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Ádám Pál
Ferenc Deák Doctoral School, University of Miskolc, Hungary
Central European Academy (Budapest), Hungary
ORCID: 0000-0002-6221-9572
pal.adam@centraleuropeanacademy.hu

Michal Radvan
Masaryk University (Brno), Czech Republic
Ferenc Deák Doctoral School, University of Miskolc, Hungary
ORCID: 0000-0002-9858-4555
michal.radvan@law.muni.cz

Constitutional Regulation of Local Financial Autonomy in the Visegrad Countries

Regulacja konstytucyjna lokalnej autonomii finansowej w państwach Grupy Wyszehradzkiej

ABSTRACT

In this article, the authors investigate the connection between the level of detail in constitutional regulations of local financial autonomy and its overall quality in Hungary, Slovakia, Poland and the Czech Republic. The article aims to either confirm or refute the hypothesis that more comprehensive constitutional rules result in an enhanced quality of local financial autonomy. To be able to test the hypothesis, the authors first examine the relevant constitutional regulation in these four countries. Thereafter, they employ two different indicators, selected statistical data and the conclusions from the monitoring procedure of the European Charter of Local Self-Government to measure the quality

CORRESPONDENCE ADDRESS: Ádám Pál, Researcher, Central European Academy, 1122 Budapest, Városmajor u. 12-14, Hungary; Michal Radvan, PhD, Dr. Habil., Associate Professor, Vice-Dean for Foreign and External Affairs of the Faculty of Law, Masaryk University (Brno), Faculty of Law, Department of Financial Law and Economics, Veveří 158/70, 611 80 Brno, Czech Republic.

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of local financial autonomy in the studied countries. Finally, they compare the results of the quality assessment with the degree of the constitutional framework's specificity to see if the hypothesis was correct or not.

Keywords: local self-government; local financial autonomy; constitutional regulation; Visegrad countries

INTRODUCTION

The immense importance of constitutions as supreme legal documents is well recognized, even by persons without a specific background in law. A constitution encapsulates the essence of a state by delineating the values it is based on, guaranteeing fundamental rights for individuals and laying down the rudimentary rules of state functioning. In most countries, the latter involves various provisions on decentralization, that is, the transfer of authority and responsibility for certain government functions from central to sub-national governments.[1] One way of carrying out decentralization is the establishment of local self-government,[2] which essentially means the ability of local residents to govern themselves through elected local authorities empowered to regulate local affairs under their own responsibility.[3]

However, local self-government is seen by many not only as a mere way of implementing decentralization but also as an inherent right[4] or freedom[5] of local communities and one of the foundations of a democratic establishment. These ideas are also expressed in the Preamble and in Article 3 ECLSG.[6] It is, therefore,

[1] World Bank, *Decentralization*, 6.6.2013, https://www.worldbank.org/en/topic/communitydrivendevelopment/brief/Decentralization (access: 23.2.2024).

[2] It is rather hard to distinguish between decentralization and local (or territorial) self-government or to explain the relationship between them. The OECD practically equates the two by stating that "decentralization consists in the transfer of a range of powers, responsibilities, and resources from central government to subnational governments, defined as legal entities elected by universal suffrage and having some degree of autonomy" (OECD, *Making Decentralisation Work: A Handbook for Policy-Makers*, Paris 2019, p. 30). Still, others understand decentralization as a broader term, as it can also be realized by measures not linked to local self-government, e.g. by assigning tasks and responsibilities to non-governmental entities. See F. Fleurke, R. Willemse, *Approaches to Decentralization and Local Autonomy: A Critical Appraisal*, "Administrative Theory & Praxis" 2004, vol. 26(4), pp. 523–544.

[3] M. Pejanovic, *Local Self-Government: A Must for Democracy, Civil Society and EU Integration*, [in:] *Peacebuilding and Civil Society in Bosnia-Herzegovina: Ten Years after Dayton*, ed. M. Fischer, Münster 2006, pp. 215–216.

[4] A.M. Eaton, *The Right to Local Self-Government*, "Harvard Law Review" 1900, vol. 13(6), pp. 441–454.

[5] G. Boggero, *Constitutional Principles of Local Self-Government in Europe*, Leiden–Boston 2018, pp. 9–12.

[6] European Charter of Local Self-Government, 15 October 1985, ETS No. 122.

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unsurprising that local (or territorial) self-government has appeared as a constitutionally guaranteed right in many European states. This holds true for the countries of the Visegrad Group as well, as their legal and constitutional restructuring after the collapse of the communist regime was significantly influenced by international documents such as the ECLSG.[7]

Yet, despite the wide incorporation of the principle of territorial self-government in the constitutions of European states, specific rules on the matter may vary significantly among them. The reason is that the question of local or territorial self-government has many dimensions, and not all of them may find their way into the constitutional framework or may be regulated to a desirable extent. One of these important dimensions is the financial one. As the Explanatory Report to the ECLSG points out in its comment on Article 9, "the legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out".[8] But does this mean that local self-government cannot be properly guaranteed if the constitution itself does not pay enough attention to its financial dimension? In this paper, we try to answer this question by investigating the relationship between the extent of constitutional regulation and the quality of local financial autonomy in the Czech Republic, Hungary, Poland and Slovakia.

The constitutional enactment of certain rights or legal institutes should, in principle, provide additional security for their beneficiaries and contribute to their adequate implementation on the statutory level. Building on this presumption, the authors set up a hypothesis according to which a more thorough constitutional regulation of local financial autonomy results in its better quality. While the main goal of this article is to confirm or refute this hypothesis, the steps needed to reach this goal enable the authors to introduce the constitutional framework of local financial autonomy in the four mentioned countries to the reader, identify the strong sides and the weaknesses of each, and suggest steps for their improvement.

To have reference points when testing the effects of constitutional regulation, the authors assess the quality of local government financing systems based on two indicators described below, which also give us interesting inputs regarding the overall characteristics of the studied systems. Therefore, besides answering the main question of the research contained in the hypothesis, the authors also investigate the intensity of interaction between the constitutional regulation and the whole system of local self-government financing by looking for peculiarities appearing both on a constitutional level and as a general feature of a system as a whole.

[7] C.M.G. Himsworth, *The European Charter of Local Self-Government: A Treaty for Local Democracy*, Edinburgh 2015, pp. 148–149.

[8] Council of Europe, *Explanatory Report to the European Charter of Local Self-Government*, 15.10.1985, https://rm.coe.int/16800ca437 (access: 23.2.2024).

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METHODOLOGY

To test the above hypothesis, the authors first describe and analyse the relevant constitutional provisions in the four countries. This is followed by parts summarizing the findings, where the method of synthesis, together with comparison, is used to evaluate the quality of these frameworks. After this, the authors assess the overall quality of local government financing systems. For this, two very different quality indicators are employed: statistical data and conclusions of an international monitoring procedure. The authors recognize the challenge of objectively assessing the quality of an entire municipal financing system. However, they believe that a combination of statistical data ("hard" indicator) and the conclusions drawn from monitoring reports on the ECLSG's implementation ("soft" indicator) may provide sufficient evidence to reach a credible verdict regarding the hypothesis.

Concerning statistics, two types of statistical indicators are used: the share of own revenues[9] compared to total local revenues and the share of local tax[10] revenues compared again to total local revenues. These data are regarded by international expert bodies as reliable indicators of the quality of local financial autonomy (see the part on statistical indicators). The formula for assessing the quality here is simple: the higher the indicated share, the stronger should financial autonomy, in principle, be.

However, to mitigate possible distortions caused by purely numerical indicators, the authors also judge the quality of local government financing based on the feedback from the monitoring procedure to the ECLSG, which may be more subjective on one hand, but also more capable of evaluating the situation in a broader context. Here, they look at the ratio of compliance and non-compliance with those provisions of the ECLSG, which are concerning financial autonomy. The more extensive the compliance, the better the quality of local financial autonomy.

The authors then cumulate the findings and determine which country has achieved the best result according to the indicators used. Ultimately, these results are

[9] For the purposes of the paper, the understanding of "own revenues" corresponds to that of own resources according to the ECLSG: they include resources that either originate from independent decisions made by local authorities, with no interference from higher authorities, or resources that are not directly collected by local authorities but are of local origin and the revenue generated from them cannot be arbitrarily altered by the State. See B. Schaffarzik, *Handbuch der Europäischen Charta der kommunalen Selbstverwaltung*, Stuttgart 2002, p. 512. Own revenues, therefore, include all local taxes and charges, the level of which can be influenced by the municipality. Additionally, revenues stemming from the entrepreneurial activities of the municipality or from the exploitation of its property are also included.

[10] In the context of this paper, "local taxes" are defined as financial levies determined for the municipal budget, which can, at least to a certain extent, be influenced by the municipality, irrespective of whether they are labelled as local taxes, or local charges/fees. This influence may involve aspects such as the tax base, tax rate, or correction elements. See M. Radvan, *Article 9 of the European Charter of Local Self-Government in the Czech Republic*, "Financial Law Review" 2017, vol. 2(4), p. 12.

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compared to the comprehensiveness of the constitutional regulation to see whether there is a correlation between them. If a positive relationship can be identified, the hypothesis will be confirmed; if not, it will be disproved.

LITERATURE OVERVIEW

The specific regulation of local self-government financing on a constitutional level is not a field that many authors delve into. Usually, the matter gets touched upon from two possible directions: either within the framework of a broader scrutiny of a whole system of local self-government (or its financial aspect) or as part of the general description of a constitutional order. Yet, in neither of these cases is the primary emphasis put on such a particular matter as the constitutional aspects of municipal financing. It is, therefore, not an easy task to find abundant bibliographical sources for the research.

From the existing sources on Hungary, certain works of G. Kecső are particularly topical, such as his comparative monography on the financial legal status of local self-governments,[11] where he addresses constitutional aspects quite extensively. Besides this, a few articles by other authors are also relevant, such as that of E. Ritó[12] or Á. Varga[13] on the right of local self-government, despite not focusing solely on its financial aspect. In their book on the constitutional order of Hungary, E. Bodnár and M. Dezső[14] also address local self-government matters.

A. Románová, M. Radvan and J. Schweigl[15] compare the constitutional aspects of local taxes in Slovakia and the Czech Republic, while certain works of L. Trellová[16] explore the constitutional background of local self-government in Slovakia. In Poland, the works of E. Juchniewicz[17] are particularly relevant, given that they are specifically aimed at exploring the constitutional implications of local financial

[11] G. Kecső, *A helyi önkormányzatok pénzügyi jogi jogállása. A jogállást meghatározó jogintézmények modelljei a bevételi oldalon. Anglia – USA – Magyarország*, Budapest 2016.

[12] E. Ritó, *A helyi önkormányzatok autonómiája és a helyi önkormányzáshoz való jog*, "Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica" 2018, vol. 36(1), pp. 192–203.

[13] Á. Varga, *Thoughts on the Meaning Content of the Principle of Local Autonomy*, "Institutiones Administrationis – Journal of Administrative Sciences" 2023, vol. 3(1), pp. 85–97.

[14] E. Bodnár, M. Dezső, *Decentralized Authorities*, [in:] *Constitutional Law in Hungary*, ed. M. Dezső, Alphen aan den Rijn 2010, pp. 219–240.

[15] A. Románová, M. Radvan, J. Schweigl, *Constitutional Aspects of Local Taxes in the Slovak Republic and in the Czech Republic*, "Lex localis – Journal of Local Self-Government" 2019, vol. 17(3), pp. 591–616.

[16] L. Trellová, *Ústavnoprávne aspekty územnej samosprávy*, Bratislava 2018; eadem, *Územná samospráva ako "štvrtá moc" v štáte?*, "Verejná správa a spoločnos" 2018, vol. 19(2), pp. 53–63.

[17] E. Juchniewicz, *The Principle of Fiscal Local Autonomy in the Light of Polish Constitution*, "Financial Law Review" 2017, no. 6, pp. 33–43.

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autonomy. A book edited by Z. Nagy[18] assessing the constitutional regulation of public finances in the Central European countries also includes numerous rules on local finances from all four countries studied.

All these sources, however, describe the (then) existing regulation. To our knowledge, no one from the analysed countries studied the specific relationship between the constitutional framework and the actual quality of the local self-government's financial dimension so far.

RESEARCH

1. Constitutional regulation of local financial autonomy in Hungary

Hungary was the first among the studied countries to sign the ECLSG in 1992.[19] The Hungarian system of local self-government introduced after the fall of the communist regime was extensively influenced by this document.[20] Its impact was evident even at the highest tiers of the legal system: the constitutional reform after the regime change placed great emphasis on decentralization. In line with the ECLSG's approach, the amended Constitution of the Republic of Hungary from 1949[21] (also known as the Constitution of the Democratic Transition) understood the concept of self-government as an inherent right of a local community[22] and established extensive municipal rights and competences in Article 44/A, many of which had financial implications.

Yet, despite the detailed constitutional background, the system of local governance introduced after the regime change was unable to ensure the proper functioning of municipalities, which resulted in their excessive indebtedness.[23] Although the explanation of factors causing this failure lies outside the purview of this article, the experience brought about the review of the local government system, which did not leave the constitutional regulation untouched. The new Hungarian constitution called the Fundamental Law, adopted in 2011, showed a sharp contrast vis-á-vis

[18] Z. Nagy (ed.), *Regulation of Public Finances in Light of Financial Constitutionality: Analysis on Certain Central and Eastern European Countries*, Miskolc–Budapest 2022.

[19] See the exact dates of signatures and ratifications: Council of Europe, *Chart of Signatures and Ratifications of Treaty 122*, https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=122 (access: 23.2.2024).

[20] I. Hoffman, *Local Self-Government in Hungary*, [in:] *Local Self-Government in Europe*, eds. B. Brezovnik, I. Hoffman, J. Kostrubiec, Maribor 2021, p. 240.

[21] When the communist regime in Hungary fell, the constitution adopted in the early years of communist rule was not formally replaced by a new document but instead underwent extensive amendments to address the social and political changes of 1989 and beyond.

[22] E. Bodnár, M. Dezső, *op. cit.*, pp. 220–222.

[23] G. Kecső, *op. cit.*, p. 217.

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the enabling approach of the previous constitution. Arguably the most important manifestation of the change in approach was that the Fundamental Law omitted the right to local self-government.

The Fundamental Law has kept provisions on the municipalities' exercise of ownership rights, on their independent operation on the basis of an own budget, and on their possibility to conduct business activities within certain limits (Article 32 (1) (e–g) of the Fundamental Law). However, many provisions related to local financial autonomy encompassed in the previous constitution fell out of the constitutional framework, such as the municipalities' right to own revenues. The Fundamental Law only stipulates that local self-governments shall be entitled to proportionate budgetary and other financial support for the performance of their mandatory tasks and competencies (Article 34 (1) of the Fundamental Law). Most likely as a response to previous experiences, the Fundamental Law explicitly enables the statutory restriction of municipal borrowing by requiring the fulfilment of certain conditions and governmental approval (Article 34 (5) of the Fundamental Law).

Still, one vital feature of local financial autonomy was taken over by the Fundamental Law practically in an unchanged form: the power to decide on the types and rates of local taxes within the statutory framework (Article 32 (1) (h) of the Fundamental Law). Depending on the importance of local taxes, such provision may have a very significant impact on the quality of local financial autonomy.

The adoption of the Fundamental Law in 2011 brought significant changes to the constitutional regulation of financial autonomy in Hungary. While certain constitutional safeguards of local self-government have weakened or disappeared as a consequence, other important provisions, which may not standardly appear in other constitutions, such as the one on local taxes, have managed to retain their position in the Fundamental Law.

2. Constitutional regulation of local financial autonomy in the Czech Republic

Although the Czech Constitution was adopted in 1992, the ECLSG was signed by the Czech Republic only in May 1998. Furthermore, as of 2023, the Czech Republic still does not consider itself bound by several provisions of the ECLSG.[24] With regard to financial autonomy, especially derogations to Article 9 ECLSG are essential. The Czech Republic is currently unwilling to commit to guaranteeing that local taxes

[24] Namely, Article 4 (5), Article 6 (2), Article 7 (2), and Article 9 (3), (5) and (6) ECLSG. See information on reservations and declarations: Council of Europe, *Reservations and Declarations for Treaty No. 122 – European Charter of Local Self-Government (ETS No. 122): Czech Republic*, https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=122&codeNature=10&codePays=CZE (access: 22.2.2024).

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and charges will form at least a part of local financial resources and does not want to ensure the power of local authorities to determine the local tax rates within statutory limits. There is no reason not to follow the ECLSG's provision on local taxes, as local taxes are already collected by Czech municipalities (in the form of local charges and the tax on immovable property), and they also have adequate powers to influence their rates.[25] The fact that the regulation *de lege lata* in the Czech Republic misses the definition of a local tax does not change this statement.

The Czech Republic is also reluctant to accept legal obligations concerning the protection of financially weaker municipalities. Besides, the country does not seem to be willing to consult local authorities on the way in which redistributed resources are to be allocated to them. The reason for these two reservations to the ECLSG is more apparent: with the extremely high number of municipalities in the Czech Republic (over 6,250; many of them having less than 1,000 inhabitants), it is practically impossible to consult all of them. However, associations of municipalities are being consulted, e.g., when the state budget is created. The administrative costs for managing so many small municipalities are also high. That is why it is reasonable not to protect financially weaker local authorities but rather to set rules motivating municipalities to unite.

Article 8 of the Czech Constitution grants local units the right to self-government. According to certain opinions, local self-government might even be considered the fourth power in the state, alongside legislative, executive and judicial powers.[26] This opinion is also based on the fact that the principles of local (territorial) self-government are expressly set forth in Chapter 7 of the Constitution. According to Article 99 of the Constitution, the basic territorial self-governing units are municipalities, while regions are higher territorial self-governing units. The detailed regulation of these units is laid down by specific acts on municipalities and regions.

As obvious from the above, the constitutional regulation of local financial autonomy in the Czech Republic is very general and brief and warrants a more comprehensive elaboration. Due to the large number of small municipalities, the Czech Republic does not consider itself bound by several ECLSG provisions. Concerning financial autonomy, some reservations are clear, some not (especially if these rules are, in fact, followed). For example, despite the reservation, local taxes may be imposed by a local bylaw in accordance with the *nullum tributum sine lege* rule. In contrast to many countries, this principle is not expressed in the Constitution but in Article 11 (5) of the Charter of Fundamental Rights and Freedoms. Its legal power is at the same level as the Czech Constitution, as both are parts of the constitutional order of the Czech Republic. From a *de lege ferenda* perspective, it would be reasonable to be inspired by other constitutions (such as the Polish). It would be advisable to adopt the principle that local self-government units shall be assured public funds adequate

[25] A. Románová, M. Radvan, J. Schweigl, *op. cit.*, pp. 605–609.

[26] P. Průcha, *Místní správa*, Brno 2011, p. 32.

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for performing the duties assigned to them. It would also be appropriate to guarantee local self-government units' own revenues in the form of local taxes and charges at the constitutional level.

3. Constitutional regulation of local financial autonomy in Slovakia

Local governance has a strong constitutional basis in Slovakia. Although the Constitution of the Slovak Republic was adopted seven years before the country signed the ECLSG and the rules on local self-government have largely remained unchanged since then,[27] these were found to be in conformity with the requirements of the mentioned international document.[28] The comprehensiveness and the systematic arrangement[29] of provisions regarding the matter even prompted certain scholars to consider whether the framers of the constitution intended to emphasize local self-government as the fourth power within the system of separation of powers[30] or as a central element in the triad of citizen–municipality (region)–state, a constitutional structure rooted in the principle of subsidiarity.[31]

The right to local self-government as such is not explicitly proclaimed by the Slovak Constitution. Instead, the existence of such right follows from the provisions of the entire Chapter 4, particularly from Article 64a, which states that municipalities (along with regions) are independent territorial and administrative units comprising persons permanently residing on their territories, and Articles 67 and 68 on the modalities and means of performing self-governance and the limitations on state's interference with it. In Article 71 (1) it is stipulated that the state will fully cover the costs associated with the execution of tasks of state administration delegated to territorial self-government units. This principle underscores the financial autonomy of territorial self-governments within the broader framework of state governance.[32] A further important provision beyond those in Chapter 4 is Article 127a, which enables local authorities to file a complaint with the Constitutional Court against unconstitutional or unlawful intervention in matters of self-administration.[33]

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[27] The only changes introduced to the constitutional framework later were concerning the establishment and functioning of regional self-governments.

[28] D. Klimovský, J. Nemec, *Local Self-Government in Slovakia*, [in:] *Local Self-Government in Europe…*, p. 362.

[29] The rules on local self-government form the Fourth Chapter of the Slovak Constitution, preceding the provisions on legislative, executive and judiciary powers.

[30] L. Trellová, *Územná samospráva…*, pp. 53–63.

[31] I. Palúš, M. Jesenko, A. Krunková, *Obec ako základ územnej samosprávy*, Košice 2010, p. 7.

[32] G. Hulkó, *A V4-országok helyi önkormányzati rendszerének összehasonlító elemzése*, [in:] *A helyi önkormányzatok nemzetközi környezete*, ed. E. Farkasné Gasparics, Budapest 2021, p. 271.

[33] Z.J. Tóth, *Constitutional Adjudication*, [in:] *Comparative Constitutionalism in Central Europe: Analysis on Certain Central and Eastern European Countries*, eds. L. Csink, L. Trócsányi, Miskolc–Budapest 2022, p. 376.

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However, the provision serving as a constitutional basis of local financial autonomy also clearly attests to the existence of this right. The first paragraph of Article 65 states that municipalities are legal persons that independently manage their own property and financial resources under conditions laid down by law, while the second paragraph mentions own revenues and state subsidies as municipal revenues.

The first paragraph essentially enables municipalities to gain revenues using their own property, e.g., by independently engaging in business activities. The second paragraph is more specific. It mentions own revenues first by stating that they should be the primary source of the local authorities' revenues. While the term "primary" does not necessarily have to be understood as majority, the importance of own revenues is clearly emphasized by such terminology. It is quite clear that an important role in this regard can only be credibly manifested by a significant share in total revenues. Given that it is not an easy task to create a system where local authorities are first and foremost financed from their own revenues,[34] the mentioned provision has quite an aspiring wording.

Local taxes play a pivotal role in establishing a system characterized by a predominant share of own revenues. Local taxes receive explicit mention in Article 59 (1) of the Constitution, which delineates that taxes may assume both state and local forms, albeit without providing specific definitions. Article 65 (2) of the Constitution, then expands upon this provision by referencing "taxes, the revenue from which belongs to local self-governments" among the sources of municipal financing. Notably, the Constitution lacks a stipulation mandating municipalities' ability to influence the amount of these taxes, raising uncertainties regarding the clear assurance of local taxes as defined within this paper's scope. This ambiguity stems from the fact that the requirement of certain tax revenues being allocated to municipalities is also fulfilled by shared taxes. Nevertheless, under a favourable interpretation, Article 65 (2) could potentially serve as a constitutional basis for genuine local taxes, the amount of which may indeed be influenced by municipalities. Lastly, Article 65 (2) explicitly hints at municipalities' funding through central transfers.

To summarize the above, the constitutional regulation of local self-government in Slovakia is quite detailed overall. Regarding its financial dimension, economic and fiscal independence, own revenues (with an explicit reference to taxes with a budgetary allocation to municipalities), and state transfers were all considered during the drafting of the constitution, creating a solid basis for a well-functioning system of local financial autonomy. One important aspect that the Slovak constitutional regulation on local government financing is, nevertheless, lacking, is a reference to the principle of adequacy, which is strongly emphasized by the ECLSG.

[34] See Appendix 1, Article 2a (i) of Recommendation 79 (2000)1 of the Congress of Local and Regional Authorities – The financial resources of local authorities in relation to their responsibilities: a litmus test for subsidiarity, based on the 4th general report on political monitoring of the implementation of the European Charter of Local Self-Government.

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4. Constitutional regulation of local financial autonomy in Poland

Poland signed the ECLSG in February 1993 without any reservations and additional declarations. The Constitution of the Republic of Poland was adopted later, in April 1997. The drafters of the Constitution were aware of the importance of the ECLSG, and the content of the Constitution follows the content and the meaning of the ECLSG.

As E. Juchniewicz states, Article 2 of the Constitution, according to which the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice, is a crucial provision for local self-government.[35] Such a general legal principle should be implemented by statutes. Juchniewicz, referring to J. Glumińska-Pawlic,[36] concludes that "from this, it is obvious that in Poland fiscal local autonomy is a constitutional principle that can be realized only through a legal guarantee".[37]

The Polish Constitution contains a general provision establishing local government units (Article 16). This provision guarantees the right of inhabitants of basic territorial units to form a self-governing community in accordance with the law. The guarantee for local autonomy, including its fiscal aspect, is incorporated in the same provision stating that local self-governments shall participate in the exercise of public power and perform public tasks assigned by statutes in their own name and under their own responsibility (Article 16 (2) of the Constitution).

Besides the above-mentioned general rules, the Polish Constitution has its specific part (Chapter VII) dealing with local self-government. The very first article gives broad powers to local authorities as it states that they shall perform public tasks not reserved by the Constitution or statutes to organs of other public authorities (Article 163). The basic unit of local self-government is the commune (municipality, in Polish *gmina*). The detailed regulation is laid down by specific acts on communal, county and regional (voivodeship) self-government.

Concerning financial autonomy, all local self-governing units possess legal personality and have rights of ownership and other property rights (Article 165 (1) of the Constitution). What is more specific compared, e.g., to the Czech or the Slovak constitutions, is that the Polish Constitution explicitly states that the units of local self-government shall be assured public funds adequate for the performance of the duties assigned to them (Article 167 (1) of the Constitution). It is expected that part of the revenues of local authorities consists of their own revenues (Article 167 (2) of the Constitution): local self-government units have the right to set the level of local

[35] E. Juchniewicz, *op. cit.*, pp. 37–38.

[36] J. Glumińska-Pawlic, *Samodzielność finansowa jednostek samorządu terytorialnego w Polsce*, Katowice 2003, p. 44.

[37] E. Juchniewicz, *op. cit.*, p. 38.

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taxes and charges to the extent established by statute (Article 168). The remaining part of local revenues is to be covered by the combination of general subsidies and specific grants from the state budget (Article 167 (2) of the Constitution). The focus on effectiveness and fiscal self-sufficiency is expressed in the statement that alterations to the scope of duties and authorities of local self-government units shall be made in conjunction with appropriate alterations to their share of public revenues (Article 167 (4) of the Constitution).

DISCUSSION

1. Summary of the constitutional regulation in the studied countries

The previous chapters have shown how detailed the constitutional regulation of local financial autonomy is in the four studied countries. It can be safely concluded that there are considerable differences among them in this regard. Poland has arguably the most thorough rules on the subject, covering virtually every vital aspect of local financial autonomy. Slovakia also has a decent constitutional background regarding the matter, lacking only a few rules, such as the principle of adequacy. The situation is, however, notably different in Hungary and the Czech Republic. In both countries, the constitutional regulation of local financial autonomy is rather limited. While the Czech Constitution explicitly guarantees the right to local self-government, it does not specifically mention its financial aspect and only declares that local self-governments may own property and manage their affairs on the basis of their own budget. The Hungarian Fundamental Law has a similar provision concerning ownership and budget, but unlike the Czech Constitution, it seems to be reluctant to even acknowledge the principle of territorial self-government as such. Yet, it contains a provision on local taxes, a paramount symbol of local financial autonomy. Apart from the mentioned, the Hungarian Fundamental Law does not contain any other rules that are genuinely relevant from the perspective of the topic under study.

After presenting the relevant constitutional framework in the four countries, it is time to proceed to the quality assessment of local government financing systems. Making reliable conclusions regarding the quality of something as abstract as the financial dimension of local self-government is an extremely hard task. Still, in order to be able to test the hypothesis of the work, certain conclusions must be drawn. To provide a more comprehensive picture, the authors chose two different quality indicators. As an objective indicator, the authors looked at the statistical data concerning the types of local government revenues. Additionally, conclusions from the monitoring procedure of the ECLSG's implementation in the four countries are also be considered as indicators of quality.

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2. Assessing the quality of local financial autonomy based on statistical indicators

Let us see, first, what the numbers show. According to the Council of Europe's Steering Committee on Local and Regional Democracy, the weight of own revenues in local financing is an important quality indicator of local financial autonomy.[38] The Congress of Local and Regional Authorities proclaimed the same about the share of local taxes as a distinct category within the broader group of own revenues compared to total local revenues.[39] For the purposes of our research, we will work with these two figures.

The latest available data on the financial management of local self-governments in Hungary show that own revenues account for as much as 42% of total annual local government revenue in the country, while the share of local taxes alone reaches 28%.[40] In Poland, the share of own revenues in total annual municipal revenues amounts to 27.5%, while local tax revenues constitute 16% of total municipal revenues.[41] In Slovakia, these figures stand at 23% in the case of own revenues and 13% in the case of revenues from local taxes.[42] In the Czech Republic, own revenues make up less than 20% of total annual local government revenue, while their part from local tax revenues is only responsible for a few percentage points.[43]

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[38] Steering Committee on Local and Regional Democracy, *Limitations of Local Taxation, Financial Equalisation and Methods for Calculating General Grants*, 1999, https://rm.coe.int/1680748092 (access: 23.2.2024), p. 55.

[39] J. Wienen, *A Contemporary Commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government*, Report no. CG-FORUM(2020)02-05, 7.12.2020, https://rm.coe.int/a-contemporary-commentary-by-the-congress-on-the-explanatory-report-to/16809cbf8c (access: 23.2.2024), para. 154.

[40] Data for the year 2021. Own calculations based on the statistical data published in the Annex to Bill No. T/1877 on the implementation of Act No. XC of 2020 on the Central Budget of Hungary for the year 2021 on the budget balance of the subsystem of local self-governments, https://www.parlament.hu/irom42/01877/adatok/altindmell/hok_merlegek.pdf (access: 23.2.2024).

[41] Data for the year 2022. Own calculations based on the statistical data published in Government of Poland, *Report on the Implementation of the State Budget of Poland for the Year 2022: Information on the Implementation of the Budgets of Local Government Entities*, https://www.gov.pl/attachment/eef62d80-4946-4aac-9917-a9b27285febc (access: 23.2.2024).

[42] Data for the year 2022. Own calculations based on the data published in Ministry of Finance of the Slovak Republic, *Income and Expenditure Balance of Municipalities and Their Budgetary Organizations as of 31 December 2022*, https://www.mfsr.sk/files/archiv/77/Priloha_obce_2022.pdf (access: 23.2.2024).

[43] Data for the year 2021. Own calculations based on the data published in Ministry of Finance of the Czech Republic, *Budgetary Management of Territorial Self-Governing Units, Voluntary Associations of Municipalities, and Regional Councils of Cohesion Regions in 2021*, https://www.mfcr.cz/assets/cs/media/2021-12-31_SZU-uzemni-rozpocty-2021-Sesit-A.pdf (access: 23.2.2024).

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As it is clear from these figures, Hungary stands out among the studied countries with a much higher proportion of own revenues and local tax revenues compared to the others. Two conclusions can be drawn from this fact. First, as it was mentioned above, local taxes enjoy quite a privileged position due to their explicit mentioning by the Fundamental Law, which might signalize a link between the constitutional rules and the key features of the whole system. Second, it can be stated that statistical data clearly favour a country that does not have a detailed regulation on local financial autonomy. Would a brief line on local taxes be enough to boost local financial autonomy? The Polish and Slovak constitutions do not seem to support such deliberation, as they also mention local taxes, and yet, considering the studied statistical indicators, they do not perform as well as Hungary.

Poland and Slovakia show fairly similar numbers (slightly in favour of Poland), while the Czech Republic is somewhat behind, especially considering local tax revenues. At this point, another possible connection between the constitutional framework and the particularities of the system might be identified, as the Czech Constitution is the only one that does not mention local taxes (or taxes assigned to local budgets) at all. Still, the statistical data do not clearly support the claim, according to which a more detailed constitutional regulation results in a finer system of local financial autonomy. The list based on these data is led but also concluded by a country with a more deficient constitutional regulation, while those with more comprehensive rules are positioned in the middle. The "overperformance" of Hungary seems to disprove the logic outlined in the introductory chapters of the paper. Of course, a crucial question is if the studied data have a genuine connection to the constitutional provisions or are caused by completely other factors. It may be possible that the statistics alone simply cannot do justice to the question. For this reason, we look at the findings of the ECLSG's monitoring procedure.

3. Assessing the quality of local financial autonomy based on the monitoring procedure under the ECLSG

The Congress of Local and Regional Authorities carries out regular monitoring visits to the ratifying states of the ECLSG to assess the quality of its implementation. Since the reports resulting from these visits examine the situation article by article, and Article 9 ECLSG exclusively addresses local financial autonomy, sections of the reports that discuss this provision offer valuable insights into how independent experts perceive municipal financing in a particular country. The reports on the countries under study offer a solid basis for comparison, as they are mostly recent. However, it's worth noting that in the case of Slovakia, the most recent report was published in 2016. The following paragraphs summarize the findings of these reports with respect to financial autonomy.

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The latest report on Hungary was issued in 2021, while the penultimate report is from 2013. Both reports offered a rather unfavourable evaluation of the situation in the country. The report from 2013 found that only paragraphs 3 and 8 of Article 9, i.e. the one on local taxes and the one on the access to the capital market, were complied with in Hungary.[44] The newest report[45] was arguably even more critical. It proclaimed only partial compliance with paragraph 5 on equalization mechanisms and paragraph 8 concerning capital markets. The situation was deemed dissatisfactory with regard to all the other paragraphs, including those on the overall adequacy and commensurability of funds and, strikingly, also including paragraph 3 on local taxes, which was previously considered satisfactory. Here, the unfavourable turn was, i.a., justified by stating that at 22.5% (the rapporteurs referred to the OECD data from 2013), the financial resources deriving from local taxes represent only "a minimal part" of total municipal revenues (paragraphs 216–217). Such a negative assessment is interesting given that, as was shown above, the share of local taxes compared to total local revenues in Hungary clearly stands out among the four studied countries, and the revenue from local taxes seemed to be stable over the period between the two monitoring reports.[46]

While the negative assessment of the situation in Hungary would, in principle, correspond to the scarce constitutional framework, the conclusions of the monitoring visits to Poland show a different picture. Despite its detailed constitutional regulation on the topic, the last two reports on Poland, especially the latter one (from 2019), expressed firm criticism regarding certain aspects of local financial autonomy in the country. The previous report, published in 2015, was a bit more restrained in articulating negative opinion: while it already expressed some worries about the adequacy of funds available to local authorities (paragraphs 85 and 86), it did not explicitly say if the individual paragraphs of Article 9 are complied with or not.[47] It also noted that "the Polish Constitution establishes a rather favourable framework for local finances" (paragraph 82). But the most recent report[48] was less

[44] A. Torres Pereira, D. Çukur, *Local and Regional Democracy in Hungary*, Report No. CG(25)7, 31.10.2013, https://rm.coe.int/local-and-regional-democracy-in-hungary-recommendation-artur-torres-pe/168071910d (access: 23.2.2024), para. 165.

[45] M. Cools, J. Liouville, *Monitoring of the European Charter of Local Self-Government in Hungary*, Report No. CG-FORUM(2021)01-03, 12.2.2021, https://rm.coe.int/monitoring-of-the-european-charter-of-local-self-government-in-hungary/1680a129f6 (access: 23.2.2024).

[46] G. Hulkó, L. Pardavi, *Practical Experience and the Significance of the Settlement Tax in Hungary*, "Annual Center Review" 2022, no. 14–15, p. 47.

[47] J. Wienen, C. Hughes, *Local and Regional Democracy in Poland*, Report No. CG/2015(28)12, 26.3.2015, https://rm.coe.int/local-and-regional-democracy-in-poland-rapporteurs-jos-wienen-netherla/168071aa34 (access: 23.2.2024).

[48] D. Baro Riba, P. Mangin, *Local and Regional Democracy in Poland*, Report No. CG36(2019)-13final, 2.2.2019, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?-documentId=0900001680939003 (access: 23.2.2024).

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reserved: it proclaimed only partial compliance with paragraphs 1 and 2 (adequacy and commensurability of local resources), while stated that paragraphs 3, 4 and 6 (local taxes, diversity and buoyancy and consultation on certain financial matters) are not complied with in the country. The situation was found to be in conformity with the rest of the provisions (paragraph 5 on equalization mechanism, paragraph 7 on (non-)earmarking of grants and paragraph 8 on access to capital markets).

The research gets even more interesting if we look at the monitoring reports on the Czech Republic. The penultimate report was published in 2012,[49] and while it did not articulate separate verdicts on (non-)compliance in relation to each paragraph, it did not mention non-compliance at any point while assessing the situation under Article 9. On the contrary, compliance was often explicitly affirmed, and if not, the implications appeared to be fairly positive. The most recent report on the Czech Republic is from 2022,[50] and overall, it seems to convey a rather positive message as well. Each paragraph was assessed separately, and while no verdict was given on paragraphs 3, 5, and 6, which were not yet ratified by the Czech Republic, the rapporteurs did not find the situation to be in breach of any paragraph of Article 9, by which the country is bound. Partial compliance was declared with respect to paragraphs 2, 4, and 7, while full compliance was affirmed in the case of paragraphs 1 and 8.

It is a bit harder to accurately assess the situation in Slovakia based on the monitoring reports. Although even the most recent report on the country[51] is seven years old, a more significant difficulty is caused by the fact that the mentioned report does not articulate the opinion of the rapporteurs clearly enough. While it does mention some concerns expressed by local representatives, it does not reveal the actual stance of the rapporteurs, except for a line at the very end of the part on Article 9, which concludes that the Slovak Republic meets the basic standards enshrined in Article 9 ECLSG. Yet, while comparison with the above countries is harder given that it does not contain a paragraph-by-paragraph evaluation of the situation, the whole text seems to be less critical than the most recent reports on Hungary or Poland.

Much like the statistics, the findings of the monitoring process regarding the quality of local financial autonomy do not seem to correspond with the depth of the constitutional regulation of the matter. Here, the Czech Republic stands out

[49] E. Calota, P. Receveur, *Local and Regional Democracy in the Czech Republic*, Report No. CG(22)6, 8.3.2012, https://rm.coe.int/local-and-regional-democracy-in-the-czech-republic-cg-22-6-draft-recom/168071889a (access: 23.2.2024).

[50] V. Furdui, K. Kokko, *Monitoring of the Application of the European Charter of Local Self-Government in the Czech Republic*, Report No. CG(2022)43-17final, 26.10.2022, https://search.coe.int/congress/pages/result_details.aspx?objectid=0900001680a863aa (access: 23.2.2024).

[51] A. Torres Pereira, L. Verbeek, *Local and Regional Democracy in the Slovak Republic*, Report No. CG30(2016)09, 24.3.2016, https://rm.coe.int/local-and-regional-democracy-in-the-slovak-republic-recommendation-exp/168071aa93 (access: 23.2.2024).

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for receiving the most positive feedback from the monitoring procedure, despite arguably having the most deficient constitutional framework for local government financing, while Poland, with the most thorough constitutional rules, is seen much less favourably.

CONCLUSIONS

It can hardly be denied that certain principal features and particularities of a given constitutional regulation are reflected in the local self-government financing system, at least to some extent. This can be demonstrated, e.g., by the important role of local taxes within the revenue mix of local governments in Hungary, which seems to correspond to the position of local taxes as the most obvious of the very few manifestations of local financial autonomy in the Hungarian Fundamental Law. The situation in the Czech Republic can serve as a further example in this regard, where the deficient constitutional regulation coincides with a system where local taxes (which are formally non-existent in the country) play a very marginal role in local government financing. Thus, in this sense, the research identified certain links between constitutional regulation and the typical features of municipal financing in a particular state.

Yet, looking at the overall picture, the quality of the systems of municipal financing in the four studied countries, as shown by the two applied indicators, does not seem to be overly dependent on the respective constitutional regulations. Both the statistical survey and the outputs of the monitoring procedure favoured a country with deficient constitutional rules on local financial autonomy: in the former case, it was Hungary, and in the latter case, the Czech Republic. At the same time, countries with more detailed regulations (Poland and Slovakia) did not stand out from either of the two perspectives.

Furthermore, while the constitutional framework pertaining to the question shows substantial differences, certain characteristics of municipal financing reveal interesting similarities in the studied countries. Statistics showed a comparable proportion of own revenues (and to some extent also local tax revenues) in relation to total local revenues in Poland, Slovakia and the Czech Republic. Concerning the monitoring procedure according to the ECLSG, all four countries seem to be facing certain issues in complying with the initial, more general paragraphs of Article 9 concerning the overall adequacy and commensurability of local resources, as well as the quality and relevance of local taxes.

After assessing the quality of local financial autonomy based on two different indicators, it can be stated that neither the statistical data nor the reports from the monitoring procedure showed results that would truly correspond to the quality of the constitutional regulation. While certain characteristic imprints of the constitutional order may be observable in the systems of local government financing, the above facts

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lead us to the conclusion that constitutional regulation in the studied countries does not have a decisive influence on the overall quality of local financial autonomy, as shown by our indicators. The hypothesis stated in the introductory part of the paper was thus generally proven incorrect. While the authors acknowledge that the quality evaluation of municipal financing systems is a very complex task and the use of other methods or indicators may lead to different conclusions, the indicators applied in this study suggest that a detailed constitutional background alone does not necessarily lead to enhanced financial autonomy for local self-governing units.

The existence of the ECLSG may serve as an explanation for this phenomenon. Given that all four studied countries are bound by the ECLSG's provisions on local financial autonomy (Hungary, Slovakia and Poland are fully bound by Article 9, while the Czech Republic is bound by all but three paragraphs of it), the constitutional entrenchment of these questions may be superfluous. The question of such redundancy is, naturally, highly dependent on how internationally binding legal documents are treated by a given legal order.

In any case, the absence of these provisions in the constitutional framework does not contribute to the effective legal protection of the right to local (or territorial) self-government. As was noted in the case of Slovakia, the constitutional anchoring of the principle of local self-government, including its financial aspect, may provide local authorities with the opportunity to seek recourse in courts to defend their rights. Moreover, while the link between a detailed constitutional regulation and the well-working local financial self-government was not securely identified, it is highly improbable that such enactment would negatively affect the quality of local financial autonomy. For the above reasons, the authors think that provisions on local financial autonomy should have their place in the constitutional order of a state, regardless of their actual impact on municipal autonomy.

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ABSTRAKT

W niniejszym artykule autorzy badają związek pomiędzy poziomem szczegółowości konstytucyjnych regulacji dotyczących lokalnej autonomii finansowej a jej ogólną jakością na Węgrzech, Słowacji, w Polsce i Czechach. Artykuł ma na celu potwierdzenie albo obalenie hipotezy mówiącej o tym, że bardziej kompleksowe przepisy konstytucyjne skutkują wyższą jakością lokalnej autonomii finansowej. Dla umożliwienia przetestowania tej hipotezy autorzy najpierw badają odpowiednie regulacje konstytucyjne w tych czterech państwach, następnie stosują dwa różne wskaźniki, wybrane dane statystyczne i wnioski z procedury monitorowania z Europejskiej Karty Samorządu Lokalnego do pomiaru jakości lokalnej autonomii finansowej w państwach objętych opracowaniem, a na koniec porównują wyniki oceny jakości ze stopniem szczegółowości ram konstytucyjnych celem sprawdzenia trafności bądź nietrafności hipotezy.

Słowa kluczowe: samorząd lokalny; lokalna autonomia finansowa; regulacja konstytucyjna; państwa Grupy Wyszehradzkiej