

Law-making in the time of emergency: the case of Budapest Metropole and its districts

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Abstract: During the first period of the state of emergency declared because of the COVID-19 pandemic, the local governments of Hungary tried to react to the new challenges raised by worsening social and economic conditions, special law-making regulations, and conflicting interests. This paper (as a part of broader research) examines the first results of a black letter study of the municipal decrees created in the first stage of the pandemic. This sub-research summarizes the municipal decrees of Budapest (the capital of Hungary) and Budapest's districts between 11 March 2020 and 16 June 2020 and examines them on based on their subject and the technicalities of their codification.

Keywords local governments, emergency law-making, empirical research

1. Introduction

From the spring of 2020 onwards, the coronavirus epidemic has posed new challenges to public administration, especially to local administration worldwide. In Hungary, the law-making competence of local governments is exercised by the mayors during an emergency period, which presented a singularly unusual situation, and evaluating it is the basis of our research. At the time of the writing, the third wave is in full effect and the second declaration of a state of emergency¹ happened, the relevance of these concerns is high as ever.

This paper's² purpose is to present the preliminary results of broader research that aims to categorize and examine the municipal law-making in the first period of the state of emergency (between 11 March 2020 and 16 June 2020) related to the COVID-19 pandemic. The research ambition is to create a database of all municipal decrees of the period and use the data to gain qualitative and quantitative insight into this extraordinary legislation effort.

This paper first describes the methodology used during this stage of the research and introduces the general concepts behind the empirical parts of the study. Then a brief presentation of the main themes of local legislation follows: the necessary albeit unpopular local measures against the pandemic and social and economic responses of the local governments. Lastly, general notes on the technical difficulties concerning local law-making and the problems with non-pandemic-related decrees conclude the paper. The focus of our current presentation is the capital of Hungary, Budapest. The first wave of the epidemic affected the capital heavily, so the research tries to give an idea of how the capital's legislation has responded to this.

2. Methodology

In order to acquire the most complex picture regarding municipal law-making in the capital city, the research was carried out by using the toolbar of both the qualitative and the quantitative research methodology, meaning that besides examining the merits and the content of the municipal decrees, analyzing statistics also played a great part in completing the project.

The research aimed to understand the legal coping mechanisms of district municipalities, to identify potential mutual approaches and rule-making patterns among the municipalities. Therefore, the emphasis was put on black letter analysis. This method concentrates on primary sources instead of using mostly academic literature – in the case of the research it meant focusing on municipal decrees. All decrees of all districts and the Municipality of Budapest were examined by different standpoints. The aspects that fell into the scope of the research (among others) were: the subject of the decrees, whether the municipality would have had authorization to regulate certain subjects without the state of emergency, how the decrees have affected fundamental rights, what followed strategy could be identified in a district..

3. Hypothesis

According to the centralization thesis, a state of emergency usually indicates centralization in decision-making (Hart – Rosenthal – Kouzmin, 1993, 13). During such an emergency, rapidity, effectiveness, and integrated solutions are critical points of giving adequate reactions to the appearing issues through legal means. Although delegating competences from the assembly (the legislative body of the local government) to the mayor contributes to satisfying these requirements, the dysfunctional effects of the centralization may also appear, especially so when the state of emergency lasts for a longer period of time.

The state of emergency concerning the COVID-19 pandemic put a strain on not only the central government, but the municipalities as well, making them shoulder more legal burdens than they generally do. The special legal order may also give rise to a different concern, called the trashcan-effect (Balázs – Hoffman 2020), meaning that the central government is able to delegate such rule-making tasks to the municipalities, that incorporate making socially, economically, politically unpopular decisions. Within the framework of the research, it was examined whether the division of competences could mean delegation of an excessive amount of responsibility to the municipalities.

In Hungary, both the Municipality of Budapest and the district municipalities are entitled to make municipal decrees. In the capital city it is highly important to give proper reactions to the serious economic and social issues caused by the pandemic, by the virtue that a significant portion of the population lives in the city and a large part of the national economic potential is centred here. So, these municipalities had to be the part of the conversation between the government and the municipalities regarding the upbrought questions of crisis management, as well as to take on a significant role in softening the harms. The research has assumed that the municipalities were active in decree-making in order to protect the wellbeing of the citizens and the operation of the economy. This paper is also focused

on the questions of unified crisis management among district municipalities and the municipality of Budapest.

4. Statistics

Surprisingly, statistics shows that the state of emergency did not result in excessive decree-making activity in Hungary. The number of decrees decreased by two thousand between the first term of 2019 and the firm term of 2020 (OSAP 1622, 2019). However, it is not a significant number considering the fact that there are roughly three thousand-two hundred municipalities in Hungary (Gazetteer of Hungary 2019).

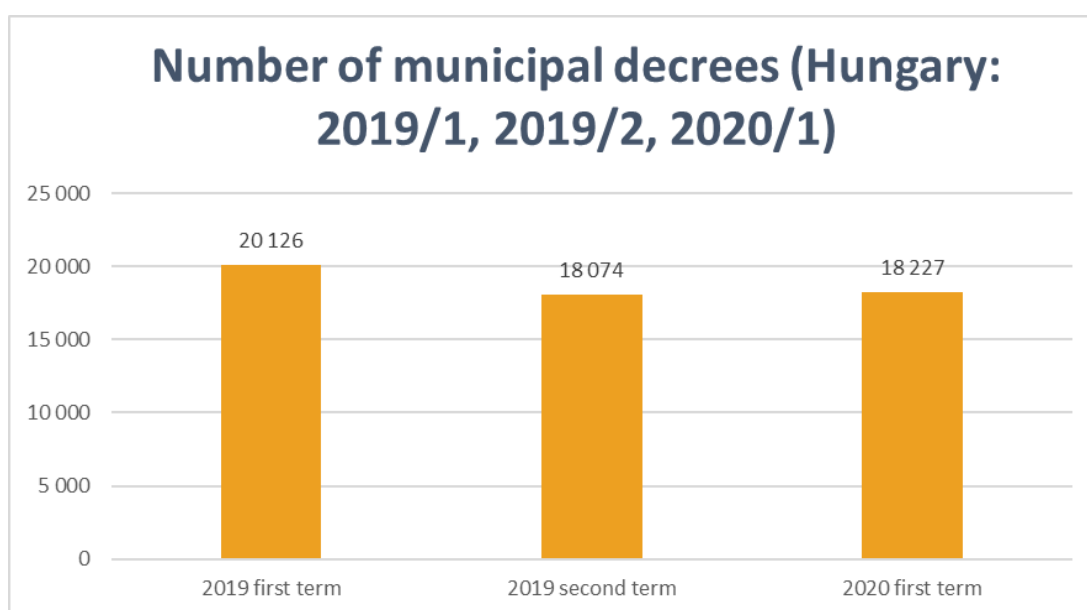


fig. 2. Number of municipal decrees created by all municipalities

On the other hand, the crisis decision-making patterns of the capital city differ from the previous data. In the first term of 2020 district municipalities had made almost twice as many decrees as they did in the second term of 2019 (OSAP 1622, 2019). That indicates activism in decision-making among the district municipalities. The analysed general data confirmed that the focus should be put on the activity of district municipalities and the municipality of Budapest.

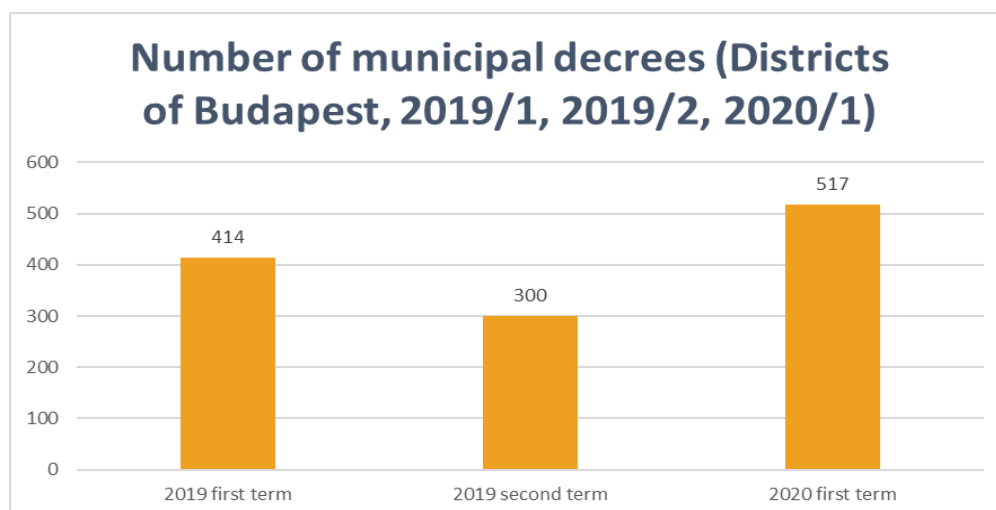


fig. 2. Number of municipal decrees created by the districts of Budapest

5. Centralization

The competence transfer carried out in section 46 of the Act on damage management gave the mayor the authorization to make municipal decrees during state of emergency, setting little to no limitation regarding the exercise of the given competence, for example, in the aspect of the subject and the amount of regulations [subsection (4) of section 46 of Act CXXVIII of 2011]. It is undeniable that the authorization most likely provides the mayors the opportunity to respond quickly to the appearing issues. However, the mayors did react quite differently to the altered legal environment. Some of them started making decrees in advance; others stayed passive and waited two or three weeks before deciding on any matter.

The general authorization described above may cause dysfunctionalities as well, since the decree-making originally falls into the competence of the assembly. The assembly – not the mayor – has the democratic legitimacy to regulate such matters. Lack of legal limits means that the abuse of authority is also possible, making the attitude of a mayor an important factor to form the patterns of crisis management and to be considered during state of emergency.

It is also clear that deciding on certain subjects was a question of necessity rather than will or attitude in most municipal matters. Central government gave the municipalities the freedom to make stricter regulations than the central ones in order to set higher protection levels. In some cases, the heavy choices regarding economy, fundamental rights and social care needed to be shouldered by the municipalities, giving rise to the problem of the trashcan-effect mentioned above.

6. Decree-making in “politically unpopular” matters

The crisis has highlighted a number of aspects of local authorities: municipalities had to react urgently to raise awareness on COVID-19, to reduce the economic impact of the crisis, and to provide care for people

in vulnerable situation. The Central Government was not slow in putting the municipalities on the frontline either: on the first day of the state of emergency (11 March 2020), the Government issued a decree making the “supply of persons undergoing an official home quarantine” a legal obligation of the mayor of the competent local government [41/2020. (III. 11.) Government Decree]. On 16 March 2020, the Government required mayors to provide home assistance to persons above the age of 70 should they decide not to leave their home [46/2020. (III.16.) Government Decree].

When analyzing the decrees adopted by the District Mayors and the Mayor of Budapest in comparison with the emergency decrees of the Central Government, the research have focused on three of the most mediatized and controversial matters around the management of COVID-19: the regulation of local marketplaces the obligatory face mask covering and the lockdowns and closure of public areas.

The Central Government issued a decree on 27 March requiring persons aged 65 or above to do their shopping between 9:00 to 12:00. An interval was set up in which no others, but the elderly could be present in grocery stores. The scope of this decree also extended to local markets, which operate primarily on public premises under the authority of local governments [section 6 of 71/2020. (III. 27.) Government Decree]. On 9 April, local (district) governments were provided the competence – and also the obligation - to pass decrees on the manner in which local markets should operate amid the pandemic [section 6 of 95/2020. (IV. 9.) Government Decree]. The delegation of competence implies the recognition of the local governments’ authority contrary to that of the Central Government in the question of safety measures at marketplaces. We have found after the analysis of all municipal decrees adopted in Budapest that Mayors have not aligned the open hours of local markets with that of grocery stores, shops, supermarkets, and pharmacies, an inconvenience which concerned not only the elderly, but also vendors and marketers, shop owners directly in the vicinity of farmers’ markets.

Regarding the obligatory face covering, mayors of District VII [12/2020. (IV.17.) Municipal Decree of District VII] and District XI [14/2020. (IV. 17.) Municipal Decree of District XI], then the mayor of District IV made the wearing of face masks obligatory at different public premises, on 17 April and on 24 April [14/2020 (IV.21.) Municipal Decree of District IV], respectively. On 23 April, the Mayor of Budapest issued a decree [21/2020. (IV. 23.) Municipal Decree of Budapest] requiring users of Budapest public transport to wear masks at the stops and on the vehicles, also for those travelling by taxi, shopping in malls, shops, and marketplaces. One week later, the Central Government’s decree [168/2020. (IV. 20.) Government Decree] made it obligatory to wear face masks for shopping and for accessing public transport services. This shows that on the health front, the adoption of measures such as mandatory face mask covering does not solely originate from the Central Government, on the contrary, opposition-led local government acted first in the name of emergency preparedness. It must also be admitted that there was a sudden shortage in masks by the end of March 2020³, and even the WHO did not recommend the compulsory wearing of masks at the time (Hungarian Academy of Sciences, 2020).

COVID-19 restrictions on movement were introduced by the Central Government on 27 March 2020 [71/2020. (III. 27.) Government Decree]. Twenty-one different reasons for leaving one’s home were

adopted as justifiable grounds for being in public. These restrictions were largely unpopular, but the Central Government deemed that further restrictions would need to be issued by the mayors. Hence an extraordinary competence of mayors was introduced by the Central Government. Through the exercise of this *sui generis* competence, decrees were passed on more severe movement restrictions and closure of public areas (like public parks, playgrounds owned by the municipalities) throughout April, starting on Easter weekend.

While localized lockdowns were still enforced by the National Public Health Center (NNK), entry to different, mainly recreational areas of the Budapest was prohibited pursuant to the decrees of District Mayors which were enforced by the respective local authorities. It must be highlighted, however, that in some cases, the sanctions envisaged for those contravening to the said decrees were likely disproportionate compared to the incurred risk they presented (a phenomenon that has certain human rights implications), and by the nature of closure of public areas only for the weekends, enforcement of these decrees might have been weak, even illusory. Nevertheless, the political responsibility was borne by no other than the mayors who decided to have a recourse to these new, delegated competences, to adopt more severe measures than the restrictions in force nationwide and suffer the possible political and social backlash – the *trashcan effect*. The decentralized risk management (Balázs – Hoffman, 2020, 14-15) and COVID-19 prevention should not necessarily create externalities like the trashcan effect, if multi-level governance was not jeopardized by “institutional clash” (in this respect the criticism of the administrative strategy of Italy see Vese, 2020, 1-28.) and if there was proper funding for those local authorities in the frontline against the pandemic.

7. Overview of the social and economic responses

The Municipality of Budapest and the 23 district level local governments were quite active in terms of social protection and housing regulation, the mayors of the Capital and Districts adopted 85 municipal decrees in total dealing with these issues. Even though most of these decrees were of technical nature (amending procedure, adjusting fees, among others) and only a part of them had substantial content, except for the District XXII, all Budapest municipalities took measures to assist citizens in need. Besides the action of the central government, the local level entities also reacted to the crisis appropriately and consumed their resources and stocks to fulfill the ascending for social protection. The measures were ranging from direct cash payments to elderly care and disability care to housing and social meals, with cash benefits and housing being in focus.

The most direct way of social protection provision is giving cash benefits for the persons in need.

District	1st	2nd	3rd	4th	6th	7th	8th	9th	11th	12nd	14th	16th	18th	19th	23rd
Adoption of decree	22nd April	29th April	9th April	31st March	16th April	25th March	31st March	7th April	15th April	16th April	26th May	6th April	30th April	29th April	20th April
Amount of contribution	407€ max.	242 €	Fund	Fund	285 €	162€-203€	143€ max.	Fund	130 € - 243 €	Up to 100% of the rentin g costs	430€ max.	163 €	Fund	7 € - 17 €	163 €

fig. 1. Statistics of municipal decrees concerning cash benefits

Altogether 15 out of 23 districts provided some type of financial support to unemployed persons - those who lost their jobs due to the pandemic - with a 1–2-week reaction time to the central government's steps. (The District IX adopted not one but two types of general cash assistance. [9/2020. (III.31.) and 9/2020. (III.31.) Municipal Decree of District IX]) It is an essential aspect that some districts even changed the eligibility criteria for cash benefits, so that working class and middle class households in need would not be disqualified from these services. The amounts and acceptance dates of the decrees are encapsulated in the following table:

We could find cash payments based on elderly care or disability care as well. Furthermore, the Districts not directly focusing on cash benefits nonetheless did not disregard the social needs but instead chose other forms of financial help (letting go of certain taxes, fines,) or on benefits in kind (such as food, gas, electricity, internet) or even donations could have been founded.

Housing during the pandemic, especially paying rent and utility fees, is the most significant burden for many households. While local governments have limited power regarding housing, they enjoy quite a freedom in terms of municipal housing provision. In total, 16 districts addressed the issue; they either allowed delayed payment for the tenants or buyers of municipal housing or provided cash assistance for rents or utility fees. District VIII even introduced a new term, "housing emergency" and adopted regulation about providing extraordinary municipal housing for residents in need [26/2020. (V.28.) Municipal Decree of District VIII].

While cash benefits and favorable housing provision were the most usual types of assistance given during the period, the research were also looking for atypical solutions within the social protection measures; whether there district municipalities that did something extraordinary, worth mentioning.

As an atypical solution, 4 of the districts made a special social fund to cover the amount needed for social assistance. Such funds could cover all the applicants, although the amount distributed was lower than in those who did an apply-get schematic financing of the socials in need. Other examples were the

regulation by District VI that adopted a call for application for students needing IT equipment for distance learning [21/2020. (IV.28.) Municipal Decree of District VI], or District VII, which offered to clear social security debts in order to keep citizens in the healthcare system [13/2020. (IV.17.) Municipal Decree of District VII].

8. A primer to emergency municipal law-making

In addition to the research on the subject of the emergency municipal decrees. The difficulties surrounding municipal legislation should also be inquired.

Within the framework of the general legal order, acting within their functions, local governments shall adopt municipal decrees with local territorial effect to regulate local social relations not regulated by an Act or on the basis of authorisation by an Act [see Article 32 section (2) of the Fundamental Law]. The functions and powers of the local government were exercised by the local representative body (see section 41 of the Act CLXXXIX of 2011 on Local Governments in Hungary).

As a result of the restrictions, the sittings of the local representative body were also cancelled and the necessary powers were transferred to the mayor. The extraordinary measures and rules which concerns the state of emergency are laid down in the Act CXXVIII of 2011 on disaster management and amending certain related Acts. Based on subsection (4) of section 46 of this Act, in the period of the state of emergency the functions and powers of the local representative bodies were exercised by the mayors. However, the mayor may not take a position on the reorganization, termination, supply or service districts of a municipal institution if the service also affects the municipality. Local governments have obviously used all the means provided by the acts, but in addition to the acts there was a noticeable lack of instruments to ensure consistent codification.

9. Law-making disturbances and non-essential municipal decrees

As a result of the unexpected situation, local governments have encountered several difficulties throughout the legislation but have tried to correct them. At the beginning of most municipal decrees, the local governments indicated the authorization provisions on which the decrees were issued. However, even at this point, there were differences.

In some cases, only the terminology was unique, or the mentioned reference was given at the end of the decree in the form of an explanation. Moreover, some local governments have not indicated the extraordinary nature of the decrees at all. This has mostly proved to be a codification error but, there have also been cases where the local representative body has held its sittings regardless of the restrictions. In order to avoid public annulment, the mayor later affirmed the decrees issued by the local representative body during the state of emergency.⁴ The extraordinary municipal decrees were published separately by certain municipalities (on a separate website, or in a dedicated folder), making them more challenging to

access. Furthermore, the research showed that some decrees had been used over and over again as templates. Some decrees had to be amended directly after the enactment.

In addition to the difficulties associated with the form of legislation, the local governments also had difficulties finding the adequate subjects of some decrees. The state of emergency made it impossible to hold actual sittings, albeit this obstacle did not mean that the mayors had not got the possibility to involve the representatives into the legislation. This type of consultation was not a common practice. What is more, some local governments – mayors – interpreted the lack of actual sittings as a good reason to reduce the representatives’ remuneration. The management of the state of emergency has appeared less on the level of decrees in some cases, while other local governments have issued decrees even on subjects which were not related to the state of emergency. For instance, there were decrees related to animal keeping, establishment of architectural boards, or to the use of public roads (District V). More local governments have amended their decrees on various prizes or even the parameters of the flag and the coat of arms of the district (as in the case of District VI and XIX).

10. Conclusion and further research

The of emergency forced the local governments to adapt to a tense economic, social, and legal situation. The local law-making efforts were plagued by uncertainty in higher regulation and local practice, pressure of necessity to make unpopular decisions and unfavorable relations of the local governments with central authority. Nonetheless, the local governments of the capital tried to cope with the challenges of the state of emergency and tried to reach a certain standard of local law-making and substantial pandemic relief during the period discussed in the paper. Further research will try to widen the scope to all Hungarian municipality and aims to examine deeper the local law-making during the first period of the COVID-19 pandemic.

Notes:

[1] The Fundamental Law of Hungary institutes several types of special legal order. Certain sources uses the term “state of danger” to describe the legal order in effect if a major catastrophe or other natural cause makes such declaration necessary. In this paper, the term “state of emergency” is used to the describe the special legal order declared in connection to the COVID-19 pandemic.

[2] The research project is supported by the Hungarian Academy of Sciences Centre of Excellence Institute for Legal Studies Internship Program.

[3] Said during session of Parliament by PM Viktor Orbán. See for example: <https://444.hu/2020/03/30/orban-lesznek-orvosaink-akik-megbetegednek-de-szerintem-nem-halnak-majd-meg> (11 March 2021)

[4] According to the data accessible via internet: see 8/2020. (III. 20.), 9/2020. (III. 23.), 10/2020. (III. 23.), 11/2020. (III. 23.) and 13/2020. (IV. 1.) Municipal Decree of District XVI.

References:

BALÁZS, I.; HOFFMAN I., A közigazgatási jog rezilienciája-koronavírus idején. 2020. *MTA Law Working Papers 2020/21.*,

Magyarország közigazgatási helynévkönyve [Gazetteer of Hungary] 2019. available at: https://www.ksh.hu/docs/hun/hnk/hnk_2019.pdf (25 January 2021)

Hart, P. – Rosenthal, U. – Kouzmin, A.: Crisis Decision Making : The Centralization Thesis Revisited., *Administration & Society*, 1993/1.

Hungarian Academy of Sciences: Tests, masks and recommendations - we asked WHO experts available at: https://mta.hu/tudomany_hirei/tesztek-maszkok-es-ajanlasok-a-who-szakertoit-kerdeztuk-110604 (3 March 2021)

OSAP 1622 statistics, Statistics Bureau of Hungary, 2019

Vese, D. (2020). Managing the Pandemic: The Italian Strategy for Fighting COVID-19 and the Challenge of Sharing Administrative Powers. *European Journal of Risk Regulation*

Fundamental Law of Hungary

Act CXXVIII of 2011 on disaster protection and amending certain related laws

41/2020. (III. 11.) Government Decree on the measures to be taken during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens

46/2020. (III. 16.) Government Decree on the measures to be taken during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens

71/2020. (III. 27.) Government Decree on restricting movement

95/2020. (IV. 9.) Government Decree on extending the restriction of movement

168/2020. (IV. 20.) Government Decree on protection measures

14/2020. (IV. 17.) Municipal Decree of District XI on the obligation to wear a face mask in the field of markets

12/2020. (IV. 17.) Municipal Decree of District VII on amending the basic rules of community coexistence

14/2020 (IV. 21.) Municipal Decree of District IV on on the rules of opening and visiting of Újpest Market and Fair Hall by persons over 65 years of age

21/2020. (IV. 23.) Municipal Decree of Budapest on certain measures to control the spread of the new type of coronavirus

9/2020. (III. 31.) Municipal Decree of District IX on the pandemic annuity to be established at the time of the emergency declared by the Government of Hungary

10/2020. (III. 31.) Municipal Decree of District IX on amending the regulation of benefits and allowances in cash and in kind

26/2020. (V. 28.) Municipal Decree of District VIII on amending the regulation of the conditions of renting the flats owned by the Budapest Józsefváros Municipality and the amount of the rent

21/2020. (IV. 28.) Municipal Decree of District VI on emergency student support

13/2020. (IV.17.) Municipal Decree of District VII on amending the local regulation of the use of social benefits and social services and child welfare benefits in cash, in kind and personal care