

LOCAL GOVERNMENT MODELS FROM THE CHANGE OF THE REGIME UNTIL OUR DAYS

Zita Lengyelne Bús*

Abstract

The main topic of my study is to present the local government models from the change of the regime until our days. I consider it important to present the legal status of the mayor within this framework too, because I can demonstrate the changes best with it. As we will see, the new legislation of 2011, instead of the dual model based on the duality of the mayor and the administration professionalism, with the former strong body licences, established an administrative organisation of monocratic management, reinforced against the representative body too; and with this, it implemented a kind of model-change in the Hungarian local government system.

Keywords: local government models, change of the regime, mayor, public administration, notary

Introduction

In my work, I am going to introduce the local government models from the change of the regime until our days. In my study I am also going to present how the legislation of the local public administration changed in the life of the local governments that were established ‘out of nothing’ at the change of the regime, and whether these changes facilitate or rather hinder the professional work.

My study does not provide the opportunity to analyse the local government in its complexity, but it does to inspect the tasks of mayor’s offices, that play an important role in the implementation of local government tasks, in its preparation, organising, administrative and execution phases, relying on writings, publications, opinions published in certain periodicals too.

1. The model of local governments and the mayor’s legal status at the change of the regime

1.1. The model of the local governments at the change of the regime

For the inspection of the local government model, it is advisable to start from the classical separation of the powers, that is, the legislative, executive and judicial power. As Márta Szabó says, within the framework of establishing the Hungarian democratic system, the

* IV. year correspondent doctoral student, University of Miskolc, Faculty of Law, Department of Law History; Supervisor: Dr. Ibolya Katalin Koncz university associate professor, co-supervisor: dr. István Turkovics, e-mail: lengyelne.zita@gmail.com

local government administration was created as a sub-system of the executive power. The local governments take part in the executive power on region-municipality level.¹ The modernisation of the Hungarian public administration and the local governments had to face three challenges after the change of the regime in 1990:

1. Challenge deriving from the democratic rule of law.
2. Challenge deriving from the market economy.
3. Challenge deriving from joining the European Union.²

At the change of the regime the Constitution ruled that the organisation of the Republic of Hungary changed in its fundamentals, as it says: ‘Hungary is a republic. The Republic of Hungary is an independent, democratic rule of law.’³ With the change of the regime, the restoration of local government administration was realised in addition to state administration. From the point of view of self-governance, the Act XX of 1949 (hereinafter referred to as Constitution) On the Constitution of the Republic of Hungary is one of the most important norms, according to which the local governments have the right for local self-governing.⁴ The local government is autonomous, that is, independent, it carries out its cases self-reliantly through its bodies, organisations.

The Constitution disposes of the regional division of the Republic of Hungary in its Chapter IX. According to this, the territory of the Republic of Hungary is divided into the capital, counties, cities and municipalities. The capital is divided into districts; in the cities, districts can be established. In Hungary, we can distinguish capital-, county-, city- and municipality local governments: there are no regional and sub-regional local governments. The Constitution of 1949 does not mention, but another peculiar local government exists, namely the independent city (with county licences). We call the municipality and the city together as settlement self-government. The General Councils constitute regional authorities. We call the municipal governments and regional authorities collectively as local authorities.

Public administration forms a dual system, which means that public administration is divided into two parts: local government administration and state administration; these two parts form a unified system; we can find tight contact points between the two sub-systems. I can mention the main character of my yet incomplete dissertation, the notary, who carries out both local government administration- and state administration tasks. In accordance with the main rule, the notary is entitled to the state administration tasks and powers, and the recipient of local government ones is primarily the representative body.⁵

Taking historical traditions into consideration, the Act LXV of 1990 on Local Governments (hereinafter referred to as Ötv.), passed, proclaimed in 1990, basically established a system following the dual administration model, in which, in relation to the

¹ SZÁNTÓ, Mária: A községi jegyző helye, szerepe a magyar önkormányzati rendszerben: helyzetelemzés egy községi jegyző mindennapjain keresztül II. [The Place, Role of the Municipality Notary in the Hungarian Local Government System: an Analysis Through a Notary’s Daily Life, Part II] Comitatus: Önkormányzati szemle, Year 1994 Issue 5 33-37.

² TORMA, András: Európai Unió és magyar önkormányzatok. [European Union and Hungarian Local Governments] In KÁKAI László (ed.) *20 évesek az önkormányzatok. Születésnap vagy halotti tor?* [Governments are 20 years old. Birthday or funeral feast], Pécs, 2010, 87-102.

³ Section 1-2 Subsection (1) of the Constitution

⁴ Section 42 of the Constitution

⁵ FEIK, Csaba – TÁBIT, Renáta: Önkormányzati ismeretek és praktikák polgármesterek részére [Local Government Studies and Praktika for Mayors] In BOROS Anita – BUDAI Balázs – FEIK Csaba – SZALAI András – TÁBIT Renáta – TEMESI István: *Az önkormányzati működés alapjai* [The Basics of Local Government Operation], Mayor Academy, 2009, 7-9.

management of the administrative organisations, it separated the local politicians' and the profession-based tasks and powers.

The organisation of the Hungarian local governments which is responsible for execution and administration is under dual management, as this system is operated on the one hand, by the mayor representing the non-professional element, and on the other hand, by the notary representing professionalism and stability.⁶ The local government model of dual administration organisation includes the legislation of states where local government law establishes an administrative-execution organisation, which is independent from the strategic decision-making body, has a legally separated circle of tasks and powers, but the powers related to the management of this organisation are divided among several persons or bodies. As opposed to this, the monocratic system is which rather characterises the Hungarian local government legislation of 2011, as we will see it in my study. On international level, we know dual systems where the system is based on the duality of the mayor and body committees (Benelux countries, Spain, Portugal, Greece), the kind where the system is based on the duality of the mayor as a political leader and the administration professional. (British local government model of 2000). The Ötv. model of 1990 also belongs to the latter dual administration organisation model, when the implementation of tasks and powers of the dual management of the administrative organisation is characteristically divided between a professional administration expert, that is, the notary and a leader that can be considered a politician, that is, the mayor. In accordance with the Ötv., the dual model system is defined by the special legal status of the notary.⁷

The Hungarian local government system, in the making in 1990, taking the previous legislative capabilities and historical traditions into consideration, in addition to the direct body management powers, established a strong dual system by institutionalising the roles of the local politician mayor and the administration-professional notary.⁸

1.2. The legal status of the mayor in the dual local authority model in the change of the regime era

On the basis of the Ötv., the mayor naturally has a lot of tasks related to the operation of the local governments, which can be classified several ways. These tasks include ceremonial, local political, also administrative-execution activities. Therefore, the mayor is the chairperson of the representative body, who convenes and chairs the sessions of the representative body and implements its representation.⁹ The mayor can take part in the sessions of the committees of the body, and in relation to them, has decision-preparation and execution powers. In relation to the decisions made by the body, the committee and the part-local government, the Ötv. provides a right of veto with suspensive effect.¹⁰ The right of veto already leads to one of the most important functions of the mayor, the management of the local government administration system.

⁶ HOFFMANN István: Modellváltás előtt a magyar önkormányzatok igazgatási szervezetrendszerének vezetésében – nemzetközi kitekintéssel [Before Change of Model in the Administration Management of Organisation- System of the Hungarian Local Governments – with an International Perspective], in *Közjogi Szemle* Year 2011 Issue 4, 12-21.

⁷ HOFFMANN: op. cit. 15-16.

⁸ HOFFMANN: op. cit. 19.

⁹ Ötv. Section 9 Subsection (1) and Section 12 Subsection (2)

¹⁰ Ötv. Section 25 Subsection (2)

The Ötv. regulates the mayor's tasks related to the administrative organisation in detail. Section 35 Subsection (1) of the Ötv. says that the mayor carries out his local government and state administration tasks and powers with the contribution of the office of the representative body. In relation to the administration tasks, the Ötv. records that the mayor governs the office in accordance with the decisions of the representative body and in his/her own local government power.¹¹ The mayor's circle of tasks and powers related to the divided management of the administrative organisation are defined by the Section 35 § Subsection (3) of the Ötv. Thus based on the rules of the Ötv., we can speak of a separate administrative organisation, one centre of which is the mayor.¹²

According to Section 7 Subsection (1) of the Ötv., the mayor's circle of tasks and powers are dual, because he/she can proceed both in local government and delegated state administration powers.¹³ The mayor has a circle of tasks and powers in local government administrative cases not only in the circle delegated by the body, but the Ötv. also makes it possible that the law exceptionally confers powers of this kind on the mayor, which powers cannot be withdrawn by the body in its decree.¹⁴

Although in relation to the independent administrative organisation, the mayor has a wide range of management powers, the Ötv. model can be considered as a dual system, in which the strategic decision-making body organisation and its committees also have certain executive powers. However, the dually modelled system is basically defined by the special legal status of the notary, as the in the system of the Ötv. the notary can be considered as an independent administrative manager.¹⁵

The mayor is the number one elected official of the local government. The position of the mayor comes into being via direct election by the citizens, which provides a fairly strong legitimacy for him/her. By being elected, the mayor becomes a member of the representative body, but not a simple member of it, but its chairperson, manager, who on the other hand, represents the representative body; on the other hand, he/she is the legal representative of the whole local government, as of a legal entity. For this representation, in addition to the legal authorisation, there is no need for further mandate.

Considering the legal status: the mayor carries out his/her tasks in a full-time job or with a societal mandate. A mayor with a societal mandate can be elected in a municipality with a population under 3000 residents. There is a difference in the legal status of the mayor depending on whether he/she is a mayor in a full-time job or with a societal mandate. In case of the mayor in a full-time job, the representative body exercises the employment rights. This employment right means that an employment relationship, namely a peculiar public service employment, the so-called employment relation is established between the body of representatives and the mayor. Between the mayor with a societal mandate and the representative body no employment relation is established, here the representative body is not the mayor's employer. Although the mayor does not constitute a public servant, related to his/her employment relation, certain passages of the Act XXIII of 1992 on the Legal

¹¹Ötv. Section 5 (2) Subsection

¹² CSEFKÓ Ferenc (ed.): Önkormányzati iránytű. Gyakorlati útmutató a helyi képviselők, polgármesterek, köztisztviselők számára [Local Government Compass. Practical Guide for the Local Representatives, Mayors, Public Servants]. Új Historica Publisher Villány, 1999, 129., VEREBÉLYI Imre (ed.), Az önkormányzati rendszer magyarázata [The Explanation of the Local Government System, Economy and Legal Publisher], Budapest, 1999, 121-122.

¹³ CSEFKÓ: op.cit. 129-130.

¹⁴ Ötv Section 2 Subsection (2)

¹⁵ HOFFMANN: op.cit. 16.

Status of Public Servants (hereinafter referred to as Ktv.) are to be applied. Regulating the resting period¹⁶ or setting his/her salary belong to this.¹⁷ In relation to his/her remuneration, Section 43 (1) Subsection of the Ktv. sets the salary of the representative body and the mayor on the basis of the public servant basic salary – can be related to the number of inhabitants – and a defined multiplier, about which the representatives decide during the constituent meeting. They do not have unlimited freedom, however, they can decide independently within the framework of a ‘from-to’.

Concerning his/her qualifications, the legislation makes no exception, sets no requirements. This fact has significance in connection with the notary and with the public servant staff under his/her management, which I will detail further on.

The mayor, when elected, is obliged to make an asset declaration annually in accordance with the rules applying to the asset declaration of Members of Parliament. The Ötv. records the posts, commissions that are incompatible with the mayor’s post. One group of these incompatibility cases originate from the separation of state administration branches; the cases of economic incompatibility belong to the other group.

The mayor’s circle of tasks and powers are bidirectional. On the one hand, the mayor can be given a local government circle of tasks and powers, namely in two ways. On the one hand, based on the authorisation by the first recipient of the circle of local government tasks and powers, that is, by the representative body, in delegated power. On the other hand, the Ötv. can exceptionally set a local government circle of tasks and powers for the mayor in a direct way.

On the other hand, the mayor exercises state administration circles of tasks and powers as well. Namely, on the basis of legislation or authorisation, the governmental decree exceptionally can authorise the mayor with state administration powers. (For instance, defence-, civil defence-, disaster management cases.) If the mayor proceeds in his/her own state administration powers, the representative body cannot instruct him/her, cannot revise his/her decisions, at the same time, during his/her activity, the mayor is responsible in accordance with the public service regulations.

The mayor is responsible for the local government and for its work as well. The mayor has an interest that the office and its staff operate in a unified, effective way, in the spirit of client-centred, service-providing public administration. The mayor has a closer contact with the office as compared to other representatives. In addition to the visible, perceptible developments, the citizens assess the activity of the mayor through the operation of the office. The public mostly identify the operation of the local government with the operation of the office; they do not make a distinction between the two. On the basis of my experiences, I can tell that this can be witnessed in the cases specifically referred to notary powers as well. The average citizen is unimpressed by the fact that cases like property protection or probate do not belong to the competence of the mayor; he/she is the ‘number one person’ of the municipality, let him/her solve it. Therefore, it is vital that both the notary at the top of the office and all its public officials are professionally suitable public servants carrying out his/her work with expertise.

The effectiveness of both the local government and the activity of the mayor greatly depend not only the professional operation of the office, but also on the teamwork of the local government, its representative body, the mayor, the notary and the mayor’s office, on supporting one another’s work as well.

¹⁶ Ktv. Section 41 Subsections (1), (2), (5)

¹⁷ Ktv. Section 42 Subsection (5) Point b)

Although the representative body is the exerciser of the (full-time) mayor's employment rights, as he/she was not elected by the body, they cannot withdraw, dismiss him/her. The only weapon in the hands of the representative body to 'overthrow' the mayor if they dissolve themselves. The possibility for this was enacted by the Act LXIII of 1994. According to this, the representatives 'Before the expiration of their commission, the representative body, with roll call vote, by a qualified majority can state its dissolution'.¹⁸ In this case, new elections have to be called for to fill in the vacancy of the mayor's post, at the same time with the elections of the representatives. For this decision, the roll call vote of the representatives and a qualified majority support are necessary. This decision is also risky for the representatives, as their commission also ceases to exist with it.

The Ötv. provides the representative bodies a wide range of legislative independence in determining the mayor's tasks. By delegating certain powers, they can reinforce the mayor.

The detailed rules of the operation of the representative body are defined by the SZMSZ (Organisational and Operational Regulations). A well-elaborated regulation greatly facilitates the operational functioning. The representatives do not always explore the options hidden in it, and are afraid of delegating certain powers, saying that the mayor might acquire too much power. However, a good SZMSZ would not hinder the operation of the body; it would rather serve its effectiveness. Obeying the SZMSZ and enforcing it is the priority task of the mayor, in which he/she has strong chairperson's licences. It is important that he/she is consistent. He/she risks his/her own credibility if once he/she obeys it, and on other occasions, he/she allows deviances from it. Here I would primarily highlight the preparations of agendas.

Proposals not considered, elaborated carefully enough, may cause a lot of problems and may lead to inconclusive debates, which hinder the decision-making of the body, slows down its work. The representative body has a number of sessions defined by the SZMSZ, but at least six of them, which, as I have already mentioned, are summoned and chaired by the mayor. The experience shows that on average, there is one assembly, session per month.

The mayor is a part of the body, according to the main rule, considering his vote; he is equal with his peer-representatives, however, he is the strongest member of the body. The legislation disposes that in certain cases the outcome of the decision depends on the mayor's decision.¹⁹ Considering that he/she is the legal representative of the settlement, he/she takes part in consultations, gains such information that is less accessible for the representatives. It is important that the mayor use these items of information in a way so that good decisions are born for the settlement. My experiences show that the smaller the settlement is, the closer its inhabitants feel themselves to the mayor and the more the representatives try to get involved in the preparation of one or two decisions, in some cases, in their execution as well. In many cases, they are not aware of their rights and obligations. To avoid this, the Act CLXXXIX of 2011 On the Local Governments of Hungary (hereinafter referred to as Möt.v.) requires the obligatory participation in governmental office training.²⁰ If the mayor is independent, has good concepts, can formulate them, there is bigger chance that he/she can make the local body accept his/her proposals. It is another question how he/she can materialise them if there is little resource for them, though it is not a legal category. The fact that the mayor is responsible for the implementation of the budget, however, is. That is,

¹⁸ The Ötv. Section 18 Subsection (3) was enacted by the Section 10 Subsection (2) of the Act of LXIII of 1994. (It was effective from: 11.12.1994.)

¹⁹ Ötv. Section 14 Subsection (3)

²⁰ Möt.v. Section 32 Point j)

the mayor is obliged to implement the budget accepted by the representative body. It is worth preparing the budget and getting it accepted in a way that it needs the least possible modifications during the year and so that there is appropriation, that is, coverage for the necessary outgoings. They do not have to be voted again by the representative body, as they are already a part of the accepted budget. The expertly compiled and timely accepted budget can extremely facilitate and accelerate the operational work. As I have experienced it personally as well, the effectiveness of a mayor is truly increased if he/she always prepares in the given topic.²¹

In the mayor's hand, publicity is a strong weapon. With the media, local press, by summoning the local forum, the mayor can influence the outcome of some decisions. If he/she does not use this opportunity properly, he/she may get even the opposite effect, therefore his/her balanced, good relationship with the civil society is extremely important.

2. The model of local governments since 2011 and the legal status of the mayor

2.1. The model of local governments since 2011

The Foundation Law acknowledges the constituents' right to local governing when saying that 'In Hungary local authorities function for the sake of administering public affairs and exercising local public authority.' Thus, on the basis of this, the two pillars of local governing are:

1. Management of local public affairs.
2. Exercising the local public authority.²²

The European Charter of Local Governments, which was passed in 1985, and in Hungary was proclaimed in 1997, rules that 'Public service tasks primarily have to be realised by the public administration organisation closest to the citizens. Delegating tasks to another public administration organisation depends on the nature of the task as well as effectiveness- and cost-effectiveness requirements.'²³

The Mötv. breaks away with the term office of the representative body as in the previous legislation, as well as with the principle of establishing it as a unified office. The above-mentioned Mötv. calls the office mayor's office, considering that in accordance with the legislation, by mayor's office, the General Council office, the Lord Mayor's office and the joint local government also has to be meant.²⁴ In the capital Lord Mayor's office, in the districts of the capital, in the cities and in municipalities with a population over 2000 inhabitants mayor's office functions. In settlements where the number of the population does not exceed the 2000 inhabitants, the local governments establish a joint local government. In the counties General Council offices are functioning. By mayor's office we also mean the office of the representative body, although it does not directly follow from the wording of the legislation. The office is the organisation of the representative body. The Fundamental Law²⁵ continues to use the expression the office of the representative body, as it mentions the manager or the administrator of the office of the representative body. The

²¹ FEIK – TÁBÍT: op.cit. 24-45.

²² Fundamental Law (25 April 2011) Article 31 Section (1) (25 April 2011)

²³ Act XV of 1997 On the Proclamation of the Agreement dated in Strassbourg, on 15 October 1985, On the European Charter of Local Governments, Article 4 Point 3

²⁴Mötv. Section 84 Subsection (1), (5)

²⁵Fundamental Law (25 April 2011) Article 34 Section (3)

Kttv.²⁶ and Mötv.²⁷, effective in 2011, already consistently mention mayor's office or joint office. The Kttv. rules that the effect of the law applies to the public service status of the public servant and public service administrators at the mayor's office, community support, joint local government office, that is, the office of the representative body.²⁸ The fact that the office is the office of the representative body can be concluded from the legislation of the Mötv., which records the purpose of establishing the office, that is, its general tasks: the representative body establishes the mayor's office or a joint local government office to carry out tasks related to preparing and executing cases belonging to the mayor's or the notary's circle of tasks and powers.²⁹ The office remains to be unified in relation to the fact that it carries out both things to do related to local government tasks and tasks in connection with the local government and state administration tasks referred to the circle of tasks and powers of the mayor and the notary.

The mayor's office is not a decision-making organisation of the representative body, as the Mötv. does not list the mayor's office among the organisations to which local government powers can be delegated.³⁰

Opposed to this, the mayor's office naturally can get local government tasks. What is more, we can also say that the mayor's office is the organisation of the representative body, which contributes the most to carrying out the local government tasks, and prepares them for decision and carries out the tasks related to their implementation. Based on this, we can state that the mayor's office as an office organisation does not exercise powers. The Ket. specified the mayor and the notary among the public administration authorities, but not the mayor's office.³¹

Considering its legal status, the mayor's office, on the one hand, is a local government organisation, the organisation of the representative body; on the other hand, it is a local budgetary authority belonging to the local government sub-system of the public finances.³²

In relation to managing the budgetary authority by the representative body, means exercising the following powers:

- Issuing the foundation document of the mayor's office, approving, modifying, terminating its Operational and Organisational Regulations, that is, its SZMSZ.³³
- Continuous monitoring of the management of the income and outgoing appropriations, execution and taking the necessary measures in case of the danger of failing to implement the public service tasks.
- Enforcing, reckoning, checking requirements concerning the mayor's office carrying out the public service tasks and the ones necessary for the proper and effective managing of the resources.
- Decision-making to implement or to make up for the default.

²⁶ Kttv. Section 1 Point e), the text defied in accordance with Section 55 Subsection (2) of the Act CCXIV of 2012. Effective on: 01.01.2013.

²⁷ Mötv. Section 41 Subsection (2) came into effect on 01.01. 2013. in accordance with the Section 144 Subsection (3) of the Act CLXXXIX. of 2011.

²⁸ Kttv Section 1 Point e)

²⁹ Mötv. Section 84 Subsection (1)

³⁰ Mötv. 41 Section (3)

³¹ Act CXL of 2004 On the General Rules of Public Administration Procedures and Service, Section 12 Subsection (3) Point c) d)

³² Act CXCV of 2011 On Public Finances (hereinafter referred to as Áht.) Section 3 Subsection (3) Point e)

³³ KISS László: „Az önkormányzatok Szervezeti és Működési Szabályzatai a jogharmonizáció tükrében” [The Organisational and Operational Regulations of Local Governments in the Mirror of Law Harmonisation”]. (Co-authors: Dr. Bércesi Ferenc, Dr. Solymosi Veronika). Public Administration-Methodology LT, Pécs, 2004.

- Obliging someone to report or account. Obliging someone to account belongs to the power of the head of the governing organisation.³⁴

Based on this, we can say that the mayor's office, as a budgetary authority, is a legal entity that is established to carry out public service tasks. Carrying out public service tasks means the circle of local public affairs and the local tasks of local public authority.³⁵

The Möt. meant a change of model in the management of the administrative organisation by fundamentally altering the legal status of the mayor and the notary.

The new legislation of 2011, instead of the dual model based on the duality of the mayor and the administration professionalism, with the former strong body licences, established an administrative organisation of monocratic management, reinforced against the representative body too; and with this, it implemented a kind of model-change in the Hungarian local government system. The Möt. eliminated the dual system by subordinating the notary to the mayor, by his/her becoming a one-person administrative manager, by narrowing the delegated state administration powers, as well as by separating local government and state administration powers organisationally.³⁶ I have previously mentioned the local government model with monocratic administrative organisation, which includes the legislation of states where local government law establishes a single-person manager who is completely independent from the strategical decision-making body, has a legally separated circle of tasks and powers who is responsible for carrying out administrative tasks. The French model, the American strong mayor model and the one-person, administrative professional model belong to this category.³⁷

The mayor's office is governed by the mayor and managed by the notary. This seemingly simple statement is much more complex than this. As the Möt. uses the concepts of governing and management completely differently from the management science.

In the terminology of the Möt. the mayor's governance means that it takes place in accordance with the decision of the mayor and the representative body (in local government power) and in the mayor's own power, which is also local government power, exceptionally state administration power. The right of control related to the mayor's office thus mainly applies to local government powers, which primarily means the definition of local government tasks of the office, where at these decisions the notary's proposals have to be taken into account. According to this, taking the notary's proposals into account, the mayor defies the tasks of the office in organising the work of the local government, preparing and executing decisions.³⁸ As we will see it in the sub-chapters of this chapter, the same mayor's control will be echoed at the tasks of the notary, as the Möt. rules that the notary looks after the implementation of the tasks related to the operation of the local government, in accordance with what the mayor has defied.³⁹ The mayor carries out the tasks of the local government and state administration, powers with the participation of the mayor's office. The office participating in carrying out these tasks is managed by the notary.⁴⁰ In relation to the notary, this management power means that the notary defies the concrete work-

³⁴ Áht. Section 9 (1) Subsection

³⁵ FEIK Csaba: A polgármesteri hivatalok irányítása és vezetése, az abban közreműködők feladat-és hatásköre [The Governance and Management of Mayor's Offices, and the Circle of Task- and Powers of its Participants], in Szakmai Fórum 2014, pp. 120-123.

³⁶ HOFFMANN: op. cit. 18-19.

³⁷ HOFFMANN: op.cit. 14-15.

³⁸ Möt. Section 67 Point b)

³⁹ Möt. Section 81 Subsection (3) Point c)

⁴⁰ Möt. Section 81 Subsection (1)

organisational instructions, tasks towards the public servants and other employees of the office and exercises the employment rights over them.⁴¹

2.2. *The legal status of the mayor since 2011*

In general, we can say about the mayor that he/she is also the number one person of the municipality.⁴²

One of the central elements of the Möt. is the reinforcement of the mayor's position within the local government. From the point of view of the administrative organisation, the most important is reinforcing the mayor within the execution system. Although the Möt. Section 67. §⁴³ says that the mayor governs the mayor's office in accordance with the decisions of the representative body in his/her own power, but the Section 67 § Point f) already indicates the change by stating that the mayor exercises the employment rights over the notary.⁴⁴

The governing role of the mayor has to be examined in the complexity of the mayor's legal status. When we speak about the mayor's legal status, circle of tasks and powers, the relevant rules apply not only to the mayor (of the municipality, city, etc.), but to the mayor of the capital, the chairperson of the county council as well. In effect, the legal status, the circle of tasks and powers of the mayor are defined by the Möt. Following his/her election, the mayor takes an oath in front of the body of representatives.⁴⁵ The mayor's rights and obligations start with his/her election and cease to exist with the termination of his/her commission. With his/her election, the mayor becomes a member of the representative body by the power of law, that is, in relation to the quorum, decision-making, functioning of the representative body, he/she has to be considered a representative of the settlement.⁴⁶ The mayor, however, is not only a member of the representative body, like the other representatives, but he/she manages it as well. The reason for this is that the mayor is the chairperson of the representative body, and the representative body is represented by the mayor.⁴⁷ This also means that the mayor is the legal representative of the representative body and the local government (as a legal entity).

The mayor is not only a member and the chairperson of the representative body, but an organisation of the representative body as well. Based on this, we can say that the mayor is a one-person local government organisation, who at the same time represents the main organisation of the local government, that is, the representative body consisting of the elected representatives.⁴⁸

In relation to his/her employment status, there is no change compared to the earlier. The mayor carries out his task in a full-time job or with a societal mandate. The representative body disposes of this in its Organisational and Operational Regulations.⁴⁹ A full-time mayor can turn into one with a societal mandate and vice versa, however, the representative body can decide about changing the way the mayor's post is filled only on one occasion within

⁴¹ FEIK: op.cit.: 124-125.

⁴² The Interpretation of the New Local Government Law, Menedzser Praxis Professional Publisher and Financial Counselling Ltd., Budapest, 2012., 4.

⁴³ Möt. Section 67 Point a)

⁴⁴ HOFFMANN: op.cit. 17-18.

⁴⁵ Möt. Section 63

⁴⁶ Möt. Section 34

⁴⁷ Möt. Section 65

⁴⁸ Möt. Section 45, Section 65

⁴⁹ KISS: op.cit.

the period of the mayor's commission, together with the simultaneous modification of the SZMSZ. As it has already come up in the above-mentioned chapter, in relation to the full-time mayor, the representative body exercises the employment power; however, this employment power is not complete and is specific. At the same time, the employment status of the mayor is not established by the representative body exercising the employment right, but it comes into being as a result of being elected by the local constituents, that is, via the mayor's election, by the power of law. A specific public service status is established between the mayor and the body. As we have also mentioned, in case of the mayor with a societal mandate, this public service status is not established between and the representative body and the mayor, that is, the representative body does not exercise employment rights over him/her.

Considering that the mayor gets into his/her position via direct election, the representatives cannot withdraw him/her. This is the specificity of the employment power.

As far as his/her remuneration is considered, this specificity also exists, as the amount of this is not set by the exerciser of the employment power either. With the Mötv. coming into effect, it created rather interesting situations. The freshly elected representatives has to decide about the remuneration of the mayor during the constituent sitting or at the next session. Several representatives were puzzled that they have to vote about a sum precisely defined by law. Why should one vote about it if it is set by law? The same applies to the reimbursement mayors are entitled to, as the decision is made by the representative body, but legislation disposes of its amount.⁵⁰

3. Summary

Overall, it can be said that in 2011, the model of the local governments underwent rather a lot of changes compared to the one at the change of the regime, as the Mötv. created a new situation in the operation of the local governments and their organisations in many respects. Together with this, the change of the regional public administration also took place. It is important to emphasise that the fundamental principles did not change, that is, the enforcement of the principles recorded by the European Charter of the Local Governments is practically unchanged, though changes can be observed in the details of the operation. The reason for this is that the local government system is also developing; progress in the system is not conceivable without reforms. As the father of the Hungarian public administration, Zoltán Magyary, too, already considered fundamental changes necessary, which, however, have to take place based on the Hungarian local government traditions.

The objective of the mayor's offices and the establishment, effective operation of the joint offices at the same time is that a stable, thriving, local government that is cooperative with the population, as self-reliant as possible, should look after the public services of the settlements.⁵¹

As we could see, after the change of the regime in the Ötv. (Act LXV of 1990), the notary was appointed by the representative body. And by this, a model of monocratic management was established in the Hungarian local government system instead of the dual model.

⁵⁰ Mötv. Section 43 Subsection (3); Section 71

⁵¹ FEIK: op.cit. 142.