

PUBLIC LAW

Local Governments in the System of Separation of Powers. The Executive Function in the Field of Local Public Affairs*

*Judit Siket PhD, senior lecturer,
University of Szeged, Faculty of Law and Political Sciences,
Public Administrative Law Department, Hungary*

Abstract

The paper is focused on the principle of separation of powers, especially examined the role of local self-governments in the system of division of powers. It gives a brief description on the dogmatic approach of the principle of powers based on the concept of Montesquieu, and Benjamin Constant who emphasised the significance of local power. The study demonstrates the effectiveness of principle of separation of powers and the constitutional status of local self-governments in the Hungarian Fundamental Law. According to the Fundamental Law, the essence of local governments is to manage public affairs and to exercise public authority this is the reason why local governments exist. The leading conception has changed, rejected the collective fundamental rights approach. A separate section aims to describe the executive power of local self-governments, in particular the functionality of local self-governments. A comparative part illustrates changes of local task-system after the adoption of New Local-Government Act in 2011, including both municipal and county level responsibilities, the strong centralization process in the field of local governance. In conclusion, local self-governments' role significantly decreased in the field of providing public services and in exercising of local public powers, functionality of local self-governments was substantially narrowed.

Keywords: *separation of power, local self-governments, centralization. JEL Classification: K23.*

INTRODUCTION

The demand and effective implementation of the principle of separation of powers is an essential requirement in the operation of constitutional legal state.

* This paper has been presented at the 5th Annual International Conference on Law and Administrative Justice from an Interdisciplinary Perspective, 23rd-25th November 2018, Bucharest, Romania.

Improvement related to content of the principle of separation of powers leaves room for diverse interpretations for scholars in different stages of state development process. Beliefs related to the principle of power reflect differing approaches nowadays, as well.

The paper focuses on the functional interpretation of vertical separation of power, analysis the role of local self-governments implementation of local administration tasks and responsibilities, furthermore local public service delivery, the scope of local public affairs, management methods of local public administration. State philosophical perception is discussed only limited scope necessary to highlight local self-governments' status in the separation of powers.

For investigating the status of local and territorial self-governments in the system of separation of powers the legal essay can provide a kind of basis, because the separation of powers, as a value and idea of institutional control or limitation is based on normativity (Sári, 1995.). First, the positive legal approach of local-territorial self-governments' tasks and responsibilities, thereby, definition of their role in the system of separation of powers leads to the designation of the role of local self-government and the presentation of major changes which have recently occurred.

Studying the practice of the separation of powers doctrine supplementary to the deliberation of the territorial, local self-governments' responsibilities it is necessary to discover the guarantees ensuring the autonomy and independence in the exercising of their competences. The limits of the exercising competences must comply with the requirement of legality. The democratic legal state ensures the application of the effective judicial protection both in the process of local self-governments' legislation and the implementation of public administrative functions, as well.

Furthermore, the possible demonstration of the effectiveness of vertical separation of powers might be considered another approach, which is based on the fundamental right conception. The right to local self-government supposes the local level interpretation of the principle of sovereignty; the collective right perception is discussed in a study together with the constitutional level changes of the rules.

The article focuses the vertical interpretation of the principle of separation of powers, it analyses the position of Hungarian local self-governments in the field of regulatory powers.

CERTAIN ASPECTS OF TERRITORIAL SEPARATION OF POWERS

The emergence of separation of powers doctrine corresponded to the ideas of the Enlightenment (Varga Zs., 2015.). Originally it was intended against the absolute monarchy, aimed the control and restriction of the empire, and it is

broadly based on the concept of *rule of law* (Sári, 1995.) In the classical concepts of the principle of separation of powers, established by Locke and Montesquieu, the territorial aspect has not been respected. The privileges of the local power connected to the Feudal system, in the age of Enlightenment the centralised state organization and operation was idealized.

The principle of separation of power could be interpreted on one hand horizontal way and on the other hand as a kind of vertical division of power. Horizontal type of separation of power means the classical form: the legislative power, executive and judicial powers by Montesquieu. The original theory of Montesquieu on the doctrine of separation of power based on the following principles, (1) the power is subordinated to law, (2) state organizations and state functions are defined and distinguished as legislation, executive power, judiciary, (3) differentiation of organizations and staffs of powers. (Sári, 1995.) In the original theory of Montesquieu, the vertical type of separation of power did not appear at all. For the first time local self-governments were considered autonomous powers as a municipal, local power in works of Benjamin Constant. Constant regarded municipals as the limitation of central public administration.

1. Dogmatic approach of territorial separation of power

The territorial dimension was identified as local, municipal power by Benjamin Constant, in the 19th century. According to his view '[T]he supreme authority is all citizens' (Constant, 1997, p. 77), nevertheless it is not unrestricted, and what is more, 'it must be limited by appropriate restrictions, in order to avoid the despotism' (Constant 1997, p. 85). Constant distinguished the royalty, the executive power, the persistent representative power, the power of representation of the public opinion, and judicial power in political systems (Constant, 1997.). Besides, Constant differentiated the three branches of power, analysing the interrelation between constitutional and absolute monarchies, recognised as independent branches of power the presidential power and the municipal, local power, this latter may be considered as the constraint of the central public administration. The municipal, local branch was separated on the presumption of its own local interests and residents. Constant originated the source of municipal, local power from the emotional and the volitional unity of the locally residents (Constant, 1997.). According to his view, the recognition of the local, municipal branch, the local power determined the constraints of the central power's potential activity, 'until now the local authority was considered as a dependent branch of the executive power: on the contrary, never has to obstruct it, but does not have to depend on it also' (Constant, 1862 p. 134.).

The doctrine of separation of powers is generally effective in the state organization, if the organs might exercise control on activities of each other. The

control mechanism should be general, and has a kind of counterbalance role, as well (Veress, n.d., Csink, 2014.). On the basis of the effectiveness of separation of powers doctrine, in modern states different levels might be distinguished by the attitude of Petrétei: (1) horizontal, (2) temporal, (3) vertical, (4) constitutional, (5) decisive and (6) social level (Petrétei, 2009.).

Vertical separation of powers in the widest sense is the relationship between those organs, when an organization or body constrains or counterbalances the function of another organ or body (e.g. state organs supervise the local governments' decisions). In the strict sense the vertical separation of powers might operate if the organs, established on territorial basis have the same legitimacy. However, in this latter case the people's sovereignty is the key consideration question, whether local sovereignty of the people is effective or not.

Analysing types of vertical separation of powers might be a dual interpretation, on the one hand the federal state organization, and furthermore, on the other hand the system of local, territorial level self-government public administration bodies (Csink, 2014., Sári, 1995., Szaniszló, 2018., Takács, 1998.). In case of vertical separation of powers organizations at different levels are exercising public power, providing counterbalance against the central power, entirely. (Sári, 1995., Szaniszló, 2018.) The vertical form of separation of powers might be interpreted as otherwise like (1) the right to local self-government, including the division of labour at central, territorial and local levels (territorial decentralization), (2) the functional decentralization, (3) the federal and (4) international, supranational separation of powers (Petrétei 2009 pp. 169-170).

Since the principle of separation of powers and the principle of people's sovereignty are closely linked, the source of sovereignty could be contested in case of local self-governments.

To explore the position of local self-governments in the system of powers the normative, legal analysis of local self-governments' competencies could serve as a basis of the search. This type of survey might lead to the determination of the role of local self-governments in the state governing system. It might demonstrate the special status of local self-governments, in principle might be accepted, that local self-governments are not autonomous independent branches, but rather counter balancers, since these territorial and local organizations play a major role as executive and regulatory bodies in the field of local public affairs.

The principle of separation of powers could be interpreted from another view also, from functional and from institutional approaches. The institutional approach is based on the principle of one power is only a single institution. On the contrary, the functional approach is based on the competency of the institutions; this latter interpretation can be useful for the analysis of local self-governments functions (Varga Zs., 2015.).

The functional interpretation of the principle of separation of powers deserves special attention in the analysing process. On the basis of the classical threefold power (legislative, executive powers and judicial) the role of local self-governments no longer can be considered referring to the institutional interpretation (the only single power – one organization) in the field of legislation and implementation (Varga Zs., 2015.).

The local self-governance is not just a fundamental right, but a kind of sovereignty also. As it was mentioned, that the source and existence, furthermore the interpretation of local sovereignty is a controversial matter. However, it might be concluded, that local self-governance is the achievement of the self-restraint of the sovereign (Cservák, 2002.).

In addition, it is also essential to explore the elements of guarantee which ensure the independence, autonomy of local self-governments in the exercise of powers. The limits of exercising powers shall meet with the requirement of legality; the democratic constitutional state must ensure the enforcement of right protection also in the course of executive-administrative functions.

2. Territorial separation of powers from the historical aspect in Hungary

Different forms of territorial separation of power were established during the historical development of the doctrine. Territorial units with autonomy – like nobiliary counties, towns with special rights granted by the king, cities and other territorial-local units like districts, settlements – had huge role in regulation of local social relations, in management of local public affairs, therefore they were to be regarded parties of the system of separation of powers. Especially, the regulative power and executive role of nobiliary counties are worth enshrining; hence they were empowered for local legislation and the implementation of central regulation, exercising the right to *vis inertiae*.

The majority of the listed territorial, local administrative units performed besides the executive and legislative tasks the judicial function in their own territory as well. These territorial units were entitled to exercise the right to send legate to the Parliament, which considered a form of participation in the system of separation of power. Legates had binding mandates; thereby the territorial autonomous units had the right to propose. Nevertheless legates were not delegated directly by the residents of the territorial units, but they were delegated in the age of the feudal estates by the feudal territorial assemblies and the councils of the certain cities. The petition right of the nobiliary counties belonged also to the territorial separation of power directed to the king, the central government and to the Parliament, containing such kind of appoint of view or petition and protestation (Kállay, 1998.).

The nobiliary counties were the most important protectors of the Hungarian historical Constitution; their political role was a vital question at the end of the 19th century. The legal status of the territorial and local self-governments, furthermore the establishment of the relationship between the Government and territorial and local self-governments was arranged at the beginning of 1870s and in 1886, the municipal law¹ determined for a long time the legal status and the role in the separation of powers' system of territorial and local self-governments. Local self-governments were important organs of the transmission of state public administration responsibilities beyond the exercising right to local self-government. The municipal law established a centralized public administrative system and the latter regulation strengthened further these tendencies.

The basic features of local self-government system created by the end of 19th century barely changed until the middle of the 20th century. After then the soviet-type regime eliminated the local self-government system and the separation of powers doctrine had no meaning according to the self-government system.

As result of the regime changes, the collapse of the soviet-type system, the local and territorial self-government have also been given a more important role in the administration of local public affairs, in provision of public services furthermore in performing as local actors of certain state responsibilities. According to the view of Soós and Kákai 'Hungary ... has failed to facilitate the so-called devolutionary processes, which would have granted considerable right, specified in the constitution, to subnational levels within the unitary structure' (Soós and Kákai, 2011, p. 532).

THE STATE ORGANIZATION GUARANTEES OF THE SEPARATION OF POWERS

In this chapter the provision of the Hungarian Fundamental Law is demonstrated on the doctrine of separation of powers on the one hand, and on the other hand it deals with the interpretation of the doctrine briefly, discusses the content of the principle of separation of powers in the light of the decisions of Hungarian Constitutional Court.

According to the Fundamental Law of Hungary the State shall function based on the principle of separation of powers.² The source of public authority shall be the people.³ Sovereignty of the people goes alongside the separation of powers. The practical effectiveness of the doctrine is ensured by the precise and

¹ Act XLII of 1870 on the Arrangement of Public Municipal Authorities, Act XVIII. of 1871 on the Arrangement of Municipalities, Act XXI of 1886 on Public Municipal Authorities, Act XXII of 1886 on Municipalities.

² Hungarian Fundamental Law Art. C, par. (1).

³ Hungarian Fundamental Law Art. B, par. (3).

exclusive definition of competences of state bodies (Varga Zs., 2013.). The former Constitution of Hungary⁴ did not contain explicitly the doctrine of separation of powers, but now, the Fundamental Law of Hungary *expressis verbis* includes the provision on the doctrine of separation of powers.

Effectiveness of the doctrine was at the centre in the case law of the Hungarian Constitutional Court several times, generally in the sense of a main part of the principle of rule of law. The Constitutional Court, in an early decision after the transition, interpreted the doctrine of the separation of power as a fundamental requirement of the effectiveness of the principle of rule of law. The Constitutional Court determined, that 'one of the fundamental demand of the effectiveness of rule of law is that organs entitled for exercising public power, operates within the organizational framework and according to the procedural defined by law, within certain limits which must be available for the citizens and ruled predictable way'.⁵ The effectiveness of the doctrine in the operation of state organizations was evaluated by the Constitutional Court as it follows: 'Constitutional provisions, ruling on the responsibilities and competences of state organs (branches of powers), legislation concern relationships among the state organs (organizational and procedural guarantees), furthermore constitutional rules of conflict of interests evidenced the effectiveness.'⁶

Analyzing the decisions of the Hungarian Constitutional Court, as a conclusion might be drawn, that interpreting the doctrine of separation of powers, the Court should adopt the classical, horizontal form of it, and the functional interpretation is mandatory, because the constitutional organizations are independent. (Varga Zs., 2013.). It should be added, that the Constitutional Court recognised as an independent power of the President of the Republic of Hungary, because the President is an independent, outside person from the aspect of branches of powers.⁷ By the attitude of Varga Zs. the interpretation of Constant is applied (Varga Zs., 2015.).

CONSTITUTIONAL STATUS OF LOCAL SELF-GOVERNMENTS

As it was analysed earlier, beyond the classical horizontal form of the doctrine of separation of powers, as a result of the expansion of administrative function, the vertical form of separation of powers also have been given high priority. It might be interpreted in unitary states, like in Hungary as a form of territorial decentralization, operation of territorial, local self-governments. In circumstances where vertical form of separation of powers is functioning,

⁴ Act XX of 1949 on the Constitution of Hungarian Republic.

⁵ 56/1991 (11.08.) CC ABH 1991. pp. 454-456.

⁶ 2/2002(01.25.) CC ABH 2002. pp. 50-51.

⁷ 48/1991 (09.26) CC ABH 1991. pp. 217-246.

organizations at different levels are exercising the public power, as opposite the central power, counterbalancing it (Csink, 2014.). The vertical division of government power is simply a historically proven, but at least accepted public interest (Balázs, 2012.).

Noteworthy one of the positions on the subject, pursuant to which the independent and entire state function might not be assigned to the territorial form of separation of powers, and therefore the local self-governments could not be set against none of the classical horizontal forms, and cannot form a counterbalance neither (Takács, 1993, 1998.). This point of view is open to doubt in two respects. On one hand the scope of local public affairs is not considered as dominant factor or local power, furthermore the performing of local public affairs should not qualify as indifferent activity from the aspect of the state, especially in decentralized state system. The main content of the local public affair is the local legislation and administration, provision of local public services, economic development, and might be the direction of local political relations. (Pálné 2008 p. 50.) These components have considerable significance for the state. On the other hand the local sovereignty is a problematic issue; even so the source of sovereignty is derived from the people. The unity of the sovereignty does not exclude either entirely the local interpretation, because the effectiveness of decentralization also supposes the sovereignty at local level, at least indirectly, derived from the state.

Vertical separation of power is an essential issue regarding the connection between local self-governments and the State in Hungary, especially from view of counterbalance role of local self-governments. The real question therefore is, whether local authorities could play such a balancing role, in the changed constitutional and legal environment, after 2012. Various points of views are known on the effectiveness of the vertical separation of powers. According to one aspect, the principle of separation of power does apply to some extent within the local self-governments as well. (Varga Zs., 2013.). Another approach would stress that local self-governments are not based on people's sovereignty and therefore vertical separation of powers is not effective (Csink, 2014.). In line with this view the effectiveness of the doctrine of separation of powers depends on the source of sovereignty.

According to the provision of former Local Governments Act,⁸ local government implements the principle of the sovereignty of the people at local level. Local governments shall enforce the principle of the sovereignty of the people and, in public affairs, shall express and enforce the public will in a manner both democratic and open.⁹ Local self-governments possessed

⁸ Act LXV of 1990 on Local Self-Governments.

⁹ Act LXV of 1990 on Local Governments art. 2. par. (1).

sovereignty in political and legal sense also (Petrétei, 2009.). The new Local Government Act,¹⁰ adopted in 2011 by the Hungarian Parliament, does not contain reference to the principle of sovereignty, at all.

According to the Hungarian Fundamental Law, the essence of local self-governments is to manage public affairs and to exercise public authority,¹¹ since this is the reason why local governments shall exist.

The leading conception of the Hungarian Fundamental Law is different compared with the former Constitution. The Fundamental Law focuses on the management of local public affairs and on the exercise of local public powers, instead of fundamental collective rights approach and of the legal protection against the Government and the central public administration. Practically, local public affairs mean the mandatory duties and powers of local governments; the Fundamental Law does not regulate these public powers. In accordance with the new local self-government regulation it might be generally considered that the role of local self-government in the field of local public services and the exercising of local public power, considerably decreased.

EXECUTIVE COMPETENCE OF LOCAL SELF-GOVERNMENTS IN GENERAL

As a result of the enhancement of public tasks, with regard to development of welfare states, local self-governments' public responsibilities widened, as well. Very significant improvements have been made to the local self-governments system in Europe over the last decades, exercising their public power functions were affected by the abovementioned horizontal and vertical arrangements of powers. (Soós, 1998 p. 65) The European integration and the globalization have a strong impact on the function and democratic legitimacy of local self-governments. Several attempts have been made to achieve the economies of scale, these measurements turned on one hand territorial reforms (Finland, Denmark, Greek), on the other hand functional changes. An example of these reforms is the rationalization of service provision, especially in the field of education, health care and social care. The outsourcing method of local public services has not become widespread; mainly the Anglo-Saxon states used this opportunity to achieve cost savings. The system of tasks performed by local governments plays a significant role in the operation of individual states.

Different systematization might be formed in the field of local self-governments tasks. As is widely known, clearly distinguishable the monist and the dualistic system, in the previous system the tasks performed by local self-

¹⁰ Act CLXXXIX of 2011 on Local Self-Governments of Hungary.

¹¹ Hungarian Fundamental Law art. 34. par. (1).

governments are not distinguished on the basis of local public affairs and the state-delegated competences. On the contrary, in the dualistic system the local public affairs and the state-delegated competences are clearly separated. In this latter system, applied in Hungary also, in the field of performing local public tasks, the state influence is limited, according to the provisions of the European Charter of Local Self-Government only the legal supervision emergence. Another aspect, what might be used to the systematization of local self-government tasks is the mandatory character of the performing. On this basis there might be differentiated mandatory and voluntary tasks as well; this system is applied in continental states. These types of mandatory tasks are determined by the state law, the framework and requirements of performing these tasks are determined by legislation. The freedom of choice of local self-governments is wide ranged in the method of organizing and managing the local public issues. The mandatory tasks of local self-governments may vary according to different levels of local self-governments. (Hoffman 2011) In Hungary the local self-government act contains provisions on differentiated competence delegation as well. The basis of the delegation is the number of population of municipalities, the administrative area of municipality and economic performance.¹² The delegated state issues generally are not local public affairs; therefore the scope for intervention is broader for the state and state organization. In these matters the state organization might exercise not only legal, but professional supervision. It should be enshrined, that not only the classical local self-governments task, but the mayors', or chief executives' delegated responsibilities might be scrutinized as well. These organs of local self-governments deserve attention from the aspect of separation of powers within the local self-governments.

The separation of powers doctrine might be applied within the local self-governments structure, according to view of Varga Zs., in 'some extent'. (Varga Zs., 2013 p. 4) This part of the article briefly outlines the inner structure of the Hungarian local self-governments and tries to demonstrate whether the separation of powers doctrine has effectiveness.

Despite of the fact that the Hungarian local self-government system established at two levels, municipal and territorial level, there is no hierarchical relationship, these local governments are legally equal. In the classical sense, the separation of powers in this relationship, between local self-governments, shall not be interpreted.

The main organizations of the local self-governments are the representative body, the mayor and the chief executive. Representative body is entitled to exercise responsibilities of the local self-government, the mandatory tasks of local self-government are performed by the representative body, and only

¹² Act CLXXXIX of 2011 on Local Self-Governments of Hungary art. 11. par (2).

exceptionally the mayor can exercise these competences. The mayor and the chief executive are entitled by legislation to exercise state administrative tasks, in this case there is no hierarchical relationship between the representative bodies and the competent authorities like the mayor or chief executive. In these competences the mayor and the chief executive exercise tasks on their own discretion, may not receive any instructions from the representative body. Where the mayor or the chief executive shall perform the functions assigned to them by the regulation, the doctrine of separation of powers is effective within the organs of local self-government.

As regards to the separation of powers, the administrative, legal supervision system is essential. The Hungarian local self-government supervision system has special characteristic features; however administrative supervision over the decisions became stricter after the adoption of new local self-government act, although remained posterior control mechanism. Legal toolkit of administrative supervision has become more diverse; however it does not cover powerful intervention tools in order to interfere the prevailing of unlawful legislation and provisions. The most powerful monitoring tool is unique in Europe: the replacement of local self-government decision under an appropriate judicial control over its enforcement.

THE EXECUTIVE TASK-SYSTEM BEFORE AND AFTER 2011 IN HUNGARY

The purpose of this part of the article is to highlight the main phenomena and key trends which determined the transformation process of responsibilities and functions of Hungarian local self-government system in last few years. First of all, it is necessary to lay down that Hungarian law system belongs to the continental law, from this fact, two conclusions can be drawn: the responsibilities of local self-governments based on general competence concept, and the dual system of local governments' tasks is prevailing.

According to the Hungarian Fundamental Law, there are two means of administering local public affairs: local governments can issue decrees and make resolutions.¹³ They make their decisions independently, without previous or posterior assent of any other organisation.

The representative body of local self-government has relatively huge local competence in the implementation of local public affairs; nevertheless, the New Local Government Act has limited this type of autonomy. It must be highlighted that the functionality of local self-governments' responsibilities was basically

¹³ Hungarian Fundamental Law art. 32. par. (1), Act CLXXXIX of 2011 on the Local Self-Government of Hungary art. 48. par. (1)

changed provided by the new local governmental regulation. The expansion of the state in the provision of local public services had a negative effect on local public affairs and reduced the possibilities for regulation local social relations. A crucial element of municipal autonomy is what tasks are performed through the local self-government system.

One of the highlighted elements of local self-government autonomy is the scope of implementation of local public tasks. The approach of local responsibilities might be, that the local self-government tasks are the subject of constitutionally protected independence, nevertheless, local self-governments have autonomy as to manage local public affairs. The elements of autonomy are worth to analyse to determine those limits which influence the competences of municipalities in the field of providing local public services, or in the implementation process of public affairs.

Due to the statutory legislation, functionality of local self-governments is defined by the financial resources that are available for implementation of public tasks. So, there is close connection between functionality and financial, economic autonomy of municipalities. The analysis of available financial resources is not subject of today's presentation, but it should be highlighted, that insufficient sources, lack of funding could lead to socialization of local public tasks, shrinking of the content of local public affairs.

Hungarian municipalities used to be local governments with a wide range of responsibilities in public service provision, but now they are not. Originally municipalities were given responsibility for quite a lot of services in 1990. Then a radical turn started in 2010–2011 which resulted not only structural changes, but allocation of functions, as well. The system has become centralised. The national government started to take ownership of utility companies, at the same time provision of human services became administered by the state through newly established nationwide institutions.

The right to organise bodies for the implementation of local public services has been strongly constrained by the legislator. The central legislation reduced the decision-making power of local government representative bodies, in the field of local public services and managing public affairs, typically administrative action, it means that regulation determine the content of local decisions.

All along, performing of public tasks characterized by strict regulation, the provision of service requirements, strengthening the control and from the side of local self-governments there is a decreasing margin for local discretion.

The process of centralization is summarized in the table below across several illustrative examples in the case of municipalities.

Municipalities' competences		
<i>Until 2012</i>	<i>After 2012</i>	<i>Direction of changes</i>
wastewater treatment and water supply	wastewater treatment and water supply	the form defined by law
waste management, waste disposal	waste management, waste disposal	fixing and collecting of charges - State
public hygiene and social welfare	public hygiene and basic level social welfare	narrowed - State
primary education	only nursery school	narrowed - State
local development	local development	unchanged
fire protection	-	State
minority rights protection	minority rights protection	unchanged

Figure 1. Changes of the task of municipalities (edited by the author)

Outstanding changes might be observed in the case of the county self-governments' responsibilities, as illustrated in the following table.

Counties competences		
<i>Until 2012</i>	<i>After 2012</i>	<i>Direction of changes</i>
health and social institutional services	-	State
specialised education services	-	State
territorial development	territorial development	centralized financial sources
spatial planning	spatial planning	unchanged
environmental protection	-	municipalities and State
promotion of tourism	-	State

Figure 2. Changes of the task of municipalities (edited by the author)

Public education, except for pre-school education is excluded from local public affairs.¹⁴ Changes were occurred in the field of cultural services also: the maintenance of museums was delegated from the county governments to settlements. The same procedure was in the case of public libraries.¹⁵ The

¹⁴ Act CXC of 2011 on National Education.

¹⁵ Act CXL of 1997 on Museums, Services of Public Libraries and Public Education.

archives were nationalized.¹⁶ The social and health care institutions were socialized,¹⁷ except for primary care.

The municipal services are obligatory tasks of the local governments, but the statutory legislation may regulate the requirement of majority state or local government property in corporations, which provide certain public services.¹⁸ This is the situation e.g. in the field of healthy drinking water service, water drainage or waste disposal. There is another important change: local government does not have empowerment to fix the charges of special services (e.g. waste disposal).¹⁹

In addition, approaching the executive power from another view, it is noteworthy to mention the performing of state administrative function as well. One of the most important bodies at local territorial level performed state administration tasks was the notary, as a leader of mayor's office. From 1st of January 2013 the district offices were established,²⁰ and the local state administration tasks were transferred to these offices, instead of the bodies of local self-governments. The principle of subsidiarity would be harmed as a result of this strong centralization process.

CONCLUDING REMARKS

In sum, analysing the doctrine of separation of powers should be established, that the democratic, constitutional state operation is based on this principle. Examining the different forms and interpretation of the doctrine, the vertical separation of power is also effective in unitary states as well, as a form of decentralization. The doctrine of separation of powers goes alongside with the sovereignty of the people and in the vertical form of separation of powers correlates to the right to local self-government. Local self-governments should exercise legislative and executive functions, thus they constitutes a substantial part of government power.

Investigation of the Hungarian case first it can be concluded that the state is functioning based on the separation of powers. Before 2012 the fundamental right approach served as the basis of local self-government system, nowadays the Fundamental Law of Hungary clearly states that local self-governments are the part of state structures, became administrative units, as organs of state executive powers.

¹⁶ Act LXVI of 1995 on Public Files, Archives and Protection of Private Archives.

¹⁷ Act CLIV of 1997 on Health Care and Act III of 1993 on Social Care and Social Administration.

¹⁸ Act XLI of 2012 on Passenger Transport Services, Act LVII of 1995 on Water Management.

¹⁹ Act CLXXXV of 2012 on Waste.

²⁰ Act XCIII of 2012 on the Establishment of District Offices and Modification of Related Acts.

Under the former Local Self-Government Act local self-governments implemented the sovereignty of people; nowadays the new Local Government Act does not contain any clear indication to this principle. According to the provisions of Hungarian Fundamental Law, local self-governments in connection with local public affairs shall act, within the framework of law.

By comparing and studying of provisions of Fundamental Law and the Local Government Act, after 2010 due to the launch of a powerful centralization process, great changes have been seen taken place, and have influenced the most important elements of local government autonomy on local public affairs. In sum, examined the issue of local public affairs, the organizational autonomy, the regulatory and functional autonomy it can be concluded, that the essence of local public affair as result of centralization has significantly changed, and the regulatory and functional autonomy has also dwindled.

Having regard to fact, that local self-governments' role significantly decreased in the field of providing public services and in exercising of local public powers. Therefore, the executive function in implementation of parliamentary acts is one of the most important functions of local self-governments. Several examples are demonstrated, that the competences of local self-governments were narrowed. It is particularly visible if the functions of county government and the notaries of municipalities are analysed, because in the case of counties it should be recognized the enumerative power transfer instead of the general competences and in the case of notaries' functions it is also justified that the dual task-system is also narrowed.

In sum, in Hungary there should not be identified therefore single local autonomous power in the field of local governance, but the counterbalance role is also highly doubtful.

References

1. Balázs, Z. A hatalommegosztás elméletének normatív alapjai. Working Papers in Political Science. Vol. 2012, No. 2. Available at: https://politologia.tk.mta.hu/uploads/files/archived/2550_2012_8_balazs.pdf (12.12.2018.)
2. Bradley, E. M. (1978) Separation of Powers in Municipal Government: Division of Executive and Legislative Authority *BYU Law Review* Vol. 1978 Issue 4 article 9 pp. 961-979. Available at: <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1177&context=lawreview> (04.01.2019.)
3. Cservák, Cs. (2002) A hatalommegosztás elmélete és gyakorlati megvalósulása. *Jogelméleti Szemle* Vol. 2002, No. 1, pp.1-18. <http://jesz.ajk.elte.hu/cservak9.html>
4. Csink, L. (2014). *Mozaikok a hatalommegosztáshoz*. Pázmány Press, Budapest.

5. Hoffman, I. (2011) Az önként átvállalt (alternatív) feladatok szerepe a magyar önkormányzati rendszerben. *Közjogi Szemle* Vol. 2011, No. 2, pp. 37-44.
6. Pálné Kovács, I. (2008). *Helyi kormányzás Magyarországon*. Dialóg Campus Kiadó, Budapest-Pécs.
7. Petrétei J. (2009). *Az alkotmányos demokrácia alapintézményei*. Dialóg Campus Kiadó, Budapest-Pécs.
8. Soós, G. Kákai, L. (2011). Hungary: Remarkable Successes and Costly Failures: An Evaluation of Subnational Democracy. In Loughlin J., Hendriks F., Lindström A. (eds.) *Local and Regional Democracy in Europe*. Oxford University Press, New York, pp. 528-551.
9. Sári, J. (1995). *A hatalommegosztás*. Osiris Kiadó, Budapest.
10. Soós, E. (1998). Az önkormányzatok döntéshozatali mechanizmusa az EU-ban. In Csefkó, F. (ed.) *EU-integráció Önkormányzatok*, Magyar Önkormányzati Szövetségek Társulása pp. 47-69.
11. Szaniszló, K. Államszervezeti fogalmak útvesztőjében. *Közjogi Szemle* Vol. 2018, No.1, pp. 54-65.
12. Takács, A. (1993). A hatalommegosztás elvének alkotmányelméleti értelmezése II. *Jogtudományi Közlöny*, Vol. 1993, No.7, pp. 261-272.
13. Takács, A. (1998) A hatalommegosztás elvének alkotmányelméleti értelmezése. In Mezey Barna (ed.) *Hatalommegosztás és jogállam*. Osiris Könyvkiadó, Budapest, pp. 94-149.
14. Varga Zs., A. (2013). Hatalommegosztás, az állam- és a kormányforma. *Pázmány Law Working Papers* Vol. 2013, No.5. Available at: <http://plwp.eu/docs/wp/2013/2013-5-VZSA.pdf> (15.12.2018.)
15. Varga Zs., A. (2015). *Eszményből bálvány? A joguralom dogmatikája*. Századvég Kiadó, Budapest.
16. Veress E. (n.d.). *A hatalommegosztás aktualitása*. Available at: http://epa.oszk.hu/02100/02169/00029/pdf/2005_3-4_15_236-297_veress.pdf (10.10.2018.)
17. (1943) Separation of Powers Doctrine As Applied to Cities, *Indiana Law Journal*: Vol. 18, Issue 2, Article 12. pp. 146-149. Available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=https://search.yahoo.com/&httpsredir=1&article=4204&context=ilj> (04.01.2019.)

Legal Sources

1. Act XX of 1949 on the Constitution of Hungarian Republic
2. Hungarian Fundamental Law (25 April 2011)
3. Act XLII of 1870 on the Arrangement of Public Municipal Authorities
4. Act XVIII of 1871 on the Arrangement of Municipalities
5. Act XXI of 1886 on Public Municipal Authorities

-
6. Act XXII of 1886 on Municipalities
 7. Act LXV of 1990 on Local Self-Governments
 8. Act III of 1993 on Social Care and Social Administration
 9. Act LVII of 1995 on Water Management
 10. Act LXVI of 1995 on Public Files, Archives and Protection of Private Archives
 11. Act CXL of 1997 on Museums, Services of Public Libraries and Public Education
 12. Act CLIV of 1997 on Health Care
 13. Act CLXXXIX of 2011 on Local Self-Governments of Hungary
 14. Act CXC of 2011 on National Education
 15. Act XLI of 2012 on Passenger Transport Services
 16. Act XCIII of 2012 on the Establishment of District Offices and Modification of Related Acts
 17. Act CLXXXV of 2012 on Waste