

Centralization and Reduced Financial Resources: A Worrying Picture for Hungarian Municipalities¹

Judit Siket

University of Szeged, Faculty of Law and Political Sciences, Institute of Public Law, Hungary

siket.judit@juris.u-szeged.hu

<https://orcid.org/0000-0001-5477-2792>

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ABSTRACT

The article provides an overview of governmental regulations affecting the operation and economic situation of local self-governments in Hungary during the pandemic crisis. The research covers the period from the declaration of the state of emergency in March 2020 until the end of the year. The study aims to explore the implementation of the European Charter of Local Self-Government's special provisions related to local democracy concerns in times of crisis. The article analyses the relationship between the pandemic and governmental measures that affected the economic position of local self-governments. It does not provide an objective assessment, but rather presents and analyses the relevant resources. The article is primarily based on the review of the legal framework and the relevant Constitutional Court's decisions. The analysis demonstrates that the Constitutional Court did not or only partially defended the legal interests of local self-governments. The governmental measures 'stood the test of constitutionality'. The study confirms the initial assumption that the excessive centralization process was significantly reinforced, while the position of local self-governments in the state organs system weakened. However, some measures cause concern as they highlight deeper problems in the Hungarian legal system, irrespective of the pandemic.

Keywords: constitutional requirements, Covid-19 pandemic crisis, European Charter of Local Self-Government, exceptional legal order, local self-government, municipal finance facilities

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1 Introduction and research question

The Covid19 pandemic has put the States in an exceptionally difficult situation and notably has changed the system of traditional exercise of powers. The direct leading role and influence of governmental authorities will become much more significant, protection of human life and maintenance of the functionality of the economy requires extraordinary and coordinated measures by the government. Therefore it should be made clear, that an emergency is not favourable for autonomous structures, may arise an imbalance between vertical structures involved in the exercise of public powers at the national, regional and local level.

The paper considers those governmental measures that affect the local government system. It is fact, that the pandemic crisis has a spatial dimension as well, it may differ also across regions and municipalities within countries, both in terms of confirmed cases and related deaths.² All countries suffer the consequences of the global pandemic in a various form but there are significant differences even among different regions and districts of the same country. There is no uniformity in the effects, not even in a single unity. Different economic, employment and financial impacts could occur, the treatment of these severe problems posed a serious challenge for local self-government both from health care and economic aspects.

Operation of local self-governments especially appreciated in times of crisis, knowledge of and familiarity with local social spheres, the ability of rapid, responsive and efficient reaction for local population needs are of paramount importance during the elimination of crisis, mitigating social and economic consequences. Fundamental institutions of local democracy, the institutional and legal guarantees of democratic operation will not be treated with the same priority as previously.

However, it is important to emphasise, that the centralization of financial resources and suspension of the operation of democratically elected local self-government bodies must not jeopardize the performance of local self-governments' tasks, must not lead to deprivation of core content of the local public affairs.

Different bodies of the Council of Europe, such as the Monitoring Committee and the Congress Group of Independent Expert on European Charter of Local Self-Government have expressed concerns that the upsetting of the delicate balance between organizations exercising public powers have changed in times of crisis and the local democracy may be threatened. The effectiveness of fundamental principles of local self-government laid down in the European Charter of Local Self-Government (hereinafter: Charter) are subject of ongoing debates during the pandemic, nevertheless the situation requires tight cooperation between central governmental a local self-government organs.

² The territorial impact of Covid-19: managing crisis across levels of government. OECD 2020. pp. 3–4.

This research aims to examine especially on one hand effectiveness of constitutional requirements, like necessity and temporality of those governmental measures, which are affecting local self-governments and on the other hand, the application of fundamental principles and values of European local democracy in times of crisis, in Hungary. The main question is, whether the governmental measures adopted in time of crisis but integrated to 'normal' legal order are conducive to mitigate the effects of pandemic crisis or deprive the main content of local public affairs. As to assess the governmental measurements correctly, it is essential, to fit these steps of the Hungarian Government to the fundamental constitutional requirements and European values of the Charter.

2 Methods

The focus of the research underlying this paper is the impact of the exceptional legal order regulation on the functionality and economic position of Hungarian local self-governments. The study analyses the governmental decrees and the decisions of the Hungarian Constitutional Court through the prism of general constitutional requirements, the principles of rule of law and respect of European values of local democracy, principles of local self-governments.

The analysis exposes the governmental measures mainly from a legal aspect. It also attempts to give a short glimpse of the economic effects, as the data of final balance of last year's budget is not yet available. Therefore only assumptions can be made based on the reports.

3 Results of the analysis

Hungarian Government declared the state of danger for the first time on 11 of March 2020, from this time the exceptional legal regime was applied.³ Under the special legal order, the Government is authorized to issue governmental decrees. The Government made use this authorization and issued a lot of decrees to mitigate the consequences of the epidemic crisis, on one hand, to defend human lives and to ensure the health care possibilities and on the other hand to handle the economic consequences of the crisis. The study demonstrates the theoretical and constitutional background of the state of danger, nevertheless examines at least three major areas of the local self-government, like (1) the specific way in which local government operates in the state of danger, (2) the governmental measures affected the management of local public affairs and (3) the case of 'special economic zone'.

The exercise of public power at the local level, the manner of self-governance takes a particular form in the state of danger. The mayors of the municipalities are given a prominent role, therefore the operating mechanism of local self-governments deserves attention. The cases examined showed that may-

³ Government Decree 40/2020. (III.11.) on the declaration of the state of danger.

ors have acted in accordance with the local self-government law actually, except for few cases.

Local self-governments in Hungary –based on the provision of the Charter and the Fundamental Law – should enjoy wide-ranging financial autonomy. In this respect, this research concerned two elements, local taxes and ownership rights. The governmental measures related to local taxes resulted was a serious intervention into the local financial management, especially they concerned the resources of the fulfilment of voluntary tasks. Major cities were particularly hard hit by these governmental decrees. As a consequence, the vast majority of local self-governments reduced the operating costs. The population of municipalities was also adversely affected by the suspension of applications for projects and the ongoing investments.

Through the designation of the special economic zone, the Government withdrew the right to development decision-making on the economic environment of the municipality and along with it the surplus resources from local self-government.

On several occasions, the unconstitutionality and the violation of the principle of rule of law related to governmental measures there have been suspected. They were examined by the Hungarian Constitutional Court, despite all this, the infringement of the Fundamental Law was not established on any occasion. This fact could lead to the question of whether the Constitutional Court can perform its constitutional protection function, but the answer is not the subject of this paper.

4 Discussion: exceptional legal order and the governmental measures in the heart of the analysis

4.1 Theoretical and constitutional approach of the exceptional legal order

The hypothetical starting point of such special legal order's regulation is that the State may not handle the highly vulnerable situation with tools by their nature used in the time of peace (Till, 2019, [11]). There is no rule of law standard on the deepness and differentiation of special legal order's regulation, notwithstanding the Government is obliged to reason the introduction of derogations, permanently (Till, 2019 [14]).

However, it is also common, that in the situation of exceptional legal order the principle of separation of powers is not or only partially applied. In addition, the regulation of exceptional legal order shall provide the possibility of swift action and defence of safety and human life, nonetheless, limitations should not cause the infringement of fundamental rights and constitutional democracy. The concentration of powers shall be limited to what is necessary to handle the crisis, if the principle of rule of law is prevailing. The Government's role becomes much more decisive in times of crisis, expanding gov-

ernmental executive powers is emblematic, Parliament does not exercise any control over the activity of the Government, and therefore the ex-post norm control function of Constitutional Court is appreciated (Kiss, 2018, p. 556).

Most European constitutions contain provisions on emergencies.⁴ Ordinarily, Constitutions of Central and Eastern European States contain rigorous and detailed rules on emergencies, as a result of previous, before the political transition authoritarian characters of States (Drinóczy, 2020, p. 3). These rules generally cover competent bodies authorised for the handling of a crisis, the framework of their competences and the time restrictions.

Hungarian constitutional level regulation also follows this regulatory method, as it could be traced in Fundamental Law of Hungary (hereinafter: Fundamental Law),⁵ entered into force 1 January 2012. Different types of emergencies are classified and the subject of the detailed ruling. In this way, Fundamental Law contains a separate chapter on crises, entitled special legal order. The term of special legal order can be considered an umbrella term, diverse types of state of danger are constituted, as follows, (1) state of national crisis, (2) state of emergency, (3) state of preventive defence, (4) emergency response to terrorism, (5) unforeseen intrusion and (6) state of danger. The latter type, state of danger is the only stage, which shall be highlighted from the special legal order, in accordance with the topic of the study. The state of danger is the sole emergency, which is not intended the armed defence of the State. The scope of this provision is broader than the other types of special legal order, it could develop a serious constitutional concern because the basic regulation of the state of danger is laid down in Fundamental Law, but detailed rules covered in Act on catastrophes.⁶ Due to the Fundamental Law, the main elements of the state of danger are as follows, (1) this period when the lives of citizens, their material possessions and the territory and the sovereignty of the country requires special protection, that (2) may need temporary derogation of the normal legal system and governance by regulation may be legitimized, which (3) may prioritize obligations over certain fundamental rights. According to Article 53 of Fundamental Law, the Government shall declare the state of danger and empowered to introduce emergency measures. This disposal specifies the kinds of emergency in case of state of danger, natural or industrial disaster endangering lives and property to mitigate consequences. Only the parliamentary act provides the human epidemic causing a mass disease, precisely, for this reason, the unconstitutionality of the governmental decree, and the state of danger was suspected because the human pandemic is not involved in the list of Fundamental Law (Drinóczy, 2020, p. 17; Mészáros, 2019, pp. 68-71., Mészáros, 2020, pp. 7-8; Szente, 2020, pp. 15-18).

Provisions introduced by the Government may be the adoption of decrees, suspension of the application of certain provisions or derogate provisions of law and taking the other necessary steps. The principle of temporality shall

4 European Commission for Democracy through Law (Venice Commission) CDL-STD (1995) 012, Emergency Powers. 3.

5 Fundamental Law of Hungary (25 April 2011) Special Legal Order Art. 48-54.

6 Act CXXVIII of 2011 on catastrophes.

prevail, given the decree of Government shall remain in force only for 15 days, except if the Government extends the effect of the decree – based on the authorization from Parliament.

In the case of the state of danger, the principle of *rule of law* requirements shall be applied. Public and private interests deserve protection, and therefore emergency may lead only to a temporary derogation from certain human rights and to an extraordinary division of powers.⁷

Special attention should be paid to principles of necessity and temporality, for the reason, that any kind of emergency measure shall be maintained as long as it is necessary and only for a certain, limited period.

A state of emergency is by definition a state which must be exceptional and temporary. So, it must also be provisional. The emergency rule must be – as it was referred to – strictly limited in time. It must last no longer than the emergency itself and cannot become permanent.⁸

The exceptional authorization, like the state of emergency, requires guarantees, ensured the temporary nature of the situation. These guarantees may be procedural rules, the expansion of emergency desire empowerment derived from the legislator. The most important principle is, that the special legal order must be only maintained as long as causes exist which justify the application of such measures.

Examination of effective application of the principles of necessity and temporality are particularly relevant in governmental actions affected local self-governments of Hungary. Insufficient enforcement of these principles in process of legislation would undermine local self-governments' interests and such legislation may also conflict with the European fundamental values of local democracy, local self-governance.

4.2 First and second 'wave' – declarations of the state of danger

Hungarian Government declared the state of danger for the first time on 11 of March 2020.⁹ The Government issued a lot of governmental decrees, aimed to mitigate the consequences of the epidemic crisis, on one hand to defend the human lives and to ensure the health care possibilities for the involved population and on the other hand to handle the economic consequences of the crisis. In the context of the expiry review, the Government submitted the so-called authorization Bill, which was adopted on 30 March, became the Coronavirus Act 2020.¹⁰ The presumption of unconstitutionality of this Act also emerged for the following reasons; the Act granted the power to the Government to extend the terms of governmental decrees until the state of

7 European Commission for Democracy through Law (Venice Commission): Rule of Law Checklist CDL-AD(2016)007-e II. A. 6. Exceptions in emergency situations. pp. 13-14.

8 Compilation of Venice Commission Opinions and Reports on States of Emergency CDL-PI(2020)003 The Compilation serves as a frame of reference. VII. Duration of the state of emergency p. 21.

9 Government Decree 40/2020. (III.11.) on the declaration of the state of danger.

10 Act XII of 2020 on Measures for the Control of Coronavirus.

danger is declared ended. It meant that the term of state of danger was undetermined and unpredictable, the authorization of Government was unlimited, as provided in the before-mentioned act, it also contained more general authorization to suspend the application of specific law provisions, derogate statutory provisions and introduces extraordinary measures, including those measures, which are affecting local self-governments. The termination of the state of danger was declared by the authorization of the parliamentary act,¹¹ with the governmental decree.¹² Secondly the state of danger was declared on 4 of November 2020,¹³ this period is not over even at the closure of the study. The governmental measures in details are examined in the following chapters.

4.3 Exercising of public powers during pandemic at the local level – the entitled person is the mayor

According to the Fundamental Law (Art. 31. sec. 1) in Hungary municipal governments are set up for the administration of public affairs locally and for exercising local public authority. During the pandemic, the territorial decentralization units so as local self-governments are also operating in a particular manner. The fundamental rules of this special local self-governmental operation appears in the Act on catastrophes.¹⁴

Analysing subject matters of these types of government regulations, two main groups can be separated, on one hand those provisions authorizing the mayors of local self-governments to issue decrees on detailed rules on local social relationship, and on the other hand ensuring intervention for the Government into local matters, to stabilize the economy and to prevent property damages. Especially in the spring of 2020 additional tasks were established by the Government for local self-governments concerning the handling of the pandemic crisis. Certain financial sources of local communities, such as vehicle tax, business tax, tourism tax were diminished; other liabilities, like the solidarity contribution become severe. These measures may adversely affect the compliance of mandatory and voluntary tasks.

Moreover, uniquely, the Government adopted regulation on establishing special economic zones, which is one real case that has already resulted in the withdrawal of competence, decision making power on the development of industrial issues and tax revenues from the municipality, and thus from the population of the settlement. The example illustrates the fact that requirements of the special legal order, like purpose limitation, proportionality, and temporality would be put in doubt. The question arises whether local governments deprived of important part of an local public affairs, especially own resources are necessary to comply with local responsibilities.

¹¹ Act LVII of 2020 on Termination of State of Danger.

¹² Government Decree 282/2020. (VI.17) on termination of state of danger declared on 11 March 2020.

¹³ Government Decree 479/2020. (XI.3.) on additional protection measures applied in time of state of danger.

¹⁴ Act CXXVIII of 2011 on catastrophes.

The first issue is the method of exercising local public powers in a crisis, when the meeting of representative bodies may be a source of risk. Local self-governments regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. Following the provision of the Charter (Art. 3.), local self-government right is exercised by the representative body or assembly. From the view of the state of danger, two aspects deserve particular attention, the organizational questions and the subject of mayoral decisions, related to the scope of local public affairs.

According to Hungarian Local Government Law,¹⁵ implementation of municipal duties shall be provided by the representative body and its entities. Municipal decisions may be made generally by the representative body, exceptionally by local referendum. The representative body may authorise the committee, the mayor, the notary or the association of local governments to make decisions on behalf of the representative body.¹⁶

During the period of the state of danger, responsibilities of municipal councils, the assembly of the city with county rights, of Capital and the county shall be exercised by the mayor, Lord Mayor and the president of county assembly (hereinafter: mayor).¹⁷ This method of the exercising of local self-government powers fundamentally alters the decision-making procedures and the competences of organs (Balázs–Hoffman 2020, p. 12, Balázs – Hoffman 2021, p. 113). The role of the mayor became outstanding in this period; local tasks are performed by the mayor. In this context, the mayor is entitled to decide on the subject of local decrees or decisions. This decision-making power generally derives from government decrees; however, the mayor entitled to exercise the competence of the representative body, with the exceptions, laid down in the Act on catastrophes. The Government has issued the regulation on the rules followed if the post of mayor is vacant or the mayor is permanently prevented from performing her/his duties and the vice-mayor does not exercise mayoral functions defined by the Act on catastrophes.¹⁸ The member of the representative body designated by the local decree of organization and operation or by the county government office is entitled to exercise the duties of the mayor. The resignation of the mayor and the vice-mayor and the rules applicable in this case are also determined by the Government Decree.

Having examined the mayoral decrees that the subject of these types of regulation it seems to be related to the annual budget of local self-governments: reductions on expenditures, cut of salary of local representatives, sale of certain local assets, establishing donation fund, etc.¹⁹ Besides the financial rules, several city mayors ruled the fundamental provisions of community living,

¹⁵ Act CLXXIX of 2011 on Local Governments of Hungary.

¹⁶ Local Government Law Art. 41. par. (2) – (3).

¹⁷ Art. 46. par. (4) Act on catastrophes. Under this provision she/he is not empowered to adopt an opinion on reorganisation or closure of operation, supply and service districts of local government institution, if the municipality is concerned by the supply of services.

¹⁸ Government Decree 15/2021. (I.22.) on performing the mayor's duties during the state of danger.

¹⁹ Source: Nemzeti Jogszabálytár. www.njt.hu (Author's collection)

modified the organizational and operational rules of representative bodies, as well. Issuing measures, the mayor shall respect fundamental principles of rule of law, like necessity and proportionality, the prohibition of abuse of rights principle, principles of sincere cooperation, etc. Legislative authorization of the mayor shall be exercised by its social purpose; the aim of these measures shall be only to ensure the normal, smooth operation of municipalities.

Government Decrees entitled to rule the local social relations in several cases, in accordance with local public affairs.

4.4 How the epidemiological measures affected the sources and responsibilities of local self-governments?

According to the Fundamental Law and the requirements of financial autonomy, local self-governments in connection with local public affairs the municipal government may (1) exercise ownership rights concerning the property of the municipal government; (2) determine its budget and autonomously manage its financial affairs on the basis thereof; (3) have the option to engage in business activities using its assets and revenues; and (4) decide on the types and rates of local taxes, within the limit of the law.²⁰

The budget items and authorisations of local self-government own revenues are determined in Local Government Law.²¹ Details of regulation, such as revenues of local governments from the central budget, division of certain resources between the state and local governments are laid down in the annual budgetary acts.²² In Hungary, the task financing system is effective, as a very tough accounting system. The state finances only the mandatory tasks of local self-governments established by statutory acts, and on the other side, local self-governments shall expend sources transferred from the state only for these tasks, and shall account with them. But there are some own revenues, serving the additional sources for mandatory tasks and voluntary tasks. To illustrate the reduction of local self-government sources, that affected local governments as a result of the Government measures, only a few items of local own revenues, such as (1) vehicle tax, (2) local business tax, (3) tax on tourism and (4) the car parking fees, have to be highlighted. (Balázs – Hoffman, 2021, p. 113–115)

ad. 1. The vehicle tax is a divided financial resource between the state and local government; 40 % of the collected vehicle tax belongs to the local government.²³ This type of revenue does not represent a significant source in the municipal budget, it is under 2 %, despite that, it is considered a freely usable source, serves the correction of sources for mandatory tasks, or may be the source of voluntary tasks.

²⁰ Fundamental Law Art. 32. par. (1), points e) – h).

²¹ Art. 106. par. (1). local taxes, revenue, profit, dividend, interest and rent arising from own activity, undertaking and utilisation of the local government property, monetary assets received, duties, penalties, fees payable on the basis of law to the local government, other peculiar revenues of the local government and its institutes.

²² Act LXXI of 2019 on Central Budget of 2020 Hungary.

²³ Art. 37. par (1) point a) Budgetary Act 2020

The Government adopted exceptional regulation on different rules of the 2020 central budget of Hungary in the period of state of danger.²⁴ The government decree established three different funds to serve the defence against the pandemic, the Fund against the Epidemics, the Fund of Economy Defence, and the Fund against the Epidemics from the EU. All three funds are centrally managed financial appropriation, they ensure resources against the epidemics and restarting the economy. According to the Decree of Government, the vehicle tax entirely will be the part of the Fund against the Epidemics revenues in 2020. In addition, the Parliament enacted the Act on 2021 Budgetary Act, and has not changed the rule adopted for the state of danger, the vehicle tax remains entirely the revenue of the state in next year also.

The Government Decree raised the question of unconstitutionality, therefore 54 MP-s submitted a claim to the Hungarian Constitutional Court as to establish the infringement of Hungarian Fundamental Law by the Government Decree. Their posterior norm control aimed at establishing the lack of conformity with the Fundamental Law and annulling the provision of Government Decree laying down derogations applicable to the central budget of Hungary for the year 2020 during the period of the state of danger, the distraction of vehicle tax from local governments, and the limitation of the local governments' property rights in a state of danger. Proposers invoked that the Government Decree, besides the infringement of Fundamental Law, conflicts with the international contract, namely the European Charter of Local Self-Government.²⁵

It should be pointed out, that the Constitutional Court has limited competence in the field of reviewing public finance acts²⁶ since 2010 (Chronowski, s.a., pp. 1-11; Chronowski, 2014, pp. 3-4).²⁷ Therefore the Constitutional Court rejected the motion aimed the establishing of the infringement of international contract in its decision,²⁸ and rebuffed the motion aimed at the establishing the infringement of Fundamental Law and annulling on the following grounds. It follows from the restricted competence of the Constitutional Court, that there is no competence for the Constitutional Court to review on the substance the motion related to the distraction of tax vehicle

24 Government Decree 92/2020. (IV.6.) on different rules of 2020 central budget of Hungary in the period of state of danger.

25 Charter Art. 3. point (1), Art. 9. par. (1), (2), (4).

26 Fundamental Law Art. 37. par (4). According to the Fundamental Law insofar as the level of government debt exceeds half of the gross domestic product, the Constitutional Court shall have powers to review laws on the central budget, the implementation of the central budget, central tax revenues, duties and contributions, customs duties, and on the central government conditions for local taxes for conformity with the Fundamental Law solely as pertaining to inherent rights to life and human dignity, the right to the protection of personal data, the right to freedom of thought, freedom of conscience and freedom of religion, or the rights in connection with Hungarian citizenship, and may annul such laws only in the case of any infringement of these rights. The Constitutional Court shall have powers to annul the aforementioned laws unconditionally, if the formalities and procedures laid down by the Fundamental Law concerning the adoption and publication of those laws are not satisfied.

27 Provision on the limited power of Constitutional Court in the subject of public finance acts has been incorporated to the former Constitution of Hungarian Republic. The purpose of the amendment of the Constitution presumably was to eliminate those constitutional reviews, could obstruct the achievement of the government's then economic policy goals.

28 Constitutional Court Decision 3234/2020. (VII. 1.) CC

from the local self-governments. In connection with the infringement of the European Charter of Local Self-Governments, the Constitutional Court stated that there is no constitutionally assessed relationship between the general fiscal and budgetary provisions of the Charter and that provisions, according to the vehicle tax shall be the source of the Fund against the Epidemics.

The Constitutional Court Decision may be of concern from several points of view, but the main question is whether the Constitutional Court is capable to comply with its function in a state of danger.

The Parliament adopted the budgetary act of 2021 in July of 2020, after the termination of the state of danger, but the regulation on vehicle tax has not changed, revenues from the vehicle tax shall be the revenue of the state, the Fund against the Epidemics.

ad. 2. Local self-governments – within the limit of the law – may impose the local business tax. All business activities pursued in the territory of a local self-government shall be subject to taxation.²⁹ It is evident, that the economic conditions of local self-government are different, therefore only certain local self-government may impose the local business tax. The so-called ‘solidarity contribution’ as a smoothing mechanism aims to compensate the differences between local self-governments’ revenues. Looking at the annual budget act of 2020 and 2021, it is clear, that the budgetary revenue on this item in 2020 was 40 billion HUF, and in 2021 cc. almost four times higher, 160 billion HUF.³⁰ Thus, the threshold of the payment obligation has been lowered; the range of contributors will be broadened considerably. This measurement may worsen the financial and economic capacity of local self-governments.

ad 3. The Government Decree related to tax on tourism laid down, that after the spent guest night the tax does not have to be paid by the taxpayer, the person obliged to collect the tax does not have to collect or pay, in the period from 26 April 2020 to 31 December 2020.³¹

ad 4. Ensuring the car parking free of charge from 6 April, the Government affected adversely the financial conditions of larger cities, the Capital and its districts. The vast majority of municipalities have not imposed parking fees, therefore the revenue forgone is significant only in those municipalities, which operate paying parking systems.³² After that the state of danger was declared in autumn also, the car parking has become free of charge, resulting in loss of income for local self-governments concerned.

²⁹ Act C of 1990 on Local Taxes Art. 35.

³⁰ Act LXXI of 2019 on Central Budget of Hungary 2020 Appendix 2. V. Solidarity Contribution, Act XC of 2020 on Central Budget of Hungary 2021 Appendix 2. II. 56. 42.5.5. According to this provision, the certain part of local business tax enters to the financing of mandatory tasks, and the State withdraws the remaining part and recycles to the financing sources for other local self-government. The significant difference is the amount of the deduction between the two-year budget requirements, namely the amount of deduction is much the largest.

³¹ Government Decree 140/2020 (IV.21.) on tax facilitations.

³² 49 municipalities operate this type of parking system. Source: http://njt.hu/njt.php?onkor-manyzati_rendeletek

The Association of Municipalities (Települési Önkormányzatok Országos Szövetsége: TÖOSZ, hereinafter: Association), as a municipal interest association re-grouping and represents the interests of more than half of Hungarian municipalities, conducted a series of surveys among its members on Government's measures. The experience of these surveys in May 2020³³ could be summarized, on the ground of cc. 400 responses, as follows. Measures of the Government crucially affected the financial, budgetary conditions of the local self-governments; they are not able to correct with their measures the situation. The vast majority of local self-governments reduced the operational expenditure, which could lead to staff cut, dismissals. They decided on the suspension of applications for projects and the ongoing investments. It is a sad fact, that the local self-government does not possess sufficient financial resources.

The paper attempts to demonstrate negative trends in municipals' budgets through the examples of the Capital of Hungary and five major cities. It emphasises only those resources, like the local business tax and vehicle tax, which were fundamentally affected by the government measures. The change of revenue sources is illustrated by the initial budget headings for 2020 and 2021. It can be seen that, except in one case, the local self-governments expect a reduction in resources. Although it is also notable that the initial total budgetary data cover not only the operational but the development resources.

Figure 1: Total Budget of the Capital and Five Major Cities 2020-2021.
(Sources: annual budget decrees of municipals)

municipalities	population (2021)	total budget (2020) (thousand HUF)	total budget (2021) (thousand HUF)	reduction
Budapest (capital)	1 662 996	415 004 833	388 745 291	-6%
Szeged	160 927	91 426 738	84 392 410	-8%
Debrecen	199 856	160 996 869	69 546 672	-57%
Pécs	145 468	63 815 342	49 247 066	-23%
Miskolc	155 476	40 105 474	38 062 740	-5%
Győr	123 475	53 483 093	67 058 289	25%

Source: Author's editing³⁴

33 See results: <http://xn--tosz-5qa.hu/news/594/73/A-ToOSZ-felmereseben-resztvevo-onkormanyzatok-tobb-mint-felenek-legfeljebb-kethonapnyi-tartaleka-va/>.

34 Sources: Belügyminisztérium <https://www.nyilvantarto.hu/hu/statisztikak?stat=kozerdeku>; *Local Government Decrees*: Local Government Decree 9/2020 (II. 29.) On the Annual Budget of Budapest, 2020 <https://or.njt.hu/onkormanyzati-rendelet/5494>; Local Government Decree 69/2020 (XII. 29.) on the Annual Budget of Budapest, 2021 <https://or.njt.hu/onkormanyzati-rendelet/5601>; Local Government Decree 1/2020 (II.25.) on the Annual Budget of Szeged, 2020 https://or.njt.hu/onkormanyzati-archiv-csatolmany/cfd9bd07a-2030c61811ac52404f02443_903961; Local Government Decree 1/2021 (II.01.) on the Annual Budget of Szeged, 2021 https://or.njt.hu/onkormanyzati-archiv-csatolmany/bbcd2c66075412a445168772e236d40d_903770; Local Government Decree 4/2020 (II.13.) on the Annual Budget of Debrecen, 2020 <https://or.njt.hu/onkormanyzati-rendelet/415085>; Local Government Decree 6/2021 (II.26.) Annual Budget of Debrecen, 2021 <https://or.njt.hu/onkormanyzati-rendelet/412787>; Local Government Decree 6/2020. (III.12.) on the Annual Budget of Pécs, 2020 <https://or.njt.hu/onkormanyzati-rendelet/391741>; Local Government Decree 10/2021. (III.12.) on the Annual Budget of Pécs, 2021 <https://or.njt.hu/onkormanyzati-rendelet/392378>; Local

Examining the change of local business tax sources, at least two types of effects can be visible. Reduction in resources derived on one hand from the government measures concerning local business tax, freezing of revenues and the introduction of a non-normative balancing mechanism, but on the other hand it is resulted from the decline of economic downturn. The impact of the latter case is still difficult to quantify, during the period of budgetary planning.

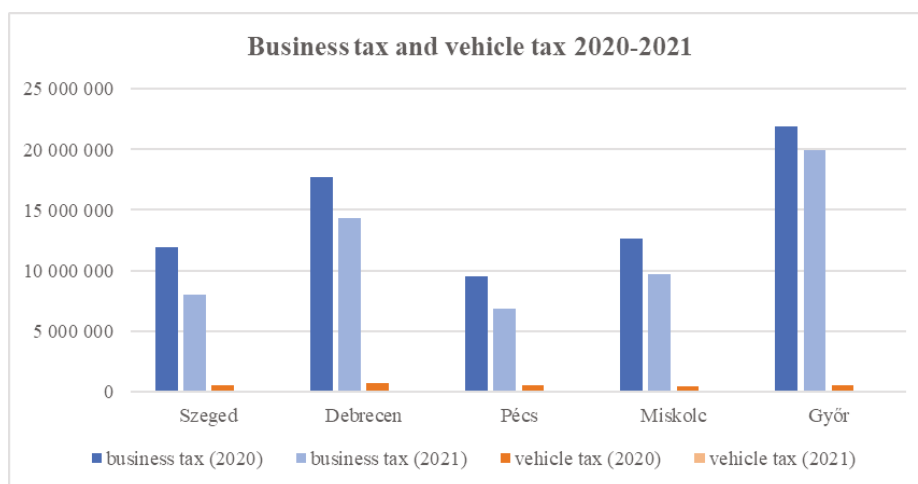
Figure 2: Business Tax and Vehicle Tax 2020-2021 (Sources: annual budget decrees of municipals)

municipalities	population (2021)	initial local business tax revenue (2020) (thousand HUF)	initial local business tax revenue (2021) (thousand HUF)	reduction	initial vehicle tax revenue (2020) (thousand HUF)	initial vehicle tax revenue (2021) (thousand HUF)	reduction
Budapest (capital)	1 662 996	174 420 000	139 320 000	-20%	no such resource	no such resource	no such resource
Szeged	160 927	11 920 000	8 000 000	-33%	500 000	0	-100%
Debrecen	199 856	17 700 000	14 350 000	-19%	720 000	0	-100%
Pécs	145 468	9 500 000	6 800 000	-28%	480 000	0	-100%
Miskolc	155 476	12 680 000	9 668 000	-24%	450 000	0	-100%
Győr	123 475	21 902 951	19 905 607	-9%	550 000	0	-100%

Source: Author's editing³⁵

The figure below does not contain the data of Capital, because of the amount of local business tax revenue and the Capital has not resources from vehicle tax.

Figure 3: Business Tax and Vehicle Tax in Five Major Cities 2020-2021



Government Decree 5/2020 (II.27.) on the Annual Budget of Miskolc, 2020 <https://or.njt.hu/onkormanyzati-rendelet/115226>; Local Government Decree 8/2021 (III.5.) on the Annual Budget of Miskolc, 2021 <https://or.njt.hu/onkormanyzati-rendelet/111923>; Local Government Decree 3/2020. (II.28.) on the Annual Budget of Győr, 2020 <https://or.njt.hu/onkormanyzati-rendelet/275362>; Local Government Decree 10/2021. (II.23.) on the Annual Budget of Győr, 2021 <https://or.njt.hu/onkormanyzati-rendelet/277235>.

35 See the sources in footnote 35.

4.5 Special economic zones: the case of Göd

This case is a particular sample of that tendency, how an exceptional government decree becomes a universal ruling on the economics of local self-government. This example suffices to illustrate, that a governmental measure does not necessarily serve the mitigating of the pandemic.

In the context of the state of danger, the Governmental Decree³⁶ authorized the Government to declare a territory or a part of the territory of the municipality as a so-called 'special economic zone'. (See also Balázs – Hoffman 2021, p. 115) Taking into account the most important conditions of such qualification, (1) the Government shall declare the investment of major importance from national economic aspect, (2) the cost of the investment may exceed 100 billion HUF and (3) the investment affects the significant part of the county. The link between the declaration and the state of danger was that this measure (4) shall be suitable to avoid mass loss of jobs and (5) established a new investment or expansion. The first zone, according to the Governmental Decree³⁷ was the city of Göd. Under the regulation, Governmental Decree aimed to defend more than 1.500 jobs threatened by the state of danger and to establish more than 2.500 new jobs.

What may be the consequences of the abovementioned Governmental Decrees on the competences of the municipality? The ownership of assets (public open spaces, public parks and public roads are non-marketable), belonging to the common property located on the territory of the special economic zone, is acquired by the county government, Pest. The decision making and regulatory competence related to the special economic zone shall belong to the county government in the following areas, (1) urban planning and building rules, (2) requirements of forming plots, (3) requirements of the settlement image, (4) heritage protection rules, (5) using and maintaining the public open spaces, regulation of traffic law, (6) fundamental rules of self-support, the fulfilment of public duties and community living.

The tasks and competences of the municipality, specified by the law, shall be performed by the county government. The state administrative functions of the mayor and the notary shall comply with the president of the county assembly and the notary of the county. Why it is a huge loss for the municipality from an economic point of view? Every local tax is imposed by the county government decree, and the income belongs to the county government as well. The most important local tax from this aspect is the local tax on operation on economic activity. The tasks of tax authorities belong to the state tax authorities. This type of revenue is not entirely a freely disposable source for the county government, because it shall be used for the support of developments of the settlements. Only 5 % may be the source of operation of the county government.

36 Governmental Decree 135/2020. (IV.17.) on necessary measures for the stability of national economic in the context of state of danger.

37 Governmental Decree 136/2020. (IV.17.) on designation a special economic zone in the administrative territory of the town of Göd. Göd is a town in Pest County, located in the agglomeration of the Capital of Hungary, Budapest. The population is approximately 18,000.

The Preamble of the Bill contained a populist motive from the general policy of the Government according to the Article XII of Fundamental Law, by which all those who can work, and who want to work, have an opportunity to work. The general objectives of the proposal are set out in the explanatory memorandum. The general reasons given for the proposal points out that the designation of special economic zones contributes to restarting the economy. Besides, the effects of these special economic zones are wider than the municipalities of location, allows more proportionate distribution of the sources within the county. The county self-government supports the development and operation of the local municipalities, based on knowledge of the economic and employment position of the county. The law on special economic zones empowers the county self-government to impose the local tax and the tax revenue-raising from this business tax is the income of the county government.

The main deficiencies of the proposal should be considered, that proposal did not contain any impact assessment on fulfilment of the mandatory and voluntary tasks, providing of public services of concerned municipalities. The insufficiency and inconsistency of the proposal could be detected in the infringement of subsidiarity and decentralization and result in further centralization as well. The decision-making competency on the designation of special economic zones, on their territory, concerned municipalities, and competent county governments belongs to the Government, which decides on investments eventually. Considering this provision, it can be concluded, that the lack of normativity and predictability is causing the serious breach of financial, economic and functional autonomy of the municipalities.

The Hungarian Parliament adopted the proposal and enacted the Act LIX of 2020 on special economic zones. The special economic zones law entered into force on 18 June 2020. The Act altered related acts on local taxes in two main ways, on one hand the local government decree of the county self-government shall be sent to the Government, and on the other hand, the tax authority who is responsible for the collection of the business tax is the state tax authority.

This ruling poses also legal problems. According to the Fundamental Law (Art. 34. par. (4)), the Government shall supervise the legality of municipal governments through the Budapest and county government offices. The Government's task in connection with this decree does not reveal from the text of the Act, however the relevant provision of Local Government Law (Art.132.) on regulatory supervision has not been modified. The empowerment with the local tax collection function the state tax authority makes clear, that the territorial, county self-government unable to perform tax administration tasks (Art. 27. par. (1)). The Local Government Law is conferring only four, defined function to county self-government; territorial development, rural development, territorial planning and coordination tasks. The competences and functionality of county self-governments located at the territorial level of public administration have not been satisfactorily arranged, especially since 2012.

The case of special economic zones was also examined by the Hungarian Constitutional Court. 59 Member of Parliament submitted a constitutional

complaint to the Constitutional Court to establish the infringement of Fundamental Law and to annul the Governmental Decree. The posterior norm control aimed at establishing the lack of conformity with Fundamental Law, principles of rule of law, prohibition of retroactive legislation, right to legal remedy, breach of the principle of hierarchy of norms and the conflict with the international treaty, the Charter. The Constitutional Court examined only the Governmental Decree on special economic zones. Given the fact, that this governmental decree has been expired, the motion was rejected for reasons of mere formalism.³⁸

The Constitutional Court on a consequent constitutional complaint, submitted by the local self-government of Göd concerned, examined the Act LIX of 2020 on the designation of special economic zones, for a second time. The constitutional court decision was rejected as well, nevertheless a constitutional requirement was established *ex officio*.³⁹ According to the constitutional requirement established by the Constitutional Court, the Parliament must ensure budgetary and financial support proportionally for local self-governments to mandatory tasks performed by them. During the state of danger, Parliament may reduce these resources from public interest, but it must not render to exercise their function impossible and must not deprive them of their constitutionally protected powers.

This latter decision may be considered of great importance, the Constitutional Court established a paramount constitutional requirement.⁴⁰

4.6. How to fit governmental measures to the framework of European values of local self-governance?

Local authorities are in the frontline of the Covid 19 emergency, as those organs are the closest to citizens and their needs. The Monitoring Committee of Council of Europe⁴¹ – as a responsible body for the implementation of the European Charter of Local Self-Government – highlighted, that the competences of local self-governments were centralized during the pandemic crisis in several European states, the control of the exercise of powers by the central government has become very extensive. Local self-governments were often forced to take actions against the pandemic without adequate financial resources. These facts may establish the infringement of the Charter, therefore it was highlighted, that “Member States must apply the European Charter of Local Self-Government under any circumstances”.

The Hungarian local self-government law is traditionally based on the principles and values of European local democracy, for this reason the compatibility with the European mainstream is worth for mention. The Congress of

38 Number of the decision: 3388/2020. (X. 22.) CC.

39 Number of the case: IV/839/2020.

40 Number of the Decision 8/2021 (III.2.) CC.

41 “Member States must apply the European Charter of Local Self-Government under any circumstances”, underline Congress Co-Rapporteurs at COVID-19 event <https://www.coe.int/en/web/congress/-/member-states-must-apply-the-european-charter-of-local-self-government-under-any-circumstances>

Local and Regional Authorities of the Council of Europe adopted the Resolution 466 (2021) and the Recommendation 453 (2021) considered the Covid-19 pandemic as a 'major crisis situation which has put the exercise of local democracy'.⁴²

The explanatory memorandum could serve as an overview on the handling of crisis, the best practices on the local level. The Congress adopted the Recommendation considered that in the affected areas (public health, social services and economic activities) the crisis accelerated the trend towards centralisation. However, the centralization trend should be only crisis-related and temporary, during the time of emergency. The centralization should not violate principles of necessity proportionality and temporariness. The crisis management and the recovery policies should be consulted with local self-governments.

As regards the financial autonomy of local self-governments, the Recommendation emphasised to support local authorities in their efforts to tackle the public health, societal and economic challenges caused by pandemic, allocating adequate resources and ensuring coordination on measures.

The Hungarian Government faces a major challenge in complying with the Recommendation, since the trend of measures is a tough centralization, at least, until now, there is no trace of temporariness.

5 Conclusion

The study attempted to give a short overview of the measures of the Hungarian Government concerned with local self-governments during the pandemic. The examination of economic decisions specified how the measures are taken have served the interests of local self-governments and their population and assessing whether the principles of rule of law and basic values of European local self-governance were respected. Another issue was the presentation of decisions related to the governmental measures of the Hungarian Constitutional Court, so that an assessment may be outlined concerning the fulfilment of constitutional requirements.

The analysis on local self-governments' revenues has confirmed, that the Government has not given any specific role for the decentralized local communities either in defence, or in the protection of economic life, excessive centralization process has taken place. The short overview of the budgets of the Capital and the five major cities showed, that the reduction of sources deeply affected their fulfilment of obligations, especially the voluntary tasks. The governmental measures do not adversely affect local authorities per se, but the population of municipalities. It is clear, that the centralisation measures and the reduction of resources could only be temporary.

⁴² Ensuring the respect of the European Charter of Local Self-Government in major crisis situations. <https://rm.coe.int/0900001680a19f64>

At the time of the state of danger the Government defined the development site of Samsung-factory as a special economic zone, this measure shown, that an exceptional measure has become an increasingly common practice, restricted economic conditions of concerned local self-government. The discretionary power of the Government, the lack of normativity and predictability may cause a serious breach of financial, economic and functional autonomy of local self-governments.

The analysis demonstrated that the Constitutional Court did not or only partially defended the legal interests of local self-governments. The governmental measures 'have stood the test of constitutionality, only a constitutional requirement was established related to them.

Considering the measures of Hungarian Government affected local self-governments in the light of the Recommendation 453 (2021) of the Congress, it must also be specified, that an end has to be put to further centralisation and reduction of financial resources, without infringement of the principles and values of European local democracy, especially of the Charter.

References

- Act XII of 2020 on Measures for the Control of Coronavirus.
- Act LVII of 2020 on Termination of State of Danger.
- Act LXXI of 2019 on Central Budget of 2020 Hungary.
- Act C of 1990 on Local Taxes.
- Balázs, I. and Hoffman, I (2020). Közigazgatás korona idején – a közigazgatási jog rezilienciája? MTA Law Working Papers 2020/21, pp. 1–18.
- Balázs, I. and Hoffman, I. (2021). Administrative Law in the Time of Corona (virus): Resiliency of the Hungarian Administrative Law? *Studia Iuridici Lublinensia*, 30(1), pp. 103–119.
- Chronowski, N. (s.a.). A korlátozott alkotmánybíráskodásról. At <http://real.mtak.hu/11497/1/chronowski_lib.am.kotet.pdf>, accessed 19 August 2020.
- Chronowski, N. (2014). Az alkotmánybíráskodás sarkalatos átalakítása. MTA Law Working Papers 2014/8, pp. 1–16.
- Compilation of Venice Commission Opinions and Reports on States of Emergency CDL-PI (2020)003. At <<https://rm.coe.int/09000016809e85b9>>, accessed 3 November 2020.
- Constitutional Court Decision 3234/2020. (VII. 1.)CC.
- Constitutional Court Decision 3388/2020. (X. 22.)CC.
- Constitutional Court Case IV/839/2020.
- Constitutional Court Decision 8/2021 (III.2.)CC.
- Drinóczi, T. (2020). Hungarian Abuse of Constitutional Emergency Regimes – Also in the Light of the COVID–19 Crisis. MTA Law Working Papers 2020/13, pp. 1–28.
- Ensuring the respect of the European Charter of Local Self-Government in major crisis situations. At <<https://rm.coe.int/0900001680a19f64>>, accessed 30 April 2021.
- European Charter of Local Self-Government, Strasbourg, 15.X.1985. ETS No. 122.
- European Commission for Democracy through Law (Venice Commission) CDL-STD (1995) 012, Emergency Powers. At <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012)>, accessed 15 January 2021.
- European Commission for Democracy through Law (Venice Commission): Rule of Law Checklist CDL-AD(2016)007-e. At <[https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2016\)007-e&lang=EN](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2016)007-e&lang=EN)>, accessed 29 September 2020.
- Fundamental Law of Hungary (25 April 2011).
- Government Decree 40/2020. (III.11.) on the declaration of the state of danger.
- Government Decree 92/2020. (IV.6.) on different rules of 2020 central budget of Hungary in the period of state of danger.
- Government Decree 135/2020. (IV.17.) on necessary measures for the stability of national economic in the context of state of danger.
- Government Decree 136/2020. (IV.17.) on designation a special economic zone in the administrative territory of the town of Göd.
- Government Decree 140/2020 (IV.21.) on tax facilitations.
- Government Decree 282/2020. (VI.17) on termination of state of danger declared on 11 March 2020.

- Government Decree 479/2020. (XI.3.) on additional protection measures applied in time of the state of danger.
- Government Decree 15/2021. (I.22.) on performing the mayor's duties during the state of danger.
- Kiss, B. (2018). Az alapjogok korlátozhatósága különleges jogrendben, különös tekintettel a (büntető-) igazságszolgáltatásra vonatkozó rendkívüli intézkedésekre. *Acta Universitatis Szegediensis: acta juridica et politica*, 81, pp. 552–568.
- Local Government Decree 9/2020 (II. 29.) On the Annual Budget of Budapest, 2020.
- Local Government Decree 69/2020 (XII. 29.) On the Annual Budget of Budapest, 2021.
- Local Government Decree 1/2020 (II.25.) on the Annual Budget of Szeged.
- Local Government Decree 1/2021 (II.01.) on the Annual Budget of Szeged.
- Local Government Decree 4/2020 (II.13.) on the Annual Budget of Debrecen.
- Local Government Decree 6/2021 (II.26.) Annual Budget of Debrecen.
- Local Government Decree 6/2020. (III.12.) on the Annual Budget of Pécs.
- Local Government Decree 10/2021. (III.12.) on the Annual Budget of Pécs.
- Local Government Decree 5/2020 (II.27.) on the Annual Budget of Miskolc.
- Local Government Decree 8/2021 (III.5.) on the Annual Budget of Miskolc.
- Local Government Decree 3/2020. (II.28.) on the Annual Budget of Győr.
- Local Government Decree 10/2021. (II.23.) on the Annual Budget of Győr.
- Meeting of the Monitoring Committee 17 September 2020. At <<https://www.coe.int/en/web/congress/meeting-of-the-monitoring-committee-17-september-2020>>, accessed 23 October 2020.
- Meeting of the Congress Group of Independent Expert on the European Charter of Local Self-Government (GIE) 18 September 2020. At <<https://www.coe.int/en/web/congress/-/congress-group-of-independent-experts-on-the-charter-discussed-consequences-of-covid-19-on-government-systems-in-europe>>, accessed 23 October 2020.
- Mészáros, G. (2020). Carl Schmitt in Hungary: Constitutional Crisis in the Shadow of Covid-19. *MTA Law Working Papers*, 17, pp. 1–19.
- Mészáros, G. (2019). Indokolt-e különleges jogrend koronavírus idején? Avagy a 40/2020. (III.11.) Korm. rendelettel összefüggő alkotmányjogi kérdésekről. *Fundamentum*, 3-4, pp. 63–72.
- Szente, Z. (2020). A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái. *MTA Law Working Papers*, 9, pp. 1–24.
- The territorial impact of Covid-19: managing crisis across levels of government. OECD 2020. At <<https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/>>, accessed 19 August 2020.
- Till, Sz. (2019). Különleges jogrend. In A. Jakab, A. And B. Fekete, eds., *Internetes Jogtudományi Enciklopédia*. At <<http://ijoten.hu/szocikk/kulonleges-jogrend>>, accessed 15 August 2020.