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LOCAL SELF-GOVERNMENTS IN HUNGARY AND IN CROATIA

I. Regulations in the Fundamental Law concerning local self-governments

1. The significance of the (old) transformation Constitution – from the perspective of local self-governments

In 1990, the constituting local self-governance was of great importance in the history of Hungary: the half century old name of state administration system changed (from state administration to public administration), its uniform system was extended with a new subsystem (with the administrative subsystem of local self-governments), new organisation principles were introduced (e.g. real decentralisation, autonomy) and certain operational principles lost their significance (e.g. state guidance), while others became re-valued (e.g. the principle of legality).

"The most important legislative task of these months and of this year is framing the law of self-governments and having local elections." – said József Antall, the then prime minister, in the Parliament on 22 May 1990, and the last twenty years may have seemed to prove him right.[1]

Local communities – following the full revision of the Act XX of 1949 the Constitution of the Republic of Hungary (henceforth: Constitution, Cx) – gained independence, and they achieved the constitutional basic right to regulate and conduct – within the framework of the law – their local public affairs by themselves.[2] Autonomy created the possibility for local interests and individualities to emerge as a result of legally correct proceedings and it allowed

[1] The government programme of József Antall, delivered in the fifth session of the national assembly of 1990-1994 in 22 May 1990. Source: Magyar Kormányprogramok. 1867-2002. 2. kötet. 1945-2002 (Hungarian Government Programmes 1867-2002. vol. 2. between 1945 and 2002). Magyar Hivatalos Közlönykiadó, Kiss, Péter (ed.). Budapest 2004.

[2] *Act XX of 1949 the Constitution of the* Republic of Hungary Section 44/A. § (1). a). Effective until 1 January 2012.

municipalities to attend their function and authority by themselves.[3] Besides, an economic independence was guaranteed by the Constitution.

Based on the provisions of the regime changing Constitution a *fundamentally liberal* and a relatively *modern* locally governed institution system has evolved:

- the basic principles of European Charter of Local Self-government prevailed
- democratic local authority could be exercised
- the system gave way to self-regulating processes and to local legislation.[4]

A democratic mechanism developed – and this aspect has a highlighted significance from this study's point of view – in which "centralisation for the sake of social aims can be considered to have general effects and for the sake for any other aims of public interest local self-governing (autonomy) can prevail".[5]

The characteristics of the Hungarian local-self-government system, established the above mentioned way, originates from several sources: from Hungarian self-governing traditions, from the former Soviet type institutions of public administration which were proper within the framework of the rule of law, as well as from West-European (specially South-German) local self-government systems. These are the basics, where modern Hungarian self-governing structures have sprung from.

Hungarian local self-governance stands on two pillars: local authorities (settlement) and county authorities (territorial). The duties of self-governing (and their financing) are concentrated at local authorities. County authorities have been searching their role in Hungarian municipal governing since 1990.

Although self-governing duties have dual characters, one can find services as well as official tasks (based on executive power), but it is indisputable that local self-governments are the providers of certain local public services, municipal organs rarely participate in practicing local executive power.

On one hand, the last two decades have proven that local goals and purposes, collaboration, mutual will, local patriotism and local identity can reach significant results, renewal and the preservation of values. On the other, it has become more and more obvious that the municipal system has been burdened by inconsistency. As a result of the continuously shrinking state contribution and the economic crisis it has become obvious that the system is non-sustainable and it is unjust from many aspects.[6]

2. General regulations of the new Constitution concerning local self-governments

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[3] Laurence J., O'Toole, Jr. "Local public administrative challenges in post-socialist Hungary". International Review of Administrative Sciences. 1994. Vol. 2.

[4] Cf. Szabó, Lajos: Az önkormányzati igazgatás korszerűsítése a gyakorlati igények tükrében (Modernising local self-government administration in the view of practical needs). In Csefkó–Pálné Kovács (ed.). Tények és vélemények a helyi önkormányzatokról (Facts and opinions about local self-governments) Dialóg Campus Publising, Pécs, 1993.

[5] Tamás, András. A közigazgatási jog elmélete (Legal Theory of Public Administration). Publisher: Szent István Társulat. Budapest, 1997.

[6] Zongor, Gábor: Húsz év után, változások előtt. (After twenty years, before changes) in Kákai, László (ed.) 20 évesek az önkormányzatok. Születésnap, vagy halotti tor? (Self-governments are twenty years old. Birthday celebration or funeral feast?) in Publikon, Pécs, 2010.

The Hungarian Government presented the (new) Fundamental Law [henceforth: Fund. Law] to the Parliament on 14 March 2011, which was passed by the Hungarian Parliament on 18 April 2011 and was signed by the President of the Republic of Hungary on 25 April. Before I examine the regulations of the Fundamental Law, that concerns local self-governments, coming into effect on 1 January 2012, I mention some remarks in advance.

The common feature of the modern European constitutions is that they pay special attention to the guarantees of the predominance and enforcement of constitutional institutions and to the protection of the constitution. Without these guarantees the constitution deteriorates to the collection of slogans and declarations. If the conditions required for the fulfilment of the aims, duties and responsibilities set out are not provided, the implementation is endangered.

Professional opinions differ concerning including the principles of state administration (within this, public administration) in the Constitution, or more specifically if it is justified to include them therein. Regulatory solutions vary. Some of the European constitutions contain basic principles on state administration, some of them do not. Within the Hungarian circumstances, the basic character of centralisation and decentralisation should have been detailed in the Fundamental Law. (Some constitutions go way further, for example the formulation of the principles of subsidiarity or self-governing autonomy in the constitution.)

The Constitution effective until 1 January 2010 – within the international context – dealt with local governments in detail, in this respect it is (also) similar to the new Fundamental Law. (Altogether five articles and twenty-three paragraphs deal with local self-governments). Let us take a closer look at the provisions of the Fundamental Law that have changed compared to the previous one instead of studying the provisions of the Constitution concerning local self-governments.

The *territorial structure of Hungary* is detailed in the F. article of the *Basic Stipulations* of the Fundamental Law. Highlighting this from the regulations of local self-governments is not without an example; this cannot be considered as an unusual solution. The above mentioned article has two paragraphs:

(1) "The capital of Hungary is Budapest.
(2) The territory of Hungary shall be divided into counties, cities and municipalities. Districts may be formed in cities."

This provision gives the semblance of endeavouring alteration at any price, since the latter enumeration leaves out the capital, which may make believe to a „two Hungary" syndrome. (As if the Fundamental Law legitimated that the capital and the country can have different political and legal judgement.) A more significant change is that – different from the Constitution – the Fundamental Law does not mention the districts of the capital, as a settlement type (which is endowed with the power of self-governing rights).

Under the title of *public authority*, one can find the rules concerning local governments. The fact, that there are four references in this chapter to the so called cardinal law[7] with „constitutional force" to be created later which will contain detailed rules and regulations

[7] "Cardinal Act' shall mean an Act for the adoption or amendment of which the votes of two thirds of the Members of Parliament present shall be required." [Fund. Law, T. Article (4)]

concerning local self-governments, indicates that significant provisions will be formulated in the detailed laws.

This, however, does not prevent us from feeling the lack of something. For one thing, the indefiniteness of the subject of local self-governance causes vagueness. Since the territorial structure of the country and the rules of local self-governance have been divided in the Fundamental Law, we only know for certain that *"In Hungary local governments shall function for the administration of local public affairs and the exercise of local public authority"* and that fundamental rules are defined by cardinal law. [Fund.Law, Article 31. (1)] Thus we should wait until we see weather each settlement (village, town, city) would elect its own independent general assembly, and how the presently „two levelled" (including the capita as a whole as well as the twenty-three district self-governments) and strongly segmented municipal structure of the capital will be formed.

In the Fundamental Law – as opposed to the former Constitution – there is no reference to the content of the local self-governing, to local autonomy, and to the constitutional right of local self-governing which is a basic right of the voter. Of course local voters can continue taking part directly and indirectly in practicing local public authority. In the chapter *Freedoms and Responsibilities*, it says regarding this: "All those entitled to vote in mayoral and local government elections shall have the right to vote in local referenda." [Fund. Law, Article XXI (4)]

3. Scope of Duties and Authority of local self-governments [Fund. Law, Article 32.]

The Fundamental Law declares that *"(1) Local government shall with a view to managing local public affairs within the frameworks defined in law:*

a) issue decrees,
b) make resolutions;
c) perform individual administration,
d) define its own organization and rules of procedure,
e) exercise proprietary rights with respect to local government assets,
f) establish its own budget and manage it independently,
g) independently manage local government assets and revenues and, without endangering its mandatory obligations, undertake entrepreneurial activities,
h) determine the types and rates of local taxes,
i) create symbols and emblems of local government, and establish local honours and titles,
j) may request information from authorities with jurisdiction, initiate a decision, articulate an opinion,
k) freely associate with other local representative bodies, may create local government associations for the representation of their interests, may co-operate with the local governments of other countries and may be a member of international organizations of local governments, and
l) may exercise other tasks and authority as set forth in law.

(2) A local government, acting within its remit, shall issue local government decrees in order to regulate local social relations not yet regulated by an Act and based on its authorization defined by an Act.

(3) Local government decrees may not be in conflict with other rules of law.

(4) The local government will send its resolution and the local government decree once published forthwith to the capital and county Government Office having jurisdiction. If the Government Office determines that the resolution or the local government decree or any of its decrees are contrary to the law, it may initiate a court review of the local government decree.

(5) The capital and county Government Office shall initiate at court the establishment of local self-government's neglect of its statutory legislative obligation. If such local self-government continues to neglect its statutory legislative obligation by the date determined by court's decision on the establishment of such neglect, the court shall order at the initiative of the capital and county Government Office, the head of the capital and county Government Office to adopt a local decree required for the remedy of the neglect in the name of the local self-government.

(6) The property of local governments shall be public property serving the performance of local government tasks."

Comparing the text to the former regulation, it has minimal changes, the difference is almost negligible. The most important difference can be traced in the title of the article: instead of basic self-government rights, the above mentioned jurisdiction is named in the Fundamental Law as duties and the scope of authority of local governments, which name – as opposed to basic rights – undoubtedly better suits he features of a public authority body, such as a local government.

The content of point *k* is also unchanged. I mention it because the twenty years of the municipal lobby, which evolved based on this point, illustrates the difficulties of the relation between the state government and self-governments, which was specially apprehensible in the reconciliations (or in omitting these reconciliations) concerning those parts of this year's approbation bill, which detailed the financing of self-governments.

Taking a look at the situation in Europe, one can see similar processes, in regard that besides their significant service activities, a municipal lobby implementing definite goals in a stabile system, which shows cooperative abilities and seeks cooperation with the government is typical.

Most of Western-Europe's municipal lobbies are strong, that is they gained (got) such government appreciations, by which (adding to proper financing and professionalism) they can be significant power-restricting factors or at least they are equal to other organisations of interest spheres. They play important roles in central decisions, in influencing these decisions, in the complex system of society's reconciliations of interests in Western-Europe, especially in Germany.[8] The Hungarian lobbies have never had such power-restricting roles for the last twenty years.

The Constitution contained only the following about issuing decrees: "Local representative bodies may issue decrees, which may not conflict with legal statutes of a superior order." [Cx. Section 44/A (2)] This rule was the widest and most general statutory authorisation concerning Hungarian self-government legislation, in addition to which it indicated the

[8] See more: Csefkó, Ferenc and Fábián, Adrián: Önkormányzati érdekvédelem Magyarországon. (Municipal lobby in Hungary) Közigazgatási Szemle, 2007.

boundaries of municipal legislative autonomy as well[9], *but it did not mention local legislation based on statutory authorisation.* The Fundamental Law has corrected this serious deficiency.
The local government will send its resolution and the local government decree once published forthwith to the capital and county Government Office having jurisdiction. If the Government Office determines that the resolution or the local government decree or any of its decrees are contrary to the law, it may initiate a court review of the local government decree. [Fund. Law, Article 32 (4)]
The intervention possibility provided by this paragraph is far from modern surveillance methods (e.g. consultation, appeal) which serve the prevention of local self-governments' from violating the law. The primary goal of state surveillance is to provide lawful operation of self-governments. State organs must promote the task management of municipalities, while they strive for enforcing the constitutional principle of lawful administration.
Other goals of state surveillance are to counsel local municipalities in their task management, to support and protect local communities and to increase the sense of responsibility of municipal organs.
The latter paragraph differs from the former constitutional regulation in assigning the competence of judicial supervision concerning local governments' decrees to the High Court of Justice instead of the Constitutional Court.
It is also the High Court of Justice's competence to decide on local government's legislative obligation based on the Act on Local Governments and on the basis of this act to order the country (capital) Government Office to adopt the necessary local decree in the name of the local self-government. [Fund. Law, Article 32 (5)] This new "decree-substitution" right of the Government Office is by all means to be considered a strong surveillance competence.

4. The Organs of Local Government [Fund. Law, Article 33]

On the organs of local government we find:

(1) The tasks and competences of a local government shall be performed and exercised by a body of representatives.
(2) Local representative bodies shall be governed by the mayor. The president of the county representative body shall be elected by the county representative body from its members for the term equal to the mandate of the representative body.
(3) The representative body may elect committees and set up its own local governmental office as laid down in a cardinal Act.

It can be stated that no significant changes took place in the organizational units of the local self-governments compared to the former Constitution, except for the fact that in the new Fundamental Law – as opposed to the former Constitution – the notary is not mentioned, thus this institution has lost its constitutional status. (Whether this change has further consequences is still uncertain until the framing of the new Local Government Act.)
The internal structure of the Hungarian municipalities is strikingly proportioned it almost mirrors to scale the system of checks and balances. This means that based on the present

[9] Cf. Jakab, András: A jogszabálytan főbb kérdéseiről. (Main issues of the study of the rule of law) Unió Publishing. Budapest, 2003. pp

statutory regulation, there are three organs in the focus of the municipal organisation and operation (body of representatives, the mayor and the notary), each of them in its own functions is irreplevisable, non-evadable and stabile as a result of legal regulation.

5. The Functioning of Local Government [Fund. Law, Article 34]

On the functioning of local government we can read verbatim:

(1) *"Local governments and the State shall cooperate in order to achieve the aims of the community. Only an Act of Parliament may define mandatory tasks and competences for local governments. In order to perform their tasks and exercise their competences, local governments shall be entitled to receive budgetary and other financial means proportionate thereto.*
(2) *An Act may prescribe that a mandatory task of a local government be performed within the framework of an association.*
(3) *Apart from local governmental tasks, the mayor and the president of a county representative body may also assume the tasks and competences of state administration in exceptional circumstances, on the basis of an Act of Parliament or of a Government Decree issued on the basis of authorization of an Act of Parliament.*
(4) *The Government shall ensure supervision of the lawfulness of the functioning of local governments through the Capital and County Offices of the Government.*
(5) *In order to preserve the balance of their budget, an Act of Parliament may prescribe that if a local government plans to contract a debt above a level defined by an Act of Parliament or to undertake any other commitment, it shall obtain the approval of the Capital or County Office of the Government."*

It is entirely inevitable that when defining local governments the legislator bid farewell to the natural law like approaches. The clue is that the modern (local) government is part of the state, and that self-governing is traceable to several theoretical starting points:

1) According to the French, *local (governmental) authority is an independent part of state authority, it is the opposite pole of centralisation.*
2) According to the classic German approach, *through directly elected bodies, the civilians can be involved in state affairs.*
3) According to the English „local government" thesis there is no opposing municipal authority opposing state authority, but *the former is an intermediate form between the state and society, which responsibly and independently rules and governs (locally) within the framework of the law*.[10]

Modern local self-governments, despite of the fact that they have autonomy, are clearly state self-governments, they are not independent from the state. True cooperation with central (state) organs is inevitable token of their operation. The importance of this is constitutionally appreciated in the new Fundamental Law.

Hungarian local self-governments are in a position today, that the number and the order of magnitude of their compulsory duties greatly surpass their income, their state contribution in the first place. The result of this process is that the debt-stock of the local governments have reached an extent that nobody is able to calculate, since not only local budgets suffer deficit (which is visible) but the self-government owned ventures also (the deficit of these are mostly invisible). Properly speaking, the central budget tries to keep its own deficit in check by

[10] Stern ,Klaus. Das Staatsrecht der Bundesrepublik Deutschland. Bd. 1. C. H. Beck Verlag. Munich, 1984.

shoving greater and greater part of it on to the system of local governments.
The regulation, which says "local governments shall be entitled to receive budgetary and other financial means proportionate thereto in order to perform their tasks and exercise their competences", basically, preserves present conditions. The greatest plea against "proportionate" is not that this term belongs to the so called indefinite legal notions, but that it does not provide any guarantees on the merits for local governments. Deformed proportions, more precisely the disproportionateness from the self-governments' point of view are against the concept of self-governing, they undermine its essence.
Institutionalising the mandatory local government association, making it possible to provide it by law clearly serves modernisation: the former governmental practice (bringing many problems) – for the sake of managing tasks effectively – tried to prevail on local authorities by budgetary-financial tools to attend tasks jointly. Based on the Fundamental Law, this can be implemented by provisions of the law as well.
State surveillance (control) of local governments has been a cardinal issue of the Hungarian self-governing system in the last twenty years. The characteristic of this system is the multitudes of *correction and control mechanisms* and *at the same time this is its weakness* and contingency. This is not about having too few – external and internal – organs (government office, public prosecutor, State Audit Office, local government committees, notary and auditor) for controlling the lawful management of public authorities, but about the fact that the correction power of these organs is insignificant.
In my view, the requirement of lawful operation of local authorities is just as an important basic principle as to respect their autonomy. These two demands of a constitutional state, which are preferably not inconsistent but complementary with each other, must be balanced. The emphasis and predominance, in Hungary at present, is expressly on autonomy and on its safeguarding.
I agree with authors, who urge to shift to the other direction. Géza *Kilényi* formulates his opinion on this issue and says "it would not harm to realise that the Hungarian Republic is not a loose federation of 3200 sovereign local governments and that the local governments – however important they are to democracy – are parts of the state organisation".[11]
„Strong supervision of lawfulness and financing", covering practical purposes, has significance from the viewpoint of effective cooperation of self-governments and public administration".
From time to time majority of special literature urged the reinforcement of legal control and its conversion to legal supervision due to theoretical reasons.[12] The minimal expansion of competence was considered to be achieved by temporary execution of allegedly unlawful decision and by substation of neglected decision by means of an inspection body. (Other authors argued a more serious supervision competence expansion.)

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[11] Kilényi, Géza: A közigazgatás törvényességének garancia-rendszere. (The guarantee system of public administration's lawfulness). Csefkó, Ferenc (ed.). Szamel Lajos Tudományos Emlékülés [Lajos Szamel Scientific Session]. A Jövő Közigazgatásáért Alapítvány Publishing. Pécs, 2000.
[12] Foreign professional literature has also called the attention to the weakness of the state surveillance over the Hungarian self-governments: Küpper, Herbert. Verwaltungsrecht im Erneuerungsprozess Osteuropas. Berlin Verlag. Berlin, 2001.

In my view, many aspects of the role and significance of the state surveillance over the operation of Hungarian local self-governments should be strengthened. Not necessarily because of West-European countries, where the authority of the state surveillance organs is wider than in Hungary, and not necessarily because the rate of unlawful local government decrees would be outstandingly high. Greater interference opportunity is needed in order to *redress* the relatively low rate of *unconstitutional decrees (and other decisions) faster and in accordance with the rule of the law principles*.

Based on the above mentioned antecedents, the codification of state surveillance in the Fundamental Law is hardly a surprise. However the "implementation" cannot be passed unnoticed.

According to the argument of the Fundamental Law "the guardians of local governments' lawful operation in harmony with the Fundamental Law are the capital and county Government Offices, which also control the local government's decree enactment besides traditional judicial supervision in order to ensure the proper quality of legislation." It is distinctly visible that the legislator, sadly enough, used the notions of supervision and control as synonyms.

The other supervision competence mentioned in the Fundamental Law is also debatable: *In order to preserve the balance of their budget, an Act of Parliament may prescribe that if a local government plans to contract a debt above a level defined by an Act of Parliament or to undertake any other commitment, it shall obtain the approval of the Capital or County Office of the Government."* [Article 34 (5)]

The above mentioned provision is also a new element of the Hungarian constitutional law. Its goal is obvious: to prevent further indebtedness of local governments,, which is so huge today that it imperils budget equilibrium, by the means of state supervision. (Regulatory enactments restrict the possibility of local governments' borrowings, yet these restrictions are easily evaded, that is why they have not fulfilled the expectations.)

Studying the issue from another angle, it is clear that local governments' borrowings all the less cover the financing of investments and developments but they are assigned more to finance operation and attendance of compulsory tasks and duties. It is obvious that local governments' deficit arises traditionally because state contribution and own incomes are insufficient to cover financing of compulsory tasks and to provide local community services.

The new Fundamental Law has not solved the problem of financing. It is institutionalising a mean with doubtful impacts, which strongly restricts the local administration autonomy.. One must add that the impact of this rule is also violated by its lateness: credit banks – aware of the huge problems of local governments' property management and financing –are less willing to finance local governments' operation independently from the consent or refusal of the supervising state organ (Government Office) on the borrowing.

6. The Mandate of Local Governments [Fund. Law, Article 35.]

The mandate of local governments is an entirely new article, it was not included in the former Constitution:

(1) "Local government representatives and mayors shall be elected by direct and secret ballot by constituents with voting rights, based on their universal and equal right to vote, in elections ensuring the free expression of the will of the voters, in the manner laid down in a cardinal Act.
(2) Local government representatives and mayors shall be elected for a term of five years as laid down in a cardinal Act.
(3) The mandate of the local representative body shall last until the day of the general local government elections. If elections cannot be held due to a lack of candidates, the mandate of the local representative body shall be extended until a by-election can take place. The mandate of an incumbent mayor shall last until the election of a new mayor.
(4) A local representative body may declare its dissolution in accordance with the conditions laid down in a cardinal Act.
(5) At the submission of a motion of the Government made following its request for an opinion of the Constitutional Court, the Parliament shall dissolve the representative body functioning contrary to the Fundamental Law.
(6) Upon dissolution of a local representative body, the mandate of the mayor shall also end."

The above mentioned provisions were regulated in different Acts. Their fundamental content has not been changed by raising them to constitutional level, except for raising the term of local government representatives and mayors from four to five years.

7. Résumé

There was a provision in the regime changing Constitution which stated that *"The lawful exercise of the powers of local government is granted legal protection of the courts and any local government may appeal to the Constitutional Court for the protection of its rights."* [Cx, Article 43 (2)] This provision was omitted from the new Fundamental Law; there is no indication of constitutional protection regarding local self-governments.

This change, together with the above mentioned, explains well: the constitutional character of Hungarian local self-governments has radically changed in spite of the fact that the constitutional text on local self-governments has remained unchanged in the new Fundamental Law compared to the former Constitution.

The terminology of the former Constitution recalled the atmosphere of the 1989-1990 regime change: the central governing of settlement councils had been changed to local governing, independence and wide scope of local autonomy were expressed in the Constitution. This manifested in that local governing was approached as a collective fundamental right of the community of local voters and the functions of local representative bodies were defined as basic rights.

The Fundamental Law seems to break with this approach, and expressly takes the stand on that local governments are institutions within the state, they are local administrative organs, which do not run counter to the state, but they are organic parts of it and they strengthen democratic legitimacy. Local government is not an "anti-state" institution organised on a social basis, but it is an *autonomous administrative form reliving the state by decentralisation,*

legitimated by the principle of democracy and by vertical function and authority sharing., in order to attend local affairs for own responsibility. [13]

The Hungarian constitution does not define the essence of local governing as the subject of special basic rights anymore or as the realization of local national sovereignty, but (based on German examples) as a constitutional (institutional) guarantee, based on which Hungarian local self-governments must exist and operate. The necessary legislative and financial conditions for the actual realisation of these guarantees must be provided by the Hungarian state. This constitutional basis is much closer to Western-European standards and constitutional solutions than the former, but it also breaks with the centuries-old Hungarian public law traditions.

II. System of local self-government in the Republic of Croatia

1. Constitutional provisions on local self-government

Constitution fo the Republic of Croatia[14] (further: Constitution) in Article 4. Paragraph 1. determines: «In the Republic of Croatia government shall be organized on the principle of separation of powers into the legislative, executive and judicial branches, but also limited by the constitutionally-guaranteed right to local and regional self-government.» Accordingly, Organisation of government is stipulated (under IV, Article 70 – 125), separated from Community-level, local and regional self-government (under VI., Article 133 – 138)

Constitution guarantee citizens the right to local and regional self-government. The right to local and regional self-government shall be exercised through local and/or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage. But citizens may directly participate in the administration of local affairs, through meetings, referenda and other forms of direct decision-making, in compliance with law and local ordinances (Article 133, Paragraph 1 – 3).

Constitution determines the substance of the right to local and regional self-government. The right to local self-government includes affairs of local jurisdiction by which the needs of citizens are directly fulfilled, and in particular affairs related to the organization of localities and housing, zoning and urban planning, public utilities, child care, social welfare, primary health services, education and primary schools, culture, physical education and sports, customer protection, protection and improvement of the environment, fire protection and civil defence. The right to regional self government includes affairs of regional significance, and in particular affairs related to education, public health, zoning and urban planning, economic development, transportation and transportation infrastructure and the development of the network of educational, health, social and cultural institutions (Article 135 Paragraph 1 and 2).

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[13] Cf. Stern, Klaus. Das Staatsrecht der Bundesrepublik Deutschland. Bd. 1. C. H. Beck Verlag. Munich, 1984.

[14] Official Gazette, No. 85/10., consolidated text

Municipalities and towns shall be units of local self-government, and their territories shall be determined in the manner prescribed by law. Other units of local self-government may be provided by law (Article 133 Paragraph 1).
Counties shall be units of regional self-government. The territory of a county shall be determined in the manner prescribed by law. The capital city of Zagreb may be accorded the status of a county by law.[15] But larger cities in the Republic of Croatia may also be given the authority of a county by law (Article 134 Paragraph 1 – 3).
Affairs falling within the purview of local and regional self-government shall be regulated by law, therewith in administering the affairs within their jurisdiction, units of local and regional selfgovernment shall be autonomous and subject only to the review of the constitutionality and legality by the authorized national governmental bodies. Units of local and regional self-government shall have the right, within the limits provided by law, to autonomously regulate, through their charters, the internal organization and jurisdiction of their bodies and adapt them to local needs and capacities (Article 135 Paragraph 3, 136 and 137)
Constitution, in Article 137, particulary provide that units of local and regional self-government shall be entitled to their own revenues and to dispose of them freely in the performance of the tasks under their purview; revenues of local and regional units of self-government shall be proportional to their powers as envisaged by the Constitution and law.
Constitution also provide that forms of community-level self-government may be established in a community or any part thereof (Article 134 Paragraph 4).

2. Local self-government as regulated by law

Croatian system of local and regional self-government is regulated by Law on local and regional self-government from year 2001.[16] (further: LLRSG) as general law. Local self-government is also regulated by other laws, from which we will emphasize Law on counties, towns and municipalities[17], Law on the City of Zagreb.[18]
Pursuant to the Constitution, LLRSG provides that the units of local self-government are municipalities and towns, and the units of regional self-government are counties (Article 3 Paragraph 1 and 2).
The municipality is a unit of local self-government, which is founded, as a rule, for theterritory of several inhabited places representing a natural, economic and social whole, and which are connected by common interests of the inhabitants (Article 4 LLRSG).
The town is a unit of local self-government where the seat of the county is located, as well as any other place with more than 10000 inhabitants, and which represents an urban, historical, natural, economic and social whole. The town as a local self-government unit can include the surrounding settlements that together with the urban settlement make up an economic and

[15] According to Article 13. of the Constitution, the status, jurisdiction and organization of the capital city Zagreb shall be regulated by law.
[16] Official Gazette, No. 33/01., 60/01., 129/05., 109/07., 125/08., 36/09., 150/11.
[17] Official Gazette, No. 86/06., 125/06., 16/07., 95/08., 46/10., 145/10.
[18] Official Gazette, No. 62/01., 125/08., 36/09.

social whole and are connected with it through the movements of daily migration and everyday needs of the inhabitants of local importance (Article 5 Paragraph 1 LLRSG). Exceptionally, where there exist special reasons (historical, economic, geographic and transit), a place that does not meet the abovementioned conditions may be established as a town (Article 5 Paragraph 2 LLRSG). Large town is a local self-government unit that is also economic, financial, cultural, medical, transport and scientific centre of development of broader area with more than 35000 inhabitants (Article 19a Paragraph 1 LLRSG).

The county is a unit of regional self-government whose territory represents a natural, historical, transit, economic, social and self-governmental whole, and it is organized for the purpose of performing tasks of regional interest (Article 6 LLRSG).

Pursuant to the Constitution, LLRSG provides that the territory of a municipality, town and county is regulated by a special law, but prior to any change in the territory of a local and regional self-government unit the opinion of the inhabitants of that area will be required (Article 7 LLRSG).

Municipality, town and county are legal entities and the have a statute (Article 8 and 9 LLRSG).

Municipalities and towns in their self-governmental scope perform the tasks of local importance which directly address the needs of the citizens, and which are not assigned to state bodies by the Constitution or by law, and especially the tasks referring to organization of settlements and housing, town and urban planning, utility services, child-care, social welfare, primary health protection, education and primary-school education, culture, physical culture and sports, consumer protection, protection and improvement of natural environment, fire-protection and civil defense, and other specific activities regulated by special laws (Article 19 Paragraph 1 LLRSG).

Large towns, i.e. towns with more than 35000 inhabitants, as well as towns that are centers of the counties, besides ditto perform the tasks of maintaining public roads, issuing building and location permits and other acts related to building, implementation of documents for urban planning, and they are permited in their territory to perform the tasks from the competence of the county (Article 19a Paragraph 2 LLRSG).

The county in its self-governmental scope performs the tasks of regional importance, and especially the tasks which refer to education, medical care, town and urban planning, economic development, transit and traffic infrastructure, planning and development of the network of educational, medical, social and cultural institutions, issuing building and location permits and other acts related to building, implementation of documents for urban planning for the territory of the county but outside the territory of large towns, and other specific activities regulated by special laws (Article 20 Paragraph 1 LLRSG).

The tasks of the government administration performed in the unit of local selfgovernment and in the unit of regional self-government are established by special law, the costs of performing these tasks are covered from the state budget (Article 23 Paragraph 1 and 2 LLRSG).

Provision of Article 22 LLRSG provide, with certain conditions, possibility of transfer of certain tasks from the self-governmental scope onto the county or the local self-government,

and possibility of transfer of certain tasks from the county scope to the onto self-government units in the territory of the county.

Municipal council, town council and county assembly are representative bodies of citizens in the units of local and regional self-government (Article 27 to 38 LLRSG). Executive body in a municipality is municipal prefect, in a town is mayor, and in a county is county perfect (Article 39 to 44, 48 LLRSG). The municipal prefect, mayor and county prefect are directly-elected by the citizens according to the special law.[19]

For the performance of tasks from the self-governmental scope of the units of local and regional self-government as well as the tasks of state administration transferred to those units, administrative departments and services (administrative bodies) are set up, therewith that in the municipalities and towns with less then 3000 inhabitants a single administrative department is established for the performance of all tasks from their self-governmental scope. Two or more units of local self-government, especially those territorially connected in a unique whole (municipalities and towns on an island etc.), can jointly organize the performance of specific tasks from their self-governmental scope with special agreement in accordance with law and their statutes and general by-laws (Article 53 Paragraph 1 and 2, Article 54. LLRSG). The administrative bodies are run by heads of offices appointed by municipal prefect, mayor apropos county perfect after an open competition (Article 53a Paragraph 1 LLRSG). Representatives of national minority, pursuant to the Constitutional law on the rights of national minorities[20], are entitled to proportional representation in the executive and administrative bodies of the units of local and regional self-government (Article 56a Paragraph 1 LLRSG).

Local self-government generates from local committee which is set up for a settlement, several inter-connected smaller settlements or for a part of a bigger settlement or town which, in relation to other parts makes up a special separate whole (a part of the settlement). Local committee is a form of direct participation of citizens in decision-making about local tasks of direct and everyday influence on the life and work of citizens (Article 57 LLRSG). But, the statute of a municipality or town can assign to the local committee to perform certain tasks from the self-governmental scope of a municipality or town, which have direct and everyday influence on the life and work of the citizens on the territory of the local committee (Article 60 LLRSG). The bodies of the local committee are the council of the local committee, which members, for a period of 4 years, are directly-elected by secret ballot by the citizens from the territory of the local committee who have the right to vote, and the president of the council of the local committee, who is elected among its members by secret ballot, also for a period of 4 years (Article 61 LLRSG).

Funding the units of self-government – local and regional, is stipulated in Articles 68 to 72 LLRSG. One of those provisions determines the revenues of the unit of local and regional self-government (Article 68 Paragraph 3 LLRSG).

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[19] Law on elections of municipal perfects, mayors, county perfects and mayor fo the City of Zagreb, Official Gazette, No. 109/07., 125/08.

[20] Official Gazette, No. 155/02.

3. Basic data about units of local and regional self-government

Pursuant to valid constitutional and law provisions, in the Republic of Croatia today exsits 429 municipalities with average of 3145 inhabitants, 126 towns with average of 18328 inhabitants, 20 counties with average of 182916 inhabitants, and the City of Zagreb with both status – county and town. Counties with the City of Zagreb have average of 211308 inhabitants.[21]

According to administrative law writers, local self-government in the Republic of Croatia is very complex (because of two-instance structure, municipalities and towns as first, and county as second instance), unstable (because of permanent number increase of municipalities and towns, especially towns because of special reasons), unbalanced (because of major diferences in size and number of inhabitants in particular towns and municipalities), ineffective and not quality enough.[22]

[21] See: Ivan Koprić, Stanje lokalne samouprave u Hrvatskoj, Hrvatska javna uprava, No. 3/10., page 668. and further.

[22] See: Ivan Koprić, Karakteristike lokalne samouprave u Hrvatskoj, Hrvatska javna uprava, No. 2/10. page 372. and further.