

Theses

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Changes affecting local governments in the coronavirus pandemic

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1. Reason for the choice of topic

The emergence of the coronavirus pandemic has undoubtedly had a major impact on the entire legal system. Fundamental human rights declared in European conventions, such as freedom of movement, freedom of residence or freedom of assembly, have been restricted. However, such restrictions on these rights were unthinkable before the pandemic.

The topicality of the subject and the fact that I myself am a deputy municipal clerk at the Joint Local Government Office of Kisapostag, in Kisapostag, the seat of the joint local government office, played a cardinal role in the choice of the topic of my thesis “Changes affecting local governments in the coronavirus pandemic”, so I was able to follow the restrictions and limitations very closely from the very beginning. I have had the opportunity to be personally involved in decisions such as the provision of several months’ worth of food and the purchase of protective equipment to meet the needs of the population. It is not easy to participate and coordinate in good governance, but all responsible leaders have done their best. However, the unknown nature of the situation has also made responsible decision-making difficult, as our municipality only implemented a total lockdown and curfew at the beginning of March 2020, which has not been fully implemented nationwide.

The emergence of the Covid-19 epidemic has made the future negative impact on the economy a reality, posing serious challenges for local governance and putting the latter at the centre of the scrutiny of experts and analysts. The negative economic effects of the coronavirus pandemic posed unprecedented challenges for local governments; then the tough consequences of the Russian-Ukrainian war have had to be and still have to be managed responsibly.

Overall, it should be noted that a centralisation has also been going on for several years, starting with the creation of government offices and district offices, when various functions were taken away from local governments, such as official documents, guardianship and child protection, construction, veterinary matters, or public health. The coronavirus pandemic and the declaration of a state of danger further intensified the centralisation process. The emergency decisions of the Government have affected the budgets of municipalities, including a significant share of municipal revenues, the freezing of local taxes, and the very restrictive measures taken with regard to municipal property, such as the creation of special economic zones or the nationalisation of water utilities. Many of these decisions were taken during the state of danger, but have continued in full force and effect from the end of the state of danger. Many think that overriding the Fundamental Law by law is unconstitutional, so it is

not appropriate to amend the Fundamental Law by law. Among other things, the declaration of a state of danger is inconsistent with the Fundamental Law because it was declared due to a human epidemic that caused mass disease. In Hungarian law, however, a human epidemic does not fall under the definition of an elementary (natural) disaster, nor can it be interpreted as an industrial disaster. Furthermore, the Fundamental Law also states that the Government may adopt decrees deviating from the current laws and regulations for a period of fifteen days, but that the extension of this period requires parliamentary authorisation. The rule of fifteen days has never been respected, the government decrees have always been for a longer period. In my opinion, from this point onwards, the numerous government decrees and laws that have been passed on this basis give cause for uncertainty, since the authorisation itself is a matter of concern from a constitutional point of view.

The war and the epidemic gave rise to many tasks to be solved, which undoubtedly required a strengthening of the role of the state. This situation has put constant pressure on both the functioning and the running of local administrations. The declaration of a state of danger and the applicability of decisions based on this authorisation are certainly questionable in many cases, which has aroused my interest and I have tried to look into this area.

2. Objectives of the research

Before presenting the objectives of the academic research, it is necessary to clarify the milestones that the decrees made during a state of danger introduced into the Hungarian legal system.

Epidemics occurred not only in the 21st century, the Spanish flu of 1918 also decimated the population. The scope and sequence of measures is eerily similar to the situation in 2020-2021. The typical conclusion was that people should stay at home, not socialise, isolate themselves from society and social life, and mayors were given a prominent role during this period. The concept of health crisis already existed in the Hungarian legal system, but it was not a case of a special legal order, but merely a state in between. In a health crisis, regulated by the Healthcare Act, the following restrictions are all possible: restriction of the right to personal liberty, restriction of patients' rights, compulsory tolerance of measures, epidemiological isolation, surveillance, lockdown, control, search for persons to contain the infection. While I was writing this thesis, I repeatedly asked myself whether the state of danger was really necessary. On 11 March 2020, however, the Government declared a state of danger. During a period of governance in a state of danger, assembly is not possible, so the mayor himself or herself exercises the powers of the municipal council under the Disaster

Management Act, and thus governs a community of one size or another, depending on the type of municipality.

Special legal order is a complex concept that encompasses all the areas that define the functioning of the state in exceptional periods other than peace, as a specific part of the constitutional regulations. In the current period, the role of the checks and balances is given a prominent role, which was not noticeable in the Hungarian legal system, as there were no adequate legal powers to counteract the Government's decisions. The Government's first provisions in the state of danger included the suspension of local elections and referendums, strengthening the role of the mayor. Empowering the mayor with such far-reaching powers has proved questionable in several cases. There have been abuses of power, but with the periodic lifting of the state of danger, the municipal councils have had the opportunity to modify the decisions taken by the mayors, and members have always been able to turn to the municipal clerks and the departments responsible for legality for help with abusive decisions. The role of the checks and balances at the local level was noticeable. The period covered by the decisions made in the state of danger has seen a gradual reduction in local government revenue. Starting with the suspension of certain enforcement procedures, the introduction of mandatory deferments without surcharges, the additional expenditure on food for children, and the purchase of protection equipment. A huge loss of revenue was caused by the introduction of compulsory free parking, followed by the complete and permanent abolition of the vehicle tax or the temporary suspension of the tourist tax. This revenue-losing restriction was only the beginning. These were followed by measures such as the creation of special economic zones, which generated billions of forints in revenue, and then the prohibition of new local taxes, the prohibition of increases in existing local taxes, the freezing of rents, the halving of local business tax if the local business tax rate was set at two percent. The above only covers the most serious revenue-losing measures. In conclusion, the above measures have been a hotbed of indebtedness of local governments, which has been exacerbated by the energy crisis, as the Government has exempted local governments from the universal energy rebate. However, the Government has not only reduced revenue, it has also taken away the opportunity for local governments to make up for lost revenue.

The general objective of my research is to strengthen the basic survival of self-governance and to prove its sustainability. I will show the effectiveness of decentralisation processes under special legal order. For example, the decentralisation measure of the Government was embodied in the measures where the mayor was given the power to impose a ban on leaving the residence.

My objective in writing this thesis is to illustrate the negative and positive impacts that local governments have experienced during and after the governance in the state of danger. The war between Russia and Ukraine broke out during the writing of this thesis, so I thought it was essential to take a brief look at the difficulties caused by the war, which had a direct impact on local governments, especially those near the border. The full implementation of the tasks to be carried out in the state of danger has shown that local governments are needed, that there are problems that can only be solved and dealt with at local level.

3. Research methodology

In developing the thesis, I considered it important to define the theoretical foundations, analyse the relevant provisions of the special legal order, and provide a detailed overview of the functioning of local government. Following a brief presentation of the historical background, I first focused on the measures affecting local governments during the three waves of the coronavirus pandemic and the state of danger attributed to the war. In the course of writing my thesis, I reviewed a number of government decrees and legislative amendments that have recently affected local governments. The year 2020-2021 was a crucial year for local governments. This was not the first such period for local governance, as states of danger had been declared before, but previous events were linked to a specific region or geographical unit, such as the red sludge disaster or the Danube floods. Both the territorial and temporal scope of the previously declared states of danger was substantially different from that of the pandemic. In my research, I tried to review all domestic government decrees and legislation directly or indirectly related to local governments that were part of legislation during the state of danger. With the declaration of a state of danger, the government decree that made all early elections in the country impossible was the first to be issued. The question of why a body dissolves itself or why a mayor's status is terminated by resignation has many implications. What is certain, however, is that the one-man decision-making has only complicated the situation and created further conflicts. I looked at the reasons why mayoral statuses were terminated in the country, based on data from the National Election Office.

I have mapped the mayoral decisions and decrees of several municipalities in a number of areas in order to draw conclusions regarding uniform legislation and application of the law. During the research, I used the decrees uploaded in the National Legislation Database and, in the case of decisions, I browsed the municipal websites. I looked at the form of the decisions, which were initially very different. Both an informative description and a text that the

legislator has included in a regular decision framework were considered decisions. I also looked at the authorisation of a number of local government decrees, which also showed significant differences. Some local government decrees were also adopted by the municipal councils during the state of danger, and some by the mayors of the municipality. Whether or not the enabling Disaster Management Act was included in the enabling provision was also highly variable. An analysis of the powers of the mayor as a single responsible decision-maker is also provided as well as some cases of abuse of power and the counterbalances that can be observed. An interesting and changing position concerned the employer powers over mayors. My research was based on positions issued for several counties on the employer powers over mayors.

In parallel, my thesis also presents the Local Government of Kisapostag in the context of certain decisions made in the state of danger. I paid particular attention to the fact that the introduction of restrictive measures had a major impact on local governments. I will also illustrate how well local organisations and institutions can work together in such a crisis situation, whether it is the care of the elderly or the creation of childcare facilities at work.

For each measure that resulted in a loss of revenue, I have tried to illustrate what the loss of revenue means for a particular local government, since not all local governments were affected by the abolition of parking fees or tourist fees.

I examined the implementation of the LocLex local legislative system, which was not justified by the emergence of the coronavirus, but was introduced in the state of danger. It was difficult to implement and met with a lot of resistance, as evidenced by the local government decrees that are attached, but it certainly has many advantages. The introduction of the system will guarantee uniform legislation and eliminate errors in legislation.

My study also deals with the state of danger due to the war, the loss of revenue and the additional expenditure caused by it. The energy crisis is another phenomenon that plays a cardinal role for local governments during the state of danger due to the war and must be presented. I examined the data on the Public Procurement Authority's website and analysed the extent and scale of the utilities crisis for some of the smaller and larger local governments.

4. Short summary of the research results

Local governments were generally prosperous until 11 March 2020. Municipal investments and tenders had flourished. The local government had been able to create and renovate several new institutions, not to mention road renovations and smaller and larger investments. Year after year, managers were able to plan their budgets carefully until the pandemic struck. To

sum up, my opinion is that the Hungarian legal system was not prepared for the pandemic, and the nationwide emergence of the state of danger caught all sectors by surprise, despite the fact that we had already encountered it with a smaller territorial scope and a shorter timeframe. It was a challenge to adapt the existing legislation to the extraordinary legal order, which was not fully achieved, as there are still contradictory laws and government decrees in force. The legislative hierarchy has lost its stability. Local governments were particularly affected by this period, given the significant tax cuts and the allocation of additional responsibilities. The duty of local governments to provide information was of paramount importance. Once again, the emphasis is on transparent and accessible decision-making, even if not entirely so far. There was a demand from the public to know the decisions taken by mayors on measures affecting the municipality and its inhabitants, a statement that is perfectly illustrated by the increase in the number of visits to the websites during this period. In the early days, municipal leaders had to make decisions without having all the necessary information to make them or data on the epidemiological situation in the municipality, even if we are talking about the care of the elderly, as age data are not available in the municipalities. In many cases, the government decrees that were issued were not clear. However, few local governments raised publicly the issue of lack of information in their decision-making. All local governments tried to respond to the unexpected situation as best they could. There was a palpable demand from the public to receive credible and up-to-date information during the epidemic. In larger cities, despite public pressure, mayors were not always able to provide full information, and they were also at the centre of the communication effort, in addition to the responsibility they had to shoulder. Despite the difficulties in the flow of information, many municipal leaders tried to inform the population in a fair way, either through local newspapers, local media, shooting videos and uploading them on websites and Facebook pages. From the above, we can see that government regulation can be an effective instrument of governance in a democratic rule of law. However, this requires certain conditions to be met by both legislators and subjects of law. And when drafting a government decree, care must be taken to ensure that the legislation is fit for purpose, but this takes time, not to mention clarity. When a special legal order is in place, the legislator is pressed for time, and by that we can also mean local legislators. However, preparation time plays a key role in the drafting of all legislation. In the special legal order this kind of validity requirement was missing. Decisions were taken day by day, with little preparation for the consequences. At the municipal level, decisions and decree-making made under the mayor's authority have been given a prominent role. The mayors had tools (website, Facebook page, YouTube, local newspaper) to make

local decisions known, giving them even more legitimacy. The changing epidemic situation and the need for rapid response have drawn attention to the importance of communication between municipalities and residents and the use of new communication channels. In the last ten to twelve years, local governments in Hungary have experienced two global crises, both of which have been caused by processes outside their control. In both cases, local governments were the victims of global processes. The global economic and financial crisis in 2008-2009 made operations difficult, followed by the state of danger caused by the Covid-19 epidemic in 2020-2021, which was compounded by the state of danger due to war in 2022, the effects of which are still being felt today, not to mention the other inconveniences of the war between Russia and Ukraine. I do not even rule out the possibility that we will have to live through another series of events similar to the 2008 crisis. It is likely that managing the consequences and impacts will be the challenge that will have a cardinal impact on local governments and local governance. In the extraordinary situation caused by the coronavirus pandemic, local governments proved to be viable local administrative units capable of carrying out their constitutional tasks in the face of challenges. It can be seen that centralisation was basically stronger during the epidemic, in terms of governance by government decrees, but there were also decentralisation tendencies, for example when mayors were allowed to impose stricter curfews. Demand for local governance is undoubtedly declining in view of the measures taken today, as evidenced by the loss of municipal revenue, the ban on local tax increases, the creation of various special economic zones, which are the beginning of the municipal debt crisis, not to mention energy prices, which will upset the budgets of many local governments. At the beginning of 2023, the sustainability of local governments is in a precarious and uncertain situation. This statement emerges from a set of centralisation processes. The diversion of local water utilities also supports this finding. Generally speaking, local governments were caught unawares when the government removed them from the universal energy rebate scheme from 1 August. The bigger problem is that the municipalities have less than a month to adapt to the situation, but in such a short time they can only prepare a procurement contract. One solution would be for municipalities to introduce different revenue-raising activities, including local taxes. However, the municipal sector is burdened with incredibly strict and multifaceted regulations. Without state intervention, the budgets of many municipalities will collapse in the short term. The intervention I believe and trust will come. Those working in local government are confident that local governance is a part of public administration that can never be neglected, that its powers cannot be exercised at

district or government office level, and that they cannot be replaced in any way. Local problems can and must be tackled locally and this will not change as the decades go by.