

TRANSFORMATION OF THE MUNICIPAL SYSTEM

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ABSTRACT

Due to the lack of necessary competence, the European Union does not specify the targets of the municipal and public administrative jurisdiction. In addition, functional (urban) regions guaranteeing more flexible functioning are coming into prominence. This, however, does not mean that regional policy is not under adjustment constraints; however, it can formulate expectations with respect to the implementation of the required goals, which contributes to the adoption of mutual standards and practices. In Hungary, almost every settlement – even the smallest one – has a municipality of its own. Considering the member states of the European Union, our country is among those member states where the number of population per municipality is the lowest. This is why it is thought that financing problems of decentralized public administration levels – including the level of local governments – could be solved by the consolidation of certain municipalities. However, the viewpoint more essential than the economic consideration is that even the smallest municipalities play an important role in retaining localities and the population, and, on the other hand, European consolidations have not resulted in obvious effectiveness improvement or cost saving. Experience accumulated in the past twenty years since the beginning of the post-communist era has revealed that the local authority model does not meet modern challenges. The municipal system has not fulfilled expectations of effectiveness or those of power policy. The Hungarian state has remained centralized, although municipalities are autonomous entities under public law (Pálné Kovács, 2007).

Keywords: public administration, rescaling, municipalities, provisional arrangement, secondary level

PUBLIC SERVICE AS SPECIFIC SERVICE

Public service is a specific type of community services. When the concept is analyzed – especially the community feature – it is difficult to specify the activities to be included in the scope of these services. In this respect, different approaches are offered by economics, the science of public administration, the science law and positive law. This study briefly reviews the systems of the first two categories.

The most important public services are manifested as basic rights in the constitutions of states. Public services, which the government provides, finances and regulates, are qualified by the government as public services in a specific legal procedure.

Considering the establishment of duties and jurisdiction, the Hungarian regulation in force prescribes that it is only the law that can determine compulsory duties, and local referenda or the body of representatives (general assembly) can decide about the voluntary undertaking of further duties and jurisdiction. There is no hierarchy between local governments considering the movement of duty and

jurisdiction. Furthermore, compulsory duty and voluntary duties can be separated in case of municipal affairs. All these duties together are normally considered the compulsory service minimum (Horváth, 1993).

Primary and secondary services, which are implemented on different regional scale, are distinguished fundamentally. Primary services involve basic provision, whereas secondary services include special and specialized provisions. The distinction also appears in several acts of constitutional significance. For example, Act no. LXV of 1990 On Local Governments (Alg.) Article 8 Par. (4) prescribes health and social basic provisions among the compulsory duties of settlements. In Alg. Article 70 Par. (1) Subsection b), Alg. prescribes specialized social and health provisions among the compulsory duties of county municipalities which is the level of the fulfilment of regional duties.

In this study, basic services are those human and infrastructural services which are principally expected to be available - possibly on settlement level - as close to a settlement as possible. Secondary services (which mean the implementation of duties covering larger areas) can also guarantee the fundamental rights; however these require specialized knowledge and the size effectiveness of the services also indicates that they should be provided by a larger unit than a settlement.

The interpretation of the public service concept varies widely in different specialized literature references. Certain authors approach public services from the viewpoints and aspects of those who provide the services, and they relate the notion to the supply function of the government (including local governments as well). This approach is more common. Others define public services from the consumers' perspectives. They also deal with demand for public services and economic features of their consumer processes. Finally, there is another approach, which set up categories and definitions on the basis of distribution processes of public services. European Union documents discussing issues in connection with public services (for example, *Green Paper*, 2003; *Horizontal Evaluation*, 2004) emphasize that it is the right of member states to decide what they consider public service. According to these documents, prescribing obligation to have public services cannot entail defining the ways of fulfilling obligations, even though the tools used for this purpose should be proportional to the goals to be achieved.

Public services often have public good features or just some features known in economics. Public good is non-rival, non-excludable and non-refusable. Non-rivalry means that consumption of the good by one individual does not reduce the quantity and availability of the good for consumption by others. It is non-excludable when its consumers do not have to purchase it, but the government, in the name of consumers, buys these services from taxes and contributes to their production. Last, it is non-refusable if its consumption is the consumers' obligation or maybe their basic interest (Valentiny, 2008).

In terms of demand, the necessary but not sufficient criterion for public services is that they are fundamentally important and universal. A service can be defined as public service if the government is involved in its supply via one of the above-mentioned modes, and its distribution mechanism should have the features described in detail below.

Treatment as human rights can prevail both in services provided under market circumstances (for example: telecommunication, energy and water supply and traffic, etc.) and in services provided under non-market circumstances (for example: compulsory education, social security or other public duties representing national interests such as justice, public safety and recording in the register).¹ The concept of services of general interest (public service) appears in the frame of competition regulation of the Union.

In the past decades, it has changed significantly how public services are provided and what requirements they have to meet. Consumers are more resolute to practice their rights and more demanding with respect to quality, price development and choice between service providers (*Valentiny, 2008*).

COMMUNITY FEATURES OF PUBLIC SERVICES

The specialized literature typically deals with the community feature of public services. While definitions of the community feature of public services - usually in connection with sectoral and economic questions - are not normally challenged, economics and the science of public administration have developed independent terminologies – often quite conflicting ones - considering when a service can be regarded as public service. The different academic definitions are aimed at finding a coherent answer to the question within the system of their own academic field. However, the complexity of the question raised virtually makes it impossible to give a thorough, precise and coherent answer to it within a branch of social sciences. That is why economic and public administration elements of the public services concept should be examined and synthesized into a uniform – but complex – definition so that the community feature of public services can be understood (*Hoffman, 2009*).

The concept of public service was first defined in economics. The notion of public good was the basis of the economic approach. Economics divided public goods into private goods and public goods. Economics classifies those goods – commodities and services - as private goods which do not satisfy community needs, but can be realized in traditional, interpersonal and bilateral relationships.

The approach of the public administration science is that public goods are to satisfy community needs (*Stiglitz, 2000*). It distinguishes several groups within public goods. From an economic viewpoint, public goods are so-called pure public goods. In terms of pure public goods – besides they satisfy community claims - different economic actors cannot be excluded from consumption. Traditional governmental and public power activities (for example: national defense) belong to this category. Local pure public goods, for example, public parks, represent a relatively independent group within the scope of pure public goods. In this respect, people who do not live in the locality can be excluded from the service. Those goods which satisfy community needs but might be excluded from consumption are considered mixed public goods. Within mixed public goods there are goods that are distinguished because exclusion from services would require significantly high expenses and consequently, treating these goods as private goods would be

uneconomical. Those goods whose community provision has become evident during the development of the society, even though anybody can be excluded from the consumption of the goods – and the consumption of which the majority of the subjects were excluded from formerly (due to lack of fee payment) – are also distinguished. Within mixed public goods, the category of local (mixed) goods is also recognized. Those goods belong here which can be produced more effectively in the locality?

In this respect, public service can be regarded as an economic process which produces various public goods in order to satisfy community needs. However, the above approach to public service, in connection with the production of public goods to satisfy community needs, results in a situation where the content of the notion cannot be interpreted exclusively within the framework of the given academic field. It is principally the mixed public goods that weaken the theory and the definition of the notion. Since a pure economic distinction – i.e. whether consumption can be excluded or not due to the lack of fee payment - cannot be applied in every case. The economic approach considering mixed public goods can still prevail when the so-called “stowaway” effect can be excluded only with significant expenses. In this case, their treatment as public goods can be considered rational from an economic point of view as well. However, the economic approach cannot include the definition of the scope of mixed public goods which are specified by the society as community needs and thus belong to public goods even though subject not paying could be excluded from the consumption of the goods. In this case, the service is interpreted as public service because of non-economic aspects (*Hoffman* 2009).

With respect to the community feature of public service, the economic approach can be applied without problems only in case of pure public goods and exclusively by the application of the tools of economics. On the other hand, it is problematic in case of mixed public goods that make up the majority of public goods because at present specifying their scope is primarily a legal, political and social question so the purely economic model relies on legal and political concepts – principally second generation basic rights derived from constitutions - to define the notion of public service in case of mixed public goods. This problem was understood within economics; therefore, economics tried to justify the scope of mixed public goods with economic reasons. This effort became especially significant in the 1970s and 1980s when, after the failure of the Keynesian intervention paradigm, economics tried to specify where was the borderline between the state (public sphere) and the private sphere. In connection with the applied science, this raised the question when the governmental duty-provision was groundless and where it could be terminated primarily by privatization and the sale of governmental properties (*Stiglitz*, 2000).

Both the aspects of excludability from consumption and the manipulability of information were taken into account by theories of economics so that public goods and private goods could be distinguished in the new situation (*Doyal and Gough*, 1991). According to the above approach, manipulatable information means that the parties have information asymmetrically (*Akerlof*, 1970), and this asymmetry hinders

one of the parties from entering into a contract on the basis of real information (Mulgan, 1998). According to economic theories dealing with the question, the manipulability of information could be more appropriate to the definition of the character of service since a common feature of all public service is that consumers have very little information about the main features of the service (De Lima, 2005). Besides the manipulability of information, the economic aspect, i.e. how developing and profitable the above area can be considered from a market viewpoint, is also taken into account in the distinction of public goods and private goods. Analyses dealing with the question, however, involve a third element besides the above-mentioned two economic criteria, namely, whether the service is related to a basic right of the constitution. This approach reveals that the question cannot be answered with the methods of economics exclusively since specifying the scope of public services is largely a social and political question.

THE HUNGARIAN MUNICIPAL MODEL

At the beginning of the post-communist era no fundamental regional reform was completed in Hungary even though a competitive public administrative regional reform could have been implemented. Political actors at that time must have thought that the transformation of public administration, and within this, the close absolutization of the role of settlement municipalities would ensure a greater opportunity for governing parties to manage the transitions. In the new municipal system, the function of county municipalities became negligible whereas one of the largest transitions of the history of the Hungarian public administration was implemented: the focus of public administration was shifted from counties to settlements. In this situation, fragmented settlement municipalities could not function as counterbalance against the central power/administration. The implementation of the new public administration system has remained – practically - incomplete (Németh, 2009).

In the European Union – as it has been mentioned above – characteristics of the municipal systems differ considerably. This is presented from various aspects in specialized literature. A proper framework of analysis to describe different municipal models is provided by the four dimensional space which describes the important features of different systems in accordance with constitutional status, the establishment of duties and jurisdiction, the mode of service arrangement and financial architecture. This approach is effective because it is suitable for functioning as a conceptual frame of consistent proposals. The main features of the “Hungarian municipal model” developed in 1990 can be described as follows.

Considering the constitutional status, the municipal system was established as the fourth branch of power with significantly larger independence than what is common in Europe. It is characterized by fundamental tools – local political elections, the right to impose local taxes, assets necessary for fulfilling duties -, the identical constitutional status of actors with different orders of magnitude, strong ownership rights and the strong restraint of the central power. In the new system, the municipal right belongs to the settlements, which is the reason why the system

adjusted to the settlement structure is fragmented. It should be noted that the Hungarian municipal system was not related to settlements before World War II.

In addition, due to the liberal regulation of settlement foundation, new “independent republics” have been established until recently. An important feature of the large degree of independence is that duties undertaken voluntarily are only limited by the fact that certain activities are forbidden by other acts (for example: foundation of credit institutions, operating law enforcement bodies, etc.). The constitutional situation is that these “republics” cannot be forced legally to cooperate in the fulfillment of compulsory duties prescribed in Acts. This feature of the model was the result of the political illusion accompanying political transformation whose concept was that the monopoly of the one-party system could be terminated this way. It was ironic that due to the reform of the council system, public administrative structures, which lacked “only” the political pluralism, were developed by the 1980s. A rather disintegrated system evolved in 1991 instead of municipal integration following European trends. This was reinforced by the system of property rights, which today hinders assets necessary for fulfilling a public duty from “moving together” with the duty (*Vignári, 2007*).

The most important feature of the establishment of duties and jurisdiction was that the justified differentiation, which would have been obvious in case of settlements of different levels and sizes, failed. The Alg. did not exclude this; however, the passed jurisdiction act and, concerning the fulfillment of duties, the refusal of the institution of partnership coercion – not uncommon in international practice - mean serious imposition for the system. The specification of compulsory duties and jurisdiction has involved continuous changes from a legal viewpoint. The only fix point is the list in the Amendment to the Act XXV of 1996 On Debt Adjustment of Local Governments. A further feature is weakening the municipal secondary level (capital and county municipalities) and principally degrading it to the role of institution maintenance (according to *Gábor Zongor* classical evaluation: GAMESZ). Counties do not have any rights to impose taxes, so they and towns of county rank, the capital and its districts to a lesser degree, solve several problems with unnecessary parallelism. Unlike the legal and financial incentive approach to providing small settlements with public services, the cooperative service of the fulfillment of large-scale regional duties (county, towns with county rank, large towns and their agglomeration) is not incited at all (*Vignári, 2009*).

In terms of service arrangement, the paradigm of new public administration (New Public Management) has been prevalent in the Hungarian municipal regulation from the beginning, as it has been mentioned above.

According to this, municipalities are responsible for ensuring services and not for “producing” them, consequently, there are strong grounds for the fulfillment of duties outside the budget. Typical examples of these are public utility companies belonging to the municipality, which work as companies subordinated to general corporate governance rules. Local governments operating public utilities as price authorities and owners simultaneously are not capable of managing and controlling them satisfactorily. The other mode of ensuring services outside the budget is outsourcing which can be implemented on the basis of a purely market or

partnership approach with the cooperation of the public and private sphere (public private partnership, ppp). In spite of the alternative service arrangement, the number of municipal budget bodies is still unproportionally high. This reveals that the fulfillment of duties cannot often meet the basic requirements of economies of scale.

THEORIES FOR THE TRANSFORMATION OF THE HUNGARIAN PUBLIC ADMINISTRATION SYSTEM

It is counties that represent the regional level within the legislative environment which is currently in force in the Hungarian Republic. There are two different approaches to counties within the research on the regional structure of the Hungarian public administration. According to the first approach (e.g. Bibó and Erdei), a county is too large for the implementation of a real political municipal system and people-friendly public administration (*Csizmadia*, 1979). According to the other one, a county is too small for fulfilling certain modern functions independently (*Hoffman*, 2009). The system, however, can be considered to conform to the EU, as it has been concluded by several authors (*Pálné Kovács*, 1999; *Verebélyi*, 2000).

Many – including the IDEA work team of the Ministry of Internal Affairs during the two previous parliamentary cycles - thought that size disadvantage could be ceased by establishing regional municipalities at the secondary level of public administration. Bill No T/240, which was aimed at establishing 7 regions with elected municipalities within the frames of development and strategic regions, was based principally on these expert and academic concepts. The bill, however, was rejected due to lack of qualified majority (*Hoffman*, 2009).

The Bibó-Erdi concept of town-county was published in 1947. According to this, 70-80 town-counties would have been established with municipal level. Above this, there would have been 7 administrative regions, which would have been only public administrative levels (*Belényi*, 1995).

Verebélyi (2000) suggested that 12-13 large counties should be established from the current 19 counties in several phases, with the insertion of partnerships and regional changes.

Besides the claim for the precise regulation of jurisdiction and authority, there are two entirely distinct professional approaches among the ideas concerning the vertical entirety of the system. According to the first one, a “three-actor” structure would be needed: settlement, micro-region/district and county. According to the other one, a four-element structure should be created: settlement, micro-region/district, county and region.

Hoffman’s settlement- and micro-region-centred model belongs to the latest concepts. On the basis of the model, if the legislator chose the district model, a town with actual district centre functions should be in the centre of each micro-region. Now there are 120-180 such towns in Hungary. *Beluszky* (2000) estimates that 128 settlements with actual town functions can be found in Hungary. The author would not establish a municipal level for public services in the micro-regions, voluntary – but compulsory – associations would be entrusted to fulfill

them. In this case – in his opinion – counties are too small for regional coordination. He, however, points out that in case of certain secondary services, the region would be too far from the recipients of the services, so it would be reasonable to establish an intermediary and lower secondary level.

The micro-region system that follows the municipality alliance model conforms to the current county system, since it is aimed at filling the shortages of settlement basic services and does not affect the county system fundamentally or the current structure of secondary level public services (*Hoffman, 2007*).

CONCLUSION

Rescaling had two large waves in Europe. It affected the local governmental level fundamentally in the 1960s-70s. In several countries (Germany, the United Kingdom and Scandinavian countries) municipal areas with significantly larger jurisdiction were established due to the expected advantages of economies of scale and because of the optimization of public services arrangement. The stake of the transformation was whether municipalities were capable of adapting to new challenges whereby they could become appropriate for the acceptance of new further functions and resources or they would maintain their structures but would lose their functions in favour of other contract types of public and private law (e.g. deconcentrated authorities obtained significant positions against the municipal sector or a complicated system of associations was created for a possible solution to the differences between the optimal scale of services and size of public administrative units).

Within a relatively short time, by the end of the 80s, it emerged that it was difficult to reveal the effects of structural reforms on the effectiveness of municipal functioning (*Pálné Kovács, 2010*).

In the past decades, the application of such functional solutions (associations, finance constructions and jurisdiction differentiation), which are not uniform and seek more unique solutions, has been more prevalent (*Martins, 1995*).

The implementation of the domestic secondary level, that is, the current form of counties created by the post-communist era, was not preceded by surveys of economies of scale, establishment of jurisdiction or duty fulfillment. It does not have regional integration role either. Therefore, it cannot function as the basis of decentralization, which has been formulated by political actors several times and has never been implemented, or as the counterbalance of the central power.

Hungarian municipalities compete with each other and with municipalities in the European Union, for example, to obtain investments of the public and private sectors or significant EU resources. In this competitive situation, our position is not satisfactory because provisional arrangement does not seem to be effective.

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