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CONFLICTS OF INTEREST BETWEEN LOCAL GOVERNMENTS AND CENTRAL LEGISLATION – HOW FINANCIALLY INDEPENDENT CAN LOCAL GOVERNMENTS BE

Summary: Rights and responsibilities of local governments are defined by the central legislature, in accordance with the given country's rules, traditions, institutions of constitutional and administrative law. To perform public duties they need financial resources, incomes and wealth. Above these, the right of disposition, financial and economic autonomy have to be provided, moreover, the possibility to receive suitable subsidies from central budget. The proportion and guarantees of the income are important too, as the autonomy of local governments depending from central subsidies may be injured. The question of primary importance is that where are the limits of the mentioned autonomy, protected by various constitutional provisions and international legal documents, how the legislature is able to control the law of taxation, to enter transactions that give rise to debts, or how to withdraw different resources from local governments. The central withdrawal and reallocation of resources may raise the issue of local government solidarity. As well as the extent to which the property and income of local governments can be limited. According to the practice of the various constitutional courts and the supreme courts (American, French, German and Hungarian judicature), the rights and authorities of local governments are not unlimited. Although, local governments have to get effective protection, but after all it is the state who determines the content and the framework of relevant legal regulations for local governments. Therefore, within the constitutional framework, the central legislature has a serious opportunity to intervene in protected autonomy by withdrawing or reallocating revenues, assets or subsidies.

The research method of the study is primarily financial and administrative legal analysis and legal comparison: in addition to international, constitutional and legal (American, German, French, Hungarian) rules, the basic characteristics

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of local government financial autonomy are presented based on the principles worked out in various Supreme Court and Constitutional Court decisions elements, as well as the limitations that said autonomy must face as a result of the decisions of the central legislature. The subject of the research is the financial autonomy of local governments and its legal limitations, which point out that autonomy - unfortunately, cannot be unlimited. Local taxation, own revenues and subsidies can indeed provide adequate foundations for independent local government management, however, since local governments must adapt in the state's central system of public administration and public finances, therefore, within the constitutional framework, the central legislation can make decisions that adversely affect their incomes, budgets and assets.

Keywords: public administration, local governments, public finances, municipal autonomy, local taxes

1. INTRODUCTION

In a democratic environment, the various local governments, through their roles in the application of public law and in the field of public services, function as important elements of public administration systems. The national legislations assign local communities' tasks, responsibilities and authorities they have to carry out. In the same time, it enables the elected assemblies, elected by these communities, to decide by themselves the direction and the content of their tasks, within the limits set by the law. Also, it enables to decide on its basic financial and budget conditions. On condition that the legislator is not considering them as a simple executive 'agency' of the central will.¹ For that local government may be real, the central legislation has to ensure certain eligibility, which, as a main rule, cannot be violated even by the legislation, it must respect the decisions of the communities, thereby ensuring real effective autonomy. The political structure and the administrative division of a given country determine which communities have the right and the possibility for self-government. Generally, decision-making and provision of tasks defined by representative organizations, elected by local communities, can be implemented by communities and bigger administrative unites.

However, besides of administrative characteristics, we need to consider how local communities settle in the fiscal administration. Since legal frameworks, financial resources and other different form of wealth provided by the state are essentials for the provision of tasks. In the absence of these elements, they could not fulfil their tasks. This serves to show how important are the possibilities and legitimations established by the central legislature. Also, the domain of financial resources, such as subsidies, which one of them are provided for the local governments or how the public income is shared with them. It is extremely important that the central legislature makes appropriate decisions in this area, otherwise the quality of public service and the provision of tasks will decrease, which is more visible for citizens, as

¹ Stephen Bailey & Mark Elliott, 'Taking Local Government Seriously: Democracy, Autonomy and the Constitution' (2009) 68 Cambridge Law Journal 436, 468.

many public tasks, such as law enforcement duties, health, social, education, cultural services, development and maintenance of infrastructure, are performed by local governments. It follows from this, that on the one hand ‘activities of local governments accompany citizens, in a little overstated way, from the crib to the coffin.’² On the other hand, ‘they form such a complex system, in which the multitude of problems and the effects of the state organizations, law, agriculture, allocation of provisions and financing are in a vigorous interaction and it concerns directly the citizens.’³

So, it is an issue of facts which financial resource, how, in which manner, in which proportion are provided to local governments? What sort of relationships or conflicts can be possible between the local and the central budgets? Do these relationships ensure the financial autonomy? Or, are the signs of dependence and vulnerability detectable between these relations; and the financial autonomy exist only in theory? This study endeavour to give an answer for these questions. Mainly, from a theoretical point of view by applying the method of comparative jurisprudence (American, French, German and Hungarian) and by using some results of application of law. Among these results, the principles worked out in the decisions of the Constitutional Court or other courts, which can also be used as a basis for legislation, are mentioned first.

2. THE PLACE OF LOCAL GOVERNMENTS IN FISCAL ADMINISTRATION AND PUBLIC-SERVICE

Local governments make part of the fiscal administration and as unites they have different public-service tasks, determined by the state (central government) ‘based on their place in the system of the state.’ As a result, they are obliged to finance the performance of certain public tasks specified by law, and their budgetary and financial decisions (possibilities) are limited by these obligations.⁴ The reason that they need to be involved to the provision of public-service is, because the state (at government level) cannot accomplish all the task in itself, so the cooperation of the local governments is indispensable; the development and the maintenance of an own financial system is required. ‘A municipal corporation is a public instrumentality established to aid in the administration of the affairs of the state.’⁵ In this financial system ‘the local finance, which needs to be distinguished more, and in case it is for a whole district or territory of a country, district or county, or else for a community, it is called provincial, county or municipal finance.’⁶

Different laws determine diverse tasks to fulfil for local governments, but in addition, they are allowed to take tasks voluntarily. As part of fiscal administration, they treat public funds, possess wealth (public property) and manage them based on a budgetary and according to

2 Árpád Kovács, *Pénzügyi ellenőrzés változó erőtérben* (Perfekt Gazdasági Tanácsadó, Oktató és Kiadó Részvénytársaság, 2003), 162

3 *Ibid.*

4 Farkas Heller, *Pénzügytan* (Magyar Közgazdasági Társaság 1943) 93.

5 *Covington v. Kentucky* 173 US 231 (1899) 232.

6 Gyula Kautz, *Államgazdaság – vagy pénzügytan* (Aula Kiadó 2004) 290.

financial law. Besides, they can develop contractual relationships, award public contracts and concessions, make legal relationships for employment. However, it does not necessarily follow from this that certain institution can be sue based on a given legal system.⁷ According to this, the necessary resources have to be provided for the provision of different tasks and also the management framework and conditions for their use, as well as their verifiability.

Depending on the time and country, different policies, government programs, historical traditions give different answers on how responsibilities should be distributed between the central (or even the federal) government and the local governments. Of course, theories exist as to that which level has the advantage and disadvantage, which is primarily suitable for centralization or decentralization. There are approaches that local officials have a better understanding of local needs than central government, so government tasks should be performed at the lowest level of the budget hierarchy, considering the requirements of efficiency and equity. However, if a municipality imposes higher taxes, it may encourage taxpayers to settle elsewhere, which means that a community, making it impossible to achieve the original local objectives, will lose people (businesses) with higher incomes.⁸ When local governments try to get from the central government as much financial resources as possible, it can lead to the softening of the budgetary restrictions and this can be the flip side of decentralization. Such a situation can occur in case local governments feel that the government lacks the ability or the will to maintain budgetary framework as in case a financial difficulty occurs, they will be saved with different rescue packages.⁹ Otherwise, the theory and research of fiscal federalism may provide answers to questions on how public tasks and financial resources can be distributed effectively between different levels of governments.¹⁰ The following arguments are often cited in favor of the strengthening of local communities' autonomy: it gives individuals more freedom to perform their tasks more effectively, as local decision-makers are more aware of local needs, problems, economic conditions and a strengthened autonomy can provide opportunities for direct participation. The question of human rights enforcement can occur as a counter-argument, as for example to ensure accessibility to education and health-care may be more effective on national level. There is also a significant need to compensate for differences in living standards, as local communities are not equally able to fund public services and may not be able to ensure the level expected at national level. Moreover, the economies of scale of the public administration, the limited characteristic of controllability for the average citizen or the efficient feasibility of public procurement also militate against extending autonomy.¹¹

7 Ken E. Jarrard, 'Local Government Law' (2017) 69 Mercer L Rev 205, 216–217.

8 Richard W. Tresch, *Public Finance. A Normative Theory* (Elsevier 2015) 15.

9 See Jürgen von Hagen and Matz Dahlberg, 'Swedish Local Government: Is There a Bailout Problem?' in Per Molander (ed.), *Fiscal Federalism in Unitary States* (Springer 2004) 47.

10 See Patricia E. Salkin & Charles Gottlieb, 'Engaging Deliberative Democracy at the Grassroots: Prioritizing the Effects of the Fiscal Crisis in New York at the Local Government Level' (2012) 39 Fordham Urban Law Journal 727, 735–736.

11 See Per Molander, 'Introduction – Problems of Multi-level Democracies' in: Per Molander (ed.), *Fiscal Federalism in Unitary States* (Springer, 2004) 4–5.

3. STRUGGLES AND DIFFERENCES OF INTEREST RELATED TO LOCAL BUDGETS

Budgets can also form the platform of various conflicts, as ‘budgetary circumstances are always tense, so tense, indeed almost extremely tense.’¹² Their significance can also be summarized as ‘if politics is a struggle in which it is decided whose ideas will determine the decisions, then the budget is the financial imprint of that struggle.’¹³ Therefore, the budget ‘is a mechanism, in which subunits, classes, portfolio bargain with each other about counter purposes, they make business and try to involve others in achieving their own interests.’¹⁴ As the available and distributable financial resources are limited, apparently there is a competition for them. In such case the role of the treasurer of the treasury becomes more valuable. In the 19th century, Louis Thiers, Minister of Finance, defined his own task as ‘cruel determination (...) is necessary to protect the treasury.’¹⁵

During the bargaining and struggles, certain participants such as government, president, budget committees, government agency, institutions, local government’s municipal council, mayors, representative factions may take a role, which can be defined as kind of a calculation mechanism (expected behaviour for institutional positions). Therefore, a distinction can be made between the treasurer, the advocate of economy, the role of the arbitrator and the petitioners often become the ‘enthusiastic procrastinator’ of the financial embrace of the case they represent. It is to be noted at this point that the treasurer role is have been formed quiet lately (see above Louis Thiers’s terms of reference) and is relatively rare in legal systems and cannot be enforced if financial legislators demand more money to protect their areas of competence, even going beyond their party’s position. The proposers use different strategies to achieve their purpose. It is important that it is inexpedient to request too many, as probably, whom who adjudges the requests will use the means the instrument of ‘retaliation for unrealistic demand’, which means that the applicant will receive an even smaller amount than if he had applied for only a modest amount. On the other hand, it is inexpedient also to request less than sufficient because then it will be accepted by the decision-makers without any further investigation, so ‘knowing the division of roles, one must be prepared for the shortening of the requested amounts and submit the claims with a margin. Thus, the decision-making rule is: ask for a little more (cushion the amount) but not too much (loss of confidence).’¹⁶ So, it is extremely important to properly assess the needs and boundaries of local governments and central governments, to analyse the patterns of behaviour (roles) and to select the appropriate strategy. Struggles can be fought by considering these. No matter what kind of decisions are made based on these assessments, there may always be the prominent question of Valdimer

12 See Aaron Wildavsky, ‘A költségvetés készítése mint politikai folyamat’ in Richard J. Stillman (ed.), *Közigazgatás* (Századvég-Osiris 1994) 107, 111.

13 *Ibid.*

14 *Ibid.*

15 *Ibid.* 111

16 *Ibid.* 110–112.

Key, American political scientist. 'On what basis can it be decided why we should spend X dollars on A activities rather than B activities?'¹⁷

Thus, the fact that between which levels the struggles develop exactly is basically determined by the structure of the given country; in other words what administrative levels and units operate, whether it is a federal country or not. For example, in Germany, when the Basic Law for the Federal Republic of Germany (*Grundgesetz*) was drafted in 1949, the distribution of tax revenues between the Federation (*Bund*) and the provinces (*Länder*) was an important issue in a multi-level system with local governments (*Gemeinde*); but the strengthening of the financial autonomy of the provinces has continued to be an important question later on as well. In addition, there are separate laws for financial equalization (*Finanzausgleich*) to reduce the differences between the different financial possibilities of the provinces: there is a vertical (federal-provincial) and horizontal (inter-provincial) equalization process. All this is based on the idea of ensuring equal living conditions in the welfare state. In accordance with Paragraph 107 (2) of the Basic Law for the Federal Republic of Germany federal law must provide a reasonable equalization of the different financial capacities of the provinces, taking into account the financial capacities and needs of the municipalities (associations of municipalities). It is important that the Act on the Basic Law for the Federal Republic of Germany provides 'reasonable' equalization and not full equalization, the implementation of the latter would be unconstitutional. Economically stronger provinces often complain that their contribution obligations are higher than justified and that some host provinces do nothing to improve their financial situation, while the latter claim that they cannot cope with financial difficulties on their own.¹⁸ The key issue, then, is solidarity: how can resources be reallocated between the different levels so that they remain at an acceptable level for those who are fundamentally tax-payers and not beneficiaries.

Conflicts of interest rules, which, for example, prohibit a local government representative or mayor from serving in parliament or holding other government office, may contribute to the separation of the central and local levels and the separation of powers. In Hungary, for example, after the change of regime, the same person could be mayor and member of Parliament at the same time, but this possibility in Hungary is not provided for almost ten years. The mentioned Act also contains regulations regarding the accumulation of offices, the influence, the financial independence and other conflict-of-interest regulations.¹⁹ So, in the past, settlement leaders, if they were also members of Parliament, were able to represent the interests of the municipality they represented, more effectively. Although, in certain issues they also had to choose whose interests were more important: the electorate who was a member of the legislature or those who elected him to be the leader of the settlement? This issue may have been particularly determinant in those financial and budgetary decisions where there is a tense contrast between local and central interests.

However, as mentioned above, the local level can be a tax-payer also and not only be a beneficiary as a recipient of central subsidies, as the relationship between local governments and the central budget can be in the opposite. In other words, the central legislation has the possibility to oblige the economically stronger local governments for payment or also has the possibility to reduce the subsidy according to the possibilities inherent in the ability to tax,

17 Vernon Bogdanor (ed.), *Politikatudományi enciklopédia* (Osiris Kiadó 2001) 318.

18 Dirk Brand, *Local Government Finance: A comparative study* (African Sunmedia 2016) 46–53.

19 See Act CLXXXIX of 2011 on the local governments of Hungary s 36 and s 72 (4) and the Ministerial Justification to the Bill s 36.

starting from the fact that they can make up the lost part from their own revenues. In case a community, besides, an economically strong one, believes that the central legislation does not ensure those political rights the community deserves regarding its financial position and is rather to be part of a larger economy (a country, a federal state or even an empire) as tax-payer can be considered as an extreme manifestation of political struggles. In other words, a situation may arise where a community moves from budgetary (involuntary) solidarity to political separatism. Such was the case with the American War of Independence; the ‘no taxation without representation’ claim stemmed precisely from a lack of one-way fiscal ties and political rights, and the independent United States of America was in fact the result of a ‘tax war’.²⁰ From time to time, conflicts arising from financial and economic interests may occur in countries between central and local levels. The phenomenon of ‘small nationalization’ needs to be mentioned, which means that some of the wealthier parts of the unified countries and federal states aim to achieve independence because they do not want to cooperate with the poorer nations, territories and provinces. For example, in the 1970s, under the leadership of Governor Ronald Reagan, California refused to rearrange their taxes for the underdeveloped areas. Catalan aspirations with Spain, Flemish objectives with Belgium and independence movements in Northern Italy with Italy are based on the same considerations. According to Andrew Janos, contrary to popular belief that primarily, separations are due to economic interests. Wealthy provinces, unites can get rid of less developed territories, no need to share taxes and investments, no need to bear different expenses for example provide financing for social institutions, also to afford a possibility to replace the coercion integration with volunteer ‘big market’ integration. ‘Social self-seeking overcomes patriotism and dreams of big states.’²¹ Thus, some provinces, parts of the country that already have local government may raise the issue of independence; it is enough to refer to the events in Catalonia in 2017, for example.

In other words, the question is, on what basis and for how long can larger administrative units with local government (provinces, regions, parts of the country) be expected to participate in cooperation with only disadvantages? Walter E. Williams, American economist, phrased the following about solidarity and redistribution.

But you might say, if government didn’t do all that it’s doing we wouldn’t have a just society. What’s just has been debated for centuries but let me offer my definition of social justice: I keep what I earn and you keep what you earn. Do you disagree? Well then tell me how much of I earn belongs to you – and why?²²

4. FUNDAMENTAL RIGHTS OF LOCAL GOVERNMENTS – THE CONSTITUTIONAL FOUNDATIONS OF PROTECTED JURISDICTION

In the light of the above, the basic question is what kind of legal guarantees can have the relationship between local governments and the central government. The starting-point

²⁰ Arthur J. Cockfield & Jonah Mayles, ‘The Influence of Historical Tax Law Developments on Anglo-American Laws and Politics’ (2013) 5 *Columbia Journal of Tax Law* 40, 58–62.

²¹ László Lengyel, *Mozgástér és kényszerpálya* (Helikon Kiadó 1997) 172–175.

²² Walter E. Williams, *All It Takes is Guts: A Minority View* (Regnery Books 1987) 62.

is that 'local governments are creatures of the stat and therefore they can own only those authorities and authorizations provided by the constitution and the law.'²³ According to the Supreme Court of the United States: 'counties, cities, and towns are municipal corporations created by the authority of the legislature, and they derive all their powers from the source of their creation.'²⁴ Therefore, in each case, the central legislature decides how to divide responsibilities between the central and local levels, including how it develops the legal framework for financial opportunities. However, it also follows from this hierarchical relationship, that guarantees of local autonomy have to be ensured, namely those authorities and rights have to be determined, so that central legislature and decision-makers have to respect. Nevertheless, the important question is, where do the possibilities of the central government lie to intervene, which decisions can take, which one of these decisions will involve the restriction or the distraction of these authorities.

The European Charter of Local Self-Government, signed in Strasbourg on 15 October 1985. (the Charter), sets out various rights for local authorities.²⁵ Article 9 lists these authorities and disposes for the financial resources of local governments. Two of the rights concretized in the Charter needs to be mentioned primarily in this section. On the one hand, that the financial resources of local governments must be commensurate with their tasks as defined in the Constitution and legislation, on the other hand; the fact that at least part of the financial resources of local governments are made up of local taxes and fee revenues, the extent of which, within the legal framework, these organizations have the power to determine.

Different rights may be determined by certain national legal systems. Generally, constitutions may contain main rules regarding local governments, also for their finances; however, this is not the case in all countries. For example, the United States of America and the Constitution of Norway need to be mentioned as examples.²⁶ For example, Article 28 (2) of the Basic Law for the Federal Republic of Germany states that local governments have the right to regulate local affairs on their own responsibility and within the framework of the law and that local government includes financial autonomy, which includes the right to taxation. These provisions are the main point of local government (*Kernbereich*) which cannot be violated by the legislature; and local government cannot be abolished nor in law or nor in fact. Moreover, in its Rastede Decision (BVerfGE 79, 127 – *Rastede-Entscheidung*), the Federal Constitutional Court (*Bundesverfassungsgericht*) in Germany analyzed in detail the content elements of the self-government.²⁷

Article 72–2 of the Constitution of France (*Constitution française du 4 octobre 1958.*) contains similar rules for regional communities, emphasizing that taxes and other own resources represent a significant proportion of their revenues and that, if the central government delegates any responsibilities to them, then they must be provided with equivalent revenues as well. This principle of compensation was incorporated into the text of the Constitution of

²³ *Ibid.* (n 10) 739.

²⁴ *Commissioners of Laramie County v. Commissioners of Albany County et al.* 92 US 307 (1876) 308.

²⁵ In the Hungarian legal system, promulgated by Act XV of 1997.

²⁶ *Ibid.* (n 11) 1.

²⁷ Michael Faber, *Die Kommunen zwischen Finanzaautonomie und staatlicher – Vorgaben zur Einnahmenoptimierung und Ausgabenkontrolle in der Haushaltssicherung: Eine Untersuchung vorrangig am recht des Landes Nordrhein-Wetsfalen* (LIT Verlag 2012) 13.

France in 2003, and the following year, in 2004, the concept of financial autonomy was introduced for all three levels of government (municipalities, counties, namely *départements* and regions) with the Act of 13 August 2004. on local public freedoms and responsibilities. However, this did not fully resolve the financial difficulties of local authorities, which were exacerbated in 2008 by the Government's announcement of zero growth in government transfers in order to achieve fiscal stability.²⁸ Article 32 (1) of the Fundamental Law of Hungary (*Magyarország Alaptörvénye*) states the following: the local government shall exercise the rights of the owner in respect of its property; determines its budget and manages it independently; may carry on business without jeopardizing the performance of his duties with the assets and income which may be used for that purpose and shall decide on the nature and amount of local taxes. It is important to be able to do all of this within the framework of the law.

It should be noted that in Hungarian constitutional court practice these cases cannot be considered as local government 'fundamental rights', as 'the Basic Law does not provide for local governments fundamental rights, the Fundamental Law of Hungary (...) defines the components (content elements) of local public affairs.'²⁹ And groups of powers that may be exercised by local governments in the management of local public affairs within the legal framework.' As stated in the above-mentioned paragraph from the point of view of local governments, those are rights granted in the Fundamental Law of Hungary but they cannot be considered as fundamental right. According to The Constitutional Court of Hungary (*Alkotmánybíróság*), the autonomy of local government is filled with the above-mentioned protected powers. These may be limited by law, but may not be emptied. Thus, in the constitutional assessment of the restriction, it is not the measure of necessity proportionality, but the so-called evacuation standard applies.³⁰ In order to enforce these provisions, for example the right to apply to The Constitutional Court of Hungary must be guaranteed, failing which local governments 'would be subject to certain state authorities, in particular the central organs of the executive and to unconstitutional court decisions.'³¹ That assessment of the 'fundamental right' nature is, moreover, consistent with the German approach.³²

5. RIGHT TO REVENUE, TAXATION AND SUBSIDIES

5.1. THE MAIN GROUPS OF MUNICIPAL REVENUES

Local governments can have different revenues, which can provide the basis for financial autonomy and economic independence. There are revenues in their own right on which development they can have a significant influence: primarily local taxes and other public charges (fees, charges) can be included in this category, but, of course, the tax capacity of the commu-

28 See OECD The Governance of Land Use in France Case studies of Clermont-Ferrand and Nantes Saint-Nazaire: Case studies of Clermont-Ferrand and Nantes Saint-Nazaire (OECD Publishing 2017) 36.

29 The Constitutional Court of Hungary 3105/2014. (IV. 17.) [2014], para 7, ABH 2014 546, 547.

30 The Constitutional Court of Hungary 8/2021. (III. 2.) [2021], para 162, ABH 202 689, 723.

31 The Constitutional Court of Hungary 3311/2019. (XI. 21.) [2019], para 35–36, ABH 2019 2105, 2110.

32 About the German interpretation see *ibid* (n 27) 16–20.

nity is a given, they cannot directly influence it but it can also be shaped by a well-considered local and central tax and economic policy. Profits from business activities are also important elements, profit on sales, rental and dividend income can be mentioned also in this context. Transactions that give rise to various debts; such as loans, credits, bond floatation can also serve as possible financial sources. However, they may be subject to conditions, such as the prior consent of the government or the imposition of at least one local tax by central legislation in order to contain public debt. Such a restriction may be particularly pronounced if previously accumulated debt has been taken over by the central government, as has been the case in Hungary since 2010. After the change of regime that overthrew the Communist dictatorship (1989/1990), due to the financing shortcomings of the local government system, most of the local governments run up significant debts and put difficulties in its own way. Therefore, the Government has decided to take over it from the concerned local governments in several stages but in order to prevent the re-accumulation of debt (except in a few exceptional cases), the conclusion of a debt-generating transaction requires the Government's permission.³³ In other legal systems, the central legislation may decide to make borrowing subject to either a parliamentary or a ministerial contribution, a solution provided for in the 19th century English legislation is also regulated.³⁴

In modern legal and tax systems, the state is the depository of taxation law and it is its exclusive right to impose a mandatory, a binding, general payment obligation and one without direct compensation. The issue of sovereignty, including tax sovereignty or its philosophical debate is linked to this³⁵ that is, examining which communities are entitled to settle their tax affairs, how they relate to the state, what is the source of taxation power. In the Middle Ages, some cities and city-states had independent, modern, complex financial and budgetary systems, used taxation techniques, in that particular case and field, foregoing the central (princely) government's development.³⁶ However, once the principle of *nullum tributum sine lege* ('no taxation without a statute') has come to power, the source of tax liability can only be law. At the same time, it also ensued that the legislature may authorize other organizations and bodies to levy taxes. This right has a derivative nature, as its scope is determined by law. Local governments have the right to tax but this right is partial and derived, while the state's right to tax is general and complete. The state may decide which organizations and administrative units with local governments are entitled to collect taxes, in such a way as to ensure the possibility of using coercive state means in the event that the taxable person does not voluntarily comply with the prescribed obligation. It is also the decision of the state from which organization this right to tax is taken away. An example is the deprivation of the church of the right to take compulsory tithing during civil transformations (18th and 19th. century) in some European countries. For example in Hungary, it was repealed in 1848 by the Act XIII of 1848.

As mentioned earlier, the Charter is an important municipal right to set tax options. At the same time, it is important that this right is not unlimited, as the legal framework estab-

33 See for example the Act CLIV. of 2011 about consolidation of County governments, the takeover of certain healthcare institutions of Municipalities and of the Capital; as well as the Act CXCV of 2011 s (10) about the Economic stability of Hungary.

34 Stephen, Henry John; Jenks, Edward, Editor. *Stephen's Commentaries on the Laws of England*. London, Butterworths, 498–499.

35 See Richard Bonney, 'The Rise of the Fiscal State in Europe, c. 1200–1815' in Richard Bonney (ed.), *The Rise of the Fiscal State in Europe, c. 1200–1815* (Oxford Scholarship 1999) 4–5.

36 Eberhard Isenmann, 'The Holy Roman Empire in the Middle Ages' in *ibid.* 245–246.

lished by the legislature must be taken into account. The reason for this was defined by Paul Leroy-Beaulieu in the 19th century:

Most European countries have started to restrict local authorities in their right to levy tax in general, or at least in the subjects they may tax. The state's financial control over local taxes is justified and salvaged to the greatest extent. It is fitting that the state, which represents the public interests of the nation, is also more enlightened, impartial and forward-looking. Say, so that the state can ensure that no part of the country becomes incapable of bearing the burden of the state.³⁷

Central legislation has extremely important tasks in the field of preventing over-taxation, efforts to create a uniform legal framework, such as taxpayers, tax objects, methods of calculating the tax base, prescribing and determining the maximum amount of taxes, mandatory exemptions and procedural rules but it basically depends on the decision of the legislator how much room for maneuver local governments have in relation to their own rulemaking. In Hungary, for example, the system of local taxes was fundamentally fixed: in addition to their main rules, the types of taxes that can be levied are defined by Act C of 1990 on Local Taxes, but from 2015, the settlements also have the opportunity to use the so-called municipal taxes. However, according to the law, this possibility is not infinite, as the local government's decree-making activity is limited by some basic requirements. Thus, they may not be taxed on a tax object that is already subject to a public burden specified in another law, whether local or central and the subject of the tax may not be an entrepreneur with regard to the status of a local government, organization or entrepreneur.

The right to tax is therefore not unlimited, the central legislature has the right to set the framework. However, it is also entitled to restrict the use of tax resources, either by specifying what they may or may not be used for. For example, according to the Hungarian act on local taxation, the revenue from the local business tax must be used primarily for public transport tasks, the additional revenue can be used to finance social benefits but it is forbidden to use it for personal benefits and related public charges. Revenues from municipal taxes that are not subject to local taxes can be used for development purposes as well as social benefits.³⁸ In other words, autonomy, budgetary decisions are limited and the right to dispose of resources have various legal limits.

An example is that the legislature designates the role of local taxes in revenues: the Local Government Law, Free State of Bavaria (*Bayerische Gemeindeordnung*), for example, states that municipalities are 'particularly entitled to tax in accordance with the law to cover their financial needs if their other revenues are insufficient.'³⁹ So other income is considered primary by law, and taxation may arise as a secondary option if it does not provide sufficient coverage for expenses.

As local taxes, taxes on local wealth can be used the most, but in some places a local income tax, a flat tax based on a flat rate, a sales tax or a public tax on locally extracted raw materials are levied with different content and variable results. The application of sales tax may conflict

37 Paul Leroy-Beaulieu, *Pénzügytan II.* (A Magyar Tudományos Akadémia Könyvtár-Értékelési Osztály 1880) 424–425.

38 Act C of 1990 on Local Taxes s 1 / A (5), 36 / A.

39 Gemeindeordnung (GO) in der Fassung der Bekanntmachung vom 22. August 1998 (GVBl. S. 796, BayRS 2020-1-1-I) s 22(2).

with value added tax, so if this is also applied by a tax system, the compatibility of the different levels must also be taken into account,⁴⁰ but in the case of a local sales tax, compliance with EU law has already been examined in the case law of the Court of Justice of the European Union (CJEU).⁴¹ Otherwise, the most suitable local taxes are those that do not require the performance of complex tax administration tasks and are relatively stable and show consistency in terms of revenue. Thus, property taxes and earnings taxes are most conveniently operated as local taxes.⁴² In addition, it is important for the local tax to be well visible, as this ensures local accountability and for the tax burden to be spread evenly so as not to exacerbate local wealth inequalities. Third, the revenue from the tax must be significant and reliable, which requires that the tax base should not be easily transferable between local authorities.⁴³ At the same time, if the central legislation incorrectly chooses the public burden introduced to finance local governments, it could lead to serious political consequences, tensions, social resistance, the loss or popularity of the ruling party (abolition or transformation of the tax) and the departure of the head of government. For example, in 1988, in the United Kingdom, during the reign of Margaret Thatcher (1979-1990) the Local Government Finance Act 1988 introduced different charges in different parts of the United Kingdom, including The Community Charge, also known as a poll tax. This meant that every adult had to pay a certain amount of tax. The introduction of the head tax has led to significant social resistance and anti-poll tax unions, whose most important activities included demonstrations, flyers, newspaper articles, graffiti.⁴⁴ So, the choice of available tax types must be chosen carefully, taking into account the possible political consequences.

The question may also arise, that which members of the local government community wish to contribute to the provision of funding on a voluntary basis, so whether they wish to contribute to the costs through voluntary contributions other than the mandatory public charges. An interesting experiment in Hungary in the last decade of the Communist dictatorship (1949-1989) was the so-called settlement development contribution. The peculiarity of this was that the consent of the majority of those liable to pay was required for the imposition, the determination of the rate and the usability. The introductory law Legislative Decree No. 12 of 1984 (*1984. évi 12. törvényerejű rendelet*) expressly stated that this resource could not be deducted from the council (name of the local administrative level between 1950 and 1990). However, it was not a success: in 1990, this legislation was repealed in the process of developing rules for a new type of local taxation. In the larger settlements, in the absence of civic interest, there was no effective cooperation between them and the administration, but in the smaller settlements, where the relationship between the administration and the citizens was not alienated, the level of interest was higher.⁴⁵ Attempts at such voluntary contributions also show the measure of willingness of a local community to make additional payments (financial

40 Nick Devas & Munawwar Alam, *Financing Local Government* (Commonwealth Secretariat 2008) 37.

41 See in connection with the Hungarian local business tax: Joined Cases C-283 and 312/06 *KÖGÁZ rt and Others v. Zala Megyei Közigazgatási Hivatal Vezetője and OTP Garancia Biztosító rt v. Vas Megyei Közigazgatási Hivatal* [2007] ECR I-8463.

42 Gábor Földes, *Adójog* (Osiris Kiadó 2004) 374.

43 J. O'Hagan, P. McBride & P. Sanfey, 'Local Government Finance: The Irish Experience' (1985) 1985 *British Tax Review* 235, 243-244.

44 Paul Hoggett & Danny Burns, 'The Revenge of the Poor: The Anti-Poll Tax Campaign in Britain' (1991) 11 *Critical Social Policy* 95, 95.

45 Katalin Szamel, *Közigazgatás az állampolgárért, vagy állampolgár a közigazgatásért* (Közgazdasági és Jogi Könyvkiadó 1988) 315-316.

sacrifices) in addition to the mandatory public charges in order to increase the financial independence of the municipality by increasing the resources available.

It is also possible that the state distributes or transfers certain revenues to local governments. The scope and extent of these may change from time to time. Thus, for example, in the Hungarian tax system, the motor vehicle tax was a central tax, but it functioned as a transferred tax for a long time, 100% of the local governments were entitled to the tax paid on motor vehicles registered in their territory. Previously, this was reduced to 40% by the legislature, and from 2020 onwards, local governments will no longer benefit from these revenues due to the need to create central financial resources because of the pandemic. The law on the current annual central budget contains the revenues that the legislature shares with the local governments or that it transfers in full in the given budget year. The scope of these and the extent of the division may vary from time to time, depending on the decision of the central legislature. In the Hungarian legislation, for example, the local government is entitled to 100% of the personal income tax on the income from the lease of agricultural land, collected by the local government according to the location of the land, or 100% of the environmental fine imposed by the notary. Finally, various grants, such as grants from the central budget or certain European Union funds for EU Member States are also important. Subsidies that may be received by municipalities in financial difficulties in an emergency may be particularly important. These grants may even be provided in a private-law relationship, for example under a grant agreement on a repayable basis, using an appropriate guarantee scheme to limit the municipality's financial autonomy and local tax bills. The legislator may therefore grant the various subsidies not only within the framework of a public-law relationship, but also on the basis of an agreement with the municipality, subject to the voluntary acceptance of various restrictions.⁴⁶ It should be noted that the issue of different rescue packages (extraordinary aid) can also be examined in terms of softening the budget constraint. Although the central legislation may declare that it is not responsible for the obligations of local governments, for the consequences of their loss-making management, nevertheless, it obviously cannot allow a local government to become inoperable. Thus, it can be built into the expectations and decisions of local governments that the central budget will save them in some way if they do not manage properly.⁴⁷

5.2. REVENUE RATIO

How the proportion of the mentioned revenue can be shaped is a fundamental question. Important starting points are state budget subsidies for local governments, which are key components of local finances.⁴⁸ However, the key question is the extent to which local governments are able to raise the necessary financial resources themselves and the extent to which

46 An example is such support to a city with county rights in the Hungarian legal system. See the Government Resolution 1943/2017 (XII. 12.) on the support of local government.

47 See Csaba Lentner, 'Önkormányzatok pénzügyi konszolidációja és működőképes állapotban tartásuk eszköztárszere' in Csaba Lentner (ed.), *Adózási pénzügytan és államháztartási gazdálkodás. Közpénzügyek és államháztartástan II.* (NKE Szolgáltató Kft. 2015) 637.

48 *Ibid.* (n 10) 741.

they need public support. On the one hand, if local public services are predominantly financed by central subsidies, the benefits associated with a competitive economy will be mitigated: in market conditions, inefficiencies can lead to significant price differences. The high level of central subsidies not only reduces the efficiency of local authorities, but also leads to a distorted perception of prices by the local population. This is because the subsidies obscure the real value of the municipal services, and it may happen that the local voter only perceives the local tax cost of the service and does not take into account the amount of the central subsidy. This 'fiscal illusion' may give the impression that these services are cheaper than others, which may artificially increase the demand for municipal services. According to some approaches, subsidies should therefore focus primarily on ensuring equal opportunities and closing the gap between service needs and tax capacity.⁴⁹ The starting point in the Hungarian system is that the subsidies provided by the Parliament within the framework of the task financing system 'must ensure the maintenance of the revenue interest of local governments.'⁵⁰ On the other hand, vulnerability to central subsidies results in a dependent situation, for it is an important requirement for local governments

that the funds shall be made available to them which are free to use and the application of which they are free to decide for themselves, without any state interference. An organization or institution that manages exclusively or overweight public funds has 'sham autonomy', at least it is doomed to meet the expectations of the financier (also). With other money, there is no unlimited autonomy, or even if it is, it can only be apparent.⁵¹

In other words: 'the problem of financing local governments plays an important role in all countries. There is a belief that the lack of financial independence is one of the main reasons for the general lack of independence of local governments.'⁵²

6. RESTRICTION OF FINANCIAL AUTONOMY BY CENTRAL LEGISLATION

6.1. STATE DEDUCTIONS

Central legislation can not only shape financial relations indirectly for example, designating the legal framework for local taxation, but also directly. The first to be mentioned in this area is the central subsidies important for local governments, the resources that they can use to perform the obligatory tasks prescribed by law. However, there are relationships that are in the opposite direction and do not provide resources to local governments, but reduce or

49 George A. Boyne, *Public Choice Theory and Local Government: A Comparative Analysis of the UK and the USA* (Springer 1998) 25.

50 *Ibid.* (n 19) s 117(4).

51 The Constitutional Court of Hungary 41/2005. (X. 27.) [2005] ABH 2005 459, Dissenting opinion of László Kiss, constitutional judge, paragraph II. 4.

52 International Union of Local Authorities, *Local Government Finance and Its Importance for Local Autonomy: Reports Prepared for the Rome Congress, September 26th – October 1st (1955)* 7.

even distract them. Such a solution could be, for example, if the law specifies how certain central subsidies are to be reduced in proportion to the expected revenue from certain taxes (using offsetting), even by setting tax brackets. When applying such a requirement, local governments must consider the issue of the application and applicability of local taxes when counting the available resources, as the legislator may encourage local governments to exploit local tax potential by reducing support and prescribing a contribution to the central budget. The pandemic of 2020 forced individual states (central governments) to take various economic policy measures. The defense, the economic recovery and the provision of various subsidies required extraordinary financial resources, in the creation of which the local governments could be obliged to contribute. An emergency is clearly not conducive to autonomous structures, imbalances can occur between national, regional and local levels,⁵³ on the other hand, central legislation could have required local governments to make proportionate sacrifices, even if political debates were sparked. In Hungary, for example, local governments have been deprived of their share of revenues from motor vehicle tax (the money from it was redirected to the epidemic control fund), as a relief for smaller businesses, the upper limit of the local business tax that can be levied by local governments has been temporarily reduced (instead of 2% of annual net sales, the maximum could be 1%) and in 2021 it was not possible to increase the rate of local taxes or introduce a new local tax in 2021 and 2022. But it was just as significant a loss of revenue for municipalities that the government temporarily made free paid parking in some months in 2020 and 2021 to encourage individual, safer use of vehicles over public transport.⁵⁴ The revenue thus lost could be offset by the provision of various subsidies from the central budget, but such compensation is already a matter for individual legislative decisions. Such restrictions may also constitute a breach of the Charter (although not even in the event of an emergency), as municipalities may have been obliged by central governments to carry out epidemic control tasks, as local authorities are closest to the citizens and their needs. However, adequate resources were not necessarily provided for this.⁵⁵

6.2. WEALTH AND ASSET MANAGEMENT ISSUES

It is essential for autonomy that local governments have their own property. During the period of the regime change, in 1989-1990, the Hungarian legislation incorporated the equality and equal protection of property forms into the Constitution (*A Magyar Köztársaság Alkotmánya*) in force at that time.⁵⁶ During the Communist dictatorship (1949-1989), state ownership was primary, the right to property (and business) was not guaranteed by the state, ownership had to be restructured accordingly. The right to property, the right to dispose of it, has been recognized, the privileged nature of state property has ceased⁵⁷ as a result of which

53 Judit Siket, 'Centralization and Reduced Financial Resources: A Worrying Picture for Hungarian Municipalities' (2021) 19 *Central European Public Administration Review* 261, 261.

54 See the Government decree No. 639/2020. (XII. 22.), No. 535/2020. (XII. 1.) and No. 512/2020. (XI. 21.).

55 *Ibid.* (n 53) 276.

56 See the Act XX of 1949 s 9(1) on the Constitution of the Republic of Hungary.

57 See the Act XX. of 1949 s 4, s 6 and s 8 (1) and s 8(2) on the Constitution of Hungarian People's Republic.

'municipal property has the same protection in civil law as private property.'⁵⁸ The recognition and regulation of local government property and the shaping of its content by The Constitutional Court were particularly important, because between 1950 and 1990, it operated in a Soviet-style system of councils. Councils without real self-government could only acquire management rights on state property, their ownership and supply of appropriate assets were essential steps in the process of establishing autonomy.

Municipal property, as a form of public ownership, may be subject to special legal protection or prohibitions. On the one hand, legal obstacles to institutionalized misappropriation of property need to be regulated, on the other hand, protection should be provided against attempts by individuals to acquire property which, although permitted under private law, are open to challenge in the case of public property. As a result, the central legislature may restrict the decisions, legal transactions and contracts of local governments that relate to the alienation of assets related to public tasks and purposes. In other words, the traditional freedom of contract under private law, which is one of the cornerstones of civil law, does not apply to local authorities in general. The Local Government Law, Free State of Bavaria, for example, stipulates that a municipality may sell property that it does not need to carry out its duties and may only do so at full value.⁵⁹ In the Hungarian legal regulation, the law defines the concept of municipal fixed assets, which includes partly non-marketable and partly limited marketable assets and a contract or other legal transaction or provision, that is in conflict with the provisions of the law is void.⁶⁰ On the other hand, business assets related to the business activities of local governments are marketable and are not subject to any restrictions.⁶¹ Thus, as long as the legal specificity of the element belonging to the ordinary property does not change as a result of certain official procedures, or as long as it is related to the performance of public tasks, it cannot be alienated, encumbered, or even divided. As a result, for example, it proved illegal in one case when the local government wanted to involve private capital in the implementation of an underground garage construction project by creating shared ownership. According to the idea, the surface of the square would have remained the property of the local government, while the lower, built-in parking levels with independent topographical numbers would have been privatized. However, the court ruled that such a legal transaction was also void, because no property divided on non-marketable assets could be established. The case has also aroused interest because it has limited local government decision-making on how private capital can participate in resolving metropolitan parking difficulties.⁶²

The need for protection can be approached not only from the point of view of individuals, but also from the point of view of the state. The question arises as to the extent to which central legislation can restrict, deprive, tax, for example, the right of local governments to own property. US Case Law has traditionally assumed that local governments are state agencies, that they are controlled by the state, which their power and rights derive from them, that they

58 Decision No. Pfv.II.20.042/2021/9. of the Curia of Hungary.

59 Gemeindeordnung für den Freistaat Bayern (Gemeindeordnung – GO) in der Fassung der Bekanntmachung vom 22. August 1998 (GVBl. S. 796), s 76(1). For information on acquisition and disposal of assets at the Federal level, see Bundeshaushaltsordnung vom 19. August 1969 (BGBl. I S. 1284, 63. §).

60 Act CXCVI of 2011 on National Assets. Act s 5, s 15.

61 On the Significance of Delimitation in US Case Law see, for example *Hunter v. Pittsburgh*. 207 US 161 (1907).

62 Attila Menyhárd, 'A Legfelsőbb Bírószág ítélete a soproni mélygarázs ügyében' (2010) 1 Jogesetek Magyarázata 19, 24.

can be reorganized and that the regulation of their operation and use of government or public property is not a contractual relationship. As a result, there are no obstacles to the taxation of municipal property, but they can only be deprived of their property as a result of a fair trial.⁶³

There are some other approaches that result in various restrictions and constraints for local governments in the field of financial and economic autonomy. The principle of value guarantee can be defined as such a principle, which ensures that local governments not only formally retain property, but also show an active attitude towards it.

The practice of The Constitutional Court of Hungary also leads to the conclusion that the local government is free to manage its property, during which the principle of value guarantee, the enrichment of local government property, but at least its preservation in value, must prevail.⁶⁴

If the local government does not provide the necessary replacement of assets as compensation for depreciation, if the condition of the assets deteriorates, then according to the approach of the State Audit Office of Hungary (Állami Számvevőszék) it means hidden indebtedness, it can be considered as an internal source of indebtedness risk.⁶⁵ So, there are also obligations attached to the property that presuppose active action.

In connection with the alienation of property, we should also mention procedural issues which restrict freedom of contract. Therefore, the central legislation may stipulate that, above certain thresholds, contracts for assets may be awarded only on a competitive basis, thus ensuring that the municipal transaction can be carried out in proportion to the value of the service and consideration. The ‘risk-eliminating effect’ of competition is aimed at ‘eliminating the possibility of selling below cost in relation to state and municipal assets. This is nothing more than a reckless confidence based on luck and a lack of proven knowledge.’⁶⁶ The local government may not override the obligation of compulsory competitive bidding with its own rule, fix it such way that its against the obligation put down in the law; may dispense with the competitive bidding in case if it is necessary to agree on issues that conditions are indefinite in the tender or its unilateral determination would prevent the alienation, exploitation.⁶⁷

6.3. TRANSFORMING PUBLIC TASKS AND FUNDING

Local governments perform public tasks, for which it is necessary to adjust their funding bases and assets. As the central legislation determines the mandatory tasks that local governments must at least perform and also decides what subsidies to provide for this, local governments must comply with the relevant regulations. The fact that the legislature imposes

63 See *Hunter v. Pittsburgh*. 207 US 161 (1907) 161, *Covington v. Kentucky*. 173 US 231 (1899) 232.

64 Decision No. Kőf.5.083/2012/4. of the Municipal Council of The Curia of Hungary.

65 State Audit Office of Hungary ‘Financial Control of the Local Governments’ <www.asz.hu/storage/files/files/jelentes/2021/21027.pdf> accessed 2 May 2022, 10, 25.

66 Decision No. Bfv.III.502/2019/5. of the Curia of Hungary.

67 Decision No. Kőf.5.083/2012/4. of the Curia of Hungary.

additional mandatory tasks on local governments, but does not provide sufficient resources for this, leads to vulnerability and indebtedness. This problem may become particularly pronounced if there is political tension between the majority of local governments and the political parties that make up the central government.

The performance of the tasks may have an impact on the municipal assets, as if the central legislation decides that certain tasks (for example in the field of health or education) will be performed by state-owned institutions instead of the municipalities, provision should be made for the transfer of the relevant assets. The starting point is therefore the task and goal of the municipality. Exactly the scope of the tasks of the local government, ie how the legislature divides the performance of public tasks between the state and the local government and what funding sources and assets it assigns to them, depends on the current government objectives and decision-makers. In the United States of America, for example, in the aftermath of World War II, federal and state governments have a greater role to play in providing and funding services that have historically been more provided by local governments.⁶⁸ The deprivation of the property of the local government based on a statutory provision may also be significant from the point of view of the violation of the right to property, however, according to The Constitutional Court of Hungary, such a state decision is acceptable as long as it is related to the performance of duties and powers.⁶⁹ At the same time,

it may not be its task to examine the extent to which the transformation of a former municipal task and competence into a state task facilitates the more efficient performance of the given task and competence, as this is a matter within the competence of the current legislator.⁷⁰

It should be noted that not only the deprivation of property, but also the sharing of revenues with other municipalities are not considered illegal if they do not dismantle, for example, to compensate for the loss from the central budget and other local revenue.⁷¹

7. CLOSING THOUGHTS

No matter how important financial and economic autonomy is for local governments, it is not unrestricted and inviolable on the part of the central legislature, as it is able to exert a decisive influence on financial opportunities in various ways, either directly or indirectly. The issues discussed above demonstrate that financial autonomy is severely constrained and local governments need to fit into the framework of central legislation and government, which is determined by the characteristics of the current political situation and the related budgetary roles. The fundamental question is in what areas and how the legislature may restrict the financial freedom of local governments.

68 Eric M. Zolt, 'Inequality, Collective Action, and Taxing and Spending Patterns of State and Local Governments' (2009) 62 *Tax Law Review* 445, 499.

69 *Ibid.* (n 31), para 49, ABH 2019 2105, 2112.

70 *Ibid.* para 48.

71 *Ibid.*(n 30) paras 147–158, ABH 2021 689, 721–722.

The right to tax basically belongs to the state (central legislature) based on the principle of *nullum tributum sine lege*. Local governments may exercise the right to tax in a limited and derivative manner within the limits set by the state. The scope of this may differ from one legal system to another, but the feasibility of central taxes and the avoidance of over-taxation must be taken into account, so that different central limits cannot be disregarded.

Dependence on central budgets is reflected in the amount and nature of subsidies. Autonomy is counterbalanced by the fact that the majority of local government revenues come from central subsidies. The economic backgrounds of local governments (population, presence of high tax-intensive businesses, etc.) can be extremely diverse, so there are some who are in greater need of central assistance. However, the central budget may withdraw, by requiring compulsory payments or reducing subsidies that may otherwise be provided, based on assumed economic performance. All this raises the question of the extent to which local governments need to show financial solidarity with either the central budget or other local governments.

Defining and reallocating mandatory tasks are also key issues. Withdrawal can also be achieved by increasing the number of tasks in the central legislation, but does not provide the necessary resources to perform them properly. This can be particularly pronounced in emergencies such as pandemics. In such a case, the question may arise as to whether all this may infringe the rights enshrined in the constitutions or in the Charter, as well as the autonomy. In such a case, however, it can be said that all parts of society, the economy and public finances (individuals, businesses, central governments) have to make financial sacrifices. So why should local governments be the exceptions? If public burden-bearing means that the possession of various privileges cannot be exempted from taxation either, then the necessity and legal basis of local governments to make financial sacrifices cannot be questioned, at most the extent of which can be disputed.

Property of local governments is public property, which must be protected and institutionalized on the one hand and systemic depletion of property must be prevented on the other. The financial autonomy of local governments is therefore subject to public law constraints with various private law effects. In addition, the preservation of the value of the property, as well as its increase and development may be expected, and it may also be a requirement that the sale is possible only in certain cases and as a result of procedures. Local governments' freedom of contract is also subject to strong restrictions accordingly.

Based on the above, autonomy of local governments is not unrestricted and not self-serving. Local governments need to fit in with the revenue framework set by public tasks, public finances and central legislation. If funds are taken away from local governments or financial sacrifices are expected, the question of a violation of autonomy may rightly arise, but this should not be an endless reference either. The judicial and constitutional decisions of the respective legal systems ultimately determine the framework within which the various legal, political and financial conflicts can be handled. It is essential that the legislator provides appropriate opportunities (such as Constitutional review) for the decisions made to local governments. The regulations and legal disputes presented in the study (mainly the American and Hungarian cases) usually support the fact that the central legislation can make decisions that can adversely affect local governments from a financial point of view. However, as stated in German law, local governments have an unlimited, inviolable internal autonomy (the inviola-

ble area of local government is the so-called *Kernbereich*), which is considered a basic condition of their existence. However, the limit of this is uncertain in many cases, when developing the relevant legislation and legal application aspects, documents of strategic importance, which are above national regulations (constitutions), such as the Charter.

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SUKOBI INTERESA IZMEĐU LOKALNIH SAMOUPRAVA I SREDIŠNJEG ZAKONODAVSTVA – KOLIKA JE FINANCIJSKA NEOVISNOST LOKALNE SAMOUPRAVE

Sažetak

Prava i odgovornosti lokalnih vlasti definira središnja zakonodavna vlast, u skladu s pravilima, tradicijom, institucijama ustavnog i upravnog prava određene zemlje. Za obavljanje javnih dužnosti potrebna su financijska sredstva, prihodi i bogatstvo. Povrh toga, potrebno je osigurati pravo raspolaganja, financijsku i ekonomsku autonomiju, kao i mogućnost ostvarivanja subvencija iz državnog proračuna. Omjer i jamstvo prihoda također su važni jer autonomija lokalnih vlasti koja ovisi o središnjim subvencijama može biti upitna. Od primarne je važnosti utvrditi granice autonomije, zaštićene raznim ustavnim odredbama i međunarodnim pravnim dokumentima, kako zakonodavac može kontrolirati porezni zakon, ulaziti u transakcije koje stvaraju dugovanja ili kako ostvariti financiranje iz različitih izvora financiranja lokalnih vlasti. Središnje povlačenje i preraspodjela sredstava mogu potaknuti pitanje solidarnosti lokalnih vlasti. Nadalje, postavlja se i pitanje u kojoj se mjeri mogu ograničiti imovina i prihodi lokalnih samouprava. Praksa raznih ustavnih sudova i vrhovnih sudova (američko, francusko, njemačko i mađarsko pravosuđe) ukazuje da prava i ovlasti lokalnih samouprava nisu neograničene. Međutim, lokalne samouprave moraju pribaviti učinkovitu zaštitu, ali u konačnici država određuje sadržaj i okvir važećih pravnih propisa za lokalne samouprave. Stoga, unutar ustavnog okvira, središnje zakonodavno tijelo ima priliku intervenirati u zaštićenu autonomiju povlačenjem ili preraspodjelom prihoda, imovine ili subvencija.

U istraživanju se primjenjuje metoda financijske i upravno-pravne analize i usporedba prava. Osim međunarodnih, ustavnih i zakonskih (američkih, njemačkih, francuskih, mađarskih) propisa u radu se prikazuje i temeljne karakteristike financijske autonomije lokalne samouprave na temelju načela razrađenih u različitim elementima odluka Vrhovnog suda i Ustavnog suda, kao i ograničenja s kojima se navedena autonomija suočava kao rezultat odluka središnjeg zakonodavnog tijela. Predmet istraživanja je financijska autonomija jedinica lokalne samouprave i njezina zakonska ograničenja koja ukazuju na to da autonomija, nažalost, ne može biti neograničena. Lokalno oporezivanje, vlastiti prihodi i subvencije doista mogu pružiti odgovarajuće temelje za neovisno upravljanje lokalnom samoupravom. Međutim, budući da se lokalne samouprave moraju prilagoditi središnjem državnom sustavu javne uprave i javnih financija, središnje zakonodavstvo može donositi odluke koje nepovoljno utječu na njihove prihode, proračune i imovinu.

Ključne riječi: *javna uprava, lokalna samouprava, javne financije, općinska autonomija, lokalni porezi*



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