper will show, which alternative solutions, benefits and measures have been evolved by these municipalities.

3 Legal framework for the municipalities – in the time of the corona(virus)

A detailed regulation on emergency situations evolved in Hungary after the Democratic Transition – as an answer to the wide regulations of the legislation of the former authoritarian regime(s) (Drinóczi, 2020: 2-3). The Hungarian Constitution, the Fundamental Law of Hungary (25th April 2011) (hereinafter: Fundamental Law) regulates six types of emergency situations (Gárdos-Orosz, 2020: 158). One of these situations is the 'state of danger' which is regulated by the Article 53 of the Fundamental Law. This article allows to the government to declare the state of danger »[i]n the event of a natural disaster or industrial accident endangering life and property«. It has been a debate whether the Hungarian constitutional regulation allows the declaration of the state of danger. It is emphasised that the Fundamental Law has a closed taxation on the justification of the declaration, and the epidemic/pandemic is not among the acceptable reasons (Szente, 2020: 13-14). However, the Article 44 of the Act CXXVIII of 2011 on Disaster Recovery states, that state of danger can be declared in case of a human epidemic by which mass disease is caused and even in case of an animal epidemic. However, these rules gave a justification for the declaration of the state of danger, but the rules has not been enough sufficient, and therefore new regulation on the epidemiological emergency and on the detailed regulation on state of danger should be passed during the spring and autumn of 2020 (Balázs & Hoffman, 2020: 4-5).

4 Challenges of urban areas in the time of a pandemic

As I have mentioned earlier, the urban areas, and even the suburban areas have been impacted significantly by the COVID-19 pandemics. That pattern can be observed by the Hungarian data, as well. Mainly the counties with larger urbanised and suburbanised areas have been relatively infected. It is interesting, that the largest Hungarian city, Budapest, and its urban area (which belongs mainly to county Pest) has been relatively moderate infection cases (however, during the first wave of COVID-19 it has been the most infected area in Hungary). (See Table 2)

Table 2: Population, COVID-19 infections and the infected people /100 000 inhabitants[3]

County (Capital City)	Population (2020)	Number of people infected by COVID-19 (as of 20th January 2021)	Number of infected people / 100,000 inhabitant
Budapest	1750216	66138	3778,84
Pest	1297102	44065	3397,19
Fejér	418603	13457	3214,74
Komárom-Esztergom	300995	11005	3225,79
Veszprém	341157	14408	4223,28
Győr-Moson-Sopron	473141	20006	4228,34
Vas	254137	11196	4405,49
Zala	267271	10274	3844,04
Baranya	359109	12220	3402,87
Somogy	299950	10010	3337,22
Tolna	267271	7569	2831,96
Borsod-Abaúj-Zemplén	637064	19803	3108,48
Heves	293421	9900	3373,99
Nógrád	188092	8643	4595,09
Hajdú-Bihar	526727	20100	3816,01
Jász-Nagykun-Szolnok	366905	13544	3691,42
Szabolcs-Szatmár-Bereg	549028	17444	3177,25
Bács-Kiskun	502220	16284	3242,4
Békés	330542	11959	3618
Csongrád-Csanád	398332	16227	4073,74

However, the large (urban) municipalities have higher risk in infectious diseases, but they have several advantages during epidemics. First of all, the large municipalities have significant resources. In Hungary, the capital city of Budapest has the 37,03% of the Gross Domestic Product (GDP) and the per capita GDP of Budapest is 206,6% of the national average.[4] The significance in national economics is mirrored by the municipal expenditures. The Capital Municipality of Budapest and its districts have 871.996,8 Mio HUF (approx. 2.603 Mio. EUR), which was 32,47% of the total expenditures of the

Hungarian municipal system. The share of the 9 large cities (including the districts of Budapest) in the total expenditures of the Hungarian municipal system was 45,22% in 2018 based to the data of the Eurostat[5] and the municipal decrees on municipal final accounts (see Figure 1 and Figure 2)

Figure 1: Total expenditures of the Hungarian municipalities and the large municipalities in 2018[6]

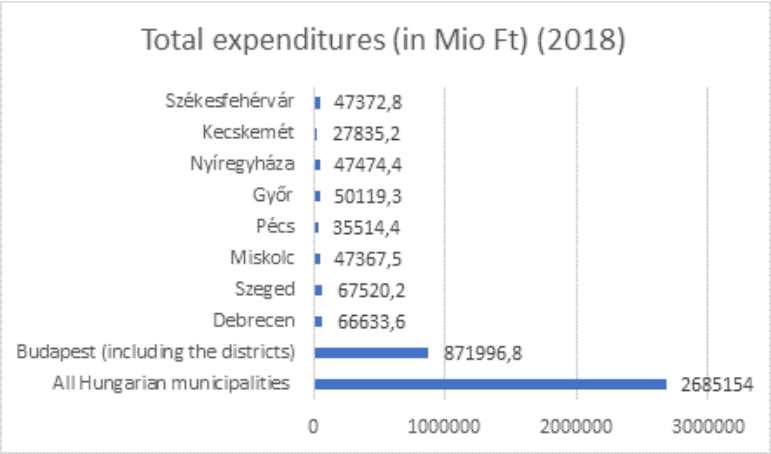
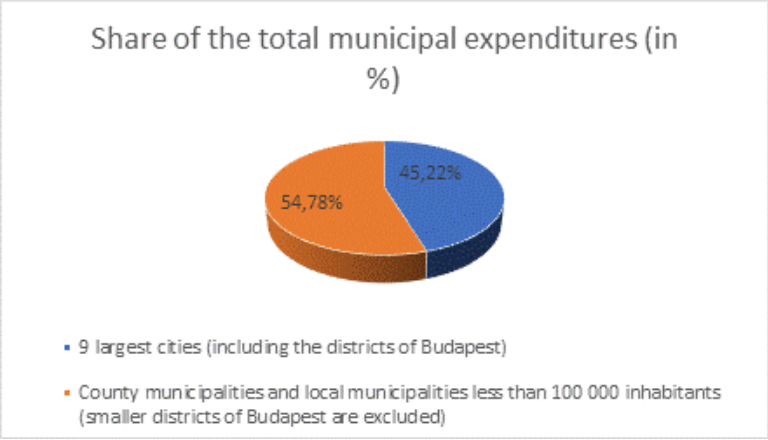


Figure 2: Share of the large municipalities in the total expenditures of the Hungarian municipal system in 2018[7]



The fragmented Hungarian municipal structure has another challenge. However, these large municipalities have significant resources, the suburban areas are administratively divided from these entities. In Hungary Budapest, the capital city has the similar legal status like a county and even the county seat towns and the 5 larger towns (these towns have mainly more than 50 000 inhabitants) as towns with the status of the county are not part of the county governments (Nagy, 2017: 21-22). This administrative division is a great challenge because the suburbanisation is an issue – not only in the surrounding of Budapest, but even in the micro-regions of the towns with more than 100 000 inhabitants (Hardi, 2002: 58-60). However, these urban and suburban areas can be interpreted as unifying service provision units, but the joint and cooperated service provision is difficult because of this division (Hoffman et al., 2016: 458-460). In Hungary metropolitan areas have not been established yet. The municipalities can form inter-municipal associations, but these cooperation have only voluntary nature, and they are not encouraged by the central government. Therefore, the inter-municipal cooperation in urban areas is very limited (Balázs & Hoffman, 2017: 16-18). This problem has been partly solved by the recentralisation of the public services. The majority of the human public services (public education, health care and social care) and in the Budapest area the suburban railway have been nationalised in the last decade in Hungary, but the advantages of the centralisation are limited by the administrative decisions. For example, the administration and management of the nationalised (centralised) educational and social care services is based on the county structure, therefore, the management of these services in the Budapest area has remained a divided one.

5 Centralisation and concentration – in the time of corona

5.1 Concentration of the municipal decision-making – the mayor as a 'dictator' of the municipalities?

A special regime of the municipal decision making has been introduced by the emergency regulations in the Hungarian public law. Because of the extraordinary situation which requires quick answers and decisions, the council-based municipal decision making is suspended by the Act on Disaster Recovery. The paragraph 4 article 46 of the Act CXXVIII of 2011 on Disaster Recovery states, that the competences of the representative body of the municipality is performed by the mayor when the state of danger is declared by the Government of Hungary. There are several exceptions, thus the major decision on the local public service structure cannot be amended and restructured by the mayors. Therefore, the mayors have the local law-making competences, as well: the mayors can pass local decrees, which remain in force after the end of the state of danger. Therefore, the mayor can pass and amend the local budget and they can partly transform the organisation of the municipal administration, as well. The mayors can decide the individual cases. It is not fully clear but based on the legal interpretation of the supervising authorities (the county government offices and the Prime Minister's Office), the competences of the committees of the representative bodies shall be performed by the

mayors, as well (Horvat et al., 2021: 148). The position of the mayor is like the 'dictators' of the Roman Republic: because if the extraordinary situation, the rapid decision making is supported by a personal leadership.

This regulation resulted different solutions in the Hungarian large municipalities. It shall be emphasised, that the mayor has a greater power, but his or her responsibilities are increased by this regulation. For example, in the largest Hungarian municipality, in the Capital Municipality of Budapest a special decision-making regulation has been introduced during the period of the state of danger. The decisions of the Capital Municipality are made by the Mayor of Budapest, but there is a normative instruction issued by the Mayor [No. 6/2020. (13th March) Instruction of the Mayor of Budapest], that before the decision-making the Mayor shall consult the leaders of the political groups (fractions) of the Capital Assembly. After the 1st state of danger, the decrees issued by the Mayor were confirmed by a normative decision of the Capital Assembly [No. 740/2020. (24th June) Assembly Decision]. However, this decision can be interpreted as a political declaration, but it shows, that the Mayor of Budapest tried to share his power and even his responsibility. There are different patterns among the Hungarian large municipalities, as well. For example, in the County Town Győr several unpopular decisions and land planning regulation were passed by the mayor, who fully exercised his emergency power.

5.2 Centralisation and concentration of the municipal tasks

As I have mentioned earlier, centralisation is encouraged by crises, especially the centralisation of the economic (budget) resources. These tendencies can be observed in Hungary, especially in the field of local taxation. The (emergency) Government Decree No. 140/2020 (published on 21st April) stated that the tourism taxation has been suspended for the year 2020. The (emergency) Government Decree 92/2020. (published on 6th April) centralised the revenues of the municipalities from the shared vehicle tax, and later the vehicle tax became a national tax (before the COVID-19, the revenues from vehicle tax were shared between the municipalities and the central government, but the taxation was the responsibility of the municipal offices). The most significant centralisation of the taxation was done by the (emergency) Government Decree No. 639/2020. (published on 22nd December) by which the local business tax rate has been maximalised at 1 percent (instead of the former 2 percent) for the small and medium enterprises which have less than yearly 4 billion HUF (approx. 10,8 M EUR) balance sheet total. It has been a significant intervention into the local autonomy, and especially into the autonomy of the larger municipalities, because the local business tax[8] is one of the most important revenues them (see Table 3).

Table 3: Business tax revenues and property tax revenues

Year	2015	2016	2017
All revenues at regional and local level (in million HUF)	2 745 138	2 240 787	2 437 439
All tax revenues at regional and local level (in million HUF)	770 375	805 446	845 975
Business tax revenue (in billion HUF)	523 125	584 380	638 731
Business tax revenue as % of all local revenues	19,05	26,08	26,20
Business tax revenue as % of tax revenues at local level	67,90	72,55	72,50

Source: Hungarian Central Statistical Office (www.ksh.hu)

Similarly, the government declared that the municipalities could not charge parking fees, by which decision the urban municipalities have been impacted, because parking is a typical urban issue, and these municipalities introduced differentiated parking charge regulations.

As a part of the concentration, a new regulation evolved. A new institution, the special investment area was introduced – originally by the (emergency) Government Decree No. 135/2020. (published on 17th April), later, as a permanent regulation by the Act LIX of 2020. It is stated by the Act LIX of 2020 that the Government of Hungary can establish a special investment area for those job-creating investments whose value is more than 5 billion HUF (approx. 13,5 million EUR). If a special investment area has established, the municipal property of the area and the right to local taxation is transferred to the county government from the 1st tier municipality. The justification of the regulation was to ensure a more balanced revenue system for the environment of these investments, by which the benefits of the investments can be shared with another municipalities. *Prima facie,* it seems a justifiable transformation, but there are different open questions. First of all, the county government did not get service provision competences, therefore the local public services shall be performed by the 1st tier municipalities. The county governments cannot aid the performance of these services, they can give them just development aids. Secondly, this model is not widespread. Till early 2021 only one special investment area has been established, in town Göd based on the Samsung investment. Therefore, this seemingly fair concentration of the municipal tasks seems to be an individual measure, driven by extrajudicial considerations (Balázs & Hoffman, 2020: 7-8).

However, the centralisation trend has been the dominant during the legislation of the last year, different tendencies can be observed, as well. As I have mentioned, the municipalities can be the 'trash cans' of the public administration. This 'trash can' role can be observed in Hungary, as well. During the 1st wave of the pandemic, the municipalities were empowered to pass decrees on the opening hours and shopping time for elderly people for the local markets, and they were empowered to pass strict regulations on local curfew. These measures were restrictive; therefore, they can be

interpreted as unpopular decisions. Similarly, after the 2nd wave of the pandemic, it has been stated that there is a mandatory face masks on the streets and other public spaces if the municipality has more than 10 000 inhabitants. The detailed regulation on these measures shall be passed by the municipality. Therefore, the unpopular measures on public space mask wearing became municipal tasks, as well.

5.3 Facultative municipal tasks as alternative solutions?

The large municipalities which have significant revenues have enough economic power to provide additional services for their citizens. Those large municipalities, which are led by opposition leaders, can use this opportunity to offer and to show alternative solutions for the national policies, therefore the (national) opposition-led municipalities are traditionally active in the field of facultative tasks (Hoffman & Papp, 2019: 47-48). If we look at the legislation of the large Hungarian municipalities, it can be highlighted, that not only the opposition-led municipalities, but even the government-led local governments tried to introduce several voluntary services and benefits related to the health and socio-economic crises caused by the COVID-19. The detailed analysis of these local decrees will be showed by the paper of K. B. Cseh and Associates. It shall be highlighted, that the major fields of these municipal non-mandatory (voluntary) tasks have been the institutionalisation of new social benefits, by which the moderate central benefits could be supplemented (in Hungary, the increase of the social benefits related to the COVI-19 crisis has been very limited, for example, the sum and the period of the unemployment benefit has not been amended). Similarly, several municipalities established special aid for the local small enterprises. Different public services – especially social care and health care services – have been performed (for example mass testing of SARS-Cov-2, aid for flu vaccination and provision of free face masks for the local citizens). The fate of this municipal activity is ambiguous in this year because the coverage of these measures has been the local tax revenues. As I have mentioned, the major tax revenue of the municipalities is the local business tax, which rate has been radically reduced by the latest legislation.

5 Conclusions

The trends and transformations in Hungary fit into the main European trends. The centralisation tendency is a main issue of the COVID-19 pandemic in Hungary and the municipal administration is strongly impacted by it (Siket, 2021: 277-278). However, the municipalities are partly considered, as the ‘trash cans’ of the public administration and they are empowered to pass different unpopular decisions. The opportunities of the municipalities have been significantly reduced by the latest legislation on local taxation. It is now a question, how can they provide additional, non-mandatory services for their local citizens.

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Notes:

[1] Hungary had 3152 municipalities in 2010. Budapest, the capital municipality has more than 1 000 000 inhabitants (circa 1 700 000 inhabitant). 8 municipalities have a population between 100 000 and 1 000 000 inhabitants (practically, the 2nd largest town of Hungary, Debrecen has ca. 200 000 inhabitant). Thus 0,28% of the municipalities have more than 100 000 inhabitants (including Budapest) (Szigeti, 2013: 282-283).
[2] For example, in the Netherlands the main foci of the first wave of the SARS-CoV-2 infection were suburban areas, such Noord Brabant and Limburg provinces (Boterman, 2020: 518).
[3] Source: Hungarian Central Statistical Office (https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_wdsd003b.html) and https://koronavirus.gov.hu/terkepek/fertozottek
[4] Source: KSH
[5] See https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do
[6] Source: Eurostat (https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do) and the municipal decrees on final accounts.
[7] Source: Eurostat (https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do) and the municipal decrees on final accounts.
[8] Similarly, like in antoher V4 countries (Radvan, 2019: 14 and Vartašová, 2021: 135-138).

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LEX LOCALIS

Law-making in the Time of Emergency: The Case of Budapest Metropole and its Districts

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Abstract During the first period of the state of emergency declared because of the COVID-19 pandemic, the local governments of Hungary tried to react to the new challenges raised by worsening social and economic conditions, special law-making regulations, and conflicting interests. This paper (as a part of broader research) examines the first results of a black letter study of the municipal decrees created in the first stage of the pandemic. This sub-research summarizes the municipal decrees of Budapest (the capital of Hungary) and Budapest's districts between 11 March 2020 and 16 June 2020 and examines them on based on their subject and the technicalities of their codification.

Keywords: • local governments • emergency law-making • empirical research • Hungary • public services • state of danger

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1 Introduction

From the spring of 2020 onwards, the coronavirus epidemic has posed new challenges to public administration, especially to local administration worldwide. In Hungary, the law-making competence of local governments is exercised by the mayors during an emergency period, which presented a singularly unusual situation, and evaluating it is the basis of our research. At the time of the writing, the third wave is in full effect and the second declaration of a state of emergency[1] happened, the relevance of these concerns is high as ever.

This paper's purpose is to present the preliminary results of broader research that aims to categorize and examine the municipal law-making in the first period of the state of emergency (between 11 March 2020 and 16 June 2020) related to the COVID-19 pandemic. The research ambition is to create a database of all municipal decrees of the period and use the data to gain qualitative and quantitative insight into this extraordinary legislation effort.

This paper first describes the methodology used during this stage of the research and introduces the general concepts behind the empirical parts of the study. Then a brief presentation of the main themes of local legislation follows: the necessary albeit unpopular local measures against the pandemic and social and economic responses of the local governments. Lastly, general notes on the technical difficulties concerning local law-making and the problems with non-pandemic-related decrees conclude the paper. The focus of our current presentation is the capital of Hungary, Budapest. The first wave of the epidemic affected the capital heavily, so the research tries to give an idea of how the capital's legislation has responded to this.

2 Methodology

In order to acquire the most complex picture regarding municipal law-making in the capital city, the research was carried out by using the toolbar of both the qualitative and the quantitative research methodology, meaning that besides examining the merits and the content of the municipal decrees, analyzing statistics also played a great part in completing the project.

The research aimed to understand the legal coping mechanisms of district municipalities, to identify potential mutual approaches and rule-making patterns among the municipalities. Therefore, the emphasis was put on black letter analysis. This method concentrates on primary sources instead of using mostly academic literature – in the case of the research it meant focusing on municipal decrees. All decrees of all districts and the Municipality of Budapest were examined by different standpoints. The aspects that fell into the scope of the research (among others) were: the subject of the decrees, whether the municipality would have had authorization to regulate certain subjects without the

state of emergency, how the decrees have affected fundamental rights, what followed strategy could be identified in a district..

3 Hypothesis

According to the centralization thesis, a state of emergency usually indicates centralization in decision-making (Hart – Rosenthal – Kouzmin, 1993, 13). During such an emergency, rapidity, effectiveness, and integrated solutions are critical points of giving adequate reactions to the appearing issues through legal means. Although delegating competences from the assembly (the legislative body of the local government) to the mayor contributes to satisfying these requirements, the dysfunctional effects of the centralization may also appear, especially so when the state of emergency lasts for a longer period of time.

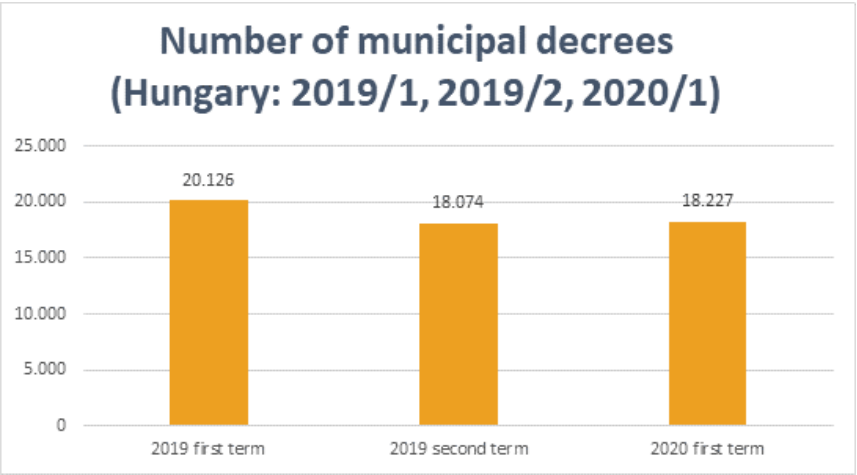
The state of emergency concerning the COVID-19 pandemic put a strain on not only the central government, but the municipalities as well, making them shoulder more legal burdens than they generally do. The special legal order may also give rise to a different concern, called the trashcan-effect (Balázs – Hoffman 2020), meaning that the central government is able to delegate such rule-making tasks to the municipalities, that incorporate making socially, economically, politically unpopular decisions. Within the framework of the research, it was examined whether the division of competences could mean delegation of an excessive amount of responsibility to the municipalities.

In Hungary, both the Municipality of Budapest and the district municipalities are entitled to make municipal decrees. In the capital city it is highly important to give proper reactions to the serious economic and social issues caused by the pandemic, by the virtue that a significant portion of the population lives in the city and a large part of the national economic potential is centred here. So, these municipalities had to be the part of the conversation between the government and the municipalities regarding the upbrought questions of crisis management, as well as to take on a significant role in softening the harms. The research has assumed that the municipalities were active in decree-making in order to protect the wellbeing of the citizens and the operation of the economy. This paper is also focused on the questions of unified crisis management among district municipalities and the municipality of Budapest.

4 Statistics

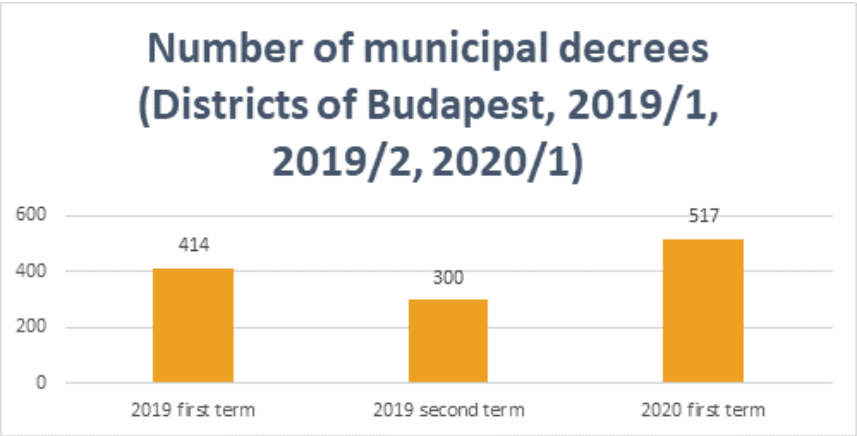
Surprisingly, statistics shows that the state of emergency did not result in excessive decree-making activity in Hungary. The number of decrees decreased by two thousand between the first term of 2019 and the firm term of 2020 (OSAP 1622, 2019). However, it is not a significant number considering the fact that there are roughly three thousand-two hundred municipalities in Hungary (Gazetteer of Hungary 2019).

Figure 1: Number of municipal decrees created by all municipalities



On the other hand, the crisis decision-making patterns of the capital city differ from the previous data. In the first term of 2020 district municipalities had made almost twice as many decrees as they did in the second term of 2019 (OSAP 1622, 2019). That indicates activism in decision-making among the district municipalities. The analysed general data confirmed that the focus should be put on the activity of district municipalities and the municipality of Budapest.

Figure 2: Number of municipal decrees created by the districts of Budapest



5 Centralization

The competence transfer carried out in section 46 of the Act on damage management gave the mayor the authorization to make municipal decrees during state of emergency, setting little to no limitation regarding the exercise of the given competence, for example, in the aspect of the subject and the amount of regulations [subsection (4) of section 46 of Act CXXVIII of 2011]. It is undeniable that the authorization most likely provides the mayors the opportunity to respond quickly to the appearing issues. However, the mayors did react quite differently to the altered legal environment. Some of them started making decrees in advance; others stayed passive and waited two or three weeks before deciding on any matter.

The general authorization described above may cause dysfunctionalities as well, since the decree-making originally falls into the competence of the assembly. The assembly – not the mayor – has the democratic legitimacy to regulate such matters. Lack of legal limits means that the abuse of authority is also possible, making the attitude of a mayor an important factor to form the patterns of crisis management and to be considered during state of emergency.

It is also clear that deciding on certain subjects was a question of necessity rather than will or attitude in most municipal matters. Central government gave the municipalities the freedom to make stricter regulations than the central ones in order to set higher protection levels. In some cases, the heavy choices regarding economy, fundamental rights and social care needed to be shouldered by the municipalities, giving rise to the problem of the trashcan-effect mentioned above.

6 Decree-making in "politically unpopular" matters

The crisis has highlighted a number of aspects of local authorities: municipalities had to react urgently to raise awareness on COVID-19, to reduce the economic impact of the crisis, and to provide care for people in vulnerable situation. The Central Government was not slow in putting the municipalities on the frontline either: on the first day of the state of emergency (11 March 2020), the Government issued a decree making the "supply of persons undergoing an official home quarantine" a legal obligation of the mayor of the competent local government [41/2020. (III. 11.) Government Decree]. On 16 March 2020, the Government required mayors to provide home assistance to persons above the age of 70 should they decide not to leave their home [46/2020. (III.16.) Government Decree].

When analyzing the decrees adopted by the District Mayors and the Mayor of Budapest in comparison with the emergency decrees of the Central Government, the research have focused on three of the most mediatized and controversial matters around the

management of COVID-19: the regulation of local marketplaces the obligatory face mask covering and the lockdowns and closure of public areas.

The Central Government issued a decree on 27 March requiring persons aged 65 or above to do their shopping between 9:00 to 12:00. An interval was set up in which no others, but the elderly could be present in grocery stores. The scope of this decree also extended to local markets, which operate primarily on public premises under the authority of local governments [section 6 of 71/2020. (III. 27.) Government Decree]. On 9 April, local (district) governments were provided the competence – and also the obligation - to pass decrees on the manner in which local markets should operate amid the pandemic [section 6 of 95/2020. (IV. 9.) Government Decree]. The delegation of competence implies the recognition of the local governments' authority contrary to that of the Central Government in the question of safety measures at marketplaces. We have found after the analysis of all municipal decrees adopted in Budapest that Mayors have not aligned the open hours of local markets with that of grocery stores, shops, supermarkets, and pharmacies, an inconvenience which concerned not only the elderly, but also vendors and marketers, shop owners directly in the vicinity of farmers' markets.

Regarding the obligatory face covering, mayors of District VII [12/2020. (IV.17.) Municipal Decree of Distric VII] and District XI [14/2020. (IV. 17.) Municipal Decree of District XI], then the mayor of District IV made the wearing of face masks obligatory at different public premises, on 17 April and on 24 April [14/2020 (IV.21.) Municipal Decree of District IV], respectively. On 23 April, the Mayor of Budapest issued a decree [21/2020. (IV. 23.) Municipal Decree of Budapest] requiring users of Budapest public transport to wear masks at the stops and on the vehicles, also for those travelling by taxi, shopping in malls, shops, and marketplaces. One week later, the Central Government's decree [168/2020. (IV. 20.) Government Decree] made it obligatory to wear face masks for shopping and for accessing public transport services. This shows that on the health front, the adoption of measures such as mandatory face mask covering does not solely originate from the Central Government, on the contrary, opposition-led local government acted first in the name of emergency preparedness. It must also be admitted that there was a sudden shortage in masks by the end of March 2020[2], and even the WHO did not recommend the compulsory wearing of masks at the time (Hungarian Academy of Sciences, 2020).

COVID-19 restrictions on movement were introduced by the Central Government on 27 March 2020 [71/2020. (III. 27.) Government Decree]. Twenty-one different reasons for leaving one's home were adopted as justifiable grounds for being in public. These restrictions were largely unpopular, but the Central Government deemed that further restrictions would need to be issued by the mayors. Hence an extraordinary competence of mayors was introduced by the Central Government. Through the exercise of this *sui generis* competence, decrees were passed on more severe movement restrictions and

closure of public areas (like public parks, playgrounds owned by the municipalities) throughout April, starting on Easter weekend.
While localized lockdowns were still enforced by the National Public Health Center (NNK), entry to different, mainly recreational areas of the Budapest was prohibited pursuant to the decrees of District Mayors which were enforced by the respective local authorities. It must be highlighted, however, that in some cases, the sanctions envisaged for those contravening to the said decrees were likely disproportionate compared to the incurred risk they presented (a phenomenon that has certain human rights implications), and by the nature of closure of public areas only for the weekends, enforcement of these decrees might have been weak, even illusory. Nevertheless, the political responsibility was borne by no other than the mayors who decided to have a recourse to these new, delegated competences, to adopt more severe measures than the restrictions in force nationwide and suffer the possible political and social backlash – the *trashcan effect*. The decentralized risk management (Balázs – Hoffman, 2020, 14-15) and COVID-19 prevention should not necessarily create externalities like the trashcan effect, if multi-level governance was not jeopardized by "institutional clash" (in this respect the criticism of the administrative strategy of Italy see Vese, 2020, 1-28.) and if there was proper funding for those local authorities in the frontline against the pandemic.

7 Overview of the social and economic responses

The Municipality of Budapest and the 23 district governments were quite active in terms of actions to reduce – both the human and economic – the effects of the Coronavirus and the resulting crisis. The mayors of the Capital and the Districts adopted 85 municipal decrees in total dealing with social protection, housing regulation to help citizens in need. Even though most of these decrees were of technical nature (amending procedure, adjusting fees, among others) and only a part of them had substantial content, except for District XXII, all Budapest municipalities took measures to assist citizens in need. Besides the action of the central government, the local level entities also reacted to the crisis appropriately and consumed their resources and stocks to fulfill the ascending for social protection. The measures were ranging from direct cash payments to elderly care and disability care to housing and social meals, with cash benefits and housing being in focus. As for the economy and businesses, the local governments had a less significant role, also the central government was more active and vocal in these issues. The district mayors still issued 13 regulations to assist local economic actors (especially SMEs). These measures focused on reducing or delaying either rent payments for publicly owned real estates or public land use fee payments. Since municipalities usually have a more considerable impact on social protection and public housing, the research focuses on these topics.

The most direct way of social protection provision is giving cash benefits for the persons in need.

Figure 3: Statistics of municipal decrees concerning cash benefits

District	1st	2nd	3rd	4th	6th	7th	8th	9th	11th	12nd	14th	16th	18th	19th	23rd
Adoption of decree	22nd April	29th April	9th April	31st March	16th April	25th March	31st March	7th April	15th April	16th April	26th May	6th April	30th April	29th April	20th April
Amount of contribution	407€ max.	242 €	Fund	Fund	285 €	162€-203€	143€ max.	Fund	130 € - 243 €	Up to 100% of the rent costs	430€ max.	163 €	Fund	7 € - 17 €	163 €

Altogether 15 out of 23 districts provided some type of financial support to unemployed persons - those who lost their jobs due to the pandemic - with a 1–2-week reaction time to the central government's steps. (The District IX adopted not one but two types of general cash assistance. [9/2020. (III.31.) and 9/2020. (III.31.) Municipal Decree of District IX]) It is an essential aspect that some districts even changed the eligibility criteria for cash benefits, so that working class and middle class households in need would not be disqualified from these services. The amounts and acceptance dates of the decrees are encapsulated in the following table:

We could find cash payments based on elderly care or disability care as well. Furthermore, the Districts not directly focusing on cash benefits nonetheless did not disregard the social needs but instead chose other forms of financial help (letting go of certain taxes, fines,) or on benefits in kind (such as food, gas, electricity, internet) or even donations could have been founded.

Housing during the pandemic, especially paying rent and utility fees, is the most significant burden for many households. While local governments have limited power regarding housing, they enjoy quite a freedom in terms of municipal housing provision. In total, 16 districts addressed the issue: they either allowed delayed payment for the tenants or buyers of municipal housing or provided cash assistance for rents or utility fees. District VIII even introduced a new term, "housing emergency" and adopted regulation about providing extraordinary municipal housing for residents in need [26/2020. (V.28.) Municipal Decree of District VIII].

While cash benefits and favorable housing provision were the most usual types of assistance given during the period, the research were also looking for atypical solutions within the social protection measures; whether there have been district municipalities that did something extraordinary, worth mentioning.

As an atypical solution, 4 of the districts made a special social fund to cover the amount needed for social assistance. Such funds could cover all the applicants, although the

amount distributed was lower than in those who did an apply-get schematic financing of the socials in need. Other examples were the regulation by District VI that adopted a call for application for students needing IT equipment for distance learning [21/2020. (IV.28.) Municipal Decree of District VI], or District VII, which offered to clear social security debts in order to keep citizens in the healthcare system [13/2020. (IV.17.) Municipal Decree of District VII].

8 A primer to emergency municipal law-making

In addition to the research on the subject of the emergency municipal decrees. The difficulties surrounding municipal legislation should also be inquired.

Within the framework of the general legal order, acting within their functions, local governments shall adopt municipal decrees with local territorial effect to regulate local social relations not regulated by an Act or on the basis of authorisation by an Act [see Article 32 section (2) of the Fundamental Law]. The functions and powers of the local government were exercised by the local representative body (see section 41 of the Act CLXXXIX of 2011 on Local Governments in Hungary).

As a result of the restrictions, the sittings of the local representative body were also cancelled and the necessary powers were transferred to the mayor. The extraordinary measures and rules which concerns the state of emergency are laid down in the Act CXXVIII of 2011 on disaster management and amending certain related Acts. Based on subsection (4) of section 46 of this Act, in the period of the state of emergency the functions and powers of the local representative bodies were exercised by the mayors. However, the mayor may not take a position on the reorganization, termination, supply or service districts of a municipal institution if the service also affects the municipality. Local governments have obviously used all the means provided by the acts, but in addition to the acts there was a noticeable lack of instruments to ensure consistent codification.

9 Law-making disturbances and non-essential municipal decrees

As a result of the unexpected situation, local governments have encountered several difficulties throughout the legislation but have tried to correct them. At the beginning of most municipal decrees, the local governments indicated the authorization provisions on which the decrees were issued. However, even at this point, there were differences.

In some cases, only the terminology was unique, or the mentioned reference was given at the end of the decree in the form of an explanation. Moreover, some local governments have not indicated the extraordinary nature of the decrees at all. This has mostly proved to be a codification error but, there have also been cases where the local representative body has held its sittings regardless of the restrictions. In order to avoid public annulment,

the mayor later affirmed the decrees issued by the local representative body during the state of emergency.[3] The extraordinary municipal decrees were published separately by certain municipalities (on a separate website, or in a dedicated folder), making them more challenging to access. Furthermore, the research showed that some decrees had been used over and over again as templates. Some decrees had to be amended directly after the enactment.

In addition to the difficulties associated with the form of legislation, the local governments also had difficulties finding the adequate subjects of some decrees. The state of emergency made it impossible to hold actual sittings, albeit this obstacle did not mean that the mayors had not got the possibility to involve the representatives into the legislation. This type of consultation was not a common practice. What is more, some local governments – mayors – interpreted the lack of actual sittings as a good reason to reduce the representatives' remuneration. The management of the state of emergency has appeared less on the level of decrees in some cases, while other local governments have issued decrees even on subjects which were not related to the state of emergency. For instance, there were decrees related to animal keeping, establishment of architectural boards, or to the use of public roads (District V). More local governments have amended their decrees on various prizes or even the parameters of the flag and the coat of arms of the district (as in the case of District VI and XIX).

10 Conclusion and further research

The of emergency forced the local governments to adapt to a tense economic, social, and legal situation. The local law-making efforts were plagued by uncertainty in higher regulation and local practice, pressure of necessity to make unpopular decisions and unfavourable relations of the local governments with central authority. Nonetheless, the local governments of the capital tried to cope with the challenges of the state of emergency and tried to reach a certain standard of local law-making and substantial pandemic relief during the period discussed in the paper. Further research will try to widen the scope to all Hungarian municipality and aims to examine deeper the local law-making during the first period of the COVID-19 pandemic.

Acknowledgments

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Notes:

[1] The Fundamental Law of Hungary institutes several types of special legal order. Certain sources uses the term ”state of danger” to describe the legal order in effect if a major catastrophe or other natural cause makes such declaration necessary. In this paper, the term “state of emergency” is used to the describe the special legal order declared in connection to the COVID-19 pandemic.

[2] Said during session of Parliament by PM Viktor Orbán. See for example: https://444.hu/2020/03/30/orban-lesznek-orvosaink-akik-megbetegednek-de-szerintem-nem-halnak-majd-meg (11 March 2021)

[3] According to the data accessible via internet: see 8/2020. (III. 20.), 9/2020. (III. 23.), 10/2020. (III. 23.), 11/2020. (III. 23.) and 13/2020. (IV. 1.) Municipal Decree of District XVI.

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Fundamental Law of Hungary.

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41/2020. (III. 11.) Government Decree on the measures to be taken during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens.

46/2020. (III. 16.) Government Decree on the measures to be taken during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens.

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95/2020. (IV. 9.) Government Decree on extending the restriction of movement.

168/2020. (IV. 20.) Government Decree on protection measures.

14/2020. (IV. 17.) Municipal Decree of District XI on the obligation to wear a face mask in the field of markets.

12/2020. (IV. 17.) Municipal Decree of District VII on amending the basic rules of community coexistence.
14/2020 (IV. 21.) Municipal Decree of District IV on on the rules of opening and visiting of Újpest Market and Fair Hall by persons over 65 years of age.
21/2020. (IV. 23.) Municipal Decree of Budapest on certain measures to control the spread of the new type of coronavirus.
9/2020. (III. 31.) Municipal Decree of District IX on the pandemic annuity to be established at the time of the emergency declared by the Government of Hungary.
10/2020. (III. 31.) Municipal Decree of District IX on amending the regulation of benefits and allowances in cash and in kind.
26/2020. (V. 28.) Municipal Decree of District VIII on amending the regulation of the conditions of renting the flats owned by the Budapest Józsefváros Municipality and the amount of the rent.
21/2020. (IV. 28.) Municipal Decree of District VI on emergency student support.
13/2020. (IV.17.) Municipal Decree of District VII on amending the local regulation of the use of social benefits and social services and child welfare benefits in cash, in kind and personal care.

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