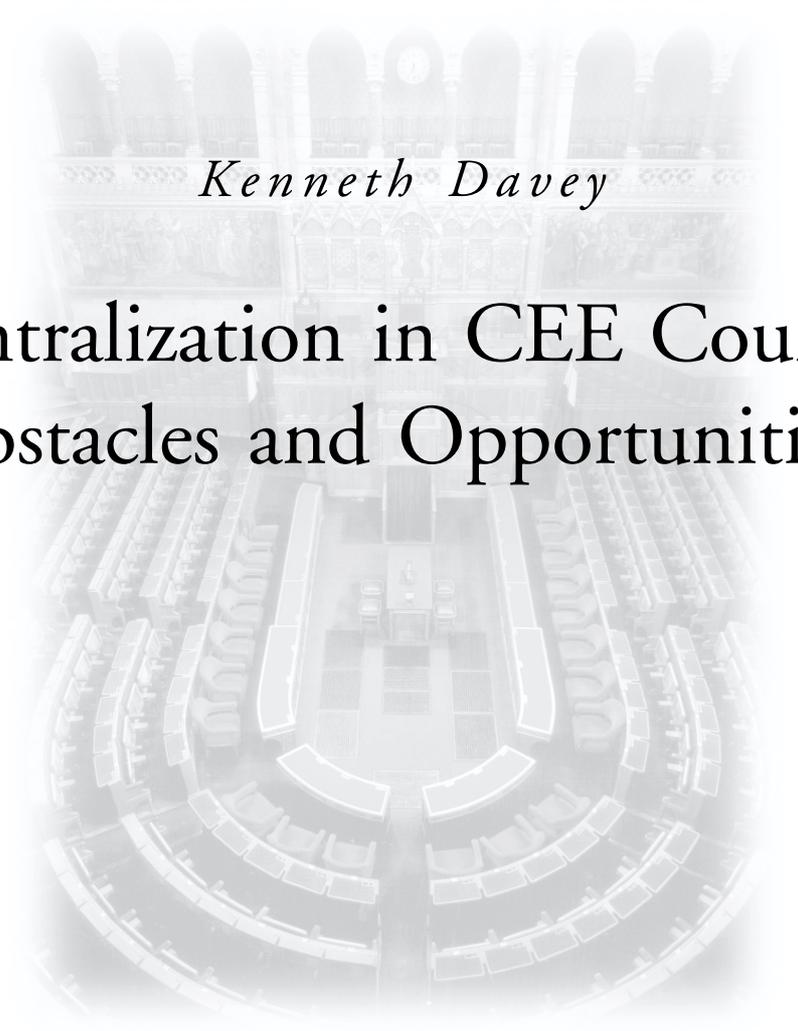


PART I.

Decentralization and Public Administration Reform

MASTERING DECENTRALIZATION
AND PUBLIC ADMINISTRATION REFORMS
IN CENTRAL AND EASTERN EUROPE

DECENTRALIZATION AND PUBLIC ADMINISTRATION REFORM



Kenneth Davey

Decentralization in CEE Countries: Obstacles and Opportunitites

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INTRODUCTION

Decentralization is a protracted and difficult process. So much is clear from the experiences related in this book. Vested interests and intractable problems subject reform to long delay and prevarication. Even when a comprehensive package is enacted, as in Hungary in 1990/91, operational problems arise which defy solution. A change of government can bring the process to a halt, as in Poland in 1993, or move it in a false direction, as in Slovakia the following year.

The Polish experience also shows that persistence pays. If reformers have a clear program and sustained determination, the opportunity to move ahead occurs sooner or later. Political momentum can be short-lived, however, and the reforms have to be ready for launching while the favorable tide lasts.

This chapter attempts to summarize a number of the issues which arise from the country experiences and to address four key questions:

- What are the key components of a decentralization program?
- What are the major difficulties associated with each of these components?
- What are the main sources of resistance to reform?
- What circumstances provide a favorable opportunity for promoting decentralization?

ELEMENTS AND STAGES OF REFORM

The introduction of pluralist democratic government at national level has led in almost all CEE countries to an immediate demand for a parallel reform in local administration. One of the first acts of newly elected parliaments in countries such as Hungary was to provide for the election of representative municipal councils with an executive mayor selected either by the voters at large or by the council.

What varied greatly, however, was the speed with which these elected bodies were vested with the powers and resources that determined their real weight in local affairs. Four sets of issues typically pose challenges:

- Territorial structure
- Assignment of competencies
- Financing
- Transfer of state property

Territorial Structure: the Municipal Tier

Problem issues concerning territorial structure have typically arisen at both primary and upper tiers of local government. In the majority of post-Communist states, local government legislation often reinforced by constitutional provisions has allowed human settlements of any size to claim the status of an autonomous municipality. This has been exploited by thousands of small villages, often reacting against forced amalgamations and deprivation of services and development under Communist regional planning policies. The result is that the basic level of local government has a highly fragmented territorial structure as illustrated in Table 1.

This situation is not universal; in Bulgaria and Poland, for example, the basic levels of local government have average population sizes well over 5,000 which have been the target minimum in western European reorganizations and are viewed empirically as adequate for most municipal services. (Council of Europe, Colloquy on the size of municipalities, efficiency and citizen participation, Budapest, 1994).

However, most CEE countries have thousands of communities with municipal status with populations below 1,000 (and a substantial proportion of these fewer than 200). Reform programs are challenged by the inability of such communities to provide administrative and financial capacity and the scale economies and catchment areas

Table 1
Average Size of (Municipal) Local Governments in Selected Countries

Country	% of Municipalities Below 1,000 Citizens	Average Population	Average Area [sq. km]
Bulgaria	0	35,000	432
Poland	0	16,000	130
Hungary	54	3,300	32
Slovakia	68	1,900	17
Czech Republic	80	1,700	13

SOURCE: P. Swianiewicz: Size of Local Government, Local Democracy and Efficiency in Local Services' Delivery in Central and Eastern Europe. Draft paper prepared for LGI, 2001.

necessary for such essential services as primary education or waste disposal and for the employment of staff qualified in law, engineering, physical planning etc.

There are a range of solutions to territorial fragmentation including amalgamation of smaller units, performance of tasks through inter-municipal bodies, and assignment of selected tasks to either central town municipalities or to higher tiers of self-government. For varying reasons, reform programs find it extremely difficult to make a strategic choice between these options. Architects of reform are so obsessed by the economic costs and irrationality of fragmentation that they refuse to accept the political (and often constitutional) impossibility of amalgamation. Local government associations resist the compulsory frameworks that usually accompany inter-municipal cooperation on any significant scale. Assigning tasks to central towns is unpopular with villages, and assigning them to higher tiers is unpopular with the larger towns. Failure to drive a solution forward often leaves in the hands of local state administration functions that should be managed by locally accountable bodies.

Territorial Structure: Higher Levels

Most CEE states have faced the challenge to establish a higher tier of self-government. The municipal tier, whether highly fragmented or not, does not provide adequate catchment areas for the more specialized services such as secondary education, hospitals, or residential care institutions. There has been increasing pressure, particularly from the European Union, to establish representative

institutions at regional level that can provide a focus for planning and partnership in economic and social development. Moreover, most post-Communist countries have a legacy of powerful state administration at a regional/county level that do not fit comfortably in a democratic system of government; they lack direct accountability either to a local electorate or to national ministries, and are often vested with considerable authority to intervene in municipal affairs.

While most reform programs have contained a commitment to establish an upper tier of self-government, doing so has often proved a tortuous and protracted process. Numbers and boundaries pose endless possibilities of argument, historical identities conflicting with ethnic loyalties, administrative rationality and the European Union's obsession with minimum population sizes for its regional development funding. Cities fight to become or remain regional capitals because of the facilities to which this status apparently entitles them.

There are also strong arguments about the responsibilities of upper tier self-governments. While the specialized service institutions may be obvious candidates for devolution to them, it is arguable whether they should take over many of the tasks of regional bureaucracy which are regulatory or very specialized (meteorology or cadastral registration, for example,) by nature, or aimed at overseeing the operations of municipalities.

These contentious issues often take many years to resolve because forces at both national and municipal level lack sufficient positive enthusiasm for the creation of potentially powerful political rivals.

Assignment of Competencies

Most local government legislation assigns responsibility to the basic municipal level for what are often described as “communal services.” These are elements of *physical* infrastructure including local roads and lighting, heating, water supply, sanitation, waste management, parks, and cemeteries. Management of housing is also included though the extent and nature of these tasks changes with privatization of the public housing stock. These are often recognized as “own” or “original” functions of municipalities; difficulties attach more to finance and property rights than to the location of responsibility.

The most contentious item in devolution of physical infrastructure is water supply. Although the construction of individual pipelines, treatment plants etc may have been financed by local budgets, water supplies have customarily been operated in the Communist era as integrated units covering a range of urban and rural settlements. Decentralization has not been too difficult where local governments have agreed to the conversion of these regional entities into joint stock companies with constituent municipalities sharing the equity. Where, however, they have insisted on the transfer of assets to the municipality where they are located, grave operational difficulties and disputes have inevitably arisen.

Greater difficulties in the reform process surround the responsibility for the *human* services (education, health, social welfare and culture) and the local regulatory tasks (for example, physical planning and construction control, civil registration, trade and occupational licensing and child protection). Uncertainty and argument focus on two issues. The first harks back to territorial structure—the mismatch between catchment areas for schools, hospitals, social care institutions etc and the size of local governments, together with the inability of smaller municipalities to employ qualified professional staff. These difficulties do not in themselves challenge the principle of decentralization, but pose practical difficulties that, as discussed before, often exceed the political support for decentralization or the willingness of interest groups to compromise.

The second issue concerns the proper division of responsibility between national and local government; it is intrinsically more difficult to resolve because it involves principle as well as practice. Both the human services and regulatory tasks are often defined as tasks of “state administration” rather than “local self government” which can at most be delegated rather than devolved. In terms of the human

services, this definition implies that there are universal rights to minimum standards of provision that the State must guarantee. In respect of the regulatory tasks, the definition implies that the task involves an impartial application of national laws to the circumstances of individual citizens, in which there is no room for local variation or discretion; these are seen as roles for qualified bureaucrats, not elected politicians.

There are, of course, strong countervailing arguments for decentralization of both human service and regulatory competencies. The services are of strong concern to citizens, putting pressure on local governments to devote resources to their development. Local councilors and parents are just as worried as the Minister of Education if a school is failing its pupils. To retain such services under State management is to exclude the contributions of local resources and local accountability which local government is under strong pressure to provide.

There is ample evidence from Western Europe that national minimum standards of human services can be guaranteed within a decentralized framework of administration. The problem is, however, that such guarantee depends on a combination of arrangements that are relatively sophisticated and unfamiliar to a post-Communist state. The first is a normative system of financial equalization that ensures that national standards can realistically be achieved despite differences in local revenue bases. The second is national systems of inspection which can provide positive guidance as well as negative criticism, and which can be divorced from administrative management and political bias. The third is overcoming the difficulties of inappropriate territorial structures that have been discussed in the previous section. Time and determination are required to develop such framework for devolution.

Until a satisfactory framework for devolving the human services is developed, various interim solutions apply. In some cases service management is retained by State agencies which suffer from the lack of local accountability and may well be under-resourced. In a second scenario responsibilities are shared as where local governments manage schools but teachers are paid by the State, health service facilities are provided by local government, but funded principally by health insurance agencies, or the State provides social benefits but local government provides welfare services. In a third case competencies are fully transferred to local government, but subject to severe incidence of ‘non-funded mandates,’ i.e. decisions made unilaterally by sectoral ministries like teachers’ salaries increases or extra social

benefits which are not accompanied by changes in local revenues.

Similarly, the argument that regulatory tasks should be excluded from local self-government jurisdiction because of their judicial nature is oversimplified. Many regulatory decisions do involve elements of subjective judgment, e.g. the capacity of a family to bring up its children, the architectural consistency of a proposed new construction, the balance between economic benefits and environmental costs of a new industrial estate or retail park. Moreover, decisions made within the apparently neutral framework of state bureaucracy may be no more protected from political influence than in local government, simply less exposed to public scrutiny. Moreover, local governments may well be more concerned to see that such administrative processes are discharged in a “client friendly” manner. Decentralization of regulatory tasks may well be the most satisfactory solution in the long term, but again it depends on the sustained development of a supportive environment. A key element is professional staffing requirements and the combination of training, qualification and professional association that can alone ensure adequate protection and weight within local government.

Finance

The dependence of effective decentralization on an adequate and equitable financial base needs no explanation. Most post-Communist countries inherited inter-governmental finance systems, in which the cost of local public services fell initially on local budgets. These were funded partially, if not completely, by local collections of a wide basket of taxes, fees and charges including taxes on both personal and enterprise incomes as well as land. There was a system of redistribution, both vertical and horizontal, but lacking a normative base, subject to arbitrary variation in annual budgets and much political bias in its application at both national and regional levels. Liabilities for taxes and charges and their rates were determined nationally. There were strong disincentives for revenue mobilization or cost discipline. Much local budget expenditure subsidized low charges for utility services.

This framework was clearly incompatible with the functioning of a legally and politically autonomous system of local government system. Moreover its inherent inefficiency is increasingly intolerable given the massive shifts from public to private consumption and the consequent fiscal stress experienced by post-Communist governments. In

financial terms decentralization has demanded a range of fundamental reforms.

Firstly, it has been necessary to distinguish clearly between the responsibilities of different levels of government, national, regional and local, for meeting the costs of specific services. This has to be in line with the assignment of competencies, and the process is, therefore, subject to the uncertainties and arguments outlined in the previous section.

Secondly, decisions are required on which revenue sources should accrue exclusively to local governments, which should be subjected to some intergovernmental sharing (and in what proportions), and which should be retained exclusively by the State Budget. This poses several difficulties. Until the assignment of responsibilities have been resolved it is impossible to quantify the relative resource needs of individual tiers of government. The structure of taxation may be concurrently subject to reform to adjust it to the requirements of a market economy. Taxes on enterprises that have previously accrued, at least in part, to local budgets may no longer be suitable for such assignment once problems of origin or disparity can no longer be solved by arbitrary redistribution.

Thirdly, there are strong arguments of accountability and efficiency (together with the provisions of the European Charter of Local Self-Government) for giving local governments some power to determine liabilities for local taxes, fees and charges. Ministries of finance have been in no hurry, however, to surrender their exclusive powers in these respects, often supported by macroeconomic arguments concerning the control of inflation and the encouragement of private investment. Nor have they been under pressure from local government lobbies, eager to obtain larger tax shares rather than taxing powers. The demands of local government leaders have been generally short sighted in this respect, ignoring the fact that a taxing power is less hostile to political fortune than a tax share.

Fourthly, a system of redistribution may still be needed, particularly if extensive responsibilities for the human services have to be financed by local governments, requiring rough equality in per capita expenditure. This demands the creation of equalization transfers, either vertical or horizontal based on normative assessments of the differences between local needs and resources. Calculating such formulae poses technical challenges of measurement and data collection, but also political judgment over the balance between equality and incentive.

Fifthly, the demands of both efficiency and equity and the increasing intervention of private sector ownership or management have led to progressive decline in general subsidization of public utility services. This involves the challenge to apportion responsibility between the State and local government for making such decisions, for imposing the consequent rises in consumer tariffs, for funding and managing the individually targeted compensation for poorer consumers of essential services, and for meeting the increasingly urgent demand for investment in repair and upgrading.

Finally, the greater the degree of fiscal decentralization the greater the need for improved systems of accountability. EU accession processes, for example, highlight the need to develop systems of external audit of local government and to restrict indebtedness, measures that are both unpopular and technically demanding.

To list this agenda (which excludes the practical issues of revenue assessment, budget management etc in a competitive mixed economy) is to indicate its complexity and the demands it makes both on technical capability and political courage.

Property Rights

It has been an obvious and generally accepted principle of decentralization that transfer of ownership of State property should accompany assignment of functional responsibilities to any legally autonomous tier of government associated with their performance. In practice, this has often proved a contentious and protracted process.

Communist states obeyed the principle of the unity of state property. However, administration of property was often delegated to regional or local executive bodies, usually according to location or catchment area. Regional administration felt that an electricity supply belonged to them, so that they appointed the directors, controlled the budgets, disposed of surplus land etc, as though they were legal owners. The same applied to the attitude of city officials to a local hospital. This was often reinforced by the fact that capital investment in a utility plant or a service institution was often funded by regional or local budgets.

The restitution of property to pre-Communist owners has added complexity to the process. In many cases, service institutions like schools, residential homes and hospitals were originally built and managed by voluntary bodies,

usually religious. The principle of restitution has also encouraged municipal governments to demand return of assets they constructed in pre-Communist times, whether or not they now accord with their functional responsibility.

Both of these earlier patterns of ownership or management have complicated the process of transferring property rights in line with the assignment of competencies. City governments claim ownership of hospitals or secondary schools that serve a much wider area with consequent difficulties for the allocation of running costs and control over access. Municipalities, on the other hand, are made responsible for the provision of utility services that are the monopoly of regionally owned and managed networks. Technical solutions are possible, such as joint ownership of utility companies, but application is obstructed by arguments over the apportionment of shares and the opposition of current management who have succeeded in some countries in thwarting the process by buying out the assets or the contractual rights to manage them.

Property transfer is also subject to systemic difficulty, such as the lack of inventories and cadastral records and overload of the State apparatus by the processes of restitution and privatization. Again technical difficulty combines with political conflict and ambivalence to impede and delay an essential component of the decentralization program.

VESTED INTEREST

What the previous sections have tried to convey is that beyond the simple creation of legally autonomous, elected bodies at municipal level, decentralization is a complex and contentious process. It involves choices which are either politically or technically difficult (or both), such as the territorial structure of regional administration. It requires the reconciliation of conflicting interests, for example between national responsibilities and local discretion in the management of a service like education. It demands tenacious spadework, for example to devise an appropriate equalization formula or a workable framework for inter-municipal cost sharing.

To drive the process through, demand, determination and positive enthusiasm. These two qualities are often insufficient to overcome vested interest and inertia. Some interest groups are bound to oppose decentralization. The bureaucracies of sectoral ministries and local state administrations are likely centers of opposition, having much power to lose or being faced with unfamiliar roles.

Ministries of finance will be nervous, their anxiety over fiscal decentralization reinforced by IMF demands for strict control over levels of taxing and spending. Others may well be ambivalent. Mayors of smaller municipalities are often reluctant to see human service and regulatory responsibilities transferred to local governments, because a narrow range of competence preserves their freedom from cooperation with neighbors and from state oversight. The larger towns may well see the introduction of a higher tier as a threat. Local government associations may well be ambivalent or in conflict over particular stages of reform.

A further hurdle is coalition politics. Most CEE countries have proportional election systems that rarely produce overall majorities for a single party. Governments usually comprise coalitions of parties that may not share a uniform view of decentralization. However much priority may nominally be attached to such policy, it is difficult to persuade sectoral ministries to tow the line in terms of functional devolution or ministries of finance to share taxes if there is insufficient cabinet discipline and prime ministers are constantly afraid of parties walking out.

OPPORTUNITY

Nevertheless, opportunities for pushing through a decentralization program do arise, often unexpected. The overthrow of an autocratic regime may be one such occasion, leading to a determination to remove a regional apparatus that may have supported the regime in power. The 1998 election provided this opportunity in Slovakia although it has only been partially exploited.

The threat or occurrence of civil war may demand radical decentralization to give ethnic groups a sufficient degree of local autonomy to buy off attempts at secession. The current legislative program in Macedonia is a clear example.

Recent developments in Ukraine illustrate another path to reform. The severity of the State's budget crisis encouraged Government to side with Parliament in adopting a major program of fiscal decentralization involving a clear separation of functional responsibilities between State, province and city budgets, accompanied by an equally explicit division of revenues and a formula system of equalization. Although enacted through financial legislation, this reform has greatly enhanced local autonomy by severing the chain of vertical dependence.

Finally, negotiations over accession to the European Union have put pressure on candidate countries to complete structural reforms including the formation of regional tiers of self-government.

PREPAREDNESS

These are examples of circumstances that give decentralization programs a favorable wind behind their sails. But the wind can lose force or change direction. The important thing for reformers is to be able to take advantage of the wind while it is still behind them and blowing strongly enough to overcome opposition and inertia.

This means preparation. Two examples bear this out. The Hungarian reforms in 1990/91 were far more comprehensive than in other CEE countries because the Hungarian Institute of Public Administration took advantage of a more liberal political climate to prepare them during the late 1980s. The incoming Polish administration in 1997 was able to push through the creation of two higher tiers of self-government with remarkable speed, again because so much preparatory work had been done during the previous frustrating electoral period.

By contrast, the Slovak coalition which came to power in 1998 quickly adopted a strong decentralization platform, but has taken early four years to implement it and then only in a diluted form. Argument over regional boundaries has highlighted the conflicts that have delayed reform, but equally debilitating has been a failure to formulate a clear model of how to devolve state competencies on a very fragmented municipal structure. The absence of a coherent model of inter-municipal relations has allowed sectoral ministries to procrastinate over the devolution of competencies, which in turn has delayed the elimination of the local state administration and the introduction of a permanent structure of intergovernmental finance; the Ministry of Finance has been able to argue, with some justice, that it did not know the scale of the finances which would have to be transferred to local government and to which tier. Lack of technically coherent solutions has been just as responsible for the delays as the ambivalence of coalition partners and xenophobia.

Earlier sections have highlighted the technically problematic areas for which blueprints have to be prepared. Particularly important are the questions of inter-municipal cooperation in the territorially fragmented states, (and its

implications for the roles of upper tiers of self government), the precise divisions of responsibility between the State and local government in respect of education, health care and social welfare, and the basic elements of inter-governmental finance, namely the division of tax revenues and the system of equalization.

Reformers can never quite know when their day will come. When it arrives, they will still have many vested interests to surmount. Their success will depend heavily, not only on political support, but also on averting excuses for delay. A politically and technically coherent set of proposals will enable reformers both to catch a favorable tide and, more importantly, to keep up momentum.

