

# COMPARATIVE ANALYSIS OF MUNICIPAL SERVICES

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Block seminar

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General theory of public services

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# INTRODUCTION



# Public services and public law

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- Traditional approach: public administration as public power
- Service provider role of the public administration
- Changing role of the public administration in the 20th century: Forsthoff: administration as service provider



# Different approaches of the concept of public service

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- Different sciences → different approaches
- **Economics:** the economic elements of the public services
- **Sociology:** public services and public needs
- **Administrative sciences:** public services and their management
- **Jurisprudence:** public services as legal institutions and legal phenomena
- Complex, multi- and interdisciplinary analysis is required.



# Public services as services

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- Economics, sociology:
  - Broad approach of services: „the thrid sector”
  - Government services as services
- Administrative sciences
  - Broader: based on the concept of government services
  - Broad: services excluded the public power
  - Narrow: only the personal nature services, cash benefits excluded
- Jurisprudence:
  - Legal definitions, different approaches in different rules



# Public services and the ‚public‘ (1)

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- Economics:
  - Public goods – mixed goods – private goods
  - Market failures and public services
    - Monopol and oligopol structures
    - Externalities
    - High transaction costs
    - Information asymmetry
- Sociology and social policy:
  - Concept of governance: from consumer to citizen
  - Concept of best value
  - Accountability
  - Co-creation: nothing about us without us



# Public services and the ‚public‘ (2)

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- Definition of public services: practically by legal norms
- Procedure of the definition is regulated by the law
- Constitutions, acts as tools of the definitions
- Concepts on the role of public administration:
  - Provider state
  - Regulator state → share of the role (regulation – provision – supervision)
  - Cooperating state



# Models

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- ‚Service public’
  - French based model
  - Broad concept: organisation, activities, ethics
- Daseinsvorsorge
  - Organisation centered
- Public service
  - Public and private
- NPM and after...
  - Changes of the NPM
  - Post-NPM: Good Governance, NPS, Neo-Weberian State





Municipal models in the liberal democracies

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# MUNICIPAL MODELS



# Anglo-Saxon model

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- Ultra vires model and its transformation
  - Concept of sovereignty
  - Transformation in England: from ultra vires to general clause model
  - United States: Dillon, home rule, municipal home rule
- Municipal tasks: a monist approach
- Organisation
  - Different approaches: cabinet system, city manager, elected mayors
- Finance and asset: broad (legal) autonomy
- State supervision: fragmented, but at the central level



# French (Latin) model

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- General clause (based on the concept of undivided state sovereignty)
- Dual task system
  - Municipal tasks
  - Delegated (state) tasks
- Organisation
  - Strong mayors, weak councils, inter-municipal associations
- Finance and asset: strong central powers
- Supervision: prefectures! (Changes after the 80s...)



# German model

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- General clause (inherent municipal powers)
- Dual task system
- Different municipal administration systems
- Inter-municipal associations: obligatory associations (!)
- Finance and asset
- Supervision: developed dogmatics (legal and professional supervision)



# Scandinavia

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- A continental model
- Merge of the communities
- Wide range of municipal tasks
- Organisation: significant role of the municipal committees





The conceptual framework of the analysis

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# COMPARISON OF MUNICIPAL TASKS



# Introductory remarks

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- Analysis of the public administration:
  - Different approaches
  - Different elements
- Legal comparison and public administration
  - The main field of the comparative law
  - The evolvement and development of
    - comparative administrative law
    - comparative municipal law



# Jurisprudential comparison

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- Different levels of the comparison
  - First level: country studies
  - Second level: comparison of the legal institutions
- Formerly the majority of the books on comparative legal analysis: country studies
- Changing methods: see Bogdandy et al. (2014) and Rose-Ackermann et al. (2017)





# Comparative municipal law

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- Federal countries
- Approaches of the municipal law
  - Broad sense: Anglo-Saxon
  - Narrow sense: continental
  - *Convergence of the systems* (see Localism Act 2011)
- The subject of the analysis
  - Majority of the analysis: narrow sense: focused on constitutional status, organisation and general questions
  - Broad sense: comparison of the municipal tasks is part of the analysis



# Comparative local governance

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- Based on the methods of political sciences, economics and partly jurisprudential elements → administrative sciences
- Concept of subnational (local and regional governance) (blur of the distinctions in administrative and constitutional law)
- Approaches
  - Municipal reforms (firstly NPM, form the 2000s post-NPM, Good Governance, NWS based etc.)
  - Territorial aspects (economies of scale, borders, merge of municipalities)
  - Decision making



# Why we need comparative municipal law?

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- The significance of the legal institutions
- Questions on the nature of the subnational units
- Broad sense:
  - Organisation is important, BUT
  - ...the analysis of the tasks are required (see the example of Hungary)
- Multidimensional model



# First dimension: constitutional status and traditions

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- Constitutional status is important: the framework of the system
  - *ultra vires* vs. continental model
  - Convergence of the models
- Multi-level governance systems (and the European integration)



# Second dimension: the role of the sectoral policies and approaches

- The tasks of the municipalities are strongly impacted by sectoral policies
- Interaction between the sectoral policies and the constitutional model of the municipalities
  - Interaction between the Nordic municipal system and the Nordic welfare model
- Spatial structure
  - Tiers of the local governments as influencing factor
  - Size of the municipalities, economy of scale problems
    - Centralization
    - Merge of municipalities
    - Inter-municipal cooperation



# Third dimension: model of the public service provision system

- Municipal tasks are strongly influenced by the service provision role of the given state
- *„Les Trentes Glorieuses”* and the welfare state (interactions between the service provider role and the municipal organization)
- The influence of the reforms
  - NPM
  - Good Governance
  - Public Choices
  - NWS



# Multi-dimensional analysis

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- Jurisprudential analysis have advantages!
- Focuesed on the analysis of legal institutions on municipal tasks
- Multi-dimensional approach
  - Analysis of legal institutions on organization (constitutional status)
  - Analysis of the sectoral legal institutions
  - Analysis of rules on spatial structure
  - Analysis of the legal institutions of the public service system



Public utilities as municipal tasks

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# MUNICIPAL PUBLIC UTILITIES





# Public utilities and models of municipal tasks

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- It depends on the concept of the public service provision (the impact of the municipal – organisational – system is limited)
- Main models:
  - Anglo-Saxon
  - German (Daseinsvorsorge)
  - French (service public)
- Main questions:
  - Private or public providers
  - Definition of the price of the public service
  - Supervision by authorities / agencies



# Water and sewage utilities

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- Different models
- It can be classified: centralisation and concentration:
  - First-tier centered (Hungary)
  - Regional-based (UK, France)
  - Shared responsibilities (Germany)
- Secondly: private and public roles
  - Dual (parallel) model (Public/private) → Germany
  - Private model with a strong supervision of the public administration (UK)
  - Public-based model with (the possibility of) private providers



# Waste management (1): responsibilities

Primarily first-tier based model	Shared responsibility	Primarily regional based model
For example: Austria, the majority of the German provinces (Länder) etc.	For example: France (commune – département – région) Some of the German provinces ( <i>Länder</i> )	For example: United Kingdom (especially England: counties) Spain
Correction tool: voluntary associations (for example in several Austrian provinces), obligatory associations (for example: Salzburg) Hungary: <b>centralised model with IMA</b>	Correction tools in France: <i>intercommunales</i> (SIVOM, SIVU, CU)	



# Waste management (2): financing

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- Models of financing
  - Tax-based models (for example Czechia, formerly Hungary)
  - Private providers under administrative control
  - Public models (with private providers)
  - Centralised model (Hungary)
- Remunicipalitsation



# Waste management (3): the impact of the EU regulations

- Environmental law: the general requirements
- Competition law (broad sense):
  - Rules on involvement of private sector
  - State aid of private sector
  - Landmark case: C-26/03 (Stadt Halle) based on C-280/00 (Altmark)



**The principles of establishing prices and fees of waste management services**



# District heating

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- First-tier based model
- Especially in urban municipalities
- Different solutions:
  - Public provider
    - Private form
    - Public utility
  - Private provider under administrative supervision
- Remunicipalisation



# Public transport

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- Different tiers:
  - Local
    - First-tier municipalities
  - Regional
    - Regional municipalities
    - Inter-municipal associations
- Service provision:
  - Public providers → see C-280/00 (Altmark)
    - In several countries: priority of public provision (?)
    - Corporation owned by the municipalities
    - Central and local relations (trains...)
  - Private contractors
  - Definition of the prices



# Municipal roads

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- Models of responsibilities:
  - First-tier centered models (only the roads of the communities)
  - Second-tier centered roles (regional roads are maintained by regional governments)
- Models:
  - Public providers → see C-280/00 (Altmark)
    - In several countries: priority of public provision
    - Corporation owned by the municipalities
    - Local, regional and national roads
  - Limited role of the private contractors





# Other municipal public utilities

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- Models:
  - Dominantly: first-tier based, but
    - Inter-municipal associations
    - Role of the regional governments
  - Role of the central administration
- Models:
  - Public providers
    - Public utilities
    - Publicly owned corporations (and municipal holdings)
  - Private providers
  - Remunicipalisation
  - Prices and investments



The role of the municipalities in the field of education

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# EDUCATION



# Models of the concept of public education (1)

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- French model
  - Based on the dominant role of the central government and its agencies
  - Shared responsibilities with the municipalities
  - Laïcité
- Anglo-Saxon model
  - General (multi-purpose) local governments and single-purpose local governments
  - Impact of the NPM based reforms



# Models of the concept of public education (2)

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- Mixed models
  - Shared responsibilities of municipalities and central government
  - School based staffing
  - Different solutions
    - German model
    - Scandinavian model



# Centralised model

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- Based on the primary responsibility of the central government, but practically shared responsibilities
- French model: municipal task: the maintenance of the educational buildings
  - Kindergartens, elementary schools: *commune* and *intercommunales*
  - Lower secondary education (*collèges*): counties (*département*)
  - Higher secondary education (*lycées*): regions (*région*)
- Central government agencies in the counties and in the regions (regional based model): operation of the educational services
- Private schools: different types of public contracts
- French model: Romania, Spain (differences)
- Transformation to a municipal based model: Italy



# Municipal based models

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- Germany
  - Shared responsibilities: different models of the provinces (mainly only elementary schools or elementary and secondary schools)
- Austria: centralised model, but elementary schools are maintained and operated by the municipalities (but *Gymnasium*: federal competences)
- Multilayer models (within the municipal system): Norway, Latvia, Estonia
- Main municipal responsibilities:
  - Finland
  - UK → LEA (county-based)
  - USA: single purpose municipalities (school boards)



# Municipalities and higher educations

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- Higher education: state task (tasks of the central governments → in federal countries: Member States or the federation)
- Municipal tasks:
  - Cooperation
  - Aid
  - Integration into the local development system



The role of the municipalities in the field of education

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# CULTURE AND SPORT





# Culture and public administration

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- The approaches of culture
  - Broad sense
  - Narrow sense
- The role of the culture:
  - National identity
  - Local identity
- Challenges:
  - Freedom of culture and the role of public administration



# Municipalities and culture

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- Core municipal tasks
- Significant role of the local government system
- Different models, but common elements:
  - Municipalities are responsible for the local libraries, institutes of community culture and local public collections (museums and archives)
  - Aid of the local culture
  - Autonomous structures



# Models

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- First-tier based model
  - Local community culture, libraries, museums
  - Inter-municipal associations or town-centered solutions
  - Additional roles of the second-tier local governments (if they exist)
- Second-tier based model
  - Limited role of the first-tier municipalities
  - Main provider: regional municipalities



# Sport

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- Different approaches
- Municipal roles:
  - Maintenance of the infrastructure
  - Aid and support
- First-tier and regional based models



The role of the municipalities in the field of health care

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# HEALTH CARE



# Main models of financing

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- Strongly influenced the welfare model of the given country
- Main funding forms:
  - by taxes
  - by social insurance
    - special forms
  - decentralized (multipolar) funding system



# General role of the local governments in the service provision

- **Service buyer:** mainly central government agencies (Germany: public bodies – *Körperschaften*) + private sector
- **Monitoring and supervision:**
  - Central government agencies
  - Local government (municipal own competence)
  - Local government (delegated competence)
- **Provider and organiser roles:**
  - main field of the local government health competences
  - Transformation of this role: during the 1990s and 2000s



# Dominant role of the central government: general characteristics

- In these countries: local governments: no or limited competences
- Examples:
  - Purest form: United Kingdom → NHS
  - A specific form: Belgium (regions are responsible)
  - Central government centered administration in a strongly decentralized model: the Netherlands
  - France: narrow competences of the regions
  - Transition models:
    - Austria
    - Hungary after 2011





# Challenges of the central-government centered model

- Main disadvantage: inflexibility
- Attempts to eliminate the disadvantages:
  - UK
    - NPM-based reform 1990/91 of the NHS: quasi competition and internal decentralization
    - The impact of Good Governance: the LGPIH 2007: LINKs
  - Reforms in Hungary: road from a decentralized model to a centralized one 2010-2013



# Local government centered model: general characteristics

- Local governments: significant provider and organizer roles → typically: basic health care: settlement level, inpatient (and sometimes outpatient) care: intermediate level
- Examples:
  - Purest form: Nordic (Scandinavian) countries
  - Visegrád Countries:
    - Czech and Slovak Republic
    - Poland
    - Hungary: from a decentralised model to centralised one
  - Romania
  - Southern European countries
  - Germany:
    - Provision of services
    - Supervision of health care (in delegated competence)



# Challenges of the local government centered models

- Main problems:
  - spatial structure and economy of scale:
    - merge of the settlements
    - widening the competences of the intermediate local-government level
    - inter-municipal associations
    - Change of model: Hungary
  - efficiency (and cost reduction):
    - NPM-based reforms, mainly: quasi competition (voucher systems) and competitive insurers
    - Extension of the health care (*Pflegekassen* in Germany)



The role of the municipalities in the field of social care

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# SOCIAL CARE



# Municipalities and social care

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- Core municipal tasks
- Significant role of the local government system
- Different models, but common element: municipalities are responsible for basic social care



# First-tier centered model

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- Common element: basic social care belongs to the responsibilities of the first-tier municipalities
- Different models:
  - Sweden: first-tier governments are responsible for social care
  - First-tier municipalities as providers of basic social care
    - Specialised care:
      - Regional municipalities
      - Central government and its agencies
  - First-tier municipalities and their inter-municipal associations



# Main role of second-tier governments

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- Different solutions
- English model: LSA (county level)
- French model:
  - Basic care: counties (or inter-municipal associations)
  - Specialised care: regions
- German model
  - Limited basic social care of the first-tier municipalities
  - Main role of the county governments (Kreise)
  - Role of the provincial (central) government



Regional development

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# MUNICIPAL DEVELOPMENT TASKS





# Development issues

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- Local development: limited resources
- Development tasks: mainly at regional level
- Different models:
  - Federations → limited municipal development tasks (it is stronger in the decentralised federations...)
  - Regionalised countries
  - Inter-municipal model
  - Centralised model



# Main models of federalism (examples)

	Centralised	Decentralised
Symmetrical	Belgium (resymmetrisation) Austria	Germany, USA
Asymmetrical	Switzerland, Russian Federation (the 'regions')	Canada



# Models of regional development

- Centralised model
  - Greece and Hungary (formerly Ireland)
- Municipal model
  - County-based model
  - Regional development:
    - France (and the transformation of the French model)
    - Municipal regionalism in CEE: Poland
- Regionalised model
  - The ‚una e indissolubile’ Italy and its regions (multiethnicity and traditions)
  - Serbia: the case of Vojvodina (multiethnic region)
- Inter-municipal model
  - from agencies to inter-municipal associations (development issue and regionalism in Ireland and Portugal)
  - Urban governance (?)



# The hybridity and its borders. Failed reforms

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- Hybrid solutions:
  - The quasi-federalism in Spain and the case of Catalonia
  - The transformation of the United Kingdom: back to the real federalism?
- Failed reforms:
  - Lack of the traditions → Hungary
  - Multithnicity as problem → Romania and Slovakia



Municipalities and policing

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# MUNICIPAL POLICING



# The interpretation of policing

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- Different approaches
- Common element: defense of the public order
- French approach: *ordre publique* and its elements
- German concept of *Polizei*
- Anglo-Saxon countries: police → „to protect and serve”



# The beginning: medieval ages

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- Feudal policing
- The tasks of the municipalities
- State polices: absolute monarchies



# Municipal police

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- Anglo-Saxon countries
- General police tasks are performed by municipal bodies
- State polices and and municipal polices





# Mixed model (French approach)

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- Nationalisation of the local police forces
- State polices: *Police Nationale* and *Gendarmerie Nationale (police judiciaires)*
- After 1983: local police forces *can be established (police administratifs)*
- Local police forces: under the direction of the *maire* (state and municipal task)



# Number of the local policie authorities in France in 2013 (after Donelly and Horváth)

Number of municipalities	Number of municipal police bodies
36 559	approx. 3 500



# Number of the officers of the French police authorities in 2013 (after Donnelly)

Number of the police officers		
Police judiciaire		Police administrative: municipal police
Gendarmerie (Gendarmerie Nationale)	National Police (Police Nationale)	
approx. 105 000	approx. 145 000	approx. 21 500



# State police

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- German example: police is performed by state (and federal) agencies
- Municipalities have duties only:
  - fire and rescue.



Models of municipal tasks

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# CONCLUSIONS (?)



# Conclusions (?)

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- Multi-dimensional matrix:
  - Different municipal systems
  - Different welfare models
  - Different interpretation of public services
- Which element has the main impact on the task system?

