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IN ACCORDANCE WITH LEGISLATION – THE POSSIBILITY
OF ASSOCIATION IN THE PERFORMANCE
OF THE TASKS OF LOCAL GOVERNMENTS IN HUNGARY

JOGSZABÁLYOK MENTÉN – A TÁRSULÁS LEHETŐSÉGE
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FELADATELLÁTÁSÁBAN

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Abstract

Local governments are fundamental players of the rule of law in Hungary, they are key components of the state organization, and play an essential role in the performance of public tasks. They face a lot of challenges during their operation as well as the definition and organization of their tasks and competences. The solution of these requires complex attention. Public services, organized separately and individually, do not result in an optimal solution or in successful self-government. Furthermore, due to the fragmentation of the Hungarian settlement structure, it is important to strengthen the cooperation between local governments. For this, the establishment of associations is one of the most important tools. In my study, along the legal regulations, I wish to present the role of associations in Hungary's local governments' task performance, from the middle of the 20th century up until now.

Keywords: local government, task care, public service, association, efficiency, laws

Abstract

Magyarországon a helyi önkormányzatok a jogállam alapvető szereplői, az államszervezet kulcsfontosságú alkotóelemei, kiemelt funkcióval rendelkeznek a közfeladatok ellátásában. A helyi önkormányzatok működésük, feladataik és hatásköreik ellátása, fejlesztési irányaik meghatározása és megszervezése során sok kihívással találkoznak, megoldásuk komplex, összetett figyelmet igényel. A külön-külön, egyenként megszervezett közszolgáltatások nem eredményeznek optimális megoldást, sikeres önkormányzást. A magyar településszerkezet elaprózottságából adódóan is fontos a helyi önkormányzatok közötti együttműködés erősítése, aminek egyik eszköze a társulások létre-

hozása. Tanulmányomban arra vállalkozom, hogy a vonatkozó jogszabályok mentén haladva bemutassam a társulások szerepét a magyarországi helyi önkormányzatok feladatellátásában a XX. század közepétől napjainkig.

Kulcsszavak: helyi önkormányzat, feladatellátás, közszolgáltatás, társulás, hatékonyság, jogszabály

Introduction

In Hungary, local governments are fundamental actors of the rule of law, key components of the structure of the state, and have a key function in the performance of public service duties. Local authorities have the right and the duty to manage local public affairs in accordance with their function, according to the relevant legislation.

Local governments face many challenges in certain ways: how they operate, carry out their tasks and responsibilities, define and organise their development directions, and the solutions to these challenges require complex and careful attention. Public services organised separately, i.e., one by one, do not lead to optimal solutions and successful local governance.

Due to the fragmented nature of the Hungarian settlement structure, it is also important to strengthen cooperation between local governments, one vehicle of which is the creation of associations. *“The essence of an association can be put very simply: the joint performance of tasks by one or more local governments by means of an agreement in order to make efficient use of resources.”* (Bekényi et. al., 2014: 190) *Associations are institutions of inter-settlement reconciliation of interests which horizontally modify and complement the general and vertical division of powers and responsibilities within the state, depending on local interests.”* (Somlyódyné, 2003: 15)

In my study, I will attempt to describe the role of associations in the performance of tasks of local governments in Hungary, complying with the relevant legislation.

The Council system before the regime change

The administrative system established in the civil state was abolished by the Law on the Constitution of the Hungarian People’s Republic, which was adopted in 1949. The Constitution stipulated that the councils were the unified organs of state power in all administrative-territorial units of the state. The framework provisions of the Constitution were regulated by three Council Acts, the First Council Act (Act I of 1950), the Second Council Act (Act X of 1954) and the Third Council Act (Act I of 1971). (Bekényi et. al., 2014; Bekényi – Barabás, 2019)

In Hungary, Act I of 1950 established the council system based on the historically given three-tier administration in the form of the county, district, town, and commune councils. The local councils were established based on the principle of one council, one village. However, Article 9

of the Act contains that a joint commune council was to be established for villages with fewer than 500 inhabitants. (Act I of 1950) Joint councils were council administration districts, and the villages belonging to the joint council did not always form an economic and supply district. No hierarchical relationship was established between the villages belonging to the joint council, but an executive committee and a specialised administrative body performed the tasks.

Among the general provisions of Act X of 1954, it is stated that villages with a smaller population may form a joint commune council with a nearby village. (Act X of 1954) The Act also stipulates that the Presidium of the People's Republic shall decide on the establishment, dissolution and reorganization of joint commune councils in its general management and supreme supervisory powers.

Section 12 (3) of Act I of 1971 allowed councils to agree with other councils to exercise certain powers through a jointly established body, so they could establish a joint venture or institution. (Act I of 1971)

Based on the legal sources examined, two types of administrative associations in the council system can be distinguished. The first is when specific powers were exercised by local councils through a jointly established body, with the restriction that joint matters could only be entrusted to bodies of equal rank. The other type is when the executive committees of commune councils within a district jointly employed a person to perform a specific, specialised task or matter. (Government Decree 11/1971 (31 March))

At the time of the definitive abolition of the councils, there were 365 associations with 1080 local councils, 70 per cent of which were run by a specialised administrative body and the first type of association became the most common (Somlyódyné, 2003).

The objectives to be achieved by the creation of the administrative associations were modern and can be described as follows:

- bringing public administration closer to the population,
- professional and high-quality administration,
- rational use of professionals' knowledge and working hours,
- developing a coherent regional approach to the design of administrative districts (Pálné, 1991).

Cooperation between councils on economic and supply matters played an important role. Legislation provided opportunities for commune councils, towns and villages in their vicinity to cooperate and perform their tasks jointly. It was also possible for the body set up by the town to perform the same function in the villages, and this was particularly common in the area of communal services.

With the entry into force of the Third Council Act, it was also possible for several councils to set up a budget undertaking jointly or to jointly maintain those already in operation.

The councils also had the opportunity, under the auspices of economic coordination, to conclude agreements with non-council economic entities to carry out their tasks. In these relationships, the service and consideration relationship emerged, e.g., the provision of nursery places, the waiving of land use and rent (Somlyódyné, 2003).

Despite the opportunities provided by the Council Acts, associations could not be integrated into the structure of the council system as a core value as neither the structural conditions for their establishment, nor the various cooperation agreements for the creation of the legal institution of associations were given (Pálné, 1999).

In the council system, it can be stated that the institution of associations was not an end but a means to an end in the prevailing system of governance (Somlyódyné, 2003).

The associations from the change of regime – until 2011, complying with the legislation

Situation during the change of regime

The Constitution (Act XX of 1949) was amended in 1990 to include Chapter IX on Local Self-Government. The Constitution defined the position of local governments in the state organisation, laid down their basic rights and the principles for the exercise of local public authority. Under Article 42 of the Constitution, the establishment of local self-government by each settlement became a constitutional right, marking a return to the principle of “one settlement, one local government”. Under the Constitution, the fundamental rights of local governments were equal, but their obligations were different. (Act XX of 1949)

In the 1990 local elections, the majority of the commune councils, almost all of them, opted for self-governance. In Hungary, the 1586 councils were replaced by 3092 local governments (Fürcht, 2003). The resulting system of local government favoured the transformation of local communities, local autonomy and the exercise of a new type of power. The rapid (overnight) increase in the number of local governments also meant the emergence of a fragmented local government of the settlement structure. Local governments of the settlements were given wide range of duties and jurisdictions. In countries with a system of local governments similar to our own, the institution of associations offered a logical solution for the efficient performance of tasks and exercise of jurisdictions (Virág, 1998).

Act LXV of 1990 on Local Governments

The crucial law of the change of regime and the development of local self-governance is Act LXV of 1990 on Local Self-Governments (hereinafter “Ötv.”).

Article 1 of the Ötv. stipulates that local governments shall act independently in public affairs of local interest falling within their range of duties and jurisdictions and shall manage them independently in the interests of the residents. Local public affairs are not precisely defined, but a framework is provided in the Ötv.

Section 6 of the Ötv. stipulates that different levels of local governments may have different spheres of duties and jurisdictions, and that local governments may assume different municipal functions and powers depending on local needs and capacity. The Ötv. assigns more compulsory tasks and jurisdictions to local authorities with a larger population and a higher capacity. The local authorities of smaller settlements may, if their capacity allows, voluntarily take over in their area of operation tasks which the Ötv. assigns to larger local governments or governments of the counties.

The rules on the allocation of tasks and guarantees laid down by the Ötv. were largely in line with European trends in local governance of the time. Local governments were given a great deal of freedom to designate and manage local public affairs and groups of public affairs within the framework provided by the Ötv. Tasks, duties and obligations that directly affected local interests became a matter of local public concern, and local deliberation was important for their effective and efficient resolution. At the same time, the ability of local government to assume responsibility and fulfil its tasks had to be taken into account (Bekényi et. al., 2018).

Chapter II of the Ötv. defines the jurisdictions and duties of the local governments of the settlements. The tasks to be performed by the local governments are very diverse and varied. Article 8 (1) of the Ötv. lists more than 25 fields of tasks in a non-exhaustive manner, and in paragraph (4) the tasks to be performed on a mandatory basis are defined.

The Ötv. established the framework for the delegation of spheres of duties to local governments, while the specific delegation of spheres of duties and jurisdictions was the task of the sectoral acts. The delegation of these powers to the sectors was also justified by the need to define more precisely the social needs, community relations and interconnections in a specific area. The rights and obligations of the various social actors should be correctly defined. At the same time, the uncertainty of sectoral regulators was increased by the fact that in the tasks set out in Article 8 (1), it is the local government itself that determines – on the basis of the needs of the population and depending on its financial resources – which tasks, to what extent and in what way it wishes to perform (Bekényi et.al., 2018).

I consider it is important to mention here Act XX of 1991 on the duties and powers of local governments and their bodies, of the representatives of the Republic and of certain central subordinate bodies. In fact, when this law was drafted, the legislators and the professionals responsible for the sectors removed the legal provisions relating to the tasks and jurisdictions of the newly established local government by filtering the council's functions from the sectoral regulations, due to the

shortness of time. The Jurisdiction Act was intended to serve as a transitional regulatory instrument during the period of regime change. The sectoral acts came into being and were adopted gradually, not at the same time, so from the point of view of the delegation of tasks by local government there are major differences between the individual sectoral laws, and those that had been created earlier had little basis for differentiated task delegation.

The explanatory memorandum of the Ötv. stated that local governments are free to form associations based on the principles of self-governance in order to carry out their tasks more efficiently, economically and expediently, however, the association must not result in a violation of their own rights. The explanatory memorandum included the proposed forms of association, but local governments were also free to develop other forms of cooperation. The aim of the proposal for associations is to create associations of villages, based on the villages' own recognition that they can provide certain public services and related tasks more expediently, economically and to a higher standard by forming associations, similarly to European local governments (Fürcht, 2003).

Chapter III of the Ötv. deals with associations of local governments of the settlements. Article 41 states that the bodies of representative of local government of the settlement may freely form associations in order to solve their tasks more efficiently and expediently, and that the rights of the participants in the association may not be violated. When the Ötv. was promulgated, it stated that associations established by local governments are legal entities. The amendment to the Ötv. of 4 January 1998 changed this provision to “may determine certain terms and conditions of the association agreement”.

Articles 42-45 of the Ötv. regulate the forms of association that may be established by local governments:

- official administrative associations,
- association for the (joint) direction of certain institutions,
- joint body of representatives.

Article 41 of the Ötv. stipulates that in addition to the forms of association not specified in the Act, the local government may also participate in other types of association on the basis of a decision of the body of representatives.

Although the Ötv. did not list the „institution” of the district notary (section 39) among the forms of association, the district notary also helped the cooperation of small villages, and they could perform their administrative tasks within the framework of a district notary.

The state encouraged the creation of associations by means of differentiated budget subsidies, and the financing of tasks performed in the association was subject to higher levels of subsidies in the budget laws.

Despite state subsidies and contributions, there was resistance to the associations in the first period after the change of regime. Reasons for this may have been the following:

- regulatory gaps, complexity, lack of comprehensive regulation,
- it was not possible to resolve disputes quickly (e.g. financial accounting disputes),
- local authorities did not see joint development as in their own interest,
- history of joint councils,
- mayors' prestige issues (Virág, 1998).

The comprehensive amendment of the Ötv. was made in the framework of Act CXXXIV of 1997. The comprehensive amendments entered into force on 14 January 1998. The Amending Act also contained substantive changes for associations. As mentioned above, the compulsory legal personality of associations was abolished. Section 2 (2), Section 9 (3) and Section 10 (2) of the amended Ötv. allowed for the transfer of municipal functions and jurisdiction to the association and gave the associations decision-making rights in specific areas.

Act CXXXV of 1997 on Associations and Cooperation of Local Governments

Section 10 of the amendment to the Ötv., in force since 14 January 1998, already refers to the Act on the Associations and Cooperation of Local Governments (hereinafter Ttv.). The legislator's intention in enacting the Ttv. was to facilitate the establishment of associations. Looking at the post-regime period, it can be seen that local governments lacked experience with regard to the formal and substantive requirements for association agreements, which made it difficult to set up associations.

When the Ttv. was promulgated, it obliged local authorities to review the associations they had already established and were operating. *“The new source of law also introduced a mandatory typology of associations, with the stated intention of providing clarity after the many anomalies.”* (Somlyódyne, 2003: 159)

The Ttv. did not define the possibilities of association according to the nature of the task to be performed. Based on the strength of the cooperation, the drafters of the law moved from defining a looser form of association, which implied a looser relationship, to a closer form of association (implying a separate organisation), i.e., an agreement. In the different types of agreements, the Ttv. refers back to the mandatory elements of the previous type of agreement (Virág, 1998).

The following forms of association can be found in the paragraphs of the Ttv:

- „mandated association” (under article 7 of the Ttv.),
- the first case of „joint maintenance and administration” (under article 8 of the Ttv.),
- the second case of „ joint maintenance and administration”, or the classic case (under article 9 of the Ttv.),
- an association with legal personality (under article 16 of the Ttv.).

Due to the small village structure of Hungary, the cooperation of local governments and the organisation of associations is of great importance for efficient operation. The “principle of freedom of association” was defined in the Local Government Act, and the possibility of implementing the association system by defining the legal forms of cooperation was defined in the Association Act. In the two years following the entry into force of the law on associations, the number of associations increased by 20 per cent (Bekényi et. al., 2018). In 1999, 78 per cent of local governments were members of an association (Somlyódy, 2003).

Act CVII of 2004 on the Act on Multi-Purpose Micro-Regional Associations of Local Governments

It was the Spatial Development Act that defined the micro-region as a collection of intensively interconnected, self-organising, neighbouring settlements (Bujdosó, 2004).

Act XXI of 1996 on Spatial Development and Planning defined the concept of a micro-region as follows: “*Micro-region: a territorial unit that can be defined on the basis of the totality of functional relations between settlements, a self-organising, bordering set of settlements in intensive contact with each other.*” (Act XXI of 1996) The basic concept defined in the Act was only legally relevant in the context of the tasks and institutions of spatial development, but it nevertheless became a good starting point for subsequent delimitation.

The purpose of Act CVII of 2004 on Multi-Purpose Micro-Regional Associations of Local Governments (hereinafter Tktv.) is to institutionalise the multi-purpose micro-regional associations of local governments, to promote the coordinated development of micro-regions and to raise the quality of local government public services in an equalised manner. The delimitation of the micro-regions has been included in an annex to the Act.

Tktv. established three conditions for the establishment of a multi-purpose micro-regional association:

- the multi-purpose micro-region association agreement is approved by more than half of the bodies of representatives of the settlements belonging to the micro-region, but by at least two bodies of representatives, while in the case of the assumption of spatial development tasks, by all the bodies of representatives of the settlements belonging to the micro-region;
- the combined population of the settlements approving a multi-purpose association agreement exceeds 60 per cent of the population of the micro-region, or 50 per cent if the number of members of the association reaches 60% of the number of settlements in the micro-region;
- it shall be registered by the Treasury after its establishment (Act CVII of 2004).

According to Tktv., one can join a multi-purpose local micro-regional association at any time, and one can withdraw from it in cases specified by law or on 31 December. A multi-purpose micro-regional association is a legal entity. Its management is governed by the rules applicable to the operation of budgetary bodies (Act CVII of 2004).

Local government functions after 2011

Local government reform

After the regime change, sectoral legislation used the local government system as a tool. The strength and potential of NGOs and churches, which could be involved in the provision of services, did not allow for the development of scale-efficient, economical and cost-effective public services, and sectoral reforms aimed at this did not yield striking results. The fragmented structure of local government offices and the large number of public administration tasks have added to the difficulties. The increasingly complex allocation system of local governments' state funds and the resulting resource cuts made local government management increasingly unpredictable. The dilemmas and problems that arose made it clear that local government and public administration needed a comprehensive overhaul, but it was clear to experts and politicians that the core values of local government had to be preserved. The 20 years that followed the change of regime also made it clear that reform of the local government system was inseparable from reform of other components of the state system. In the years leading up to 2010, it became clear that a comprehensive reform of the local government system was needed. The Fundamental Law and Act CLXXXIX of 2011 on Local Governments in Hungary were adopted (Bekényi et al., 2014; Bekényi – Barabás et. al., 2019).

Act CLXXXIX of 2011 on Local Governments in Hungary

According to Article 31 of the Fundamental Law of 25 April 2010, local governments have a dual purpose: the management of local public affairs and the exercise of local public authority.

Act CLXXXIX of 2011 on Local Governments in Hungary (hereinafter Möt.v.) was adopted after the adoption of the Fundamental Law. *“The basic aim of the Möt.v. was to establish a modern, cost-effective, task-oriented local government system, which would redefine the division of labour between the state and local governments in the provision of certain public services.”* (Bekényi et al., 2014: 58)

The concept of “public affairs” referred to in Article 31 of the Fundamental Law is defined in Section 4 of the Möt.v. Thus, a local government’s task is that which the legislator classifies as such or which the local government undertakes.

Chapter II of the Möt.v. deals with the definition of the range of duties and jurisdictions of local governments. Under Article 10, local governments shall perform spheres of duties and exercise jurisdictions specified by law, and perform voluntary tasks. A local government may undertake

voluntary tasks only if the performance of such tasks does not jeopardise either the performance of the spheres of duties or the exercise of jurisdictions of the local government as prescribed by law.

In Article 11 the Möt.v. prescribes a differentiation obligation with regard to the spheres of duties to be compulsorily performed and jurisdictions to be compulsorily exercised by the settlements, based on the economic capacity of the settlement, the number of inhabitants and the size of its administrative area.

The differentiation of spheres of duties and jurisdiction is reflected in the Möt.v. on two levels. On the one hand, when defining the “function” of certain types of local government (village, city, city with county rights, government of county) and delegating the duties they are to perform, and on the other hand, the legislator has provided for the general requirement and the conditions of the introduction of differentiated jurisdiction delegation (Bekényi et al., 2018).

Section 12 of the Möt.v. allows smaller settlements or their associations to take over tasks from larger settlements, if the population requires it, they can perform it economically, at least to the same standard, and there is no need for additional subsidies. The optional tasks may be financed only from own revenue or from special funds earmarked for this purpose.

Section 13 (1) of the Möt.v. defines the local government tasks to be performed in the field of local public affairs and the public service duties that can be provided locally. Paragraph (2) specifies that the local government is also obliged to perform tasks specified by other law.

In their 2018 study, József Bekényi and his colleagues divided the spheres of duties and jurisdictions of local government and its bodies as follows:

- local government tasks:
 - compulsory spheres of duties and jurisdictions,
 - voluntary spheres of duties and jurisdictions;
- administrative spheres of duties and jurisdictions.

Compulsory spheres of duties and jurisdictions of local governments are delegated to local authorities by the legislator. This guarantees citizens that local authorities provide them with basic public services and that the scope, extent and quality of these services are not based solely on local decisions. The compulsory tasks assigned to local authorities vary from country to country, are not identical and are adapted from period to period in line with social expectations and economic development.

In Hungary, the possibility of voluntarily assuming spheres of duties and jurisdictions is provided for in the current legislation on the assumption of tasks (Section 10 of the Möt.v.), with several conditions: only the body of representatives, or the community of voters by local referendum may voluntarily assume local public affairs, and only those public affairs may be assumed optionally which

are not referred by law to the exclusive jurisdiction of a body, and the solution of the voluntarily assumed local public affairs must not endanger the performance of mandatory tasks.

In the process of reforming the local government system, there was a consensus among experts and legislators that the legal institution of association of local governments is a value to be preserved. Based on the provisions of Article 34 of the Fundamental Law, the Mötv. contains provisions on associations. Under the new Local Government Act, which entered into force, previously established and operating associations had to be reviewed, but they were not abolished *ex lege*. The legislator thus ensured continuity in task performance and the stable and reliable operation of public services. The audit of the associations in this context did not mean a restructuring of the associations, but an adjustment of the association agreements to the legislation that entered into force (Bekényi et al., 2014; Bekényi et al., 2018).

Chapter IV of the Mötv. provides for associations of local governments.

Article 87 of the Mötv. stipulates that local governments and municipalities may establish associations with legal personality in order to perform their range of duties and exercise their jurisdictions more efficiently.

Article 89 of the Mötv. provides for joining and leaving the association, the main rule being that joining can take place on the first day of the calendar year and leaving on the last day of the calendar year.

Under Article 90 of the Mötv., it grants associations rights similar to local governments: the freedom to perform their spheres of duties, establish budgetary bodies, economic organisations, non-profit organisations and other organisations and to appoint their managers.

Article 93 contains the basic rules of the association agreement.

The decision-making body of the local government association is the association council.

In connection with the presentation of the the Mötv., it is necessary to refer to the provisions of Articles 56 and 85 of the Mötv, the two „special forms of association”. These two articles provide for cooperation between bodies of representatives and local government offices and define the legal form of such cooperation:

- associated body of representatives,
- joint local government office.

Overall, the Mötv. *„created a sufficiently flexible system, as it only laid down the general foundations of self-government, but provided sufficient room for manoeuvre for sectoral regulation.”* (Bekényi et al., 2018: 6).

Summary

Since the change of regime, the local government system has been a key player in the organisation and delivery of public services for thirty years. For two decades, Act LXV of 1990 on Local Governments (Ötv.) defined the functioning of local governments, gave them a framework, strengthened and stabilised self-government in the Hungarian state system. Hungary's network of tiny villages, the "one settlement, one local government" principle and economic performance have led to wide disparities in the level of performance of the duties and exercise of jurisdictions of individual local authorities. In order to ensure a higher quality and more cost-effective performances of tasks, and on the basis of the principle of «free association», the Ötv. already included associations as method for local governments to perform their tasks. Act CXXXV of 1997 on the Associations and Cooperation of Local Governments and Act CVII of 2004 on the Multi-Purpose Micro-Regional Associations of Local Governments were adopted in order to increase the efficiency of participation in associations and the implementation of tasks. The series of amendments to the Constitution, followed by the adoption of the Fundamental Law – and of course the need for local governments to change their operations – justified the reform of local government, which resulted in Act CLXXXIX of 2011 on Local Governments in Hungary (Mötv.).

The possible reasons for cooperation between local governments, the necessity, expediency and their benefits, rarely trigger a compelling effect that results in the institutionalisation of relations. There are pros and cons, positive and negative effects of cooperation that need to be explored. The question is always raised: is it (i.e., cooperation) based on the inertia of local government or on the often more costly implications of the solution on an individual level to a community level.

However, we all know that local authorities are aware that results are easier to achieve through cooperation and collaboration, yet each one – all over the world – wants to be its own boss.

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