



Thoughts on the meaning content of the principle of local autonomy

Ádám Varga* 

* Assistant professor, Department of Public Administrative Law, Pázmány Péter Catholic University, Budapest, Hungary. Senior advisor, Constitutional Court of Hungary. E-mail: varga.adam@jak.ppke.hu

Abstract

Autonomy is a fundamental principle in many areas of public law, and particularly in relation to local self-government. The term itself is widely used, sometimes too widely. But what are the conceptual foundations of this principle? What are the components of this principle? Within the framework of this paper, I will examine some aspects of the principle of autonomy, without claiming to be exhaustive, in an attempt to shed light on the theoretical significance of the principle's role in relation to local self-government. The aim of this study is neither to describe current trends in the field of autonomy, nor to explore the reasons for the obstacles to its application. Instead, the study will seek to explore the concept on a dogmatic basis in order to make more effective reference to its components in the context of some of the current issues that can be associated with autonomy. In addition to examining the components, the study will seek to highlight the importance of the correct use of the concept in the protection of the right to local self-government.

Keywords

autonomy, self-regulation, local self-government, legal protection, devolution

1 Introductory thoughts

Within society there can be different more particular communities. Such elementary communities are, among others, the family, the association, the scientific society, the church or the political party. Even if a national or social community has reached a higher degree of unity, it cannot eliminate the organising power of all these. These communities act within the framework of their autonomy, the extent of which is determined by the sovereign State, to varying degrees according to the nature of each community (Lapsánszky et al., 2017, 173).

The premise of the original conception of any form of self-government was that all participants have the same preferences. This assumption of homogeneity collapsed in the recent centuries, nevertheless, a weaker notion is logically coherent: A collectivity governs itself when decisions implemented on its behalf reflect the preferences of its members (Przeworski, 2010, 17–18). István Ereky also points out that self-government is only possible for public bodies for which the statutory law explicitly recognises the right of self-determination of the depositaries. This right of self-determination extends only to their independent powers, they shall not be giv-

en instructions in that respect (Erekly 1939, 376–377). József Petréttei stresses that the recognition of the state is also necessary because the existence of autonomies implies the possibility of fragmentation, but a democratic state must grant the request for autonomy in accordance with democratic political values, while certain reasonable limits must be constitutionally enshrined (Petréttei, 1995, 7).

This is no different for local self-governments, which, in addition to their many similarities, are differentiated from other types of self-government (public bodies, civil organisations) by a number of important features. Among these, Ulrich Scheuner stresses that local self-government is differentiated from self-government organised on a professional-occupational basis primarily by its democratic-political basis and its general powers (Scheuner, 1981, 17).

The principle of autonomy is therefore fundamental in many areas of public law, and particularly in relation to local self-government. The term itself is widely used, sometimes too widely. But what are the conceptual foundations of this principle? What are the components of this principle?

Without autonomy there is no self-government. The application of this principle is essential for self-government, but it is not only linked to local self-government. Freedom within the state, within certain limits, is made up of a number of components and unfortunately is often used as a synonym for self-government, which makes it very difficult to understand its true meaning.

Constitutions rarely refer explicitly to the principle of autonomy, and even more rarely to local autonomy,¹ but in fact any regulation that in some way gives local self-governments powers that they can exercise under their own responsibility within the framework of an Act can be considered autonomy.² It is also reflected in this form in the European Charter of Local Self-Government³ (hereinafter “Charter”).⁴

Within the framework of this paper, I will examine some aspects of the principle of autonomy, without claiming to be exhaustive, in an attempt to shed light on the theoretical significance of the principle’s role in relation to local self-government. The aim of this study is neither to describe current trends in the field of autonomy, nor to explore the reasons for the obstacles to its application. Instead, the study will seek to explore the concept on a dogmatic basis in order to make more effective reference to its components in the context of some of the current issues that can be associated with autonomy. In addition to examining the components, the study will seek to highlight the importance of the correct use of the concept in the protection of the right to local self-government.

¹ This research was carried out using the European Constitutional Communication Network (ECCN) database, within the framework of the research project of the Comparative Constitutional Law Research Group at the National University of Public Service, with the support of the AURUM Lawyers’ Club for Talented Students Foundation. See Constitution of the Republic of Croatia, Article 137; Constitution of the Italian Republic, Transitional and final provisions IX; Constitution of the Portuguese Republic, Article 6 (1); Constitution of Romania, Article 73 (3), Articles 120-121; Spanish Constitution, Article 140, Article 141 (2).

² See Federal Constitutional Law of Austria, Article 118; Constitution of the Czech Republic, Article 104; Constitution of the Republic of Estonia, Articles 154 and 157; Constitution of Greece 102 (2); Constitution of the Republic of Poland, Articles 16 (2) and 166 (1); Constitution of the Republic of Lithuania, Article 120 (2); Basic Law for the Federal Republic of Germany, Article 28 (2); Constitution of the Slovak Republic, Articles 64/A and 65 (1); Constitution of the Republic of Slovenia, Article 140 (1).

³ European Charter of Local Self-Government; Strasbourg, 15. X. 1985.

⁴ See Preamble, Article 9 (1) and (5), Article 11.

2 The conceptual uncertainty of the principle of autonomy

“Etymologically, the term autonomy comes from two Greek words: auto (meaning ‘self’) and nomos (meaning ‘law, rule’). Thus, the original meaning of the word autonomy referred to the right to make own laws.” (Miklósné, 2010, 75). Móric Tomcsányi also reminds us that this term means self-legislation in a strict grammatical sense, but in a broader sense it means the right of autonomous provision (mostly autonomous rule-making). However, its common and academic use has broadened, and is generally used to describe the autonomy of regulation (as opposed to the power of governmental authority to intervene) (Tomcsányi, 1926, 242). Because of the expanded meaning, researchers have come to quite different conclusions along different research lines, and so the definitions are very diversified. According to Gábor Kecő, the diversity in the meaning of autonomy is mainly due to the different features of the subject areas under investigation (Kecő, 2016, 79). According to Ilona Pálné Kovács, this is a historically developed democratic value that has been conserved by modern democratic states. There are several approaches to it, but in a very pragmatic way, she argues that local autonomy is in practice nothing more than holding certain capacities to serve citizens locally (Kovács, 2008, 14). Adrián Fábrián focuses on the fact that the essence of autonomy is independence, i.e. that local self-government operates autonomously within the frameworks of the Acts (which cannot be formal, it must provide real freedom of action) (Fábrián, 2016, 38). Gábor Kecő points to self-determination, saying that autonomy means the relative freedom of local self-government to define its goals and use its instruments. Self-determination is not the same as independence because, for example, the Constitutional Court is independent of the government, but it does not set its own goals and instruments, but the Act does (Kecő, 2016, 100). István Hoffman stresses the separation, i.e. autonomy typically means separation from the central state power. As local self-governments are state bodies, their separation is relative, and its extension and guarantees are determined by the public law of the state (Hoffman, 2015, 40). According to Gordon L. Clark, autonomy is based on the power of immunity and the power of initiative. The former protects against interference by the authority of higher tiers of the state, while the latter refers to the power to regulate and legislate in their own interests. The American reality, he argues, is very far from this, local governments are the bureaucratic extensions of state governments (Clark, 1984, 205). Zoltán Magyary places the question of autonomy in a historical context, according to him, county nobility never considered autonomy as an original right of the county to manage its own affairs independently, but always as a piece of state functioning, a way of exercising executive power (Magyary, 1930, 165), limited by the law, which was only controlled by the legislature and the courts (Magyary, 1942, 63). Jürgen Backhaus sees local autonomy as about democracy, subsidiarity and fiscal responsibility (Backhaus, 2012, 1). In practice, he sees autonomy as a value category, which Marianna Nagy also emphasises, but she stresses that autonomy is not a value in itself, but a value if and because it is possible to carry out a task better, more effectively, more democratically, more efficiently and more cheaply. If this is done, she believes that autonomy should be preserved, and if not, a correction should be made (Nagy, 2017, 26).

István Bibó basically saw the possibility of separation from the concentration of power in increasing the autonomy of individual fields (e.g. science, art, education). The example of this, in his view, is the historically successful independence of the judiciary (Bibó, 1982, 557–558). Andrea Miklósné Zakar tries to bring together several theoretical and conceptual approaches. According to her, autonomy is the empowerment of a community with a system of institutions with some kind of representative or even administrative powers. These powers may be linked

to the whole or part of the territory inhabited by the community, but they must also encompass all individuals belonging to or wanting to belong to the community (Miklósnyé, 2010, 77).

The definitions may seem very different, but they generally summarise different aspects of autonomy. The reason is that this principle necessarily deals in some way with issues related to the right to decide on one's own affairs and to implement that decision autonomously.

Generally it can be said that autonomy is the essence of self-government, that self-government is based on it, its organisational expression (Kiss, 2016, 427). A separated principle, but because of its very broad meaning, it is also a framework for all the other principles that apply to local self-government. Some authors use it explicitly as a synonym for self-government, which makes it even more difficult to explain this principle. Since it is the essence of self-government, it is natural that it has been the focus of interest for subnational communities for centuries. List stressed the importance of autonomy, the right to enact municipal regulations and to impose taxes, which should be exercised through elected municipal councillors, as early as the beginning of the 19th century. Moreover, contrary to Lorenz von Stein's position, he did not consider autonomy to be important only for pragmatic economic reasons, but as an important first step towards constitutional government, which could be achieved through multi-level government (Chaloupek, 2012, 5–9). Ann Bowman and Richard Kearney point out that although local governments generally want increased autonomy, state governments have shared their policy-making sphere with reluctance, frequently prefer to tell them how to solve the problems (Bowman & Kearney, 2010, 329). According to Christopher L. Eisgruber, local autonomy is at once essential and dangerous to democracy, because local governments are indispensable mechanisms for securing participation, but on the other hand, they cannot by themselves provide people with the capacity to make effective choices (Eisgruber, 2001, 91). What is certain is that local autonomy depends on many elements: historical circumstances, constitutional structure, local resources, forms of local-national relations, the strength of social groups, their involvement in the local community, etc. (Vetter, 2002, 114). The members of an autonomous community may be linked by the same occupation, the same activity, the same culture, the same nationality or the same geographical locality. These autonomous associations operate on the principle of self-government and their autonomy is derived, i.e. they need to be recognised by law (Kovács et al., 2018, 7).

There is also no doubt that autonomy is not the same as sovereignty. Andreas Ladner and his colleagues argue that it occurs only because a national or regional legal framework grants it. Thus, it is necessarily limited, autonomy does not cover the defence of local governments of which the actions do not conform to the legal framework. Since the autonomous body is part of a larger political system, the principle of autonomy must be reconciled with the principle of unity (Ladner et al., 2019, 175–176). I, myself, agree that autonomy needs to be granted at a higher level of legislation if it is to be achieved. There are different approaches as to why this autonomy should be granted by the regulation. Consequently, it can be approached from two directions. According to the derivative theory, autonomy is created by a decision of another (higher) power. In opposition, the origins theory holds that the existence of autonomy is only recognised by the higher power. It is essentially a choice between a natural law approach and a legal positivist approach (Kecső, 2016, 79–80). There is no doubt that the two approaches are very different, but the result is a kind of freedom. This freedom can be directed against something (“freedom from”) or in favour of something (“freedom to”). In the former sense, local self-government may claim protection against unauthorised interference, while in the latter sense it may represent local initiative to achieve community goals (Ladner et al., 2019, 12–24).

Although autonomy is seen by many authors practically as a donation of the state, in my view the main goal is not to confirm or refute this, but to understand the original content of the principle. I think that the understanding of the principle is made more and more difficult due to the fact that its meaning has expanded enormously over the centuries. The use of it has become too general, and it can be used for everything that concerns local self-governments. I would not see any particular problem with this extension of meaning in itself, but it is important to note that it means that the concept of autonomy can be seen in two ways. It can be a separated principle that determines the content of self-government, but it can also be an outcome that is a result of other principles.

Looking at autonomy as a result, it is perhaps neither the most expressive nor the most fortunate to build the essence of self-government on the expanded and diversified principle of autonomy. However, it is possible (and indeed necessary) to build on autonomy in the narrow (original) sense.

The common link in the positions described above is freedom within the framework of the law, the right to decide on their own affairs and the autonomous implementation of their decisions. This requires the existence of powers through which this can be exercised. In full agreement with István Ereky, what is essential is that they should have powers which they can exercise with relative independence. (Ereky, 1939, 372) Based on this principle, autonomy sets out requirements that cannot be derived from other principles. In theory, the principle of decentralisation is very similar to it, so it is necessary to separate it from decentralisation. This also requires going back to the original meaning of autonomy.

3 Autonomy and self-regulation, i.e. autonomy in the narrow sense

As I have already noted above, autonomy in its original meaning refers to the right to self-regulation. In the works of German authors, this original element is very prominent, which is important because it helps to distinguish this principle from decentralisation.

Normative principles justify that local self-government has to be free to make regulatory decisions. This implies that local self-government must adopt a democratic structure, that it must find the resources to undertake any service collectively wished to be provided for itself, that it ought to represent the views of its inhabitants to other agencies, and finally that higher levels of government must respect its integrity and morally legitimate activities (Ladner et al., 2019, 10). According to Hans Peters, autonomy is the right of a separate community from the state to create law for itself. For local communities, it means that they can enact generally enforceable norms in their own sphere of activity. The dominant opinion is that autonomy and self-government (or more precisely self-administration,⁵ which I translate in this section for the clarity of the text) are two concepts of different natures. He agreed with Paul Laband, who said that the concepts of self-administration and autonomy are similar and often interlinked (Peters, 1926, 37–38). Among contemporary authors, Reinhard Hendler also stresses that, although autonomy and self-administration are commonly regarded as synonymous concepts, but autonomy in relation to public institutions is really about self-regulation based on authorisation of an Act (Hendler, 2007, 12).

Autonomy, as described above, therefore in legal sense necessarily implies legislative power. Self-administration, however, is in itself only administration and does not include the power

⁵ The German word ‘Selbstverwaltung’ is usually translated (and used in this sense) simply as ‘self-government’, but it literally means self-administration.

to legislate. The two concepts are linked (in German terminology: *Autonomie zur Selbstverwaltung*, i.e. autonomy for self-government) and cover the possibility of administrative legislation. The two concepts are therefore opposed, but complement each other well (Peters, 1926, 37–38). According to Paul Laband, in the past, both concepts meant the freedom of a person to organise his legal relations of his own free will. Autonomy, in his view, is an ability to will and act recognised by an Act. It is opposed to sovereignty, since, in the context of self-regulation, the community can only carry out what it has been authorised by the higher community to carry out (in contrast, the sovereign power has no such limits). Autonomy as a legal concept therefore does not imply sovereign power, it must respect the limits set by the sovereign, it cannot be in contradiction with the Acts issued by the sovereign (Laband, 1876, 107–108). The cited German authors (and many others) thus argue that *Selbstverwaltung* (self-government in general translation) in itself really means only autonomous administration, to which autonomy adds the possibility of autonomous regulation.

The Hungarian term ‘*önkormányzás*’ has more the meaning of the German ‘*Selbstverwaltung*’ with the addition of autonomy. In other words, in Hungary we only call a body self-governing if it has some autonomy of regulation (*Selbstgesetzgebung/Selbstregierung*), not only autonomy of the executive in the narrow sense.⁶ If a body does not have regulatory autonomy, the designation referring to autonomy should be accompanied by a restrictive expression (e.g. “*autonóm államigazgatási szerv*”, i.e. autonomous administrative agency). Therefore, the two concepts of autonomy are certainly not that far apart, but in Hungary in general, researchers focus more on autonomy. Maybe it could be said that the concept of autonomy without an adjective necessarily includes regulatory autonomy.

The English term local self-government fairly well reflects the Hungarian term ‘*helyi önkormányzat*’, although it is interesting that it only exists in the legal English language. It is no wonder that in legal terminology (as the English counterpart of the French *autonomie locale*) this is the intermediary term, because its content best captures what the concept of local self-government is intended to express. It is therefore easy to see that autonomy and self-government, and autonomy and decentralisation, are not the same concept, but that autonomy is necessarily part of self-government. Finally, it should be noted that it also follows from the Charter that self-government is a combination of administrative and regulatory activity.

Since autonomy also builds on the principle of decentralisation, it is important to distinguish it from the principle of decentralisation, which for the reasons stated above is only a kind of synthesis of what is described there. Móric Tomcsányi stresses that, while autonomy implies autonomy to initiate provisions, in the case of decentralisation it is possible to have a higher instruction (but in that case the body is not obliged to implement the instruction, which is considered illegal, and its decision is also a final one) (Tomcsányi, 1926, 242). Sabine Kuhlmann and her colleagues formulate this as autonomy is the difference between administrative and political decentralisation. In the former case, local elected representatives are not given autonomous decision-making and control competences with regard to the allocation of local tasks. In this case, although local self-government decides autonomously on the specific organisation of the task, it still acts as a representative of the State or the authorities, i.e. it remains under the legal and professional control of the State and under the control of the professional quality of the performance of the task. Political decentralisation, however, means that a locally elected

⁶ It is perhaps for this reason that the term self-government, used in an English-language context but not primarily for British local government, is more expressive.

body takes full responsibility for autonomous decisions on planning, financing and directing, and the legitimacy of the activities of local bodies is only subject to ex-post control by the state (Kuhlmann et al., 2011, 22–23).

4 Specific areas of autonomy

There is no doubt that a large part of the research on local self-government is related to the components of autonomy and their limitations. It is no wonder that after the change of regime, even in the Hungarian Constitutional Court the key concept in local self-government cases has undoubtedly become the principle of autonomy. (Sólyom, 2001, 774). The nature, essence and form of autonomy may be different from one era and state to another. However, certain elements of its content remain constant. (Siket, 2020, 23) Of these, financial autonomy is especially important, since without this, the autonomy of local self-government is only illusory (Kecső, 2016, 97). In this chapter, however, I discuss this issue only at the general level, my goal being merely to identify the different areas.

In a practical approach, the autonomy has four aspects: organisational autonomy (self-organisation, creation of autonomous organisations to manage its own affairs), regulatory autonomy (self-regulation, decision-making in its own right; direct or indirect participation of members in decision-making), administrative autonomy (autonomous management of its own affairs) and economic-financial autonomy (access and autonomous use of funds in connection with its own affairs) (Csalló, 2014, 16). Andreas Ladner and his co-authors take a very detailed look at the components of autonomy, dividing the approaches and constitutional aspects of local autonomy into four sub-dimensions:

- Legalist approach: focuses on constitutional status and general competences. The legal framework and its constitutional protection are important.
- Functional approach: focuses on specific decision-making competences and functional responsibilities. To deliver services, local government must also have the capacities to carry them out. Autonomy is therefore linked to the financial resources local governments dispose of independently and their tax-raising possibilities.
- Organisational approach: the focus is on the autonomous creation and maintenance of an administrative apparatus, i.e. self-regulation. This is how a local political system can be created.
- The political approach to intergovernmental relations: the emphasis is on vertical relations, with central or regional control and access. The nature and extent of these influence autonomy (Ladner et al., 2019, 24–25).

Overall, the authors identify seven dimensions of local autonomy: legal autonomy (guaranteed status), policy scope (tasks to be performed), political discretion (ability to make decisions), financial autonomy (e.g. own resources, tax revenues, borrowing capacity), organisational autonomy (ability to organise own administration), non-interference (consist of the way supervision is organised) and access (ability to influence higher level decisions). Among these, political discretion, financial autonomy and legal autonomy are also considered cornerstones (Ladner et al., 2019, 333–334).

The functions and powers of local self-government have been historically developed in traditional democracies, but they are by no means immutable (it is no coincidence that in many states they are not even listed in the constitution) (Balázs, 2014, 314). What is certain is that all the decision-making and executive functions assigned to local governments reinforce the role of autonomy.

5 A specific approach: the devolution

Devolution is a specific British approach that seeks to regionalise within a system based on parliamentary sovereignty without dismantling sovereignty. It is close to decentralisation,⁷ therefore it is logical to compare it with decentralisation, but in fact it is much more than that, ultimately leading to the realisation of municipal autonomy through the local reinforcement of political power. István Hoffman points out that the term devolution is used in British legislation to the specific transfer of powers and the new structure of the United Kingdom after 1997 (when the Scottish, Welsh and Northern Ireland parliaments and executive were established). It is in fact a specific federal structure (the above entities are clearly statehood entities) (Hoffman, 2017, 222). It can be stated that the devolution changes had a major impact, as a balance had to be found that structurally and functionally served the Kingdom's interests (without the specific state system, the balance could easily be disrupted) (Iván, 2015, 87). The emphasis on federal character is also important to distinguish it from the devolution that has been part of decentralisation in the narrower sense, which has strengthened local government units. This process started in 2008 (Hoffman, 2017, 222). This is significant because the concept of devolution has been increasingly used in British local government literature over the last decade or so. It seems as if authors are trying to explain the need for local government reform through the useful ideas of devolution theory. However, while István Hoffman writes about devolution as part of decentralisation, Colin Copus, Mark Roberts and Rachel Wall argue that devolution and decentralisation are separate and differing concepts, where devolution implies a substantial transfer of political power and autonomy as a result of a significant shift in the relationship between central and local government. In contrast, decentralisation describes only the transfer of authority to exercise functions, responsibilities, tasks and finances from one tier to another in accordance with national policy objectives and motives of political expediency within central government (Copus et al., 2017, 11). Robert Agranoff also argues that devolution is a way of developing autonomy, or the transfer of power downward to intermediate or local political authorities. Devolution as self-rule tries to combine the promise of democracy with expected efficiencies of government, that are closer to the people affected by local decisions. Devolution is normally enabled by organic or basic nature central legislation and supporting regulations (Agranoff, 2004, 26, 29). John M. Cohen and Stephen B. Peterson have identified six normative requirements of devolution:

- the status of the specified unit must be granted,
- jurisdiction and functional boundaries must be clearly established,
- defined powers to plan, decide and manage specific tasks should be transferred to the units,
- it is necessary to establish of basic rules for interaction among units in the governmental system,
- need to be authorised to raise own-sources revenues,
- it is necessary to authorise for devolved units to establish and manage their own budgetary, accounting and evaluation systems (Agranoff, 2004, 29).

Devolution can occur by established units of highly centralized federal systems shifting power downward, through the recasting of unitary systems in a more federal direction, and by

⁷ József Fogarasi, for example, uses the term devolution without much clarification, practically as a synonym for decentralisation (Fogarasi, 1997, 23–28).

unitary states transferring power to regions and localities. It is in many ways similar to the power sharing aspects of federation (e.g. autonomy may be guaranteed by the constitution), but also different (e.g. devolved regions usually possess no exclusive powers of their own) (Agranoff, 2004, 28).

In my reading, it seems that some British authors want to use the additional possibilities offered by devolution to move British local governments towards genuine self-government, but in fact they are talking about nothing more than increasing local autonomy. Colin Copus, Mark Roberts and Rachel Wall also note that this is an extremely difficult process, and that attempts at devolution in the UK have usually remained at the level of administrative decentralisation. Shift of power from the centre to the local level would be vital to renew local democracy. However, this requires that this change is organised from the bottom up by local communities. Without this, only the central government's objectives can be achieved, and it still has no trust in local government (Copus et al. 2017, 133–135).

6 The practical significance of local autonomy in the field of legal protection

A deeper understanding of the meaning and significance of autonomy is important from a practical point of view because of the legal protection of local self-government. It also helps to understand the limits of autonomy.

In my interpretation, issues regulated in Article 11 of the Charter fall within the scope of legal protection of local self-governments. According to this: *“Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.”* In this sense, the issues that I consider to fall within the scope of this group are the ones related to the autonomous exercise of powers.

In my view, the purpose of the legal protection of local self-governments is, that – in many respects – the local self-governments are in a subordinate position within the organizational hierarchy of the state.

The Charter assumes that the autonomy of local self-governments shall be guaranteed against the central public bodies (Szabó, 2005, 116). It is necessary to create the legal framework ensuring that central public bodies with a stronger power would not enforce their own political or professional preferences against the will of local communities with different political or professional beliefs.

The legal protection is indispensable for the protection of autonomy. The permanence of substantive independence is also essential for having autonomy; legal restrictions on local public affairs are only constitutional as long as they do not result in the complete hollowing out of independence (Patyi, 2013, 389).

The need to protect powers arises from the balance of power: it prevails primarily over the central executive power, but the legislative power has no room for maneuver either (notwithstanding the fact that autonomy only exists within the frameworks of the Acts), since it cannot hollow out powers protected by the Constitution. In fact, this creates the right to local self-government.

It is noteworthy, that in several states this protection is explicitly manifested in high standards. According to the Czech Constitution, for instance, the local self-government may submit

a constitutional complaint against an unlawful encroachment by the State,⁸ and the Croatian Constitution also makes provisions for an investigation by the Constitutional Court if local self-government was violated.⁹ Although at a lower level in terms of source of law, but the German legislation also contains similar provisions,¹⁰ according to which municipalities and associations of municipalities may lodge a constitutional complaint based on the violation of the provision of the *Grundgesetz*¹¹ which stipulates that the right of local self-government shall be guaranteed to the municipalities. In Poland, the Constitution declares the need for jurisdictional protection of self-government,¹² and in other countries the Constitution entitles the Constitutional Court or other court to resolve conflicts of competence between the local self-governments and other public bodies.¹³

In Hungary, the framework of legal protection has been shaped by the practice of the Constitutional Court.

CC decision 3311/2019 (XI. 21.) specifically deals, among others, with the groups of powers enshrined in Article 32(1) of the Fundamental Law. In its decision the Constitutional Court stated that local self-governments (in addition to being parts of the unified state system) enjoy relative autonomy *vis-à-vis* central public bodies with regard to local public affairs, which is the essence of local self-governments; the most important elements of which are listed by Article 32 (1) of the Fundamental Law. Local self-governments are in a vertical position compared to the classical actors of division of powers; therefore the relationship between central public bodies and local self-governments is quite delicate.¹⁴ Powers enshrined in the Fundamental Law should be interpreted as rights guaranteed in the Fundamental Law, because, in the event of their violation, the autonomy which the Fundamental Law intends to ensure is impaired.¹⁵ The Constitutional Court has also explained that these powers provide protection especially against central bodies of the executive branch and against judicial decisions contradicting the Fundamental Law; meanwhile, if opposed to the legislative branch (since autonomy originally exists within the frameworks of the Acts) the measure of anti-Fundamental-Law actions can only be if these powers (or rights) are hollowed out.¹⁶

CC decision 8/2021 (III. 2.) further strengthened this doctrine. Specifically basing its decision on the provision of the Fundamental Law establishing autonomy, it stated as a constitutional requirement that although the Parliament may reduce the budgetary support of local self-governments (and in a state of danger, the Government may do so as well, in view of the special legal order rules), it may not hollowing out the functioning of local self-governments.¹⁷ It further clarified the criterion of hollow out, stressing that an Act can limit autonomy, but

⁸ Constitution of the Czech Republic, Article 87(1).

⁹ Constitution of the Republic of Croatia, Article 129.

¹⁰ Act on the Federal Constitutional Court, Section 91.

¹¹ Basic Law for the Federal Republic of Germany, Article 28.

¹² Constitution of the Republic of Poland, Article 165(2).

¹³ See e.g. Constitution of the Republic of Bulgaria, Article 149(1).

¹⁴ *CC decision 3311/2019. (XI. 21.)*, Reasoning [31].

¹⁵ *Id.* Reasoning [35].

¹⁶ *Id.* Reasoning [36].

¹⁷ *CC decision 8/2021 (III. 2.)*, Operative part 1. (For a summary of the decision in English, see: <https://bit.ly/3P1aoru>)

cannot hollow out it).¹⁸

CC decision 3441/2022 (X. 28.) also stressed that the protection of property of local self-government is important mainly in the context that without property or with the partial deprivation of property, autonomy may be violated. In essence, property and its objects in the static sense are only the basic conditions for management, whereas the dynamic is the management, which is protected by Article 32 (1) e) of the Fundamental Law.¹⁹

7 Concluding thoughts

Autonomy is one of the most important characteristics of self-government, without it there can be no self-government. There is no doubt that much of the research on local self-government is related to the components of autonomy and their limitations. Although autonomy and self-government are considered by many to be synonymous concepts, I am convinced that no equivalence can be drawn between the two.

Autonomy is in fact (in a narrower sense) about self-regulation of public institutions based on empowerment of an Act. Autonomy is therefore the right of a community outside the State to make law for itself. Necessarily limited, autonomy does not protect action that does not conform to the framework of the Act. I agree with the idea that since the autonomous body is part of a larger political system, the principle of autonomy must be reconciled with the principle of unity (Ladner et al., 2019, 175–176). The common link between the very different views is the autonomy within the framework of the Act, the right to decide their own affairs and the autonomous execution of the decision. For this, it is essential that there are powers through which this can be exercised. Moreover, it is certain that all the decision-making and implementation tasks allocated to local self-government strengthen autonomy.

It is also important to emphasise that autonomy is an important principle in its own right, but because of its very broad meaning, it is also a framework for all the other principles that apply to local self-government, all of which work together to advance local democracy.

References

- Agranoff, R. (2004). Autonomy, Devolution and Intergovernmental Relations. *Regional and Federal Studies*, 14(1), 26–65. <https://doi.org/10.1080/1359756042000245160>
- Backhaus, J. G. (2012). Two Centuries of Local Autonomy. In J. G. Backhaus (Ed.), *Two Centuries of Local Autonomy* (pp. 1–2). Springer. https://doi.org/10.1007/978-1-4614-0293-0_1
- Balázs I. (2014). Új tendenciák a helyi önkormányzati rendszer szabályozásában Magyarországon és az Európai Unió tagországáiban. In Balázs I. (Ed.), *Helyi Önkormányzatok* (p. 290–320). Debreceni Egyetemi Kiadó.
- Bibó I. (1982). Az államhatalmak elválasztása egykor és most. In Kemény I., & Sárközi M. (Eds.), *Bibó István összegyűjtött munkái 2.* (pp. 541–559). EPMSZ.
- Bowman, A., & Kearney, R. (2010). *State and Local Government* (8th ed.). Wadsworth.
- Chaloupek, G. (2012). Friedrich List on Local Autonomy in His Contributions to the Debate About the Constitution of Württemberg in 1816/1817. In J. G. Backhaus (Ed.), *Two Centuries of Local Autonomy* (pp. 3–12). Springer. https://doi.org/10.1007/978-1-4614-0293-0_2

¹⁸ CC decision 8/2021 (III. 2.), Reasoning [168].

¹⁹ CC decision 3441/2022 (X. 28.), Reasoning [47].

- Clark, G. L. (1984). A Theory of Local Autonomy. *Annals of the Association of American Geographers*, 74(2), 195–208. <https://doi.org/10.1111/j.1467-8306.1984.tb01448.x>
- Copus, C., Roberts, M., & Wall, R. (2017). *Local Government in England – Centralisation, Autonomy and Control*. Palgrave Macmillan.
- Csalló K. (2014). Önkormányzás, autonómia. A helyi önkormányzatok szabályozási típusai Európában. In Feik Cs. (Ed.), *Magyarország helyi önkormányzatai* (pp. 15–32). NKE KTK.
- Eisgruber, C. L. (2001). *Constitutional Self-Government*. Harvard University Press. <https://doi.org/10.4159/9780674034464>
- Kovács R., Bekényi J., & Kónya L. F. (2018). Önkormányzatok jogállása. Dialóg Campus.
- Erekly I. (1939). *Közigazgatás és önkormányzat*. Szeged Városi Nyomda és Könyvkiadó.
- Fábián A. (2016). A helyi önkormányzat (nem jogi) fogalmáról. *Új Magyar Közigazgatás*, 9(4), 35–40.
- Fogarasi J. (1997). Önkormányzati kézikönyv. HVG-ORAC.
- Hendler, R. (2007). Grundbegriffe der Selbstverwaltung. In T. Mann, & G. Püttner (Eds.), *Handbuch der kommunalen Wissenschaft und Praxis. Band 1 Grundlagen und Kommunalverfassung* (3rd ed.) (pp. 3–22). Springer. https://doi.org/10.1007/978-3-540-68884-6_1
- Hoffman I. (2015). *Gondolatok a 21. századi önkormányzati jog fontosabb intézményeiről és modelljeiről – A nyugati demokráciák és Magyarország szabályozásainak, valamint azok változásainak tükrében*. ELTE Eötvös.
- Hoffman I. (2017). A helyi önkormányzatok és szerveik (tisztségviselőik) által ellátott feladatok főbb kérdései. *Magyar Jog*, 64(4), 216–224.
- Iván D. (2015). Devolúció és önkormányzatiság. *Kisebbségkutatás*, 24(1), 60–87.
- Kecső G. (2016). *A helyi önkormányzatok pénzügyi jogi jogállása – A jogállást meghatározó jogintézmények modelljei a bevételi oldalon. Anglia – USA – Magyarország*. ELTE Eötvös.
- Kiss B. (2016). A helyi önkormányzati rendszer. In Trócsányi L., & Schanda B. (Eds.), *Bevezetés az alkotmányjogba* (pp. 427–457). HVG-ORAC.
- Kuhlmann, S., Bogumil, J., Ebinger, F., Grohs, S., & Reiter, R. (2011). Dezentralisierung des Staates in Europa – Auswirkungen auf die kommunale Aufgabenerfüllung in Deutschland, Frankreich und Großbritannien. VS Verlag. <https://doi.org/10.1007/978-3-531-93202-6>
- Laband, P. (1876). *Das Staatsrecht des Deutschen Reiches*. Laupp.
- Ladner, A., Keuffer, N., Baldersheim, H., Hlepas, N., Swianiewicz, P., Steyvers, K., & Navarro, C. (2019). *Patterns of Local Autonomy in Europe*. Palgrave Macmillan. <https://doi.org/10.1007/978-3-319-95642-8>
- Lapsánszky A., Patyi A., & Takács A. (2017). *A közigazgatás szervezete és szervezeti joga*. Dialóg Campus.
- Magyary Z. (1930). *A magyar közigazgatás racionalizálása*. Királyi Magyar Egyetemi Nyomda.
- Magyary Z. (1942). *Magyar közigazgatás – A közigazgatás szerepe a XX. sz. államában a magyar közigazgatás szervezete működése és jogi rendje*. Királyi Magyar Egyetemi Nyomda.
- Miklósné Zakar A. (2010). Autonómia – elmélet és gyakorlat. *Tér és Társadalom*, 24(3), 75–91.
- Nagy M. (2017). A helyi-területi önkormányzatok és az Alaptörvény. *Közjogi Szemle*, 10(4), 16–27.
- Patyi A. (2013). Gondolatok a magyar helyi önkormányzati rendszer általános szabályairól. In Szoboszlai-Kiss K., & Deli G. (Eds.), *Tanulmányok a 70 éves Bihari Mihály tiszteletére* (pp. 379–395). Universitas-Győr Nonprofit Kft.
- Peters, H. (1926). *Grenzen der kommunalen Selbstverwaltung in Preussen*. Springer. <https://doi.org/10.1007/978-3-642-47664-8>

- Petrétei J. (1995). Az önkormányzatok fogalmáról, jellegéről és alkotmányi szabályozásáról. *Jura*, 2(1), 6–15.
- Przeworski, A. (2010). *Democracy and the Limits of Self-Government*. Cambridge University Press. <https://doi.org/10.1017/cbo9780511778490>
- Pálné Kovács I. (2008). Helyi kormányzás Magyarországon. Dialóg Campus.
- Scheuner, U. (1981). Grundbegriffe der Selbstverwaltung. In G. Püttner (Ed.), *Handbuch der kommunalen Wissenschaft und Praxis. Band 1 Grundlagen und Kommunalverfassung* (2nd ed.) (pp. 7–23). Springer. https://doi.org/10.1007/978-3-662-11967-9_2
- Siket J. (2020). A helyi önkormányzatok közigazgatási autonómiája Magyarországon Az autonómia egyes tárgykörei intézménytörténeti és nemzetközi kitekintéssel, figyelemmel a Helyi Önkormányzatok Európai Chartájára. *Iurisperitus*.
- Sólyom L. (2001). *Az alkotmánybírászkodás kezdetei Magyarországon*. Osiris.
- Szabó A. (2005). A Helyi Önkormányzatok Európai Chartája és Svájc. *Themis*, 3(2), 113–125.
- Tomcsányi M. (1926). *A magyar közigazgatási jog alapintézményei*. Királyi Magyar Egyetemi Nyomda.
- Vetter, A. (2002). Lokale Politik als Ressource der Demokratie in Europa? Lokale Autonomie, lokale Strukturen und die Einstellungen der Bürger zur lokalen Politik. Springer. https://doi.org/10.1007/978-3-663-10686-9_7