

Part V
– Hungarian state practice

The Solidarity Contribution in the Light of Municipal Autonomy in the Jurisprudence of the Hungarian Constitutional Court

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Abstract

In Hungary, the so-called solidarity contribution has been part of the annual central budget act since 2017, representing a payment obligation for local self-governments to the central state budget. Some argue that the solidarity contribution, which is based on local business tax capacity per inhabitant, is nothing more than a central tax on municipalities with high tax capacity. In its original form, the solidarity contribution affected only a small percentage of municipalities in 2017. However, as a result of annual changes to the rules, the number of municipalities paying solidarity contributions has increased almost fivefold (from 166 in 2017 to 855 in 2025), meaning that approximately one in four municipalities will pay solidarity contributions in 2025. Similarly, over the past nine years, the planned revenue from the solidarity contribution has increased almost eighteenfold (from 21 billion HUF to 360 billion HUF). This study examines the evolution of the solidarity contribution in relation to the financial autonomy of local self-governments, considering the decisions of the Constitutional Court regarding infringements of the European Charter of Local Self-Government.

Keywords: solidarity contribution, economic and financial autonomy, local self-government, financial distribution mechanism, Constitutional Court of Hungary

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1. Introduction

According to the European Charter of Local Self-Government (hereinafter: Charter) “Local self-government denotes the right and the ability of local

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authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.”¹ This is a powerful statement, but it also poses a serious challenge to local self-governments. It is also challenging for the state because transferring this competence is difficult. In other words, it is easier to declare that they have the ‘right and ability’ than to implement it. On the one hand, it requires a certain restraint on the part of the central government (*i.e.*, not to dominate local politics), and on the other hand, it is not easy to make a body capable of implementing autonomy. It requires not only knowledge and will, but also the provision of economic and financial resources. This is perhaps even more difficult to guarantee than political will, since resources are finite everywhere. For this reason, it is essential to guarantee financial and economic autonomy, otherwise self-government is only an illusion.

This is no different in Hungary, where the local self-government system has faced many challenges over the last three decades, many of these specifically related to economic and financial autonomy. The present paper does not discuss these impacts in general terms, but after exploring the general framework, focuses on one issue in particular, namely the so-called solidarity contribution.

The solidarity contribution was introduced in Hungarian public law in 2017. In our study, we follow the evolution of the solidarity contribution rule from year to year. Since its introduction it is essentially a payment obligation to the central state budget, primarily through the vehicle of withholding central grants. It is a unique feature and has not been properly evaluated in the past decade, that in some cases the deducted grants do not cover the required solidarity contribution and the municipality has to pay the difference to the central subsystem from its own funds.

In our study, focusing on the importance of economic and financial autonomy, and at the same time exploring the Charter’s regulations (which serve as the framework for the analysis), we will examine the regulation of the subject and the interpretation given by the Constitutional Court. On this basis, an attempt will be made to gain a deeper understanding of the legislation and to formulate critical comments.

1 Article 3(1) of the Charter.

2. The Legal Context of the Solidarity Contribution

2.1. Autonomy in General

Without autonomy there is no self-government. While this principle is essential for self-government, it is not only linked to local self-governments. Freedom within the state, within certain limits, is made up of many components. In a narrow sense, autonomy is the right of a community within the state to create law for itself.² In a broader sense, it covers different aspects of independence, the right to decide on its own affairs and to implement decisions independently. This requires having competencies through which such autonomy can be exercised. It must also be stressed that autonomy never implies sovereign power, it must respect the limits set by the sovereign, it must not conflict with the acts enacted by the sovereign.³ It can be created only because it is guaranteed by national or regional legislation. It is therefore necessarily limited: autonomy does not protect action that does not comply with the legal framework.⁴

Although the Hungarian Fundamental Law sets out just a list of groups of competences, in a practical sense these are the most important components of autonomy, ranging from regulatory autonomy to organizational and administrative freedom and economic-financial autonomy.⁵

2.2. Dilemmas Relating to Economic and Financial Autonomy

Following the change of political regime, in the local self-government-related cases examined by the Hungarian Constitutional Court the key concept was undoubtedly the principle of autonomy.⁶ From among its components, financial autonomy is particularly important, since without this, the autonomy of local self-government is illusory.⁷ Territorial self-government

2 Hans Peters, *Grenzen der kommunalen Selbstverwaltung in Preussen*, Springer, Berlin, 1926, pp. 37–38.

3 Paul Laband, *Das Staatsrecht des Deutschen Reiches*, Laupp, Tübingen, 1876, pp. 107–108.

4 Andreas Ladner et al., *Patterns of Local Autonomy in Europe*, Palgrave Macmillan, 2019, pp. 175–176.

5 Article 32(1) of the Fundamental Law.

6 László Sólyom, *Az alkotmánybíráskodás kezdetei Magyarországon*, Osiris, Budapest, 2001, p. 774.

7 Gábor Kecső, A helyi önkormányzatok pénzügyi jogi jogállása – A jogállást meghatározó jogintézmények modelljei a bevételi oldalon. *Anglia – USA – Magyarország*, ELTE Eötvös, Budapest, 2016, p. 97.

means more than just the decentralization of public administration, precisely because it has, among other things, ownership and financial autonomy.⁸ In an ideal situation, the decentralization of public functions must necessarily go hand in hand with the transfer of the financial resources needed to carry out these functions.⁹

Regarding the economic basis for the functioning of local self-governments, it should be noted that Act CLXXXIX of 2011 on Local Governments in Hungary (hereinafter: LG Act) introduced a new system of task-based financing replacing normative financing, which brought about a new era in the local self-government sector.¹⁰ In the early 2010s, the state took over municipal debts, but in return it introduced a centralized, task-based financing of public funds, opening the way for earmarked funds, the spending of which is subject to strict rules.¹¹ With the introduction of task-based financing and the centralization of some municipal functions (e.g., education), a new basis for fiscal management was created for local self-governments. The decrease in local financial autonomy increased the significance of own revenue sources, in particular local taxes.¹²

The issue of financial autonomy is constantly on the agenda, as it is in constant flux in the context of changing economic influences. Following the 2008 economic crisis, a decrease in financial autonomy could be observed.¹³

The solidarity contribution is not the only interference in financial and economic autonomy that has affected municipalities in recent years. The restructuring of the education and health systems, the creation of special economic zones (whereby property was removed from settlements and transferred to the county self-governments) and the fact that borrowing is subject to government approval under certain conditions have also raised serious questions.¹⁴ From a municipal point of view, the fundamental problem of

8 József Berényi, *Az európai közigazgatási rendszerek intézményei*, Rejtjel, Budapest, 2003, p. 308.

9 András Bencsik & Zsombor Ercsey, 'A helyi önkormányzatok pénzügyi autonómiájának átalakulása', *Glossa Iuridica*, Vol. 7, Issue 1–2, 2020, p. 226.

10 Id. p. 231.

11 Sándor Nagy, 'Hová lettél, hová levél, gazdálkodási autonómia?', *Új Magyar Közigazgatás*, Vol. 16, Issue 1, 2023, p. 12.

12 Péter Bordás, 'Kincs, ami nincs?', *Jogtudományi Közlöny*, Vol. 76, Issue 10, 2021, p. 471.

13 István Hoffman, *Gondolatok a 21. századi önkormányzati jog fontosabb intézményeiről és modelljeiről – A nyugati demokráciák és Magyarország szabályozásainak, valamint azok változásainak tükrében*, ELTE Eötvös, Budapest, 2015, pp. 25–26.

14 Sándor Nagy, 'Önkormányzati autonómia – Alkotmányos alapjog vagy személyiségi jog?', *Közigazgatástudomány*, Vol. 3, Issue 1, 2023, pp. 166–167; Katalin Adél Rámhápné

financial autonomy is therefore not caused by the contribution under examination in this study, but by the fact that municipalities are lacking financial resources. One reason for this is that the burden of financing mandatory functions (some of which are central administrative functions) reduces the scope for taking up voluntary functions.¹⁵ Another cause of indebtedness is institutionalized 'collective irresponsibility'. Following the change of political regime the Hungarian State created acts for municipalities which it either did not take seriously (e.g., requiring a quantity and quality of services that was far removed from the realities of the country) or did not create the conditions for their enforcement (e.g., there was a municipal bankruptcy Act, but the institutional conditions for its application was lacking).¹⁶

To achieve economic and financial autonomy, it is important that the local self-governments have autonomous disposal over their property and the financial resources.¹⁷ Autonomous management is guaranteed by the Fundamental Law, which states, among other things, that local self-governments exercise the rights of the owner over municipal property. In other words, although this property is part of the public property, the exercise of ownership rights is not dependent on any other body (not the government or its agency) but is decided by the elected local representative body.¹⁸

From the point of view of the central state power, the preservation of a balanced budget is also a significant task, and it is also obvious that the Fundamental Law places this above legal aspects¹⁹ (e.g., limiting the powers of the Constitutional Court; prior consent of the Fiscal Council for the adoption of the Act on the central budget). There is no doubt that an economic

Radics, 'Helyi önkormányzati autonómia: Mi változik, mi marad?', *Közigazgatástudomány*, Vol. 3, Issue 1, 2023, pp. 85–98.

15 Thomas Mann, 'Kommunale Selbstverwaltung durch wirtschaftliche Betätigung? Möglichkeiten und Grenzen in Ungarn und Deutschland', *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica*, Vol. 52, 2011, p. 47.

16 András Vigvári, 'A magyar önkormányzati rendszer (adósság)csapdában', *Fundamentum*, Vol. 16, Issue 2, 2012, p. 21.

17 In our view, the protection of property is more important in the context that autonomy is only illusory in the absence of ownership or by the partial deprivation of property. The management of property is therefore the other pillar of the system: property and its objects are just the basic conditions of management, (*i.e.* the static conditions), whereas management is the dynamic condition. András Patyi, 'Gondolatok a magyar helyi önkormányzati rendszer általános szabályairól', in Katalin Szoboszlai-Kiss & Gergely Deli (eds.), *Tanulmányok a 70 éves Bihari Mihály tiszteletére*, Universitas-Győr, Győr, 2013. p. 390.

18 Id. p. 390.

19 Article N(3) of Fundamental Law regarding local self-governments.

and a legal approach to the same issue can lead to different results, and it is also difficult to resolve the contradiction that, although local self-governments are autonomous, their debt (since they are part of the state) is also a debt of the state. And national assets must be managed in a way that is transparent to the whole nation.²⁰ Although national assets are far from being the same as assets under the control of the Government, the responsibility for the management of the State is undoubtedly primarily that of the Government.

2.3. The Importance of the European Charter of Local Self-Government

With the exception of the United Kingdom, Ireland, Norway and Latvia, all European countries have constitutional provisions that define the status of local self-government.²¹ The Charter established within the Council of Europe, set out to define common minimum standards that all Member States would consider applicable to themselves. Hungary accepted the Charter, promulgated its entire text and considers itself bound by all paragraphs of Part I of the Charter.²²

Any attempt to develop such a basic set of rules would have to face the challenge of the diversity and remoteness of the institutional systems already in place in Europe.²³ It is no coincidence that the Charter is more of a guideline, a summary of standards for local self-government, but in principle not directly enforceable.²⁴ Therefore, it did not attempt to standardize the legal framework for local self-government (which would have been impossible), but sought to establish a minimum set of criteria to be accepted by as many states as possible, despite the different state-specific factors.²⁵ This is also illustrated by the fact that the contracting states must undertake to recognize

20 János Zlinszky, *Az Alkotmány értéktartalma és a mai politika*, Szent István Társulat, Budapest, 2005, p. 36.

21 José Martínez Soria, 'Kommunale Selbstverwaltung im europäischen Vergleich', in Thomas Mann & Günter Püttner (eds.), *Handbuch der kommunalen Wissenschaft und Praxis. Band 1 Grundlagen und Kommunalverfassung*. Dritte, völlig neu bearbeitete Auflage, Springer, Berlin–Heidelberg–New York, 2007, p. 1017.

22 See Act XV of 1997.

23 Colin Crawford, 'European influence on local self-government?', *Local Government Studies*, Vol. 18, Issue 1, 1992, p. 70.

24 Hoffman 2015, pp. 55–56.

25 Anita Szabó, 'A Helyi Önkormányzatok Európai Chartája és Svájc', *Themis*, Vol. 3, Issue 2, 2005, p. 116.

at least twenty sections as binding, of which at least ten fall within a specific narrower core.²⁶ The provisions of the Charter are deliberately general enough, but its interpretation is nowadays so rich and detailed that a strict grammatical interpretation shows incompetence.²⁷

Local self-government is clearly seen as a right (and also an ability) that should be granted to local authorities.²⁸ The Charter also stresses the importance of free and direct election of councils²⁹ and the protection of the boundaries of local authorities.³⁰ It makes provision for the principle of subsidiarity³¹ – the first to do so from among all the international treaties.³² The limits of state supervision are defined (monitoring of expediency over and above the supervision of compliance with the law is possible only in the case of delegated competences)³³ and the importance of judicial remedies is also enshrined.³⁴

The Charter contains a detailed set of requirements to ensure the financial and economic autonomy of local authorities.³⁵ Article 9 of the Charter guarantees the right of local authorities to their financial resources and protects the principles of local self-government management. In light of the Constitutional Court decisions examined in this study, it is necessary to review Article 9 of the Charter, which lays down the basic principles of local financial resources in the following eight points:

	Content	Restriction
(1)	entitlement to and free disposal of own adequate financial resources	<i>“within national economic policy”</i>
(2)	commensurate financial resources with the responsibilities (provided for by the constitution and the law)	-

26 Article 12(1) of the Charter.

27 Zoltán Szente, 'Az Európai Önkormányzati Charta végrehajtásának monitoringja az Európa Tanács gyakorlatában', *Új Magyar Közigazgatás*, Vol. 7, Issue 1, 2014, p. 28.

28 Article 3(1) of the Charter.

29 Article 3(2) of the Charter.

30 Article 5 of the Charter.

31 Article 4(3) of the Charter.

32 Szabó 2005, p. 117.

33 Article 8 of the Charter.

34 Article 11 of the Charter.

35 Judit Siket, *A helyi önkormányzatok közigazgatási autonómiája Magyarországon*, Iuris peritus, Szeged, 2020, p. 198.

	Content	Restriction
(3)	the financial resources of local authorities shall derive from local taxes (and charges) of which they have the power to determine the rate	<i>“within the limits of statute”</i>
(4)	financial systems of a sufficiently diversified and buoyant nature (to keep pace with the real evolution of the cost of carrying out their tasks)	<i>“as far as practically possible”</i>
(5)	protection of financially weaker local authorities through financial equalization procedures or equivalent measures (designed to correct the effects of the unequal distribution of potential sources of finance)	<i>“Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.”</i>
(6)	consultation regarding redistributed resources	-
(7)	grants to local authorities shall not be earmarked for the financing of specific projects; the provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction	<i>“within the limits of the law”</i>
(8)	access to the national capital market	<i>“within the limits of the law”</i>

In light of the above, Article 9 of the Charter covers the main issues affecting the financial resources of local authorities, but it is also clear that it leaves a general and wide margin of maneuver for legislation and the central management of economic policy.

For the interpretation of the Charter, the Constitutional Court referred in two cases³⁶ to the non-authentic Explanatory Report to the European Charter of Local Self-Government (hereinafter: explanatory report).³⁷ The rele-

36 Decision No. 3383/2018. (XII. 14.) AB, Reasoning [22].

37 Explanatory Report to the European Charter of Local Self-Government, at <https://rm.coe.int/16800ca437>.

vant decisions of the Constitutional Court in relation to Article 9 of the Charter are discussed in Section 4.

3. Solidarity Contribution

The solidarity contribution was introduced in Hungary by Act XC of 2016 on the 2017 Central Budget of Hungary (hereinafter: 2017 Budget Act). Since then, the solidarity contribution has been part of the yearly acts on central budget. According to the explanatory memorandum of the 2017 Budget Law and the *amicus curiae* letter³⁸ of the Minister of National Economy sent to the Constitutional Court, two objectives can be identified in connection with the introduction of the solidarity contribution. The primary aim of the solidarity contribution was to provide the resources needed at the central level of public finances to cover the public education management tasks taken away from the local self-governments. Furthermore, according to the *amicus curiae*³⁹ of the Minister, the introduction of the solidarity contribution also serves to even out income differences between local self-governments.

According to the Constitutional Court's decision, the 2017 solidarity contribution was introduced as part of a horizontal equalization procedure in the financing system of local self-governments.⁴⁰ However, the Constitutional Court subsequently ruled in its decisions regarding the regulations assessed for the years 2017 and 2023 that there is a relevant difference in this respect. Unlike the legislation in force in 2017, the 2023 solidarity contribution does not contain an element providing additional financial grants to local self-government with a low tax capacity (coincidentally with the withdrawal of grants from local self-government demonstrating a high tax capacity).⁴¹

In connection with the decision of the Constitutional Court, it is worth referring to the policy report "Hungarian Local Government Finances: The

³⁸ The Act CLI of 2011 on the Constitutional Court (hereinafter: CC Act) allows the initiator of an Act to inform the Constitutional Court (in the form of an *amicus curiae*) of its position on the matter.

³⁹ *Amicus curiae* of the Minister of National Economy, p. 1, at [https://public.mkab.hu/dev/dontesek.nsf/0/0562a7dfe9f34c4cc125814d0058eeb4/\\$FILE/V_1231_2_2017_NGM_amicus_curiae_anonim.pdf](https://public.mkab.hu/dev/dontesek.nsf/0/0562a7dfe9f34c4cc125814d0058eeb4/$FILE/V_1231_2_2017_NGM_amicus_curiae_anonim.pdf).

⁴⁰ Decision No. 3383/2018. (XII. 14.) AB, Reasoning [36]; Decision No. 18/2024. (XI. 11.) AB, Reasoning [48].

⁴¹ Decision No. 18/2024. (XI. 11.) AB, Reasoning [58].

impact of the Local Business Tax and the Solidarity Contribution” [CEMGPAD(2024)4; hereinafter: policy report].⁴² The findings of the policy report echo the findings set forth in the decision of the Constitutional Court, namely that

“[c]urrently, there are no easily accessible data available on the amount of grants allocated for each specific task at national level making it difficult to assess how much of the solidarity contributions paid by municipalities are redistributed to which types of municipalities for cost or revenue equalization purposes. In the government’s view,⁴³ the solidarity contribution is a crucial funding source for local government responsibilities and equalization purposes. At the same time, municipalities that make substantial solidarity contributions request greater transparency concerning the equalization measures and effects.”⁴⁴

3.1. Elements of the Solidarity Contribution as a Payment Obligation

The solidarity contribution can be considered a specific payment obligation [see in Section 3.2]. In view of this, our study summarizes the main points of the solidarity contribution regulation in a general way⁴⁵ along the following lines: subject/object/basis/rate/relief and exemption.

The *subjects* of the solidarity contribution are the local self-governments with a specified amount of local business tax capacity per inhabitant. It is worth noting that out of more than 3,100 local self-governments in Hungary, only 166 paid solidarity contributions in 2017, as highlighted by the cited *amicus curiae* of the Minister of National Economy.⁴⁶ However 855 local self-governments will be subject to this payment obligation in 2025 (according to the decree of the Minister of National Economy).⁴⁷ It should

42 The policy report formed part of the project “Local Government Public Finance Development and Municipal Capacity Building in Hungary”, co-funded by the European Commission (DG REFORM) and the Council of Europe, at <https://rm.coe.int/cemgpad-2024-4-hungary-pad-solidarity-contribution-and-local-business-/1680b213ad>.

43 The report was agreed in April 2024 with both the ministries concerned and the mayors of some of the local self-governments concerned.

44 Id. p. 17.

45 We focus on the common points of the regulations appearing in the central budget acts of the given year (2017–2025), highlighting the consequences of the relevant differences.

46 In 2023, 724 local self-governments paid solidarity contributions.

47 See Annex 1 to Decree No. 1/2025. (II. 11.) of the Minister of National Economy on the amount of the local self-government solidarity contribution in 2025.

be noted that, on the basis of this ministerial decree, more than 65 % of the total revenue foreseen for 2025 will be met by Budapest and its districts and the 25 cities with county status.

The *object* of the solidarity contribution – *i.e.* what the contribution is aimed at – is essentially the local self-government function (option) to introduce a local business tax.⁴⁸

The solidarity contribution in force is *based* on the local business tax capacity per inhabitant of the local self-government. This is determined on the basis of historical and not current year data. The solidarity contribution is calculated using a formula based on a separate parameter table, which divides local self-governments into different categories according to their local business tax capacity per inhabitant and adjusts the contribution rate to these categories. For 2025 these calculations resulted in six categories of local self-governments, except for the first category each required to make a solidarity contribution up to 0.75 % of the estimated local business tax capacity per capita.⁴⁹ A special rule applies to those local self-governments which have not introduced a local business tax, which regards the amount taken into account for calculating the tax capacity per inhabitant: this value is multiplied by the number of inhabitants to determine the tax base reflecting the local business tax capacity of the local self-government concerned.⁵⁰ Related to the basis of solidarity contribution the policy report points to the possible impact of demographic change. Accordingly, demographic changes, such as a declining population, can also disadvantage cities in per capita based calculations.⁵¹ It should also be noted that one of the recommendations of the policy report is that in order

“[t]o better reflect the fiscal capacity of municipalities, it is recommended to broaden the basis for calculating the solidarity contribution. Currently, the assessment of fiscal capacity relies solely on the Local Business Tax (LBT). Including other local taxes, especially where LBT revenue is not significant, would improve fairness and capture fiscal disparities more accurately. [...] For example, in Bulgaria, the equalisation system takes into

48 Decision No. 18/2024. (XI. 11.) AB, Reasoning [61].

49 It should be noted that the budget acts have changed almost every year with respect to the categories and also regarding the base (from 2017 to 2020 the regulation consisted of two interdependent elements, *see* Section 4.2.).

50 See Annex 2, II.1.3. of Act XC of 2024 on the 2025 Central Budget of Hungary (hereinafter: 2025 Budget Act).

51 Policy report, p. 5.

account a broad pool of ‘fixed tax revenues’ basically including all local tax revenues.⁵²

At the same time, according to the report, local business tax accounts for approximately 80% of local tax revenues.⁵²

The solidarity contribution *rate* increased in a graduated scale (depending on the basis), with significant changes from fiscal year to fiscal year. Rather than tracking the change in individual percentages, the significant increase is best illustrated by the appropriations included in the budget acts. The table below shows that within the span of nine years, the amount of planned revenue from the solidarity contribution has increased almost eighteenfold.

Fiscal year	Appropriations according to the central budget acts (in million HUF)	Realized income according to the acts on the implementation of the central budget (in million HUF)
2017	21,321.2	26,566.1
2018	39,021.2	33,300.1
2019	43,021.2	44,623.5
2020	43,021.2	58,114.6
2021	165,452.5	155,044.8
2022	129,800.0	157,012.8
2023	217,000.0	237,240.2
2024	307,640.6	- (<i>Act not yet adopted</i>)
2025	360,160.9	- (<i>Act not yet adopted</i>)

The solidarity contribution was only explicitly *exempted* in 2017, with the 2017 Budget Act exempting the Municipality of Budapest from the payment of the solidarity contribution. As regards the Municipality of Budapest there have been special regulations for over three years, meaning their contribution rate for 2018 and 2019 was fixed individually in their respect (2018: 5 billion HUF, 2019: 10 billion HUF). Then, for the year 2020, a *discount* was introduced for the capital, with the solidarity contribution dipping 15% lower than the calculated amount. In this context, it is also worth mention-

52 Id. pp. 4, and 6.

ing that from 2019 onwards, a so-called correction factor is introduced for municipalities with a population below 500 inhabitants (from 2021 onwards, below 600 inhabitants). This reduced the amount of the solidarity contribution payable by a fixed 15 million HUF in 2019 and 2020, and by 12 million HUF from 2021 onwards.

The *main rules for the payment of* the solidarity contribution are contained in the subchapter titled “Additional rules for the provision of funds to local self-governments” of the yearly central budget acts. These provisions refer to net financing, which is regulated by Article 83 of the Act CXCV of 2011 on Public Finance (hereinafter: Public Finance Act). The key element of this is that the following are deducted from the grants received by the local self-governments: (i) public charges on staff benefits, and (ii) other statutory obligations. The remaining amount is then paid by the Hungarian State Treasury (hereinafter: Treasury) to the local self-governments concerned. In case the deducted grants do not cover the required amount of the solidarity contribution, then in addition to the deduction the municipality must pay the difference to the central subsystem. The Treasury first advances the amount and then issues a monthly direct debit order against the local self-government. If this does not produce a result within ninety days, the debt and the interest accrued are considered public debt and are collected by the State Tax Authority as taxes.⁵³

3.2. The Tax Nature of the Solidarity Contribution and its Constitutional Status

The Government considers the solidarity contribution to be a central tax (based on the ministerial *amicus curiae* briefs on the solidarity contribution for 2017 and 2023). According to the *amici curiae* of Mihály Varga as Minister of National Economy [in the case underlying *Decision No. 3383/2018. (XII. 14.) AB*] and later as Minister of Finance [in the case underlying *Decision No. 18/2024. (XI. 11.) AB*] the solidarity contributions for 2017 and 2023 meet the definition of payment obligation under Article 28 of the Act CXCV of 2011 on the Economic Stability of Hungary: the solidarity contribution is a public charge (tax) in substance, regardless of its designation. This is owed to the fact that it is a compulsory financial obligation on the part of the local self-governments to provide public expenditure. It is regul-

53 Section 83(4) of the Public Finance Act.

ated by an Act and there is no direct service provided to local self-governments in return. In the event of default, it is considered a public debt and is collected by the state tax authority in the same way as taxes.⁵⁴

However, the Constitutional Court arrived at a different conclusion in its *Decision No. 18/2024. (XI. 11.) AB*, finding that the solidarity contribution contained in the contested provisions of the 2023 Budget Act is not a tax in the constitutional sense. This finding was based primarily on the fact that the obligation of local self-governments to pay solidarity contribution does not derive from the obligation of sharing public burdens.⁵⁵ Local self-governments are the beneficiaries, not the recipients, of this obligation contained in Article XXX(1) of the Fundamental Law. They are organizations that hold public power and shall decide on the types and rates of local taxes under the Fundamental Law.⁵⁶ And they can only be subject to sharing public burdens (in the constitutional sense) when they act as private parties.

Consequently, the Constitutional Court considers the solidarity contribution to be a public payment obligation (instead of a tax) from the local sub-system to the central sub-system of the public budget, which was embedded in the system of financing local self-governments.⁵⁷

4. Related Decisions of the Constitutional Court

The Constitutional Court has so far examined the following four motions concerning the solidarity contribution, which obligation has been included in the central budget acts every year since 2017:

54 See the *amicus curiae* of the Minister of National Economy, p. 6, and the *amicus curiae* of the Minister of Finance, p. 2, at [https://public.mkab.hu/dev/dontesek.nsf/0/56ce851847832753c1258af3005b236e/\\$FILE/III_1693_3_2024_amicus_PM_anonim.pdf](https://public.mkab.hu/dev/dontesek.nsf/0/56ce851847832753c1258af3005b236e/$FILE/III_1693_3_2024_amicus_PM_anonim.pdf).

55 It is also worth referring to a study that, due to the limitation of the powers of the Constitutional Court, the Court has not yet had the opportunity to express its position in detail on the new definition of the content of the principle of sharing public burdens, although it has done so in detail in relation to the previous legislation. Zsolt Halász, 'Néhány gondolat a teljesítőképesség alapú adózásról és az irányító adókról', *Iustum Aequum Salutare*, Vol. 15, Issue 3, 2019, p. 50.

56 See Article 32(1)(h) of the Fundamental Law.

57 *Decision No. 18/2024. (XI. 11.) AB*, Reasoning [62]-[63].

Decision/ order num- ber	Initiator of the procedure	Procedure	Legislation chal- lenged	Content of decision
Decision No. 3383/ 2018. (XII. 14.) AB	One quarter of the Members of the National Assembly	Examination of a conflict with an international treaty	Article 39(4) and further provisions of the Budget Act 2017	Rejection
Decision No. 3311/ 2019. (XI. 21.) AB	Municipality of the City of Budaörs	Constitutional complaint	Article 74(4) of Act CXC of 2011 on National Public Education	Rejection
			Article 39(4)-(6) of the Budget Act 2017	Declared in- admissible
Order No. 3028/2020. (II. 10.) AB	Municipality of the City of Tiszaújváros	Constitutional complaint	Article 39(4) and further provisions of the Budget Act 2017	Declared in- admissible
Decision No. 18/ 2024. (XI. 11.) AB	Budapest- Capital Re- gional Court	Initiative of a judge: examina- tion of a conflict with an interna- tional treaty	Annex 2, point 57. of Act XXV of 2022 on the 2023 Cen- tral Budget	Rejection
		Initiative of a judge: revision of the conformity with the Fundamental Law	Article 83(3) of the Public Finance Act	Rejection
			Article 143(1) of Government De- cree No. 368/2011 (XII. 31.) on the implementation of the Public Finance Act	Declared in- admissible

4.1. Limitation of the Powers of the Constitutional Court

The Fundamental Law currently limits the Constitutional Court's powers to review specific Acts regarding fiscal policy. The limitation of powers applies to specific constitutional court proceedings, for example the examination of constitutional complaints and is linked to the level of public debt as a percentage of GDP, with a target level under 50% (currently 72.6% – planned by the Act on central budget for the end of 2025). With regard to the current level of this indicator, the limitation of powers still applies in relation to certain fiscal acts, such as the act on central budget and acts on central taxes. Although this provision guarantees a constitutional review of these acts, the review is limited to certain fundamental rights reviewable in the above-mentioned procedures. From this point of view, it is decisive that the solidarity contribution is not regulated by a separate act, but by the act on the central budget, as well as the fact that the afore-mentioned *amici curiae* considered it as a central tax regardless of its designation.⁵⁸

Consequently, these public finance acts are – as a general rule – exempt from the control of the Constitutional Court.⁵⁹ The limitation of powers does not apply to the examination of their conflict with international treaties. However, only one quarter of the members of the National Assembly, the Government, the President of the Curia, the Prosecutor General and the Commissioner for Fundamental Rights may submit a motion to this effect. In addition, a judge may initiate proceedings before the Constitutional Court if it considers that the law applicable in the individual case is in breach of an international treaty.⁶⁰

It should be noted, however, that following the amendment of the CC Act⁶¹ (in force as of 1 June 2023), local self-governments may no longer lodge a constitutional complaint against a judicial decision with the Constitutional Court (although this does not affect their rights to lodge a constitutional complaint against the law applied in a court proceeding).⁶² Consequently, the right to challenge the possible unconstitutionality of judicial

58 Article 37(4) of the Fundamental Law.

59 László Klícsu, 'A gazdasági alkotmányosság alapjai', in Lóránt Csík et al. (eds.), *A magyar közigazgatási alapintézményei*, Pázmány Press, Budapest, 2020, p. 976.

60 Section 32(2) of the CC Act.

61 Act X of 2023 on amending certain laws on judicial matters in connection with the Hungarian Recovery and Resilience Plan.

62 For more on this issue, see Ádám Varga, 'The Protection of the Right to Local Self-Government in the Practice of the Hungarian Constitutional Court', *Hungarian Yearbook of International Law and European Law*, Vol. 8, 2020, pp. 349–370.

decisions – even in the context of the solidarity contribution⁶³ – is no longer available to local self-governments.⁶⁴

4.2. Motions Challenging the 2017 Budget Act

The Constitutional Court received three petitions concerning the 2017 Budget Act. Two of these were filed by local self-governments, but the Constitutional Court refused to admit these motions regarding the solidarity contribution. In both cases, the reason for the dismissal was that the arguments contained in the motions fell partly within the limitation of the Constitutional Court's powers (*cf.* Articles XIII and XV of the Fundamental Law) and partly because they failed to refer to provisions of the Fundamental Law that may be invoked in a constitutional complaint.⁶⁵

Meanwhile, the Constitutional Court examined the merits of the motion submitted by Members of the National Assembly alleging a violation of an international treaty (the Charter). However, the Constitutional Court rejected the motion alleging a violation of the Charter on the following grounds. The Constitutional Court held that the contested legislation is not contrary to Article 9(1) to (2) and (5) of the Charter, as it applies only to local self-governments with a significant per capita tax capacity. Furthermore, the 2017 Budget Act simultaneously created the possibility of additional grants for municipalities with a low per capita tax capacity. According to the Constitutional Court, Article 9(1) of the Charter shall be interpreted within the framework of national economic policy, since only within this framework are local self-governments entitled to adequate financial resources of their own. The decision also refers to the Explanatory Report to the Charter, which states that this provision seeks to ensure that local self-governments shall not be deprived of their freedom to determine expenditure priorities.

In the Constitutional Court's interpretation, the solidarity contribution can be considered a horizontal public financial equalization procedure and is in line with Article 9(5) of the Charter. The 2017 regulation consisted of two interdependent elements. (*i*) First, it divided local self-governments into

⁶³ See the case on which the judicial initiative is based in Section 4.3.

⁶⁴ Order No. 3296/2024. (VII. 24.) AB, Reasoning [20]–[21]; Order No. 3400/2024. (XI. 8.) AB, Reasoning [19]–[20]; Order No. 3401/2024. (XI. 8.) AB, Reasoning [18]–[19]; Order No. 3425/2024. (XI. 28.) AB, Reasoning [12]–[14].

⁶⁵ Decision No. 3311/2019. (XI. 21.) AB, and Order No. 3028/2020. (II. 10.) AB.

twelve categories according to their tax capacity per capita. It provided for additional support for the two lowest categories, while the other categories were subject to support reductions. (ii) Then, from local self-governments with a tax capacity per capita exceeding HUF 32,000, the portion exceeding the basis for calculating the reduction in support was withdrawn as a solidarity contribution (within the framework of net financing).

The Court considered that the equalization of the income inequality in the Hungarian local self-government sub-system is explicitly in line with the objectives of the Charter. According to the Constitutional Court, the mere fact that the legislation may generate revenue for the central budget does not in itself amount to a breach of Article 9(5) of the Charter.⁶⁶

4.3. Decision of the Constitutional Court No. 18/2024. (XI. 11.) AB

The Constitutional Court rejected the motion of the Budapest-Capital Regional Court regarding the provisions on the 2023 solidarity contribution and the collection order issued by the Treasury.⁶⁷ In the proceedings underlying the judicial initiative, the plaintiff (the Municipality of Budapest), challenged the Treasury's procedure in relation to the 2023 solidarity contribution. The substance of the case is that the subsidies granted to the Municipality of Budapest under the 2023 Budget Act did not cover the amount of the solidarity contribution. Therefore, the Treasury advanced the difference and then submitted recovery orders to reimburse these amounts.

According to the judicial initiative, the rules on the 2023 solidarity contribution are contrary to Article 9(1), (2) and (4) of the Charter. The motion asserts that the solidarity contribution imposes a disproportionate burden on the Municipality of Budapest. It argues that its financial resources are not commensurate with the performance of its statutory tasks and that the financial system available is not sufficiently diversified and flexible. In addition, the motion alleges that the right to a fair administrative procedure [Article XXIV(1) of the Fundamental Law] is infringed by Section 83(3) of the Public Finance Act, since the Treasury's procedure is not based on a formal decision and the Municipality of Budapest was not involved in the procedure.

66 Decision No. 3383/2018. (XII. 14.) AB, Reasoning [35]–[37].

67 The Constitutional Court also rejected (for lack of necessary reasoning) the petition against the challenged provision of the Government Decree No. 368/2011. (XII. 31.).

The Constitutional Court found that the solidarity contribution cannot be linked in a constitutionally assessable manner to the relative freedom of disposal over own financial resources [Article 9(1) of the Charter]. This is because the contested provisions of the 2023 Budget Act do not restrict the possibility of using a municipal resource but impose a payment obligation instead. According to the Constitutional Court, the purpose of Article 9(1) of the Charter is to ensure that municipal revenue is not directly linked, within the limits permitted by national economic policy, to a specific legislative provision which specifies precisely what it may be used for.⁶⁸

The Constitutional Court has pointed out that the 2023 solidarity contribution may conflict with the financial autonomy of the local self-governments [guaranteed by Article 9(2) of the Charter and the Fundamental Law], when the serious disproportionality of the financing system can be expressed in a constitutional argument and measured by the Constitutional Court's instruments for review. This supposes that a reasonable link be established between the extent of the net contributor position and the inability of the local self-government to legitimately pursue a balanced and sustainable budget management based on the resources of its financing system as a whole.⁶⁹ However, the Constitutional Court – also taking into account the report of the State Audit Office of Hungary – took the view that no such reasonable link could be established for 2023.⁷⁰ The Constitutional Court explained that Article 9(4) of the Charter imposes a requirement on revenue (flexibility and diversity), while the examined provision of the 2023 Budget Act is a municipal expenditure and in view of this, no direct link can be established.

With regard to the contested provision of the Public Finance Act, the Constitutional Court held that it does not in itself infringe the right to a fair administrative procedure. However, it identified as a constitutional problem the fact that the Treasury imposes the solidarity contribution without a formalized legal procedure (based on Act CL of 2016 on the General Adminis-

68 This may raise questions in the future in relation to Section 122(1a) of the LG Act (and Section 3 of the Act CXXXIII of 2006). Under that legislation, municipalities may use the revenue from local business tax primarily for the provision of their public transport services.

69 Reasoning [73]; The constitutional foundation on budget management principles is laid down in Article N of the Fundamental Law. For more on this issue, see Olivér Ráth, 'Az Alaptörvény N' cikke, jogirodalmi megközelítések', in Gyula Bándi & Anett Pogácsás (eds.), *Stability and adaptability – Állandóság és alkalmazkodás: Selected doctoral studies – Válogatott doktorandusz tanulmányok*, Pázmány Press, Budapest, 2023, pp. 449–473.

70 Reasoning [78].

trative Procedure), while at the same time imposing a quantified obligation on the local self-government.⁷¹ Consequently, the Constitutional Court, while rejecting the judge's initiative for against the Public Finance Act, indirectly ruled against the Treasury's action on the points raised in the plaintiff's application.

5. Conclusions

In our study, we have demonstrated, through examples from the scholarly literature, that autonomy encompasses various aspects of independence. We have identified economic-financial autonomy as one of the defining aspects of autonomy, the essence of which is the acquisition and autonomous (independent) management of funds for own affairs. In this context, we have also pointed out that territorial self-government encompasses more than the decentralization of public administration, among other reasons, because it has own property and financial autonomy. In the ideal case, the decentralization of public functions should be followed by the transfer of the financial resources needed to carry out these functions, as set out in both the Fundamental Law and the Charter.

However, the topic of financial autonomy remains relevant in the context of changing economic influences. Through the studies and measures cited, we have shown that, following the centralized, multi-stage debt consolidation of local self-governments, the solidarity contribution is not the only intervention in financial-economic autonomy that has affected Hungarian local self-governments in recent years.

The solidarity contribution was introduced by the 2017 Budget Act with a dual purpose: (i) to provide the necessary resources to cover the public education management tasks taken away from the municipalities, and (ii) to even out the income differences between municipalities. Since then, the solidarity contribution has been included in the central budget acts each year, while the methodology of the regulation remained broadly similar. The changes highlight the following trends. A review of the regulations shows that the number of municipalities paying solidarity contributions is almost five times higher than when it was introduced (only 166 in 2017 and 855 in 2025). Similarly, the amount of the solidarity contribution set out in the 2017 Budget Act was around HUF 21 billion, whereas the 2025 Budget Act sets out a contribution of HUF 360 billion. This suggests that the extension

⁷¹ Reasoning [114].

of the solidarity contribution could further weaken the financial and economic capacity of local self-governments.⁷²

In our study, we have reviewed the practice of the Hungarian Constitutional Court in relation to the solidarity contribution. However, the motions challenging the different regulations were ultimately rejected/dismissed on the grounds of the limited powers of the Constitutional Court and the deliberately general provisions of the Charter, in particular with regard to Article 9 in the context of national economic policy. Meanwhile, in the context of the aforementioned trend, the decisions of the Constitutional Court make it clear that the solidarity contribution can no longer correspond directly to the equalization procedure under Article 9(5) of the Charter, as reflected in the findings of the policy report. This is important because the aim of such equalization procedures, according to the Charter, is to protect the financially weaker local self-governments.

At the same time, the Constitutional Court has given guidance for the future in connection with Article 9(2) of the Charter, according to which the solidarity contribution may conflict with the financial autonomy of local self-governments guaranteed by the Charter and the Fundamental Law only if the serious disproportionality of the financing system becomes clear from a constitutional argument and can be measured by the Constitutional Court's instruments for review. Thus, in effect, it has designated the exceptional cases in which it may review the relevant legislation.

It should also be noted that the Constitutional Court has set out the constitutional guidelines for the Treasury's fair trial (the requirement to be included as a client and to establish the amount in a formal decision). Nevertheless the 2025 Budget Act expressly provides that the rules on the administrative proceedings do not apply to the determination and deduction of the municipal solidarity contribution in the context of net financing.⁷³ Instead, the Minister responsible for public finances has been empowered to publish by decree the amount of the municipal solidarity contribution for each municipality.⁷⁴

Hence, the quantification of the solidarity contribution is now the responsibility of legislation rather than an administrative procedure. As a re-

72 Judit Siket, 'Veszélyben a helyi önkormányzatok funkcionálisása? – A pandémia hatása a helyi demokráciára', in Ádám Rixer (ed.), *A járvány hosszútávú hatása a magyar közigazgatásra*, KRE ÁJK, Budapest, 2021, p. 213.

73 See Annex 2, II.1.5. of the 2025 Budget Act.

74 See Article 78(4) of the 2025 Budget Act and Government Decree No. 368/2011. (XII. 31.).

sult, it is not possible to challenge the amount of the solidarity contribution before the courts in this way, but only to lodge a constitutional complaint directly against the Minister's decree under Section 26(2) of the Constitutional Court Act. However, the Constitutional Court has stated that it will not carry out a review of the quantification of the municipal financing system. In other words, the municipalities are not expected to be able to challenge the amount of the solidarity contribution applied to them on the merits.