

## **QUESTIONS OF THE LOCAL GOVERNMENT'S LEGAL ENTITY**

TAMARA TÓTH

Doctoral School of Law and Political Sciences, Széchenyi István University,  
Hungary

### **Abstract in original language**

Jelen tanulmányban az önkormányzatok jogi személyiségéről, jogalanyiságáról fogok írni. Először megvizsgálom a jogi személyiséget, mint fogalmat, az absztrakció szintjén. Ezt követően rátérek a jogi személyek létrehozásának, és megszűnésének kérdéseire. A tanulmány következő, legjelentősebb részét képezi a jogi személyek fajtáinak bemutatása. Kiválasztottam az én szempontomból legfontosabb jogi személyiséget, az önkormányzatot, és a tanulmány során bemutatom az önkormányzati jogalanyiság két fajtáját. Végezetül az önkormányzatok társulásainak egyes formáit, és azok jogi személyiségét vizsgálom meg közelebbről.

### **Key words in original language**

Jogi személyiség; helyi önkormányzat; társulások.

### **Abstract**

In a present study, I will write a self government's legal entity. I examine a legal entity, like a concept, on the level of abstraction. I will present the theories of the concept. We know fictional, reality, and financial theories. The legal entity's legal capacity is absolute. After that, I will present the formation, and the ceasing of legal entities. The presentation of the legal entities' kinds constitutes the next, most considerable part of the study. I selected the most important legal entity, the local government's legal personality, and I present the the two kinds of the local government's legal entity. I write about the local government's civil and the public right personality, and I present the main differences of the two types. Finally I will present the local governments' associations.

### **Key words**

Legal personality; local government; associations.

## **INTRODUCTION**

The unprofitable operation of the present Hungarian administrative system has a lot of reason that I can't present exhaustively in this paper, although I wish to deal with the biggest question, namely the components of the local governments' legal personality.

On front of the paper I would like to present the basic elements and the single theoretical approach of the concept of the legal personality. Numerous theory were developed on this issue from which I present the two best-known definition. After that, I deal with the kinds and types of the legal entities. I present the Hungarian Civil Code's provisions<sup>1</sup> and the rules of the formation and termination of the legal entities.

I continue the study with the most important type of the legal entities in the Hungarian public administration, i.e. the local governments. I examine the legal status and the legislative background of the local governments.

I think is very important to examine the legal status of the the single municipal organs. I present the body of representatives, the mayor, as an one-man organ, and the commissions of the body. It is a very important question that how it is possible to draw a distinction between the two fundamental type of the legal personality, i.e. personality under the civil law and the public law?

Which organs have legal personality under both civil and public law? What are the definitions of these concepts? How to determine the concept elements of the personality of the civil law entities? Can we even talk about the elements of this concept?

On the end of the paper I wish to deal with the question of the municipal associations and its practical significance.

## **1. THE LEGAL ENTITY AS A CONCEPT**

Many people would like to define this concept. The different theories acknowledged its existence, but there are three main different theory. These are the follows:

The first group is the fictional. The essence of this that its representatives acknowledge the legal entities' existence, but they draw a distinction between a natural person and a legal entity. The basis of the difference is the natural person is a „truth” person, not only person by way of a law, but the legal entity is an artificial person. The most famous representatives of this theory are Savigny and Puchta.

The next theory is the reality theory. The essence of this, that the legal entity is a “big man”. The representatives (Zittelmann and Gierke) of this theory do not really draw a distinction between the natural and the legal personality.

---

<sup>1</sup> Act IV of 1959 on the Civil Code of the Republic of Hungary

The third theory is the financial theory. The representatives of the theory (for example Brinz) think that two kind of property exist. The first property is the natural persons' property, and the other properties are bound to an aim. In this case, the aim is the legal personality.

There are two different kind of legal personality. These are the civil and the public law personality. In the first part of the paper I would like to define the public law personality's fundamental rules. One of the most important question of the present Hungarian public administration is what does the public law personality means and where is the limit of this personality? The basis of the personality- type examinations is that the legal status of the public law personality is basically determined by the relation between the legal entity and the state as the public law entities are attached the state more tightly than the civil law entities.

According to András Tamás, the public law personality is a general category, which has the fundamental features indicated below:

- has rights and obligations,
- the aim, tasks and functions are regulated by law,
- may not transfer its task and competence to third party,
- has independent organization and seat,
- may practise its rights and its duties with legal liability,

Based on these features, according to andrás Tamás, the state, the single organs of the state (parliament, government, local governments, etc.), the civil corporations, the public utilities, the public funds, public bodies have civil law personality.<sup>2</sup>

According to Géza Kilényi every organisations have public law personality which has obligations to perform public tasks or which has executive power of public authority.<sup>3</sup>

Marianna Fazekas states that use of the public law personality's concept is incorrect, as the legal personality is a civil law category. Regarding the

---

<sup>2</sup> PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009, p. 278

<sup>3</sup> PATYI - VARGA ZS., 2009, p. 278

public organisations the main status is the constitutional law at all time and this status determines the extent of the public law personality.<sup>4</sup>

To summarize the above thoughts, I think it is rather difficult to define the concept of the public law personality and it raises several questions during the operation of the administration bodies. In this paper I used the concept of András Tamás as a guideline.

## **2. THE LEGAL ENTITY AS A FACT**

After the legal personality concepts I would like to present the regulation on the establishment and termination of the legal entities.

### **2.1 THE GENERAL RULES ON THE ESTABLISHMENT OF A LEGAL ENTITY**

The establishment of the certain the legal entities are quite different from each other. These ways always depends on the type of the certain legal entity. Hungarian Civil Code rules as follows:

”The conditions for establishing and terminating artificial persons shall be defined by law for each type of artificial person. Artificial persons may also be established by law.”<sup>5</sup>

The Hungarian Civil Code Commentary lists the next conjunctive conditions on the establishment of a legal entity: the founders appropriate declaration, the establishment of the operation conditions, separation of the property necessary for the operation and the registration.

Let's have a look at this condition system through an actual example.

I would like to establish a limited liability company (Ltd.). So, first of all, I have to decide that which Ltd. I need, i.e. know a „one-man” or „multi member” company. After we decided on this, the next step that we prepare a deed of foundation countersigned by a lawyer. We have to regulate the following important questions: The name of a company, the members, the company seat, the manager's, a representative's name, equity capital, the organisation. It is necessary to keep a forming member's meeting, where the members decide the establishment of the company. This document has to be countersigned by a lawyer. After the preparation and execution of this and the other obligatory documents prescribed by the Company Act (specimen of signature, declaration of the management, member register, etc.) we have to do the third and very important thing, we have to make our contribution

---

4 PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009, p. 275

5 Act IV of 1959 on the Civil Code of the Republic of Hungary § 29 (1)

available to the company. According to the law in case of Ltd. this contribution is minimum HUF 500,000.- This contribution is the equity capital. After that we have one more task, namely the registration. After the establishment we have to announce it in the competent court. This was a civil law example. The complexity of the legal entities derives from the fact that it has two types. The public law entities are established by law, but the civil law entities are established by the founders resolution.

## **2.2 THE GENERAL RULES OF THE LEGAL ENTITY'S TERMINATION**

The termination, as an act produces legal effect, is a significant state interference into the operation of the legal entity. In general the termination is the task of a court. The legal entity can be terminated by law, decision of the court or the members. The legal entity can be terminated with or without a legal successor.

## **3. TYPES OF LEGAL ENTITIES**

In accordance with the applicable law, the state, municipal, economical, social and other organisations shall be considered as legal entities. A very important rule is that legal persons also have legal capacity. However, the legal capacity of these entities are different from the legal capacity of the natural persons. Why? Because certain rights and obligations can be attached to natural persons only (i.e. the protection of human dignity).

Let's have a look at the most important legal entities!

### **The State**

According to the Hungarian Civil Code the state, as a subject of the financial relations, is a legal entity. The state's representative person is the Minister of Finance. Very important rule that the responsibility of the state, as a legal entity, is complete as its liability for damages obliges the state even without the necessary funding in the budget. Why? Because „the Republic of Hungary is an independent, democratic, constitutional state.”<sup>6</sup> And the main aim of a constitutional state is the protection of the citizens.

### **Civil corporations**

Three fundamental organizational principles are known in the Hungarian public administration. These are: centralization, deconcentration, and the decentralisation. Among these principles, in the present study, the decentralisation is the most significant as there are two types of decentralization: functional decentralization (civil corporation) and the

---

<sup>6</sup> Act XX of 1949 The Constitution of the Republic of Hungary § 2 (1)

territorial decentralization (local government). Beside the full civil law personality, the civil corporations have public law personality as well. Main characteristics of this formation are indicated below:

- has rights and obligations – as they are legal entities,
- the aim, tasks and functions are defined or acknowledged by law - this derives from the civil character of the civil corporations,
- may not transfer the task and authority to third party,
- has an independent organization and a seat,
- may practise its rights and obligations with legal liability,
- their legal personality is an essential precondition of the legal security.<sup>7</sup>

Civil corporations are established for a particular aim, primarily for public tasks, which tasks may not be transferred to third party. In Hungary the most important civil corporations are: The Hungarian Academy of Sciences, business and professional chambers.

#### Business associations

Business associations have legal capacity. We know two groups of the business associations. The difference between these groups, that the limited liability company (Ltd.) and the share company (co.) have legal entity, while the limited partnership (limited partnership) and the general partnership are companies without legal personality.<sup>8</sup>

In the second part of my study, I would like to write about the legal personality of the local self-governments.

#### **4. LOCAL SELF-GOVERNMENT**

The local self-government operates based on the decentralisation as an organizational principle. The local self-governments were established in the recent past by the Act LXV of 1990 on the Local Self-Governments.

---

<sup>7</sup> PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009, p. 376

<sup>8</sup> HORVÁTH, Gergely – SZALAY, Gyula – SZALAY, László – SZEGEDI, András: Az üzleti jog alapjai, Universitas – Győr Nonprofit Kft., Győr, 2007, p. 80

The local self-government system has two levels. These are: the settlement and the regional level. The settlement level includes the urban and the community local self-governments. The separate type of the settlement local self-governments are: the urban self-local government of a city having county rights, the capital, and the district local self-governments of the capital. Regional self-government has only one type: the county self-government.

#### **4.1 THE LOCAL SELF-GOVERNMENT'S RIGHTS**

The self-government's basic elements are:

- the Constitution determine their rights and obligations,
- established by law,
- decentralized state organs,
- independence guaranteed by the Constitution,
- local residents have collective basic right for self governance.

Based on the above that the local self-governments have autonomy declared by the Constitution itself. The collective basic right is the so called mother collective right of the laws of self-government.

„Eligible voters of the communities, cities, the capital and its districts, and the counties have the right to local government.”<sup>9</sup>

These „mother collective right” contains the following rights:

- the body of representatives independently regulates and manages in relation with the municipal issues
- the second basic right to own propriety and business autonomy – I considers this right as the main right. It derives from the legal personality.
- the right for own income and appropriate state aid.

---

<sup>9</sup> Act XX of 1949 The Constitution of the Republic of Hungary § 42

- develops its organization and the operation independently
- create their own symbols, awards appreciative titles,
- right to make petition,
- right to the associate.

#### **4.2 THE LEGAL PERSONALITY OF THE LOCAL SELF-GOVERNMENT**

I indicated above the legal local self-government is a legal entity by law. The legal personality primarily means civil law personality, secondly public law personality. It isn't clear what does the public law personality's concept in the practice means, although, every legal expert state that the local self-government has such personality. If I write about the legal personality, I should write about the local self-government's representation as well. The first principle, I should write about, is: The legal personality is related to the whole local self-government, not to its organs. It isn't too logical, because the most important „decision- maker” organ of the local self-government is the body of representatives. The following principle is: The body of representatives is represented by the mayor. This is a civil and a public law representation. I wrote relatively a lot about the public law personality, but what does it mean in the practise? Primarily that when the mayor exercise its protocol power of representation or initiates a procedure at the Constitutional Court.

#### **4.3 THE BODY OF REPRESENTATIVES, THE COMMISSIONS AND THE MAYOR**

In this part of the paper, I would like to write briefly about these organs.

The body of representatives

The body of representatives, that contains non-professional (lay) elements, is a corporate organ having mixed competence.<sup>10</sup> What does it mean that the body contains lay elements? It means that the members of the body are the elected not for a particular task as their main task is the governance. So the inhabitants collective basic right for the self-government materializes through them. It is a body so the main characterise of it is the decision making by voting. The basic rule is: they make decisions in open sessions, but it is possible to hold a close session in particular questions. The body of representatives is authorized to transfer certain tasks to the commission, the

---

<sup>10</sup> PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009, p. 332



mayor and the minority local self-government. Consequently, the body of representatives is not a simple but the main organ of the local self-government. I think it is very interesting that this organ does not have a legal entity, because in the Hungarian public administration the legal entity is attached to the competences.<sup>11</sup>

#### The commissions

The following important organ are the commissions of the body of representatives. The body of representatives decides on the establishment, the tasks and competences. Their main tasks are: prepare, enforce and supervise the enforcement of the decisions. In some cases the body of representatives transfer the right of decision making. Commission do not have a legal personality.

#### The mayor

The mayor is a very important “one-man” organ, because this organ/person is the representative of the local self-government who has decision making competence and emblematic tasks. I mean the mayor is the “local government’s face”. Maybe because of the diverse competence very severe conflict of interest rules are applied for the mayors. The mayor is the member of the body of representative and has to take an oath in front of the body. The mayor is elected directly by the local residents. To summarize, the mayor represents the local self-government based on both civil and public law, although, it does not have legal entity.

## **5. THE LOCAL SELF-GOVERNMENT’S ASSOCIATIONS**

In this part of the study, I would like to present one of the basic rights of the local self-governments.

### **5.1 ABOUT THE ASSOCIATIONS IN GENERAL**

Two act regulate the local self-governments’ associations. These are: Act LXV of 1990 on the Local Governments, and the Act CXXXV of 1997 on the Local Self-Governments’ Associations and Cooperation. The associations’ main aim is the effective execution of the local self-governments’ tasks. The local self-governments may establish or join to an association freely.

A very important rule is that the members of the associations are possessing equal rights, may not violate the other’s rights of self-governance and court has authority to decide on the debate between the members.

---

<sup>11</sup> PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009, p. 331

After that I would like to briefly present the accession procedure. The most important conditions of the associations are: the decision of the body of representatives, and the signature the agreement.<sup>12</sup>

Now, I present the association types, based on the Act CXXXV of 1997 on the Local Self-Governments' Associations and Cooperation.

## **5.2 THE ASSOCIATION'S AGREEMENT TYPES**

The first type is the mandate agreement. The main feature of this that the mandated self-local government perform certain tasks for the mandator local self-government. This association type does not have legal personality.

The following type is the maintain agreement without the establishment of association council. In this type the members agree that they jointly maintain institutions, employ employees, but the mandator body of representatives exercise the employers rights. This type does not have legal personality.

The third type is the maintain agreement with the establishment of association council. This type performs the same tasks as than the previous type, but the decision maker organ is the association council. This type has legal personality.

The last type is the association with legal personality. It has association council and my own property.

## **5.3 THE MULTI-PURPOSE SMALL REGION ASSOCIATION**

The multi-purpose small region association is the most frequent association form in Hungary today. The multi-purpose small region aims are:

- education,
- social-supply,
- medical-care,
- regional development.

The micro-region can be established by two or more settlements, but one settlement can be the micro-region. Very important rule that the capital city may not be a member of the micro-region.

The multi-purpose micro- region has legal personality. Two things derives from this statement. First: the decision-maker organ is the association council. The members of the council are the mayors of the local self-governments. In the council the members choose a chairman, who convenes

---

<sup>12</sup> PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009, p. 347

the council. Second: as I have earlier referred to the legal entity includes the right of property management. So the association may own property, which property can be utilised freely. The profit of the property is the income of the association and not the members, i.e. local self-governments.

## **CONCLUSION**

We can examine the legal personality as a fact, or as a concept. I wanted to present the theories of the territorial autonomy and the local government's legal personality.

To sum it up, I tried to present the most important questions of the local self-government system, and somewhere I tried to answer these questions. I examined the legal personality, the basic rights, the organs and tasks of local self-governments. And finally I think one of the most important parts of this paper is the part on the associations.

### **Literature:**

- PATYI, András – VARGA ZS., András: Általános közigazgatási jog, Dialóg Campus Kiadó, Budapest – Pécs, 2009
- HORVÁTH, Gergely – SZALAY, Gyula – SZALAY, László – SZEGEDI, András: Az üzleti jog alapjai, Universitas – Győr Nonprofit Kft., Győr, 2007
- Act XX of 1949 on The Constitution of the Republic of Hungary
- Act IV of 1959 on the Civil Code of the Republic of Hungary
- Act LXV of 1990 on the self-local governments
- Act CXXXV of 1997 on the self-local governments' associations and cooperation.

### **Contact – email**

*drtohtamara@gmail.com*