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Legal Status of Budapest in Particular Regarding Evolution of Its Powers and Functions from the Regime Change to 1994

Keywords: Budapest, powers and functions, local government, Regime Change, constitution, monist model, dualist model, municipal authority functions, state administration authority functions

Słowa kluczowe: Budapeszt, uprawnienia i funkcje, samorząd, Zmiana reżimu, konstytucja, model monistyczny, model dualistyczny, funkcje władz gminy, funkcje organu administracji państwowej

Abstract

The main purpose of this publication is to present the legal status of Budapest between 1990 and 1994 and to expound the evolution of its powers and functions between the abovementioned period. Basically legal perspective is reflected in this study therefore it follows the legislative hierarchy particularly. First of all, I will try to define what legal status really is in that context I will use it in this study. Having defined the conceptual questions, I will present the evolution of powers and functions of the capital by analysing the constitution the concerning acts and their ministerial reasonings as well.

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Streszczenie**Status prawny Budapesztu w szczególności w kontekście ewolucji jego uprawnień i funkcji od zmiany ustroju od 1994 roku**

Głównym celem tej publikacji jest przedstawienie statusu prawnego Budapesztu w latach 1990–1994 oraz wyjaśnienie ewolucji jego uprawnień i funkcji w wyżej wymienionym okresie. Zasadniczo perspektywa prawna znajduje odzwierciedlenie w tym opracowaniu, w związku z czym wynika w szczególności z hierarchii ustawodawczej. Przed wszystkim postaram się określić, jaki status prawny rzeczywiście istnieje w tym kontekście, wykorzystam go w tym badaniu. Po zdefiniowaniu pytań koncepcyjnych przedstawię ewolucję uprawnień i funkcji kapitału, analizując konstytucję także w sprawie aktów i ich rozumowań ministerialnych.

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I. Prologue

By the words of Zoltán Magyary, one of the most influential, doctrine-founder Hungarian administrative law scholar: Budapest-capital is “the largest administrative unit following the state”².

Relating to the title of the present study, it is important to define what do I mean under legal status. There are two significant issues to clarify concerning the legal status³ of the capital: i) the nature of the legal regulation of

² Z. Magyary, *Magyar közigazgatás. A közigazgatás szerepe a XX. század államában*, Budapest 1942, p. 350.

³ We cannot agree with the view which emerged in the socialist era and stubbornly stood for decades in respect of the legal status of the city administration organs, i.e. that: “[...] the way forward to the regulation of the legal status of the city administration, which serves both the interests of the whole society and the city interests as well as promotes maximally the social development, is to find the up-to-date version of the Lenin conception of the system of the local organs. [...] the socialist state needs such local organs which are parts of the unitary machinery of state, which are executors of the society controlling central will and at the same time organs which represent the local residents, express their interests and implement their will.” T. Madarász, *Városigazgatás és urbanizáció (a városigazgatási tevékenység elméleti modellje)*, Budapest 1971, p. 434. For the sake of a holistic picture it is worth noting that the other

the capital and ii) the single – or multilevel character of the municipality of the capital. The main questions of the administrative structure⁴ of the capital may only be answered after determining its legal status since without a status concept it is pointless to elaborate any vision on structural issues. It is to be stressed that although the administrative structure is an integral part of the issue of legal status, the present study cannot deal with the administrative structure in details due to the constraints on extent.

i) In concern of the legal regulation of the capital it is to be decided which concept is more appropriate: regulating the capital along with other local and regional municipalities (A. monist model) or regulating it separately (B. dualist model)⁵. In case of the monist concept two further possibilities require exam-

elements of municipal legal status of Madarász are adequate and prevail in the democratic constitutional states too, it is evident that due to the circumstances of the given era, it was unthinkable to not present the cited section in the first place concerning the elaboration of the elements of legal status.

⁴ Under the term exterior administrative structure I mean all the statutorily determined organs which are not formed by the municipalities themselves with their autonomy, since the autonomy of municipalities can be defined around four elements: i) organizational autonomy; ii) regulative autonomy; iii) autonomy to decide and administrate; iv) economic and financial autonomy. Contrary to that, the municipality can shape itself its internal structure due to its autonomy. For this issue, Z. Magyary states that: “Self-governance (autonomy) means the literal antonym of being governed by someone else. Therefore if we state from an organ that it has municipal rights, we can presume that it could be otherwise because there is a stronger power above it, which could govern this organ. Hence, the term self-governance cannot be used for the highest, sovereign power, thus for the state, in case of which governance by someone else is not possible.” Z. Magyary, *op.cit.*, pp. 112–113. The municipal autonomy also occurred in the practice of the Constitutional Court, in its decision from 1993 it highlights (rather in respect of the organizational autonomy) that: “Per Section 44/A, § (1) point e) of the Constitution the local body of representatives may form independently its organizational and operational order within the statutory framework. This provision provides a constitutional protection for the freedom and autonomy of the municipality to independently form its organizational structure. This autonomy however, is not absolute and without limits, [...] it can only prevail within the statutory framework. This [...] primarily provides a constitutional guarantee vis-à-vis the Cabinet and the organs of the state administration. [...] the organizational autonomy afforded for the body of representatives is not incorporated in the exercise of one single right, but in the overall exercise of the freedoms of decision-making in organizational questions and the organizational powers. 1/1993 (I. 13.) ABH [Constitutional Court decision].”

⁵ An example for this in Hungary can be the regulative regime between 1991–1994 or the regulative regime of the pre-socialist era between 1872–1950.

ination. Namely that due to the special status of the capital the monist model allows to regulate the special provisions of the capital under different chapter than the general rules of municipality. Similarly to the dualist model, this approach (Ba. differentiated monist model)⁶ regulates the legal status of the capital separately from the local and regional authorities because of the special role of Budapest in Hungary, yet it does so in the same Act. The other plausible way is when the legislation regulates the capital all along with the other municipalities by not differentiating it from them and therefore not acknowledging or not considering its special status (Bb. uniformalised monist model)⁷.

ii) The relevant question in relation to the levels of the municipality of the capital is whether a single-level or a multilevel concept is wanted. Naturally both solutions have their advantages and disadvantages. The main advantage of the double-level structure is the division of labour derived from the separated powers and functions. It may result to relieve congestion either on the side of the districts⁸ or on the side of the capital (provided the adequate regulations), moreover there are powers and functions which may not be fulfilled by the districts only, etc. At the same time disadvantages can be found too. These are *inter alia*: emerging irrational situations deriving from the division of labour between

⁶ The legislation in force basically follows this model (Act CLXXXIX of 2011 on the local governments of Hungary) and the previous ALG from 1994 as well.

⁷ This solution was applied during the four decades of the council-system of the socialist era (1950–1989).

⁸ Relating to the districts, it is worth noting that the capital only had twenty-seven districts back in 1990, which was regulated by the Ministerial-Council in its decree on the determination of the districts of Budapest Capital (No. 4349/1949, XII. 20.). The authorization for such regulation was based on section 2, § 2 of Act XXVI of 1949 on the novel determination of the territory of Budapest capital. The re-regulation of the districts on statutory level was made in 1994 in Act XLIII of 1994 on the division of the administrative territories and districts of Budapest. This Act enrolled Soroksár as district XXIII. Before the 1949 regulation, two Acts ruled on the districts, namely Act XXXVI of 1872 and Act XVII of 1930. Yet, whereas the prior entrusted the general assembly to determine the actual formation of the districts (section 82), the later authorized the Home Secretary to regulate the details of the division of the districts in decree (section 3) since these Acts only defined the frameworks. Béla Scitovszky, the Home Secretary of the Bethlen Cabinet fulfilled this duty by issuing Decree No. 2.130 of 1930 on the division of the administrative districts of the territory of Budapest capital. From this review it is visible that in 1872 the capital municipality was entitled by its municipal autonomy to determine its own territorial division itself, whilst since 1930 this power gradually fell under the regulation of the central administration.

the districts and the capital; difficulties in coordination among the two municipal levels; problems concerning property settlement and property sharing⁹ between the districts and the capital; the collision of powers and functions¹⁰; etc.¹¹

Regarding the single-level structure, only two solutions may be plausible: i) either the districts are endowed with self-governance or ii) it is the capital which exclusively owns the municipal rights¹². In the prior solution the undoubted advantages are the absolute conformity with the principle of subsidiarity (which prevails at the double-level structure too, since the districts have municipality there as well); the clear determination of powers and functions; the elimination of difficulties in coordination; etc. To highlight the drawbacks it can be established that there can widely be found powers and functions which concern more districts (e.g. public transport organization, infrastructure development, etc.), hence the adequate fulfilment of these functions cannot be or cannot be fully guaranteed; the implementation of urban development, urban management concerning the whole capital obviously cannot be achieved at the district level; etc.¹³ ii) As for the second case, the advantages are: the coherent territorial development, spatial planning of the capital; providing public services concerning more districts in a simplified way (the already mentioned public transport organizational and infrastructure development tasks); clear powers and functions division; reduction of problems in coordination, etc. At the same time, a disadvantage is e.g. the violation of the subsidiarity principle and other problems derived from it (e.g. client based public administration); etc.¹⁴

⁹ In this context, it is sufficient to mention the question of road network only, since debates occur(ed) in several cases between the capital and the districts – exactly because of the inadequate determination of ownership relations – on the question of whose responsibility it is to maintain certain sections of road.

¹⁰ This issue strongly relates to the problem of municipal properties, since it is possible that the particular powers and functions are divided adequately, but due to the abstract textung of the norm, in practice, disagreements may occur exactly around the question of properties.

¹¹ For the advantages and disadvantages concerning the council-system see: cf. P. Szegvári, *Elképzelések a fővárosi önkormányzat törvényi szabályozásáról*, “Állam és igazgatás” 1989, No. XXXIX/10, p. 871.

¹² P. Szegvári, op.cit., pp. 873–875.

¹³ Ibidem, pp. 873–874.

¹⁴ Ibidem, pp. 874–875.

As presented, both solutions have several advantages and disadvantages, therefore in my view the most significant question may not be the number of municipality levels of the capital. The adequate question is whether the regulation of the “chosen” level could realise and highlight the advantages of the model and provide less space for the disadvantages at the same time. Relating to that, István Balázs notes that the hidden query behind the aforementioned regulation technique is as to how many cities the capital actually is, namely whether the capital is to be considered as double-level and federative due to the self-governance of the districts or rather as a unity per the limited and vanishing district autonomy¹⁵.

In addition, I wish to highlight that in both selecting the mode of legal regulation and determining the levels of the municipality it is needed to take into account the special status¹⁶ of Budapest and its agglomeration¹⁷. Due to extent limitations this study cannot examine the issue of agglomeration.

II. Provisions of the Old Constitution Concerning the Capital

Hereinafter, I present the legal status of the capital after the democratic changes following the legislative hierarchy top-down. The curiosity of the constitutive regulation of the municipalities after the democratic changes is that al-

¹⁵ I. Balázs, *A főváros és kerületei*, [In:] *A Magyarország helyi önkormányzatairól szóló törvény magyarázata*, eds. M. Nagy, I. Hoffman, Budapest 2012, p. 104, idem, *A fővárosi és megyei önkormányzat*, [In:] Z. Árva, I. Balázs, Z. Balla, A. Barta, B. Veszprémi, *Helyi önkormányzatok*, Debrecen 2012, p. 206.

¹⁶ István Balázs discussed the question of the capitals of the world and their agglomerations in details during the end of the 1980s. See: I. Balázs, *A világ nagyvárosai és agglomerációi igazgatásának tendenciái*, Budapest 1987, p. 45. Relating to the administration of Budapest and its agglomeration, a valuable development proposal was created with the leadership of professor Kilényi in the middle of the 1970s. See: G. Kilényi (rapporteur), *A fővárosi igazgatás a budapesti agglomeráció igazgatásának továbbfejlesztése. Összefoglaló, javaslatok*, Budapest 1976, p. 56.

¹⁷ The relationship between the metropolises and their surroundings has been luring the administrative jurisprudence and its assistant sciences for almost a century. We can mention the works of István Egyed from 1936 which also elaborate this issue: I. Egyed, *Budapest önkormányzata*, Budapest 1936, pp. 81–88, idem, *Budapest környékének közigazgatási rendezése*, Budapest 1936, pp. 1–18. Citing I. Egyed, “Usually, the metropolis and its surroundings are under separate administration, yet there are several questions which concern both collectively and which can only be sold adequately together.” I. Egyed, *Budapest önkormányzata...*, p. 81.

though the mandate of the elected councils of 1985 would have expired on 8 June 1990¹⁸, the Parliament prolonged the mandate until 23 September 1990. The reason was – as we will see – that the constitutional implementation of the guarantee rules concerning the local governments did not happen until 8 June as the constitutional amendments were not completed¹⁹.

The Act on local governments is a two-thirds majority Act. This guarantee rule was enshrined in the constitution as a result of the twenty-seventh constitutional amendment in June 1990²⁰. It is to be emphasised that although

¹⁸ Section 1, § 2 of the amended (by Act I of 1975 – fifteenth constitutional amendment) Constitution stated that: “The following regulation replaces Section 42, § 2 of the Constitution: “(2) The members of the councils shall be elected for four years.” Per section 1, § 1 of Act VI of 1976 on the election of the members of the councils, section 42, § 2 of the Constitution shall enter into force on the date of the general elections of 1980. Therefore, since 1980 the citizens elected the members of the councils for five years (just like the members of the parliament). Although the constitution amended by Act II of 1983 (seventeenth constitutional amendment) did not concern the duration of the council members’ mandate, it implemented the general principles of electoral rights to the constitution according to which: “The [...] members of the councils [...] shall be elected by the universal, equal, secret and direct votes of the electors.” This seventeenth constitutional amendment entered into force on 1 January 1984, yet the entry into force of the regulations on the suffrage was determined as on 9 June 1985 which was the date of the general elections. Consequently, the five years mandate expired on 9 June 1980. It is to be noted that Act III of 1983 on the election of the members of the parliament and the council members contained the results of both constitutional amendments (it incorporated the universal and equal suffrage at section 1; and the raised five years mandate at section 86).

¹⁹ T. Walter, *A fővárosi önkormányzat új szervezetének kialakulása*, “Debreceni Jogi Műhely” 2007, No.IV. évf 4, pp. 6–7. The study is also available online. See: http://www.debreceni-jogimuhely.hu/archivum/2_2007/a_fovarosi_onkormanyzat_uj_szervezetenek_kialakulasa (21.04.2018).

²⁰ Act XL of 1990 on the amendment of the Constitution of the Republic of Hungary (twenty-seventh constitutional amendment). The Parliament adopted this constitutional amendment on its session of 19 June and published it on 25 June. Per section 34 of the twenty-seventh constitutional amendment: “The following provision shall replace section 44, § 2: (2) The Act on the councils shall be adopted by the vote of the two-thirds part of the attendant members of the parliament.” According to the ministerial reasoning the aim is to replace the constitutional Act concept with the two-thirds majority Act category (T/69 min. ind. 1990) [T/69 min. reas. 1990]. It is apparent that the constitution still refers to councils and not to local governments, because the amendment of chapter IX was realised only on August 1990 (see below). Obviously, this thirstiest constitutional amendment also kept the two-thirds character of the statutory regulation of the local governments.

the revision of the constitution started in 1989, the sections of the constitution dealing with local governments were only regulated by the thirstiest constitutional amendment²¹ in August 1990. This amendment mostly related to chapter IX of the constitution, we can also see this as a replacement since chapter IX on the local governments replaced chapter IX on the councils. The question arises whether it was reasonable to regulate or at least express and therefore differentiate the capital and its regions from the other local governments in the constitutional level due to its speciality and its peculiar significance in the country; or it is adequate enough to regulate these specialities in Acts – although with a two-thirds majority. Relating to that, Zoltán Sente poses the question: “The indication of the capital in the constitution [...] raises the question as to what is the function of the constitutional acknowledgment. Whether it attributes a special place and role to the capital by providing a special legal status, or it only expresses a political or symbolical act showing respect to national tradition or political common understandings. From another point, is it relevant if the capital status is not guaranteed in the constitution, but “only” in Acts or unwritten conventions?²²

In my view, the primal guarantee rules should be secured at the constitutional level due to the significant role of the capital in Hungary, albeit most of the constitutions do not regulate this issue, “since they generally refrain from providing the detailed definition of the capital status”²³. On the other hand, the Ministerial reasoning of the Draft on the amendment of the Constitution of the Republic of Hungary²⁴ and Act LXII of

²¹ Act LXIII of 1990 on the amendment of the Constitution of the Republic of Hungary (thirstiest constitutional amendment). This amendment was adopted by the Parliament on 2 August 1990 and it was published on 9 August.

²² Z. Sente, *A fővárosok jogállása Európában*, “Nemzetközi Közlöny” 2007, No. I, évf. 1, p. 10.

²³ Ibidem.

²⁴ T/157 min. ind. (1990) [T/157 min. reas. 1990]. Here, I wish to point to the data provided by the results of the research lead by Zsolt Boda and Vilmos Sebők, called “*Hungarian Comparative Agendas Project, 2014–2017*” funded by OTKA (ÁJP K 109303). The data are published by the Hungarian Academy of Sciences Centre for Social Sciences. During the writing stage I relied on this study for searching data concerning the numerical marking of the statutory drafts, as well as the date of the adoption and the publication of the Acts. See from the cited project: Z. Boda, M. Sebők, *Előszó: a Hungarian Comparative Agendas Project bemutatása*, “Politikatudományi Szemle” 2015, No. XXIV, évf. 4, pp. 33–40.

1990²⁵ as the thirstiest constitutional amendment do not tell much about the capital and its municipality, only in connection with the territorial organization of Hungary²⁶ and the holders of the right to local municipality²⁷. Per section 41, § 1 of the Constitution the territory of the Republic of Hungary consists of the capital, counties, cities and villages, whereas according to § 41 section 2 the capital consists of districts and districts may be established in the cities. § 74 states that the capital of the Republic of Hungary is Budapest. Relating to that Gábor Schweitzer highlights that the norm of section 2 which states that “the capital consists of districts” means per se that the capital is divided into districts whereas establishing districts in the cities is only optional. However this norm per se does not refer to the significance of the capital in constitutional law, but only indicates the administrative system of the capital, and within it, the hierarchy between the capital and the cities²⁸. Connecting to this territorial division of Hungary, Herbert Küpper points out that the categories of city, village, county and capital can only be interpreted as the minimum divisional structure and it is the legislator’s obligation to provide the necessary regulative and material conditions of their establishment, existence and operation²⁹. He also underlines that Budapest had and still has today a dense population (nine times larger than Debrecen, the second largest city of Hungary) and a particular function (at least concerning Hungary). Relating to the function he mentions that “Budapest [...] is the venue of the state operation and the constitutional organs”³⁰. These characteris-

²⁵ Act LXIII of 1990 on the amendment of the Constitution of the Republic of Hungary (thirstiest constitutional amendment).

²⁶ Per section 42, § 1 and 2 of the constitution: “The territory of the Republic of Hungary is divided into the following administrative units: the capital, the counties, the cities and communities. The capital is divided into districts. Districts may be formed in cities as well.”

²⁷ Per section 42 of the constitution: “The community of voters of the cities, the capital and its districts, and the counties have the right to local governance.” The Constitutional Court also dealt with this issue finding in its decision of 1996 that: “[...] the fundamental right of the community of voters to local governance constitutes the origin of the municipal rights.” See: 18/1993 (III. 19.) ABH [Constitutional Court decision].

²⁸ G. Schweitzer, *A főváros*, [In:] *Az alkotmány kommentárja*, ed. A. Jakab, Budapest 2009, p. 2706.

²⁹ H. Küpper, *A helyi önkormányzatok*, [In:] *Az alkotmány kommentárja...*, p. 1483.

³⁰ *Ibidem*, pp. 1493–1494.

tics confirm the capital status of Budapest and the differentiation from the other cities³¹. Lajos Lőrincz also stresses that the capital status in a country can be provided for such a settlement in which the central administration (Cabinet, Ministries, etc.) and the other centres of power (Parliament, Supreme Court, Head of the State, etc.) can be found³². At the same time, the government must certainly seat in the capital, this is why capitals are to be considered as administrative centres³³. Yet, as regards the population, he states that the largeness of the population³⁴ and the capital status may not necessarily be connected³⁵. This finding is also upheld by Küpper, he highlighted the large population of Budapest only in relation to Hungary³⁶. It is also important to emphasise in addition to the population that in the case of Budapest a large number of residents (almost one-fifth of the whole population of Hungary) are concentrated in a relatively small area, albeit not only these residents resort to the services of the capital (but also, the residents of the settlements of the agglomeration ring)³⁷. According to Lajos Lőrincz and Herbert Küpper, Mária Dezső also refers to the fact that the supreme organs of the state are located in the capital³⁸ and the events of diplomatic contacts between the states also

³¹ Ibidem.

³² Relating to this, we can point to the special status of the Republic of South Africa where the different central organs – which embody the separate branches of power – are located in different cities to follow the three powers. In a legal sense, the Republic does not have a capital, since its Constitution of 1996 only states in section 42, § 6 that the Parliament holds its sessions in Cape Town. The Government seats in Pretoria whereas the Supreme Court in Bloemfontein.

³³ L. Lőrincz, *A közigazgatás alapintézményei*, Budapest 2010, p. 162; idem, *A közigazgatás helyi szervei*, [In:] L. Lőrincz, A. Takás, *A közigazgatás-tudomány alapjai*, Budapest 2001, p. 101.

³⁴ There are several countries worldwide where the capital is not the most populated city (e.g. the Netherlands, Switzerland, etc.), whereas in federative states metropolises and the capital are distinguished (e.g. the United States, Australia, etc.). L. Lőrincz, *A közigazgatás alapintézményei...*, p. 161.

³⁵ Ibidem.

³⁶ See: H. Küpper, *op.cit.*, p. 1494.

³⁷ I. Balázs, *A főváros és kerületei...*, p. 103, idem, *A fővárosi és megyei...*, p. 206.

³⁸ It should be noted that nowadays it is actually true that the highest state organs can be found in Budapest capital, yet, this has not always been like this, moreover the seat of the Constitutional Court has been in Esztergom – per section 3 of ACC (Act XXXII of 1989 on the Constitutional Court) – exactly until 1 January 2012 when the new ACC (Act CLI of 2011 on the Constitutional Court) entered into force. Section 3 of the new ACC states that the seat

celebrated there³⁹. Consequently, regarding the capital status of Budapest it can be stated that the acknowledgement of this status can derive from several causes and these causes justify and at the same time necessitate to regulate the legal status of Budapest separately from other settlements. Factors that orientate Budapest towards the capital status are in particular: the historical traditions of Hungary and Budapest, the quantity of the population, its functionality, and its special geopolitical, public law, political, economical and cultural role within Hungary⁴⁰.

Beyond these provisions the constitution does not regulate the capital, at the same time it contains important guarantee rules in respect of the local authorities. It states for instance that the fundamental rights of the municipalities are equal, whereas their obligations may differ⁴¹. This results that legally, the municipality of the capital is in a co-ordinative relation with the other

of the Constitutional Court is in Budapest. It must be highlighted that notwithstanding the regulation of the old ACC, the Constitutional Court has been operating in Budapest from the beginnings – although the Act ruled otherwise. Concerning this issue, Gábor Schweitzer also poses a question as to how relevant it is constitutionally that the Constitutional Court operates in Budapest instead of Esztergom? G. Schweitzer, *op.cit.*, pp. 2707–2708. It may have relevance since a posterior constitutional control claim was submitted to the Constitutional Court citing section 2, § (1) of the Constitution (rule of law) and section 74 (the capital of Hungary is Budapest) and the question was whether section 3 of the old ACC is against the constitution, since the Constitutional Court should have been seated in Budapest as one of the highest state organs. The initial was revoked therefore the Constitutional Court did not deal with the issue (see: 162/E/2001 ABH [Constitutional Court decision]).

³⁹ M. Dezső, *Az állam felségjelvényei*, [In:] *Alkotmánytan*, ed. I. Kukorelli, Budapest 2007, p. 164.

⁴⁰ Cf. J. Gelencsér, *A helyi önkormányzatok. A főváros*, [In:] *A közigazgatási jog nagy kézikönyve*, ed. G. Kilényi, Budapest 2008, p. 284.

⁴¹ Section 43, § (1) of the Constitution phrases it like: “The fundamental rights of all local governments (Article 44/A.) are equal. The duties of local governments may differ.” Here, in concern of the fundamental rights of the local governments, the ministerial reasoning addresses the historical traditions of Hungary and refers to the European Charter of Local Self-Government too. It also elaborates what it means by the phrase, that the duties of the self-governments may differ – due to certain factors: “The fundamental rights of self-governance are based on the Hungarian historical traditions, the principle of the European Charter of Local Self-Government adopted by the Council of Europe in 1985. [...] the fundamental rights of the local governments are equal, the local governments – in their municipal rights – are equal. The municipal rights and duties are both determined by statutory legislation. Besides the equality of the fundamental rights, the duties of the local governments may differ

municipalities, therefore they are equals⁴². Relating to this equality in rights, the Constitutional Court stressed in its decision in 1994 that: “[...] should the fundamental rights of the municipality of the capital and the capital districts be equal, their relation and their legislation cannot be sub- or superordinate in a public-powers sense. Therefore the decrees of the general assembly of the capital cannot be considered as superior legislation to the decrees of the district bodies of representatives. Collisions naturally may occur between the capital and district decrees. [This] however, cannot be derived from the violation of the non existing hierarchical relation”⁴³.

I refer to Zoltán Szente, who found that concerning the constitutional status of the capital it can be stated that the existence of this status is not necessarily based on formal regulations, moreover the constitutional provisions and the conventional rules rather refer to the political and symbolical role of the capital than the speciality of its legal status⁴⁴.

III. Provisions of the Act on Local Governments and the Act on the Capital Concerning the Capital Until the Regim Change of 1994

The ALG⁴⁵ also contains⁴⁶ the guarantee rules of the equality of the fundamental rights of municipality. After the aforementioned (twenty-seventh) constitutional amendment of June (by which the constitution rendered the legislative regulation of the municipalities to a two-thirds majority) and the (thirstiest) constitutional amendment of August (which resulted the replacement of the council-system by the local governments) the legislator adopted the ALG already in August⁴⁷. The ALG determined its entry into force as for the date of

depending on the number of the population and other conditions.” (T/157 min. ind. 1990) [T/157 min. reas. 1990].

⁴² The fundamental rights of the local governments – in respect of which they are equal – are enshrined in section 44/A, § (1) of the Constitution.

⁴³ 44/1992 (VII. 23.) ABH [Constitutional Court decision].

⁴⁴ Z. Szente, *op.cit.*, p. 12.

⁴⁵ Act LXV of 1990 on Local Governments.

⁴⁶ Section 4 of ALG.

⁴⁷ The Parliament adopted the ALG one day later – on 3 August – than the aforementioned thirstiest constitutional amendment which replaced chapter IX to the local governments and

the municipal elections of 1990⁴⁸. The meaning of the possibly differing obligations of the municipalities was defined – although not precisely – in the ministerial reasoning for section 5 of Draft No. T/157 (thirstiest constitutional amendment). The ministerial reasoning reads as follows: “[...] the obligations of the municipalities may be differing depending on the quantity of population and other conditions”⁴⁹. By comparison, the ALG provides a much more detailed definition quasi elaborating the meaning of “other conditions” of the ministerial reasoning. Therefore, the establishment and undertakings of differentiated obligations are not only the dependence of the population⁵⁰, but of the local needs and the capacity of the individual local governments⁵¹ too. The ALG refers the capital to the level of the settlements, cities and the districts of the capital and determines its municipality as a local government of a settlement⁵². Concerning the ministerial reasoning, the Act does not provide the reason and the purpose of treating the capital as a local government of a settlement, moreover it does not even cover this issue, though its lengths is almost a page⁵³. It is worth noting that by the meaning of the ALG, statutory legislation can only exceptionally refer local public affairs under the powers and functions of other organs, and the voluntarily committed and mandatory powers and functions of the local governments cover the broad set of local public affairs⁵⁴. In principle, the prior recipient of the local public affairs – fully compiling the principle of subsidiarity – is the local government of the settlement. Relating to that, Róbert Juharos observes that: “The advantages of autonomous and democratic local power-exercising can only unfold fully, provided that the local administration covers the broadest set of public affairs occurred locally (as well). The comprehensive responsibility of the local government obviously does not include all locally occurred public affairs, however, the more local public affairs are covered by the local govern-

published it five days afterwards – on 14 August.

⁴⁸ Section 113 of ALG.

⁴⁹ T/157 min. ind. (1990) [T/157 min. reas. 1990].

⁵⁰ Section 6, § (1) point b) of ALG.

⁵¹ Section 6, § (1) point a) of ALG.

⁵² Section 6, § (1) of ALG: “The village, the town, the capital and its districts (hereinafter: local government of the settlement)[...]”.

⁵³ T/338 min. ind. (1990) [T/338 min. reas. 1990].

⁵⁴ Section 6, § (2) of ALG.

ment, the more substantive it is”⁵⁵. He also highlights that besides, the ALG opts for the concept of broad responsibility local governments⁵⁶.

Following the text of the Act, in chapter VII – dealing with the capital – we can find further regulations which refer to the concept that the capital essentially constitutes a local government of a settlement, likewise the districts of the capital. Consequently, two municipalities operate in the administrative area of the capital with the same legal status. The capital and its districts are separate local governments with autonomous powers and functions, and whereas the districts are obliged to perform basic level public services, the capital provides public services concerning the whole or most parts of the capital as well⁵⁷. However, the capital may transfer the necessary segments of its own powers and functions – by the decree of its general assembly – to the local governments of the districts. Albeit, it has to provide the necessary material conditions in proportion of the transferred and undertaken powers and functions. At the same time the districts can refuse to undertake these duties, also they may refer back already transferred tasks provided that this jeopardises the performance of their mandatory duties delegated by statutes or the necessary conditions to perform the transferred tasks are not provided⁵⁸.

It would violate the autonomy of municipalities, if the regulation would allow to oblige the districts in an arbitrary way to perform any duties, especially concerning that the general assembly of the capital could determine which tasks it wishes to transfer to the districts. This entitlement of the assembly – in lack of the aforementioned guarantee rule – would ruin the equality between the local governments established by section 43, § 1 of the Constitution, section 4 of the ALG and section 1, § 2 of the AC⁵⁹, and it would establish a quasi hierarchal relationship between the capital and the districts. In this way, the capital could interfere in its own right to the system of powers and functions of the districts which would also affect negatively the principle of division of powers and functions. Besides, in respect of the decree of the as-

⁵⁵ J. Róbert, *Nem egy nap alatt épült Buda vára. Tanulmánygyűjtemény a fővárosi közigazgatási reformról*, Budapest 1998, p. 53.

⁵⁶ Ibidem.

⁵⁷ Section 63, § (1) of ALG.

⁵⁸ Section 63, § (1)-(2) of ALG and section 12, § (1)-(3) of AC.

⁵⁹ Act XXVI of 1991 on the local governments of the capital and the districts of the capital.

sembly on the transfer of duties, it is crucial to underline the importance of the fact that the transfer by decree ensures the collegial way of the decision making (since per the ALG the regulatory power is a non-transferable power⁶⁰, hence in any case, it is the general assembly which is entitled to transfer the powers and functions), on the other hand the acknowledgement by the broad publicity is ensured by the obligation to publish the municipal decrees⁶¹ in the official journal or in the conventional manner of the locality⁶².

However, the ALG also provides the possibility for the opposite of the aforementioned solution, meaning that not only the capital can transfer its powers and functions to the districts, but in their territorial scope of operation – or concerning the territory of more districts in case of the association of more districts or their bodies of representatives – the districts can also undertake the organization of those public services which are otherwise under the responsibility of the capital. For such transfer two criteria is needed: the approval of the assembly of the capital and the capacity of the undertaker to provide the public service in the original quality. In this case, obviously they can claim a proportional support for the undertaken duty⁶³. The AC basically leaves it to the assembly and the concerned bodies of representatives to determine the starting date from which the undertaker is obliged to perform the transferred duty, this agreement shall be concluded until 1 November in the current year. Unless otherwise agreed, the obligation to perform the transferred task burdens the local governments from the same time, from 1 January in the calendar year following the transfer⁶⁴.

The curiosity of the regulation is that by these statutory regulations, the legal status of the capital rather resembles to the legal status of the region-

⁶⁰ Section 10, § a) of ALG.

⁶¹ Section 16, § (2) of ALG.

⁶² I. Balázs, *A főváros és a fővárosi törvény*, [In:] *Az önkormányzati rendszer magyarázata*, ed. I. Verebélyi, Budapest 1993, p. 244.

⁶³ Section 65, § (1) of ALG and section 9 of AC. The phrasing of section 65, § (1) of the ALG is to be underlined: “In its operational territory the district local government may undertake to perform duties which are allocated as mandatory services to the capital municipality – as a territorial authority [...]” It is apparent that the ALG in this point addresses the capital as a territorial authority concerning the performance of certain – but not defined – services, whereas it allocated the capital amongst the local governments.

⁶⁴ Section 13, § (1) -(3) of AC.

al (county) governments, since per the meaning of the Act the county government may be obliged to perform public services which cover the whole or most parts of the county⁶⁵. Yet, the scholars and the Constitutional Court refuse the similarities between the capital-districts relation and the county-cities of county rank relation. István Balázs for instance phrases like: “Despite the illusory analogy [...], substantively, it is not about a collateral character as it is experienced with the counties”⁶⁶. It is because section 10, § 3 of the AC lists a broad set of public services which could not be maintained as an individual settlement without a unified capital perspective⁶⁷. Based on the aforementioned regulation, although some of the powers and functions can be mobilized between the capital and the districts, the majority of these tasks pertains to the organization of public services of which the districts alone – being atomised – are not capable to perform since in most cases these can only be achieved in a coherent way covering the whole administrative area of the capital (e.g. water, gas or heat services, energy service, public transportation; etc.). However, the counties are established for a limited, collateral and complementary performance of public duties compared to the local government of settlements⁶⁸, and the initiation of the division of powers and functions is unidirectional, and based on the local governments of settlements⁶⁹. Regarding the capital-county parallel, Tibor Walter states that: “The analogy attributable to the period between 1990 and 1994 does not prevail today. Since then, powers and functions of the capital municipality have become much more differentiated and what more important is that the almost unlimited subsidiarity does not prevail either which does in the case of the counties and the settlements”⁷⁰. The Constitutional Court found in its decision in

⁶⁵ Per section 69, § (1) of ALG: “[...]An Act may prescribe, as a binding county duty, the organization of a public service of a regional nature, which covers all or most parts of the county. An Act may prescribe, as a binding county duty, the organization of a public service in case of which the majority of the receivers does not reside on the territory of the settlement’s local government, on which the seat of the institution providing the service is located.”

⁶⁶ I. Balázs, *A főváros és a fővárosi törvény...*, p. 242.

⁶⁷ Ibidem.

⁶⁸ Despite this, the county is obliged to perform those duties of which the local governments of the settlements are not obliged to organize. (the already cites section 69, § (1) of ALG).

⁶⁹ I. Balázs, *A főváros és a fővárosi törvény...*, p. 243.

⁷⁰ T. Walter, *op.cit.*, p. 10.

1996 that: “[...] the division of powers and functions between the capital government and the district governments fundamentally differs from the division of powers between the county governments, consequently the legal status of the capital and the district governments differs from the legal status of other local governments. This differentiation in the legal status derives from the special role of the capital in the country and from the fact that the capital as a whole constitutes one geographical unity, one settlement. This special status of the capital is reflected in section 42 of the Constitution determining the right to local municipality, where it mentions the capital and its districts as one unity among the settlements”⁷¹. Besides, the Court already ruled in its decision in 1991 that: “[...] the position of Budapest is neither equivalent to the municipality of other cities, nor the municipality of the counties”⁷².

Per chapter VII of ALG the provisions of ALG shall be applied with regard to the differences set out in chapter VII on the capital⁷³. Therefore, even within the ALG the capital is separately regulated. At the same time, at section 62, § 2 the ALG allows that the detailed rules on the capital can be regulated in a separate statute⁷⁴. As for the separate regulation of the capital, Ilona Pálné Kovács notes that: the special regulation is cumulatively reasonable since the constitution guarantees its capital rank, its dimension ensures its economic and political significance and its agglomeration and territorial division necessitates the individual regulation⁷⁵. The ALG scheduled a three month moratorium for the adoption of the AC establishing a deadline at 30 November drawing in the capital and district governments in the preparation⁷⁶. Contrary to the ALG, the AC only constitutes a half-majority Act, meaning that it can be adopted or amended by the votes of more than half of the members of the parliament. According to the ministerial reasoning: “The capital requires special regulation. [...] the municipality of Budapest is double-level. The municipal functions, rights and responsibilities are divided between the two levels in a way which enables to achieve unified city administra-

⁷¹ Ibidem.

⁷² 37/1991 (VII. 17.) ABH [Constitutional Court decision].

⁷³ Section 62, § (1) of ALG.

⁷⁴ Section 62, § (2) of ALG.

⁷⁵ I. Pálné Kovács, *Helyi kormányzás Magyarországon*, Budapest-Pécs 2008, p. 145.

⁷⁶ Section 68, § (2) of ALG.

tion and operation as well as to establish the performance of the basic public needs and the representation at the nearest local municipality to the residents. To this end, both capital and district government are needed [...] ⁷⁷. Consequently, the legislative will can be captured – which is not identifiable from the text of the Act – which is that the aim of the unified city administration and management (capital government) and the aim to provide the residents public services (district governments) justify the establishment of the capital government and district governments with individual public law status. This intent can be derived from the following sentences of the ministerial reasoning too: “Due to the territorial size of the capital, such basic units of the municipality [districts] are definitely needed. For a population counting almost 2 million, one decision making centre is too remote, furthermore there are such public services provided for the smaller group of residents of which organisation does not achieved in great systems and their direct supervision is reasonable. In the case of one single capital level the concentration of power may occur since the capital can concentrate more rights than other local governments” ⁷⁸. It is visible that the earlier reasons are maintained and in addition, the avoidance of power concentration is elaborated which the legislator wishes to ensure by the division of powers and functions between the capital and the districts.

Although per section 68, § 2 of the ALG the Parliament was bound to draft the AC until 30 November 1990, its adoption only took place on June 1991 ⁷⁹. The AC entered into force on the day of its publication on 10 July 1991 ⁸⁰. Zsolt Tiba also recorded the problems arising from this fact ⁸¹. It is worth noting before presenting the regulation that apart from the council-system ⁸², the status of Budapest has always been regulated in a separate statute (Act XXXVI

⁷⁷ T/338 min. ind. 1990 [T/338 min. reas. 1990].

⁷⁸ Ibidem.

⁷⁹ The Parliament adopted the Act on the capital on its session of 12 June 1991 and published it on 10 July. It is to note that the Cabinet issued the draft to the Parliament also with a delay – on 11 December 1990.

⁸⁰ Section 32 of AC.

⁸¹ Z. Tiba, *A fővárosi és a fővárosi kerületi önkormányzatok – mint települési önkormányzatok – néhány sajátossága*, [In:] *Önkormányzati kézikönyv*, ed. J. Fogarasi, Budapest 1997, p. 219.

⁸² Here, I refer to the essential study of Imre Verebélyi on the council-system: I. Verebélyi, *A tanácsi önkormányzat*, Budapest 1987, p. 432.

of 1872⁸³, Act XXVI of 1924⁸⁴, Act IX of 1920⁸⁵, Act XVIII of 1930⁸⁶, Act XII of 1934⁸⁷, Act III of 1937⁸⁸, which follows the dualist legislative system⁸⁹. Beside the special status and role of the capital in Hungary, the historical tradition could also justify the separate statutory regulation of Budapest.

The AC actually states that Budapest capital has a double-level municipality: the capital and the district governments. In relation to the capital and the districts it is highlighted that – as I mentioned beforehand – the fundamental rights of the governments are equal, their obligations (powers and functions) can vary however⁹⁰. It also results that there is no hierarchal relation between the capital and the district governments⁹¹. The Constitutional Court also referred to this fact in its decision in 1991⁹²: “Per section 6, § 1 and section 63, § 1 of the ALG the capital is a local government of a settlement. Budapest, however, occupies a special, peculiar place in the system of settlements, its position is not identical to other local governments or the county governments”⁹³.

The district governments of the capital exercise their powers and functions deriving from the rights of local governments within the statutory frameworks, whereas the capital government is obliged to perform powers and functions concerning the whole or most parts of the capital too⁹⁴,

⁸³ Act XXXVI of 1872 on the formation and the arrangement of Buda-Pest capital municipality.

⁸⁴ Act IX of 1920 on the reformation of the capital administration committee.

⁸⁵ Act XXVI of 1924 on the reorganization of the capital administration committee.

⁸⁶ Act XVIII of 1930 on the administration of Budapest capital.

⁸⁷ Act XII of 1934 on the amendment of certain provisions of Act XVIII of 1930 on the administration of Budapest capital.

⁸⁸ Act III of 1937 on the further addition to and amendment of Act XVIII of 1930 on the administration of Budapest capital.

⁸⁹ Cf. I. Balázs, *Megyei jogú város, a főváros*, [In:] *A helyi képviselők és polgármesterek kézikönyve*, ed. I. Verebélyi, Budapest 1991, p. 125.

⁹⁰ Section 1, § (1)-(2) of AC.

⁹¹ T/1098 min. ind. 1991 [T/1098 min. reas. 1991].

⁹² It is apparent from the numerical marking of the decision of the Constitutional Court (37/1991 (VII. 27.) ABH [Constitutional Court decision]) that it incurred seventeen days after the publication of the AC.

⁹³ 37/1991 (VII. 27.) ABH [Constitutional Court decision].

⁹⁴ This was also declared by section 62, § (3) of ALG.

at the same time, beyond all that, the capital government may be obliged to perform regional or national level tasks which exceeds its interests and economical capacity (in such cases the Parliament shall provide the necessary material means from the Budget)⁹⁵. Examples could be for such tasks: national and regional powers and functions which derive from its cultural, sanitary, touristic centre, regional waste management or developing natural water sources in the capital⁹⁶.

Section 8 of the AC contains one of the most important regulations determining the relation between the capital government and the district governments of Budapest, by which in the capital – with exceptions enlisted in statutory legislation – the district governments exercise the powers and functions of the local government of settlements⁹⁷. This section basically strengthens the legal status of the district governments vis-à-vis the capital government, since it essentially deployed all of the powers and functions on the district governments – with the exceptions of the AC⁹⁸. These powers and functions are of a municipal character, the powers and functions of the state administration will be discussed subsequently. The statutory declaration on the recipient of the powers and functions is crucially important since its absence could result collisions. It is not reasonable to expect from the Act to provide the precise, exhaustive list of each of the countless⁹⁹ municipality duties. On this basis, the Act undoubtedly follows the adequate solution when it deploys the powers and functions only on one of the two levels. The ministerial reasoning also refers to the importance of the division of tasks between the two levels – as a main organizational principle – in order to avoid parallel performance of tasks or collision of powers and also to eliminate the risk of un-pro-

⁹⁵ Section 1, § (3)-(5) of AC.

⁹⁶ T/1098 min. ind. 1991 [T/1098 min. reas. 1991].

⁹⁷ Section 8 of AC.

⁹⁸ Section 8, § (1) of AC.

⁹⁹ E.g. in 1932 Magyary in its study – “*A Magyar közigazgatás tükre*” – attempted to enumerate the administrative duties, as a result he ended up with 9850 titles. See: *A magyar közigazgatás tükre*, eds. Z. Magyary, K. Mártonffy, I. Máté, I. Némethy, Budapest 1932, p. XXXI. 782. By comparison, in 2003 – within the framework of the Magyary Programme – compiling the state duty-cadastre the result was 30 0000 titles. The importance of this is that in the present case only municipal duties are concerned, yet even this entails such large numbers of duties that it is impossible and superfluous to exhaustively enlist in the Act.

vided duties in the territory of the capital¹⁰⁰. For that reason the Act enlists – in an illustrative way – the mandatory duties which are to be performed by the district governments. The following are included: kindergarten care, elementary education, sanitary and social base care, providing clean drinking water, street lighting, maintaining local roads, etc.¹⁰¹ It is the specificity of the municipal autonomy that besides the mandatory tasks prescribed by legislation, they can also voluntarily undertake to organize other public services of which the law did not deploy under the duties and tasks of other organs. Furthermore, they can independently regulate and in individual cases they can independently administer the local public affairs falling under their powers and functions¹⁰². Relating to that, it is a guarantee rule that the voluntarily undertaken tasks cannot jeopardize the performance of the mandatory powers and functions prescribed by legislation, at the same time, the local government can do everything which does not violate law¹⁰³. It is noteworthy that regulations on the powers and functions of the local governments also enshrined in the ALG with the difference that it does not name the kindergarten care¹⁰⁴, yet contains the maintenance of provincial cemeteries as a mandatory local government duty¹⁰⁵. The reason of this is that the legislator found that due to the higher capacity of the district governments, it is practical to refer the organization of this public affair to the district level. Yet, it allocated the organi-

¹⁰⁰ T/1098 min. ind. 1991 [T/1098 min. reas. 1991].

¹⁰¹ Section 8, § (2) of AC.

¹⁰² Section 1 pars (1) and (4) of ALG and section 8, § (3) of AC.

¹⁰³ Section 1, § (4) of ALG. Relating to that it is worth mentioning the *ultra vires* (beyond the powers) principle which prevails in the Anglo-Saxon legal system and which is a governing norm *inter alia* for the local governments as well. According to this principle the municipalities can only do for what the legal provisions entitle them to, should they act *ultra vires*, hence beyond their power, it constitutes as unlawful. See in more details: *Local Government in Ireland. Inside Out*, eds. M. Callanan, J.F. Keogan, Dublin 2003, p. 150, N. Seddon, *Government contracts. Federal, State and Local*, Sydney 2009, p. 84; R. Letwin Shirley, *The Anatomy of Thatcherism*, New Brunswick and London 1993, p. 162; N. Hawke, N. Parpworth, *Introduction to Administrative Law*, London and Sydney 1996, pp. 46–48; S.M. Stevenson, *Understanding Local Government*. Lexis Nexis 2009, pp. 110–111; E.L. Hasluck, *Local Government in England*, Cambridge 1948, pp. 9–16.

¹⁰⁴ However, section 8, § (2) of AC delegates the organization of the kindergarten care under the power of the district taking into consideration the capacity of the district.

¹⁰⁵ Section 8, § (4) of ALG.

zational duties concerning the maintenance of the provincial commentaries on the powers of the capital since the performance of this task for those – mostly inner -district which does not have cemeteries is almost impossible¹⁰⁶.

The Act illustratively enlists the organization of those public services for which the capital government is responsible. It is to be underlined that these are facultative functions which – by their characters – require unified organization, implementation and financing¹⁰⁷. The ministerial reasoning also contains that these facultative powers and functions are “[...] significant functions from the perspective of the capital, furthermore concerning their interest-content, they can only be resolved and achieved with a unified view in respect of the whole capital”¹⁰⁸. Besides, “[...] the tasks mentioned in this context deserve to be highlighted because they require a unified orchestration in aim of the effective and economical management of the city”¹⁰⁹. These duties include in particular: the protection of the built and natural environment which are determinative to the cityscape and history of the capital¹¹⁰, duties covering all or most parts of the capital: water, gas, long-distance heating, water regulation, water drainage and channelling duties; the coordination of capital traffic control; capital public transport services; naming district divisions and public spaces concerning more districts or bearing a person’s name; regulating settlement cleaning (sanitation); establishing, maintaining and developing provincial cemeteries; etc.¹¹¹

Besides determining these facultative duties, the AC determines those set of functions for which the capital government is mandatorily responsible. Among these tasks those responsibilities are included – by their characters – which concern more than two districts or exceed the territory of the capital. In this case these are mainly duties of maintaining institutions or organizing special public services. These include: maintaining duties of

¹⁰⁶ I. Balázs, *Megyei jogú város, a főváros...*, p. 130.

¹⁰⁷ *Ibidem*.

¹⁰⁸ T/1098 min. ind. 1991 [T/1098 min. reas. 1991].

¹⁰⁹ *Ibidem*.

¹¹⁰ It is worth highlighting that concerning this duty the AC authorizes the general assembly with a regulatory power, yet it cannot violate the exercise of the ownership rights of the municipalities, it can only prescribe regulations for the protection of the territory. (see: T/1098 min. ind. 1991) [T/1098 min. reas. 1991].

¹¹¹ Section 10, § (3) of AC.

educational, pedagogic or art institutions, institutions providing the education of national and ethnical minorities or sanitary, social institutions; also providing, maintaining and developing special sanitary and social activities – beyond base care¹¹². It is visible from this enumeration that the local governments are not marginal organs at all since beyond the maintenance of the technical and technological infrastructure of the settlement they perform functions – mainly from the area of human public services – which are not allocated to the municipalities or to the local governments by the regulations of several countries.

Besides the so far discussed municipal powers and functions, the ALG¹¹³ and the AC¹¹⁴ regulates certain state administration powers and functions as well. Relating to this, it is worth stating that there are three possibilities for the state to perform these duties: i) establishing central hierarchal administrative organs right down to the settlement level; ii) or achieving these tasks by involving the municipal organs; iii) or the combination of the two¹¹⁵. The ALG applies the second solution. Section 67, § 2 is almost literally identical to section 14 of the AC by which statutory legislation or governmental decree upon statutory delegation – concerning the special status of the capital – may delegate certain state administration cases under the powers and functions of the Lord Mayor instead of the district mayor¹¹⁶. At the same time, statutory legislation or governmental decree upon statutory delegation may endow the notary with first instance state administration authority with capital¹¹⁷, and even national¹¹⁸ competence (e.g. fire protection¹¹⁹ or fee¹²⁰ powers and functions). Although the ALG's chapter concerning the capital and the AC do not regulate, per section 7 of the ALG the administrator of the office of the body of representatives may be

¹¹² Section 10, § (4) of AC.

¹¹³ Section 7 and section 67, § (2) and (3) of ALG.

¹¹⁴ Sections 14–16 of AC.

¹¹⁵ J. Fogarasi, I. Ivancsics, L. Kiss, *A helyi önkormányzatok kézikönyve*, Budapest 2005, p. 87.

¹¹⁶ Section 67, § (2) of ALG and section 14 of AC.

¹¹⁷ Section 15, § (1) of AC.

¹¹⁸ Section 15, § (2) of AC.

¹¹⁹ Section 15 of Act XX of 1991 on the powers and functions of the local governments and their organs, the prefects of the Republic and other centrally subordinated organs (hereinafter referred to as Power Act).

¹²⁰ Section 141, § (1) of the Power Act.

authorised with state administrative power (duties of civil registration)¹²¹. Besides, this section states that the mayor shall take part in military defence, civil defence or emergency management prescribed by statutory legislation or governmental decree upon statutory delegation¹²². As I stated, these are state administration affairs, therefore in these cases the body of representatives or the general assembly cannot give orders to its organs and it cannot supervise their decisions. It is also significant to note that state administrative affairs are not local affairs essentially, but these are to be managed by the state administrative organs, yet they are allocated to local levels due to practical reasons. Therefore it is relevant to underline that municipal duties may only be laid down by statutory legislation¹²³, the state administration affairs may be determined by governmental decrees upon statutory delegation¹²⁴. The importance of this is evident since if the government could lay down municipal powers and functions in its decree, it would violate the autonomy of the local governments¹²⁵. The reason of the fact that the notary-in-chief and the Lord Mayor perform certain state administrative powers and functions instead of the district notary and the mayor can be found in the aim of establishing a unified city management which provides opportunities to perform these tasks fast, effectively and appropriately¹²⁶. In regard of the state administration functions, the ALG and the AC rules essentially that the bodies of representatives of the districts can conclude an agreement that they perform in an association certain state administrative affairs concerning more districts or the whole capital¹²⁷. In addition, upon the claim of the concerned districts the capital general assembly – by statutory or governmental decree authorization – may empower the district mayor or the

¹²¹ Section 7, § (1) of ALG.

¹²² Section 7, § (2) of ALG.

¹²³ Section 6, § (1) point b) of ALG.

¹²⁴ Section 7, § (1) and (2); section 67, § (2) of ALG and sections 14 and 15 of AC.

¹²⁵ The ministerial reasoning also referred to this: “Municipal powers and functions shall be determined solely by statutory legislation. Local public affairs may only be referred exceptionally to other organs even by an Act (e.g. to objective-local government, autonomous organ, public institution). All these provide an adequate guarantee that the Cabinet cannot violate municipal rights and interests while determining state administration powers and functions.” (T/338 min. ind 1990) [T/338 min. reas. 1990].

¹²⁶ Cf. I. Balázs, *Megyei jogú város, a főváros...*, p. 131.

¹²⁷ Section 67, § (3) of ALG and section 16 of AC.

notary to perform certain state administration duties with competence in more districts or in the whole capital¹²⁸. At this point, it is important to mention – for the sake of exhaustiveness – that relating to the powers and functions, besides the municipal duties and the state administration authority functions there is a third category, the so called municipal authority functions. However, this issue is not mentioned explicitly by the ALG and the AC, yet apparently municipal authority functions occur in their context as well per the general rules. In principle, the recipient of the municipal authority functions is the body of representatives – as well as in the case of municipal powers and functions. Otherwise, municipal authority affairs may be laid down for the body of representatives by its own decree or by statutory legislation (e.g. local taxes, social functions etc.)¹²⁹. It is noteworthy that neither the ALG nor the ministerial reasoning states explicitly that municipal powers and functions may be prescribed by statutory legislation, yet it derives from the regulations of the Acts on Power and the sectoral legislation. Imre Ivancsics also refers to this problem expressing his concerns¹³⁰. Previously, the municipal authority functions have formed the integral part of the state administration authority affairs, but the two categories were divided by statutory provision since the state administration authority affairs demand unified management countrywide, the municipal authority functions may be different upon locality. Whereas the state administration authority functions mainly bound to professional deliberation which allows less settlement-policy discretion and does not concern the majority of the local population, the municipal authority functions include the granting of individual cases providing equity and benefits, and these cases concern most of the local population. The body of representatives may delegate these powers and functions to its committees or to the mayor¹³¹.

¹²⁸ Section 16, § (2) of AC.

¹²⁹ T/338 min. ind. 1990 [T/338 min. reas. 1990].

¹³⁰ I. Ivancsics, *A helyi önkormányzatok feladat- és hatáskörének rendszere*, [In:] *Önkormányzati kézikönyv*, ed. J. Fogarasi, Budapest 1997, p. 79.

¹³¹ Furthermore, it is worth noting that one may only appeal to the municipality against a decision in a municipal authority case, which appeal is only possible in case of delegated power, ergo for instance when the body of representatives delegates the authority power on one of its committees and the client who contests the decision of the committee can appeal to the body of representatives. Should the body of representatives proceeds at first instance, no further appeals are available within the administration, the client may turn the courts. Compared

On the whole it can be ascertained that the division of powers and functions between the capital and its district is influenced by mainly three factors: i) both the capital and the districts constitute as local government of a settlement, their fundamental rights are equal therefore they are not in a hierarchical relationship; ii) the capital has a double-level municipality; iii) the capital has a special and peculiar status in Hungary¹³².

IV. Summerising Thoughts

It is apparent that the aim of the regulation concerning the capital and its districts initially and mainly was to reform the socialist council-system¹³³. The double-level regulation served mostly the aim of bringing the public services closer to the residents as well as the unified urban development and administration, at the same time it desired to avoid power concentration. Weakening the capital vis-à-vis the districts and the stipulation of the capital as a settlement municipality also supported this plan. It is by no accident that all the three concepts argued on behalf of strengthening the capital. Attaching to this topic, Éva Perger notes that: “The “balance of powers” [...] does not establish the fundamentals of an agreement serving the long-term interest of the region, but the fundamentals of a prolonged stationary warfare”¹³⁴. The legislative aim

to this, against the first instance decision of the state administration one may appeal to the prefect of the Republic and only after that, the client may turn to the courts. Hence, in municipal authority cases only the municipality can overrule its decision, whereas in state administration authority cases an administrative organ will proceed. Relating to this, the important difference between the two categories is that whereas in the case of state administrative authority duties the body of representatives cannot give orders to the exerciser of the power of the authority, it can do it in municipal authority cases. Cf. I. Verebélyi, *A helyi önkormányzatok alapvonalai*, [In:] *A helyi képviselők és polgármesterek kézikönyve*, ed. I. Verebélyi, Budapest 1991, pp. 15–16, 20–21, I. Verebélyi, *Az önkormányzati jogok, feladat- és hatáskörök*, [In:] *Az önkormányzati rendszer magyarázata*, ed. I. Verebélyi, Budapest 1993, pp. 33–36.

¹³² Cf. I. Ivancsics, *A helyi önkormányzatok feladat- és hatásköre*, [In:] M. Fazekas, L. Ficzer, *Magyar közigazgatási jog. Általános rész*, Budapest 2005, p. 198.

¹³³ Relating to the municipal reform of the councils see in details: *A tanácsrendszer önkormányzati típusú reformja I.-II*, ed. I. Verebélyi, Budapest 1988, I. 1–181; II. 189–328.

¹³⁴ É. Perger, *Nagy-Budapest közigazgatás-szervezési dilemma*, “Tanulmányok Budapest múltjából” 2002, No. XXVII/30, p. 184. The study is also available online: http://epa.oszk.hu/02100/02120/00030/pdf/ORSZ_BPTM_TBM_30_177.pdf (28.04.2018).

behind the dualist regulation was obviously to emphasise the special status of the capital, yet – unfortunately – although the ALG and the ministerial reasoning of its draft (T/338 min. ind. 1990), and the AC and its ministerial reasoning (T/1098 min. ind. 1991) severally highlighted the significant role of the capital, it cannot entirely be derived from the statutory legislation of the capital. Per the ALG and the AC the special, peculiar status of the capital manifested mainly in its considerably weak role compared to the districts, rather than in the expectations which could be deducted from the ministerial reasoning or the provisions of section 62, § 1 of the ALG.

Beside the critic of the already mentioned time lag (the AC was adopted later than the deadline prescribed by the ALG), Zsolt Tiba underlines its overly compromised character, however he does not challenge the results of the municipality achieved during this four years period¹³⁵.

The governmental resolution of December 1992¹³⁶ and connecting to that, Imre Verebélyi calls the attention in concern of the municipal reform to the followings: “[...] Our first Acts adopted in the beginning of the democratic changes not only introduced the institutions of a civilian, democratic state structure, but they were also carried away in the adequate line of the main directions by the negation of the previous system. [...] The political campaign of the “everything” for the collegial democracy, the more and more legal barrier against the administration, the weakest possible centre and the strongest possible local independence [...] eliminated huge historical deficiencies in Hungary. [...] Compared to the internal requirements of a modern state, the legislation over-limited well above the necessary degree the options for action of the Cabinet and the professional administration in the central level in relation to the municipalities [...]. Our municipal system is decentralized at the maximum level, however appallingly defective the vertical integration (e.g. state supervisory) mechanisms and the horizontal cooperation (associations)”¹³⁷. Specifically for that reason,

¹³⁵ Z. Tiba, op.cit., p. 219.

¹³⁶ Government resolution No. 3603/1992 (XII. 10.) on the programme of modernizing the administration.

¹³⁷ I. Verebélyi, *A fejlődés irányai*, [In:] *Az önkormányzati rendszer magyarázata*, ed. I. Verebélyi, Budapest 1993, pp. 458–459, this chapter is the extended version of a Verebélyi study published in the November 1992 issue of *Magyar Közigazgatás*. see: I. Verebélyi, *A magyar közigazgatás modernizációja*, “Magyar Közigazgatás” 1992, No. XLII/11, pp. 641–652.

the apportioning of the certain poles was needed: collegiality-professional administration; legality-administrative effectiveness; decentralization-centralization; decentralized municipalities-de-concentrated state organs. It was crucial in these pairs of terms that the decisive element does not suppress or exclude the possibility to apply the other pole¹³⁸. The four goals¹³⁹ enshrined in the aforementioned government resolution basically covers the two substantial subsystems of the administration in a complex way: the state administration and the municipal administration as well, at the same time it also embraces the functions, duties and powers, operation, organizational framework, the personal apparatus and issues of the administration¹⁴⁰.

The aforementioned “exaggerated” municipal system resulted several problems, the legal equality of the districts and the capital can obviously be evaluated as a quasi counter-reaction following the rule of law doctrine against the socialist era. Ilona Pálné Kovács also referred to the issue noting that the “bottom-up approach” and the “closeness to the base” concept which was applied during the creation of the municipal system also prevailed in respect of the capital and with these, weakening the “action unit” of the capital¹⁴¹. In practice, the model of organizational and territorial division set out by the Acts increased further the abstinence of the cooperation of the concerned ones¹⁴². Therefore the relation based on the consensual co-ordination of the two levels did not work properly.

Finally, it is to be noted that the capital municipality structure established by the ALG was not consistently created, thus essentially it generated a partly centralized, partly federative and partly decentralized model¹⁴³.

¹³⁸ I. Verebélyi, *A fejlődés irányai...*, p. 459.

¹³⁹ i) expanding the democratization of the administration; ii) strengthening the legality of the administration; iii) establishing the adequate proportion of decentralization, deconcentration and centralization; iv) the differentiated reduction of the role of the administration, increasing in the justified areas, increasing effectiveness and creating a cost-effective administration (on this see in details: I. Verebélyi, *Függelék 3603/1992 (XII. 10.) sz. Kormányhatározat a közigazgatás korszerűsítésének programjáról*, [In:] *Az önkormányzati rendszer magyarázata...*, pp. 517–535.

¹⁴⁰ I. Verebélyi, *Függelék 3603/1992 (XII. 10.)...*, p. 517.

¹⁴¹ I. Pálné Kovács, *Helyi kormányzás Magyarországon...*, p. 145.

¹⁴² *Ibidem*.

¹⁴³ From the topic see in details: É. Perger, *op.cit.*, pp. 184–185.

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