

The Essence of Local Public Affairs: What can be Considered as Local? Following Contemporary Local Self-Government Changes in Hungary

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Abstract

Approaching the essence of local public affairs, the European standards of local self-government is the primary starting point for the analysis. A comprehensive definition according to the local public affairs is referred by the provision of European Charter of Local Self-Government, thus local self-governments shall be able to regulate and manage a substantial share of public affairs. Nevertheless, the Charter remains silent on the content of the notion of local public affairs. Another crucial dimension of the analysis is that effective management of local public affairs needs the emergence of the principle of subsidiarity, and autonomy. Compliance of local tasks requires guaranteed sufficient resources. Examination of the provision of the Charter on public affairs, furthermore the constitutional regulation and requirements of certain States of Europe is designed to draw up a reliable picture on the scope of local public affairs.

The study is an attempt to identify (1) the significance of substantial share of public affairs, and (2) the imminent substance of local self-governments' regulation and managing scope in the field of local public affairs moreover (3) the abilities to regulate and manage of local public affairs. It lists and examines generally a range of factors as to classify the substantial part of public affairs as local, like the scope of regulation, requirements in connection with the service delivery, power of service pricing, organizational constraints, etc. The main goal of the article is to analyse the challenges in the implementation of local public policies, to reveal the scope of local public affairs and to describe the new cooperative relations between local self-governments' and State's central and territorial bodies. The paper aims to demonstrate the specific socialization process from theoretical and legal aspects.

Developing the issue of the paper is based on the review of the legal environment and on the synopsis of dogmatic approaches. The interpretation of the empirical data of a survey has helped in the process of the interpretation of local public affairs in the perception of citizen.

The paper tried to establish a potential definition of local public affairs; the investigation was followed according to this. Firstly, the scope of European Charter of Local Self-Government was examined, as a result of it can be concluded, that the Charter does not give any guidance for the purpose of local public affairs. It only requires the effectiveness of principles of decentralization and subsidiarity. Glancing at few European constitutions shows that here is no conclusive object of public affairs, as well.

Turning to the Hungarian local self-government system changes, it could be clarified, that the scope of local public affairs is undergoing important changes at present.

The survey was undertaken during 2018 resulted, that the attitude of citizen on the state nationalisation practice, a slightly critical response emerged. The scope of delivery of public goods, the citizen's perception basically determines the matters of local interests. Citizen hardly involved in events, where they could obtain information on the issues of local interest, however it is also reasonable to assume that local government informs citizens insufficiently about public affair.

Key words: citizens' perception, competences of local self-governments, public matters of local interests, regulation on public affairs,

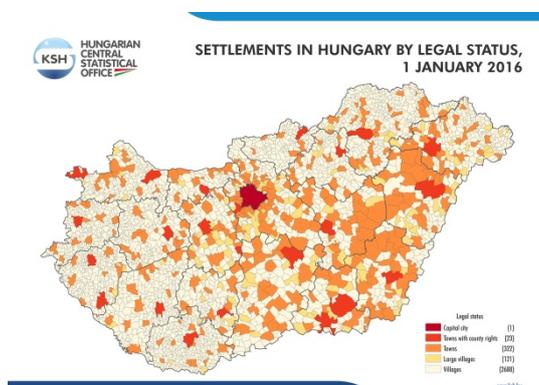
1. Introduction

The Hungarian local self-government system should be classified to the continental model of local self-government, showing mostly the features of German model, the one-settlement single local self-government principle prevails from the French model, but 'closely resembles itself'. (Kákai 2015 p. 206) This system is based on the concept of general competences, with a broad scope of responsibilities including that all public affairs could be performed by local self-governments; therefore, the Hungarian model corresponded to the common European values of self-governance. It should also be added, that the local self-government system both from horizontal and vertical aspects could be considered rather fragmented. According to certain opinion, this local self-government system increased the autonomy of the territorial units, unfortunately, however did not guarantee entirely the effectiveness of professional requirements, efficiencies and legalities, the autonomy seemed to be rather obstacle from this view. (Pálné Kovács, 2016 p. 75) The horizontal fragmentation should be illustrated with the following settlement structure. This map shows the settlements by legal status: (a) the Capital

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(1), (b) towns with county rights (23), (c) towns (322), (d) large villages (121) and (e) villages (2688). The vertical separation is derived from the two-tiered local self-government system and the multi-levelled state public service providing system.

Figure 1. Settlements of Hungary 1 January 2016



Source: Hungarian Central Statistical Office <https://www.ksh.hu/?lang=en>

In so far, in Hungary, the State plays increasing role in the realization of common goals from 2010. The strengthening of the State's position is also traceable in the field of local governments' responsibilities, especially in public service provisions. These tendencies could be considered as a very strong recentralisation process of powers, which has led to the considerable reduction of competences previously dedicated to local self-governments. It should be added, that from another approach in the Hungarian self-government system the principle of decentralization is effective but without subsidiarity and because of the financial resources allocation a highly centralized system prevails. (Kákai 2015 p. 204)

2. Methodology

Developing of the issue of the paper is based on one hand the review of the legal environment and on the synopsis of theoretical approaches. The next step was the scrutinizing of the related provisions and their effectiveness of the European Charter of Local Self-Government (hereinafter: Charter). An examination was also made on a few European constitutional provisions, in order to make a comparison with the Hungarian constitutional level regulation. The functional changes of the Hungarian local self-government systems are summarized, primarily based on legal approach. The interpretation of the empirical data of the survey of 2018 has helped in the process of the interpretation of local public affairs in the perception of citizens.

3. Scope of Public Affairs

3.1. Historical background of local matters

In the 16th century the different noble counties could adopt local decrees (*statutum, jus municipale*), their object could be considered as the defence of arable lands and fields, meadows, forests and woods and rivers, furthermore the maintenance and incomes of mills. These decrees could not be against the law and the old and Royal Curia-approved commons. (Werbőczy Tripartitum 1514 Harmadik Rész 2. cím 5. §) Werbőczy gave a wider scope for the *statutum* of cities with different legal status. Primary, the special legal status derived from their privileges and therefore could not be generalized. Secondary, the actual relationships had opened a wide range of local legislation in the absence of the legislation of the Parliament. The counties exercised their legislative power for the arrangement of local social relationships and beyond these local matters they adopted decrees involving civil and criminal matters as well. (Dambrowszky 1922, pp. 44-48) Thus the interpretation of local matters based not only the competences but mostly the legal customs.

First time in the last third part of 19th century, the legal status of local self-governments was arranged. The right of the village was to decide on your own affairs and adopt regulation (*statutum*) [Act XVIII of 1871 sec. 22 a)], and the municipal authority exercising right to self-government could act independently on its own affairs, decide and adopt regulation (*statutum*). (Act XLII of 1870 sec. 2) The scope of the local affairs, own affairs of the villages and the municipal authorities were not detailed at all.

3.2. General concept of public affairs

According to the general meaning of public affairs it needs to be stated, that the interpretation leads to diverse approaches, there is no universal consensus about what the content of the term of public affairs is. If the investigation is narrowed from some examples of observations of Anglo-Saxon legal literature, it can be concluded that there are a lot of perception, which can be interpreted only in a limited way from our point of view. According to the definition of *Public Affairs Networking*, public affairs is a term used to describe an organisation's relationship with stakeholders. The term of public affairs is a vital question, there are several view points on it: if the difference is revealed between public affairs and public relations, by James *Grunig* public affairs is the management of issues, public relations is the management of the interface between the company and the outside world. Besides this interpretation, public affairs may be defined as corporate functions as well as a management skill. (McGrath, Moss, Harris, 2010).

The concept of local public affairs is also used in a different sense. In general, from the view of the paper local public affairs are considered those general matters, which affect local community, and have local interests. From this aspect different models prevail in the Anglo-Saxon and in continental states of Europe. The Anglo-Saxon States followed the principle of *ultra vires*, but it should be added that by signing the Charter recently in the United Kingdom paradigm shift is traceable in this area. In continental states the principle of general authorization prevails, based on natural law conception. (Hoffman, 2011 pp. 27-28.) Hungary follows this latter conception from the aspect of functionality.

Local public affairs from the view of the paper considered as an essential part of democratic local self-government, thus the local self-governance means the exercise of decentralized public power in self-organized manner. This type of governance facilitates the efficient compliance of the administrative and public service needs of citizens on the spot. The fundamental goal of the local self-government is to govern locally certain part of local public affairs in the interest of citizens, independently and in a democratic way. (Balázs et al. 1993 pp.17-18.)

Küpper considered the definition of local public affairs as a *general clausula* covering two main elements: the public affairs and their local nature. In his view, public affairs mean the tasks of local self-government ruled by public law, separated from the civil matters, in turn, the local nature means that the competence of local self-governments does not cover the national administrative issues. (Küpper 2009 pp. 1506-1507)

Analysing the framework of local public affairs, *Patyi* underlined that the most important element is the regulation on statutory level, because the local self-governments shall act within the limit of the law. (Patyi 2013 p. 388) According to local public affairs, *Verebelyi* highlighted, that the tasks and competences of local self-governments should not cover all of public affairs that locally emerges, however, the more effective the municipality is, the more in relevant local public affairs is competent. (Verebelyi 1991 p. 769) Defining the frames of matters, he considered as local public affairs, which are qualified by the law to this. As regards, those matters, which the local self-government undertakes with its own decision, as community maintenance may constitute public matters. (Verebelyi 1991 p. 770) It is noteworthy, that in this latter category, in the field of voluntary tasks, the role of local self-governments has been narrowed, because of the straight rules prevailing in the financial management. *Patyi* has come to a similar conclusion, while he acknowledged that these barriers remain constitutional until they do not lead to a complete withdrawal of autonomy related to the subject matter. (Patyi 2013 p. 389)

After 2012, the alteration of the Constitution and Local Government Law, in the scope of local public affairs has been a conceptual change, as will be explained in detail below. The constitutional and statutory level regulation remains silent on the independence of administration of local public affairs and the requirement related to that the local public power shall be exercised in the interest of local citizens. This more general definition of local public affairs gives far more space for the discretion of the legislator to consider local affairs as national or *vice a versa*, therefore the withdrawal of certain tasks from the competences of local self-government could not be declared unconstitutional. This consideration has a general nature, furthermore it is recalled, that the statutory definition of local public matters also covers service provision, the obligation to cooperate with citizens and the ensuring of organizational, personal and substantial conditions. (Balázs et al. 2012 pp. 29-35)

In summary, as a consequence of the present study, local public affairs are group of matters, (1) which emerge locally (2) have a local interest, (3) linked to the exercise of local authority, (4) or to the local public service provision for the citizens, (5) should be governed by the principle of decentralization and subsidiarity, (6) in which local citizens need to be involved in decision-making process. These elements should be the subject of further examinations.

4. The Scope of Public Affairs in the Practice of Council of Europe and Local Matters of Public Interest at Constitutional Level

4.1. The scope of public affairs at constitutional level in some European states

The principles of centralization and decentralization prevail in complexity as organizational principles of the state, the emergence of decentralization results the expansion of the idea of self-government. The division of competences means also the political freedom. Providing services and exercise local public power as matters of local public interest is to be considered as main element of the independence from the view of community.

The European Charter of Local Self-Government shall be regarded the European standard of local self-government and local democracy. The fundamental values of local self-government are specified in the Charter, which is a unique international binding treaty. The Council of Europe established a local self-government model governed by general clause and within the framework of the Charter defined the common concept of local public affairs. According to Article 3 of the Charter, local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. Local authorities shall have full discretion.

Another consideration is also worth for present: how the individual constitutional provisions fit into the framework of the Charter.

Examining the implementation of the Charter, the report of the Congress of Local and Regional Authorities adopted in 2017 was scrutinized. (Comparative analysis 2017) In accordance with the Comparative analysis, core issues shall be shown that the decentralization is an ongoing process in several states of the Council of Europe, but on occasion confusing processes also occur. Beyond this, it shall be generally stated, that local self-governments are not involved in the decision-making process affected competences of them. By another general statement emerged related to the lack of adequate financial resources of local self-governments. In most Member States of the Council of Europe the principle of local self-government is enshrined in the constitution, as described in the next subsection. The monitoring reports revealed that 27 states were in conformity with the provisions, in 6 cases a partial compliance was defined and in 4 states failed to comply with Article 2 of the Charter. It is worth to point out here, that the Congress highlighted: in Hungary the principle of local self-government is neither explicitly enshrined in the Fundamental Law nor in the implementing Local Government Law. Related to the concept of local self-government (Article 3), it can be stated, that an important part of municipalities is facing lack of resources and instruments or are too small and weak to cope with their mandatory tasks. In context with the '*substantial share of public affairs*' the Comparative analysis notes, that there is a vague legal term, notwithstanding the fact that decentralization strongly deviates among Member States, following national contexts and traditions. Most countries fully comply with these requirements. In accordance with the Hungarian domestic position, it is enshrined, that the principle of local self-government is not performed with due to the pooling at the district level of competences of municipalities, and the county self-governments are weak in their function. The Concept of local self-government shall be scrutinized together with the Scope of local self-government (Article 4), thus this latter provision contains requirements in detail on the basic powers and responsibilities of the local self-governments, laid down the general principles on which the responsibilities and the nature of their powers shall be based. Most countries comply with this requirement. In this context, Hungary is recommended to revise the legislation concerning local self-governments mandatory tasks and functions to extend the range of powers, according to the principles of decentralization and subsidiarity. (Comparative analysis 2017 p. 4–16)

This brief review confirms that the European Charter although contains the European standards and the values of local self-government, however, these provisions are only a framework for the operation of local self-government systems in Member States. Consequently, it is hardly can be judged, whether the constitutional and statutory regulation of States are completely consistent with the Charter or not. This is particularly the case of the scope of local public affairs, because the Charter does not give any guidance for the purpose of local public affairs. It only requires the effectiveness of principles of decentralization and subsidiarity.

4.2. The scope of local self-government system at constitutional level in some European states

In order to have a detailed and accurate picture on the scope of matters with local interests, analysis of few local self-government system at constitutional level is needed. The selection of these basic laws is based on the significant characteristics of state groups, like the constitutions of Eastern European countries of the post-Soviet space, the Swedish Constitution as regard to Scandinavian model, the French Constitution focused on the local administration, the German Basic Law system, both belong to the continental model and the Italian Constitution as regard to Southern model.² [See details on potential models on organization and function (Hoffman 2015. pp. 39-139.)]

² The analysis of this section is based on individual texts and the English versions of Constitutions. (Nemzeti alkotmányok 2016) For preparing the Local government in the Member States of EU 2012 also was used as a basis of orientation.

For the purpose of comparison a further dimension is to be added to the local public affairs provision of the Hungarian Fundamental Law.

The Constitutions of Czech Republic, Poland and Estonia should be considered as parts of Eastern European countries of the Soviet space in this view. The *Constitution of the Czech Republic* contains provision on the powers of representative bodies, which shall be provided only by statute according to the Territorial Self-Government. For the matters of self-government jurisdiction are provided such matters for representative bodies of municipalities in the extent which are not entrusted by statute to the representative bodies of higher self-governing regions. There has been drawn a red line for the state, including the state's intervention in the affairs of territorial self-governing units only if such is required for the protection of law and only in the manner provided for by statute. As regards state administrative cases, the Constitution provides that the exercise of state administration may be delegated to self-governing bodies only if such is provided for by statute (Article 101-105).

The *Constitution of the Republic Poland* provides that local government shall participate in the exercise of public power, and the substantial part of public duties empowered to discharge by statute belong to local government (Article 16). The Constitution follows the general authorization principle in the case of determination local public tasks, providing that public tasks include all the tasks not reserved by the Constitution of statutes to the organs of other public authorities (Article 163). According to the Constitution, the lowest and basic unit of local self-government is the commune (*gmina*) which shall perform all tasks of local government not reserved to other units of local government. It also contains provision on the public duties' performance, states that public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility. The State is empowered to transfer public duties to units of local government, if the fundamental needs of the State shall so require (Article 166). The Constitution sets also organizational provisions, according to that units of local government shall perform their duties through constitutive and executive organs (Article 169).

The *Constitution of the Republic of Estonia*, according to the local public affairs stated, that all local matters are determined and administered by local authorities, who discharge their duties autonomously in accordance with the law (§ 154). However, it does not address the content and the determination of local matters.

Public administrative system of Romania has many similarities with the French public administration, the peculiarities of self-government structures are determined within this framework, as well. Local governments are considered by the *Constitution of Romania* as territorial administrative units. It is believed important and also notable that the Constitution explicitly provides basic organizational principles of the State, like decentralization, local autonomy and deconcentration of public services (Article 120). Related to local public affairs it is highlighted that local Councils and Mayors shall act as autonomous administrative authorities and manage public affairs in communes and towns, in accordance with the law (Article 121). Related to the content of matters of local interests the Constitution makes no mention.

In accordance with local public affairs, the *Constitution of Sweden* states that local authorities are responsible for local and regional matters of public interest. The nature of these matters is laid down in law. It highlighted the principle of local self-government; local authorities are also responsible for other matters laid down in law (Article 2.). Local self-government can be restricted but in such cases where the principle of proportionality is to be applied. If there are different ways of attaining the same objectives, the Riksdag should respect the principle of local self-government and choose the manner of regulation which least affects local government decision-making powers. (IG 14:4). This means, that the principle of local self-government in accordance with the principle of subsidiarity are considered primary, based on discretion in decision-making process especially the transfer of powers. Tasks which are normally the responsibility of the Government may, to a great extent, be delegated to subordinate authorities. The Instrument of Government also permits certain special arrangements in respect of the local authorities (IG 15:12).

The *France's Constitution* of 1958 follows the local administration model instead of the local self-government, defining territorial communities. On the scope of local matters, it concludes that territorial communities may take decisions in all matters arising under their powers that can best be exercised at their level. (Article 71-1) It can be seen, that the Constitution remains silent on transfer of powers and the subject of local and territorial matters. The *Basic Law for the Federal Republic of Germany* contains provision related to the autonomy of municipalities, providing regulation on the election and the elected bodies, local assemblies in municipalities. The financial segment of autonomy is highlighted, shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed. Besides, according to the local affairs the scope is defined as kind of guarantees, therefore municipalities must be guaranteed the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws. (Article 28)

The *Constitution of the Italian Republic* based on the principle of autonomy and decentralisation, emphasised the principle of administrative decentralisation 'the fullest measure' in those services which depend on State and recognises and promotes local autonomies. (Article 5) The content of municipal administrative functions is

detailed later (Article 118), according to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation. Competences are guaranteed to municipalities based on subsidiarity, hence administrative functions are attributed to the municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State. of the principle of subsidiarity. The financial autonomy is highlighted on one hand ensured the independent resources, local taxes, supplementary revenues, on the other hand the right to own properties. Article 119)

This brief overview confirmed that constitutions show a colourful variety of local self-government provisions; either the object of the examination is the organization, or the functionality of local self-governments but never the scope of public affairs. This is especially true on the scope of local public affairs; it could vary from time to time and state by state. There is no conclusive object of public affairs, as well.

4.3. Constitutional provisions on public affairs of local interests in Hungary

4.3.1. The scope of local matters of public interest in the Constitution

Former Hungarian Constitution (Act XX of 1949 on the Constitution of Republic Hungary) was based on the collective fundamental right approach related to local self-government. According to the provisions of the Constitution, eligible voters of the communities, cities, the capital and its districts, and the counties have the right to local government. Local government refers to independent, democratic management of local affairs and the exercise of local public authority in the interests of the local population. (Article 42) The definition of local public affairs was clarified by the Local Government Act, specifying that public affairs constitute providing local citizens with public utilities, locally exercising public power through self-government and creating the organizational, personnel and financial conditions for them. (Article 1)

4.3.2. The scope of local matters in the Hungarian Fundamental Law

These rules were replaced by a new dimension, focusing the management of local public affairs and the exercise of local public powers instead of the legal protection against the Government and the central public administration. (Csink–Schanda–Varga Zs. 2012, p. 391) The Hungarian Fundamental Law (hereinafter: HFL) focuses on local public affairs, stipulates that ‘in Hungary local governments shall be established to administer public affairs and exercise public power at a local level’. (Article 31.1) HFL remains silent on the objective of public matters with local interests, does not define the content of managing local public affairs. Local public affairs should be interpreted or considered as the compulsory tasks of local self-governments, thus definition according to which local governments shall manage local public affairs within the frameworks of the law has priority. The statutory provisions are worth to be emphasised, since mandatory duties for the local self-government shall establish only the act of the Parliament. However, the HFL contains a rule on the obligation for co-operation according to which a statute may order that mandatory local-government duties be performed only in the form of association. The HFL also defines numerous groups of matters, as subjects of ‘managing the local public matters’, defining the most important public matters, like during the performance of public tasks local self-government can issue decrees or make resolutions.

According to the provision of HFL in connection with local public affairs the municipal government shall, within the framework of law (a) adopt decrees; (b) pass resolutions; (c) autonomously administer its affairs; (d) determine its organizational structure and rules of operation; (e) exercise ownership rights with respect to the property of the municipal government; (f) determine its budget and autonomously manage its financial affairs on the basis thereof; (g) have the option to engage in business activities using its assets and revenues, these activities, however, may not jeopardize the performance of its statutory tasks; (h) decide on the types and rates of local taxes; (i) have the right to create its own symbols and institute local honours and titles of merit; (j) have the right to request information from the competent organ, initiate the delivery of a decision, and express its opinion; k) have the right to freely associate with other municipal governments, set up associations for the representation of its interests; cooperate with municipal governments from other countries in matters falling within its competence, and seek membership in international organizations of municipal governments; (l) perform other tasks and exercise other competencies laid down by law.³ [Article 32 (1)].

The Act CLXXXIX of 2011 on Local Self-Governments of Hungary (hereinafter: Local Government Law) contains the definition of local public affairs, thus it establishes providing residents with public utilities, locally exercising public power through self-government and creating the organizational, personnel and financial conditions for these. (Article 4) The wording of definition of local public affairs has not changed compared with the definition of former Local Government Law. (See details: Hoffman 2010 pp. 26-32) The present Local Government Law gives details on the local public affairs, and the locally ensured by the local self-governments’ public services. (Article 13) Related to provisions of local public affairs it can be stated that the methodology of

³ Mandatory tasks and competences shall be transformed for local self-governments only by a statutory act, adopted by the Parliament.

regulation has not changed, but the re-centralization of competences has narrowed the scope of local governance. The Local Government Law contains a special method for the transfer of competences to local self-governments. It defines both tasks are obligatory for every local self-government and those are mandatory only for certain local self-governments. This ruling has an opportunity for the legislator to transfer competences differently, considering the administrative territory and population of the settlement and the economic capacity as well. (Feik 2014)

The Monitoring Report of the Congress of Council of Europe [CG(25)7Final, 2013] subsequently confirmed that the strong centralization process of local self-governments' competences might give rise. (Pálné Kovács 2015 p.85.)

4.4. Related practice of Hungarian Constitutional Court

The Hungarian Constitutional Court (hereinafter: Constitutional Court) has dealt with the matters of local public affairs on several occasions. According to the consistent practice of the Constitutional Court, those public affairs which are pronounced by the legislator state public affairs direct or indirect way should not be considered as local matters. [2/2001 (01.17) CC, 36/2002. (07.19.) CC, 109/2008. (09.26.) CC]

A Constitutional Court decision of 2009 [55/2009. (05.06.) CC]⁴ provided a new framework for the interpretation of local public affairs, analysing the relationship of local public affairs and the parliamentary scrutiny competence. It confirmed that there is no constitutional obstacle if the Parliament considers that an issue requires parliamentary publicity, the Parliament could establish a committee to scrutinize performance of duties carried out as local matters. Related to the interpretation of local public matters, the Constitutional Court set apart different categories in this decision. It laid down on one hand, that establishing the local self-government system the Constitution transferred certain part of public tasks, managing of local public affairs to the competence of local self-governments, hereby the exercise of a segment of executive branch was decentralised to the community of citizens, to local self-governments. However, the territorial decentralization did not result the withdrawal of the performance of state duties considered as local public affairs from the investigation power of the Parliament. Determining the competences of the State and local self-governments the local public matters were separated and assigned for the responsibility of local self-governments. According to the attitude of Constitutional Court, the scope of local self-governments' duties is governed by the law. Without calling into question of the approach of the Constitutional Court, it should be added, that only a part of the local self-government's competences is transferred by parliamentary acts, the competences of the local self-governments are based on the principle of general authorization.

Related to the classification, the Constitutional Court considered one of the main part of local matters those, which 'solely affects the inhabitants of the settlement, or the county, and in which the municipality has almost complete freedom to decide whether to undertake or not the task, and if so, how it will perform so'. The other main part of local matters is quite a wide range of local matters, in which the responsibility and competences of performance certain State tasks are divided between the Government and local self-governments. In the scope of local public services provision for the citizens the Constitutional Court emphasised the responsibility for delivery public services of an economic character. The third part may consists of those public matters the management of which affects citizens who exceeds the circle of people living in the area of operation of the local self-government (such as, for example, the tasks of the Capital, taking into account the national functions of the Capital).

It is however noteworthy that the Constitutional Court established a clear link between the parliamentary scrutiny prevailing according to the activity of the Government and the scrutiny of performance of local public affairs, therefore it stated, that 'in the framework of fundamental constitutional rights, enforcement of the law, performance of state tasks the activity of the Government may be scrutinized only in relation to the performance of local public affairs, respectively dysfunctional occurrence of management of local public affairs may become a national issue requiring parliamentary scrutiny. The Constitutional Court as a final conclusion stated that local self-government perform tasks related to the exercise of executive power, which concern citizen directly in managing local public affairs, therefor the Parliament may establish committee to scrutinize local public affairs in order to underpin the law-making process according the responsibilities and operation of local self-governments, to control the enforcement, to prevail the constitutional responsibility of the body of local representatives, the ensure the publicity of debates on public affairs of broad social interest'.

4.5. Changes occurring related to local matters after 2012

Hungarian municipalities used to be local governments with a wide range of responsibilities in public service provision. After the radical turn which started in 2010–2011 there was a great alteration in allocation of functions. The system has become much more centralised. The national government started to take ownership of utility companies, at the same time provision of human services became administered by the State through newly

⁴ The invoked decisions of the Constitutional Court are also effective for the future.

established nationwide institutions. The right to organise bodies for the implementation of local public services has been strongly constrained by the legislator on one hand, and on the other hand the decision-making power of local government representative bodies was reduced in the field of local public services and managing public affairs; typically the higher level regulation determines the content of local decisions. All along, it should be stated that a decreasing limitation for local discretion emerged.

The process of centralization of local public matters should be demonstrated across several illustrative examples in the case of municipalities. Public education, except for pre-school education is excluded from local public affairs. (Act CXC of 2011 on National Education) Changes were occurred in the field of cultural services also: the maintenance of museums was delegated from the county governments to settlements. The same procedure was in the case of public libraries. (Act CXL of 1997 on Museums, Services of Public Libraries and Public Education) The archives were nationalized. (Act LXVI of 1995 on Public Files, Archives and Protection of Private Archives) The social and health care institutions were socialized, except for primary care. (Act CLIV of 1997 on Health Care and Act III of 1993 on Social Care and Social Administration)

The municipal services are obligatory tasks of the local governments, but the statutory legislation may regulate the requirement of majority state or local government property in corporations, which provide certain public services. (Act XLI of 2012 on Passenger Transport Services, Act LVII of 1995 on Water Management) This is the situation e.g. in the field of healthy drinking water service, water drainage or waste disposal. There is another important change: local government does not have empowerment to fix the charges of special services (e.g. waste disposal). (Act CLXXXV of 2012 on Waste) The sustainability and the quality of services are fundamentally influenced by the fee income from the service provision. Centralization of public authority in the field of fixing prices has been a major problem in many public services recently.

In addition, approaching the executive power from another view, it is noteworthy to mention the performing of state administrative function as well. One of the most important bodies at local territorial level performed state administration tasks was the notary, as a leader of mayor's office. From 1st of January 2013 the district offices were established, and the local state administration tasks were transferred to these offices, instead of the bodies of local self-governments. (Act XCIII of 2012 on the Establishment of District Offices and Modification of Related Acts) The principle of subsidiarity would be harmed as a result of this strong centralization process.

Outstanding changes might be observed in the case of the county self-governments' responsibilities. The competences of county self-governments as territorial units were narrowed to the territorial development, spatial planning, rural development and territorial coordination beside the latter wide range institutional maintenance role. It should be added, that related to the function of county self-governments Local Government Law contains only framework rules (Article 27), and these are detailed in Territorial Development Act. (Act XXI of 1996 on territorial development and spatial planning) Sectoral regulation is unable to fulfil its function in the absence of proper budget resources.

5. An Attempt to Interpret the Hungarian Citizens' Perception

Restructuring of the public tasks system after the government change of 2010 could be considered as a serious loss of prestige from the view of local self-governments. The strong centralisation process and the withdrawal of local competences resulted weakening of local powers. The question arises whether citizen perceive and how assess this process. Formulating a response to the question, the outcome of a research in 2018 (Badó–Feleky–Patyi 2018) regard to the local self-government system in Hungary might be helpful.

In 2018, an empirical survey conducted under the direction of the research group of the University of Szeged studied and analysed the knowledge and attitudes related to the local self-government system and the scope of local public affairs. Nationwide 1,000 citizens were asked. The survey covered the issue raised on the change of standard and quality of public service provision. The research group examined to what extent citizens consider the following public services as municipal tasks: public security, public transport, care for the environment, road network, sewerage network, street lighting, healthcare, nursery care and kindergarten, primary and secondary education, creation of workplaces, shipment of waste, public utilities, local public employment, social financial benefits. (Badó–Feleky–Patyi 2018 pp. 16-17) The indirect question designed to explore the attitude of citizens on the state nationalisation practice. According to the research group findings, a slightly critical response emerged. The table below shows the overview on the assessment of citizens.

How has the quality of local service provisions evolved in recent years?

Figure 2.

<i>Assessment</i>	<i>%</i>
appreciably deteriorated	23,6
has not changed	58,5

appreciably improved	17,8
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Source: *Badó–Feleky–Patyi 2018 p. 85*

In the case of assessment of the state in the area of public service provision the issue was whether citizens considered good that the state getting more and more involved in public service provision, instead of local self-governments. As a result of the survey it can be stated, that there is neither strong majority support, nor a strong majority rejection in perception of the citizens related to the statement that State undertakes more and more public service provisions from local self-governments. (Badó–Feleky–Patyi 2018 p. 88) The table below shows the overview on the assessment of citizens.

How desirable the state's growing role in public services provision?

Figure 3.

Assessment	%
really not good	16,4
rather not good	17,4
so-so	39,1
rather good	22,4
very good	4,6

Source: *Badó–Feleky–Patyi 2018 p. 88*

Respondents to the survey considered every local public service are connected to their life in certain settlement, more or less but without exception as local responsibility. In sum, they were asked about 14 public services, how much they are to be a state or municipal task (not – partly – entirely). According to citizen's views, the development of settlement's living condition primary is the responsibility of local self-governments. (Badó–Feleky–Patyi 2018 p. 96) public security, public transport, care for the environment, road network, sewerage network, street lighting, healthcare, nursery care and kindergarten, primary and secondary education, creation of workplaces, shipment of waste, public utilities, local public employment, social financial benefits.

Whether municipal task or not?

Figure 4.

	<i>it is not the task of local self-government (%)</i>	<i>it is partly the task of local self-government (%)</i>	<i>it is the task of local self-government entirely (%)</i>	<i>partly or entirely task of local self-government (%)</i>
public utilities	25,1	32,8	42,1	74,9
creation of workplaces	16,1	42,7	41,2	83,9
public transport	15,2	34,3	50,5	84,8
healthcare	14,9	37,8	47,3	85,1
road network	11,8	42,6	45,6	88,2
sewerage network	11,2	34,9	53,9	88,8
shipment of waste, waste management	11,0	27,8	61,2	89,0
street lighting	11,0	29,5	59,5	89,0
primary and secondary education	10,6	40,9	48,5	89,4
public security	9,8	40,8	49,4	90,2
nursery care and kindergarten	7,4	34,1	58,4	92,6
social financial benefits	6,6	30,6	62,8	93,4
care for the environment, sanitation	5,7	26,8	67,5	94,3
local public employment	4,3	24,9	70,8	95,7

A comparison between the nationalization process and the attitude of citizen on the public tasks fulfilled by the state or by the local self-government gives a graphic description that there is no consistency in accordance with the essence of local public affairs by the interpretation of the legislator and the meaning of the respondents. However, considered the result of the survey related to the increasing role of the state and the latter perception of citizen, it is difficult to establish and to interpret this huge difference. There is a reason to believe, that this goes together with limited feelings of involvement in local public affairs, the majority of citizens started to be interested in public affairs only when their private interests were directly affected. However, the overall experience in the area of operation of local self-governance, that citizen hardly involved in events (e.g. meeting of the representative bodies, public hearings, office hours and reports of local representatives), where they could obtain information on the issues of local interest. It is also reasonable to assume that local government informs citizens insufficiently about public affair.

The scope of delivery of public goods, the citizen's perception basically determines the matters of local interests. Providing public services, the activities of local self-government are visible for residents and if they are happy with them, its grounds for relationship between the population of local self-government unit and the representative body of it. Furthermore, as an Italian attempt also proved, that "...there is a high correlation between mayor approval rating and expert's evaluation of the effectiveness of several public services and goods in a city". (Di Pietro 2019 pp. 25-26) If the observation focuses to the determinants of political leader's popularity, there are three sets of characteristics affect: beyond the provision and quality of public services the economic conditions and crime conditions are respectable as well. But the conclusion of the observations is that only some public services (e.g. public transport) have relevance from the view of citizens. (Di Pietro 2019 pp. 36-37)

All in all, it can be agreed the conclusion, that local issues are viewed by citizen from a respectful distance and there is no real incentive to be closer. (Badó–Feleky–Patyi 2018 p. 110)

6. Conclusions

The study examined different interpretation of local public affairs, it aimed to reveal the purpose both dogmatic and legal clarification. Installing the scope of public affairs into the international framework, the paper investigated the European standards and values of local self-government, especially the related provisions of the European Charter of Local Self-Government. In this perspective, the Hungarian local self-government conceptual changes were brought into focus. Finally, the citizens' perception was described.

Consequently, the most important findings continue as follows:

According to the possible definition of local public affairs those matters may be considered, which emerge locally, have a local interest, linked to the exercise of local authority, or to the local public service provision for the citizens, should be governed by the principle of decentralization and subsidiarity, and in which local citizens need to be involved in decision-making process. Application of this definition the investigation could be continued. The European Charter of Local Self-Government established a framework for the operation of local self-government systems in Member States as an international binding treaty. Consequently, it should be confirmed, that the Charter does not give any guidance for the purpose of local public affairs. It only requires the effectiveness of principles of decentralization and subsidiarity. Glancing at few European constitutions, there is a colourful variety of local self-government provisions; this is especially true on the scope of local public affairs; it could vary from time to time and state by state. There is no conclusive object of public affairs, as well.

Turning to the Hungarian local self-government system changes, it can be confirmed, that the scope of local public affairs is undergoing important changes at present. In all, several public matters of local interest were withdrawn from the responsibility of local self-governments recently; this process may lead to the emptiness of the content of local public affairs. Local service provision has become increasingly the responsibility of the State instead of local self-governments, and there is no end to this process. It is an evidence as well, that the withdrawal of local public tasks has not induced the necessity of rationalisation, enforcement of the requirement of economies of scale, the higher level of performance of local public services, which goals were predominantly manifested as the reason for the transformation.

The survey was ongoing during 2018 yielded interesting results. It can be concluded, that the attitude of citizens on the state nationalisation practice, a slightly critical response emerged. A comparison between the nationalization process and the attitude of citizens on the public tasks fulfilled by the state or by the local self-government gives a graphic description that there is no consistency in accordance with the essence of local public affairs by the interpretation of the legislator and the meaning of the respondents. The scope of delivery of public goods, the citizens' perception basically determines the matters of local interests. Citizens hardly involved in local democratic bodies and events, where they could obtain information on the issues of local interest, however it is also reasonable to assume that local government informs citizens insufficiently about public affair.

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