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Subsidiarity as an answer to the crisis of local self-government system

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Local self-governments have faced many difficulties in recent years in the middle of crises. Many reforms have been carried out with a view to efficiency, including territorial reforms in a number of countries. However, in addition to efficiency, local communities are also claiming the right to decide their own affairs. As regards the distribution of powers, little attention is paid to the principle of subsidiarity in this process. This principle is a well-known concept in EU law, with a clear meaning, but it receives little attention in relation to local self-government. However, this principle is a fundamental principle of the social teaching of the Catholic Church, which helps to provide a stable reference point for local self-government in a changing world. Subsidiarity helps to provide a fuller and more accurate understanding of local self-government, while at the same time providing a basis for the local community to claim the right to decide on matters that concern them. Ultimately, it is partly this principle that justifies the very existence of local self-government.

KEYWORDS

subsidiarity, local self-government, local community, territorial reforms, distribution of powers

1 Introduction

Local self-government throughout Europe is based on centuries-old traditions. Although local self-government systems have many differences from one state to another, they are everywhere decentralized institutions that society expects to carry out local public affairs effectively. However, they are also democratic institutions that should not only be efficient but also expected to carry out their tasks on behalf of and for the benefit of the local community.

Over the past more than a decade, dozens of European countries have introduced territorial reforms, and the number of European local self-government units has fallen by more than 5,000. In some countries, this transformation is ongoing. The economic crisis of 2008 and subsequent years has contributed significantly to the resurgence of territorial reforms, which have been dominated by cost-saving arguments (Swianiewicz, 2018, p. 2–3). States have used a variety of techniques to address the issue of economies of scale. The Scandinavian states (and to some extent the Anglo-Saxon countries and Germany) have tried to adjust the number and size of municipalities to the increased municipal responsibilities by merging municipalities (Hoffman, 2017, p. 223). In other states, however, the regional level has been strengthened or duplicated (e.g., in the states of the Latin model) and the role of associations has been strengthened (Hoffman, 2015, p. 36–37).

In most cases, the reforms have been accompanied in part by mergers of municipalities, but it is questionable whether territorial fragmentation is a real problem, and even more questionable whether mergers are a solution (Swianiewicz, 2018, p. 7). In addition, some research suggests that population growth has a negative impact on participation rates. Since reforms involve an increase in the size of the political unit, they change the information environment and the chances and expectations of individuals to exert greater influence on political decisions. Voters thus become less informed and lose interest in local elections, leading to a sharp drop in turnout following reform (Heinisch et al., 2018, p. 478). According to Colin Copus et co-authors, this is a move away from democracy toward technocracy, in which there is a disconnection from the local reality (history, people, culture, etc.; Copus et al., 2017, p. 9). Fixed costs are difficult to reduce through the merger of municipalities, with unit costs in many areas being almost static (e.g., in social services, costs are almost independent of size; Ebinger et al., 2019, p. 16–17). The essence of the problem, in the words of Christopher L. Eisgruber, is that democratic participation requires a certain “intimacy,” because the authority has to be small enough to allow everyone who cares to enter the community scene (Eisgruber, 2001, p. 87–91).

Even in Hungary, local self-government is going through difficult times, and some elements are in crisis. There are no clear directions for reform of the system, and the county level of local self-government in terms of powers has almost disappeared. Moreover, during the COVID-19 pandemic, the system was almost completely turned upside down, and local self-governments were constantly faced with new challenges. In a matter of days, the state of danger has spread to local governments, which in some ways is quite understandable, as they are the smallest but most important bastions of community coexistence in legal terms. During this period, new powers have been given (e.g., introduction of curfews) and taken away (e.g., parking policies), financial restrictions have been introduced (e.g., on certain taxes) and powers have been transferred to mayors (e.g., local government decrees). These do not respect the principles of local self-government.

There is no doubt that in times of pandemic or other crises, self-governance and autonomy can be overshadowed by the need for unified action, in which there is not really room for different solutions. This may seem acceptable at first sight, but it is contradicted by the fact that in Hungary, for example, during the pandemic, it was quickly realized that curfew restrictions cannot be decided centrally, because it is worth adapting to local characteristics. This points to the fact that differences in local conditions can even provide grounds for the mayor to restrict a fundamental right. It was also in this direction (i.e., the importance of the local government's role) that a government decree made it a duty of the local self-government to care for persons over 70 years of age. In effect, this meant that the local self-government was given a state administrative task, because it seemed to be more efficient in this area to solve the problem locally.

Although these ideas seem to be at opposite sides of the spectrum, they are not irreconcilably opposed. Situations requiring crisis management, such as special legal orders, have a significant impact on the functioning of the administrative organization, typically involving the strengthening of one-person rather than

broader decision-making bodies and of narrower bodies. Crises primarily expand the Government's scope for action, even at the expense of the National Assembly's right to decide (Kádár and Hoffman, 2021, p. 7). Consequently, the epidemic crisis has clearly moved the state toward a more centralized approach (Hoffman and Balázs, 2022, p. 274). At the same time, however, it is also true that the role of local self-government in emergency situations is becoming more important, given its knowledge of local social relations. The ability to react quickly is particularly important in managing a crisis (Siket, 2021, p. 203).

In the light of the above, the economic and epidemiological crises of recent years have motivated me to find reference points that help me to understand more deeply the situations in which it is worthwhile to delegate a task to local self-government and to understand the needs of local communities as well. Although studies on local self-government systems typically focus on the principles of decentralization and autonomy, within the framework of this paper I will focus on the principle of subsidiarity. My hypothesis is that the principle of subsidiarity helps to provide a stable reference point for local self-government in a changing world.

2 General reference points for examining the principle of subsidiarity

Subsidiarity is a concept most people associate reflexively with the European Union. As it is a fundamental EU principle, it is no wonder that this is how legal scholars treat the concept. Although this principle is also encountered in the literature on local self-government (mainly by German authors), its role is less clear than that of autonomy or decentralization. Moreover, it is not even clear that subsidiarity is always the focus of interest as a legal principle, but it is often used as a point of reference in various political interests and arguments (Tamás Cs, 2010, p. 20).

Although most authors refer to the Catholic origins of the principle, and most briefly discuss its original meaning, and some analyse its broader meaning, most treat it almost exclusively as a principle that is fundamental to the functioning of the European Union. However, this is a considerable simplification of the original meaning of the concept, as is the other extreme, i.e., the over-emphasis on its Catholic origins.

Treating it as a purely EU principle is a significant simplification of its original meaning, but it does not change the essence: it prohibits unjustified interference by higher levels of power in the sphere of competence of lower levels, i.e., interference that is incompatible with the common welfare (Frivaldszky, 2006, p. 36), and it also stipulates that the higher level may only intervene in the relations of the lower level in order to help it.

Despite the general approach, the importance of local self-government in the field is in itself paramount because the European Charter of Local Self-Government (hereinafter: Charter), without naming the concept, requires its implementation.¹ It is less often

¹ Charter 4(3).

explicitly mentioned in national constitutions in relation to local self-government (although Article 118 of the Italian Constitution does provide for its application, both in substance and by name), but the Member States which are party to the Charter (with the exception of those which may have reservations) have undertaken to implement it.

However, I am also convinced that the principle of subsidiarity is able to bring a perspective to the analysis of the meaning of self-government that is capable of giving the idea of self-government a broader and more democratic content.

2.1 The ideological foundations of this principle

The Latin word *subsidiūm*, which is the basis of the principle, means reserve, metaphorically help or assistance (Paczolay, 2006, p. 60). It is a form of assistance that promotes the initiative of individuals in relation to organizations at a higher level of society and helps them to achieve a given public good (Novitzky, 2007). Its conceptual and historical origins can be approached from two directions. According to the Anglo-Saxon utilitarian school, the role of the state is limited to promoting individual interests. Continental Catholic philosophy (following Cicero and St Thomas Aquinas), on the other hand, sees the caring for citizens as the primary task of the state in the close relationship between state and society. The first subordinates the state to the interests of the individual, while the latter sees the individual as bound to the state and society in solidarity (Pálné Kovács, 2008, p. 28). Benjamin Constant had already formulated the essence of this principle (without naming it at this time) in relation to local government in the early 19th century, when he wrote that “the administration of the affairs of the whole is the business of the whole, that is to say, of the representatives and ambassadors of the whole. What concerns only one part must be decided only by that part: what concerns only the individual must depend only on the individual. It cannot be too often repeated that the public will is no more worthy of respect than the private will once it has gone beyond its sphere” (Constant, 1862, p. 125). In the same way, as already in 1816, List argued that the structure of political institutions should be based on this general principle. If the wellbeing of the individual is the public interest in itself, the role of the state begins only when the individual cannot achieve it. But if a more limited association is more effective in this than the state, then the task must be left to this type of association. Therefore, the state should not only permit them, but should directly create them (Chaloupek, 2012, p. 5). Although the principle is still prominent in German legal literature, its idea has also been introduced by American authors. As a constitutional value, some authors argue that it may be important (Jackson, 2014), but there are also authors who explicitly associate it with federalism (Calabresi and Bickford, 2014).

The Catholic Church adopted this principle, already well known in the Middle Ages, in its social teaching when it proclaimed the requirement of subsidiarity (Hörcher, 2023, p. 132). The true expression of the concept is due to this. Although the principle of subsidiarity was not explicitly formulated until the encyclical

Quadragesimo Anno, certain references to it can be found in Pope Leo XIII's encyclical *Rerum Novarum* of 1891 (Novitzky, 2007). The definition of subsidiarity is now classically described in the Quadragesimo Anno encyclical: “*Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them (Pope Pius XI, 1931).*” The essence of the principle, according to St John Paul II, is that “*a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good (Pope John Paul II, 1991).*” The encyclical *Centesimus Annus* rarely mentions subsidiarity explicitly, but speaks more about cooperation between people, the right of association. It is clear from the text that to deny man his personhood is to deny him his three most important rights: private property, religious freedom and the right of association (Szalai, 2011). Arno Waschkuhn does not fail to note that subsidiarity also plays a major role in Protestant ethics. Most importantly, he points out that the Evangelicals' approach to this issue is rather ambivalent. He points out that the Catholic position can only be interpreted in terms of a very simplistic society, and that there is a fear of over-integration (he notes that the EU's goals in this direction have aroused mistrust, especially in Protestant states), but that its foundations are also in line with Protestant ideas, and in some respects are derived directly from Calvinist teachings, and have therefore themselves contributed to the spread of the principle (Waschkuhn, 1995, p. 31–35).

2.2 Subsidiarity as a principle of social organization

Although subsidiarity is considered by all to be a common sense principle, it is much easier to define its content in theory than to define it in concrete terms (Locatelli, 2000, p. 54). It is, in general terms, a guiding principle that regulates the power necessary to achieve the common good. It protects free initiative in society, the rights of the little ones in social life and the building of a bottom-up society. Social action is essentially subsidiary, that is to say, helping, an assistance which people develop together with a view to improving the personality of each individual (Novitzky, 2007). Subsidiarity is based on the hypothesis that individuals (alone or together) have the potential to address and satisfy collective needs (Vittadini, 2012, p. 23). It assumes a traditionally hierarchical and segmented social model, with layers of concentric circles around the individual as the original reference point for autonomy (Kaufmann, 1985, p. 55).

This principle cannot be considered as a stand-alone principle, but the common role of the concepts of individuality—solidarity—subsidiarity in social life is emphasized. Overemphasizing either of these at the expense of the other two makes it meaningless or even impossible to achieve the desired goal, i.e., the common good

(Novitzky, 2007). In the social teaching of the Church, the principle of subsidiarity, together with the principles of the common good, personality and solidarity, thus provide a more complete and correct interpretation of subsidiarity, which can be said to be not only a principle of the organization of the State but also of the organization of society (Frivaldszky, 2006, p. 50–55). According to Péter Novitzky, subsidiarity is a facilitator, i.e., it can never be seen as an goal in itself. At the same time, subsidiarity should never be seen as a substitute for the shortcomings that are manifested, as this would be contrary to solidarity based on the common good. In its view, the concept of subsidiarity only provides a framework for society to better achieve the common good (Novitzky, 2007). It is important to stress that subsidiarity both defines and limits freedom of action. Indeed, the legitimate authority is empowered to replace a failing actor if necessary (Berthet and Cuntigh, 2006, p. 186).

Based on this, Peter Novitzky approaches the principle of subsidiarity from two sides, following Wolfgang Ockenfels' view: on the one hand, he sees it as a principle based on helping oneself, and on the other hand, as a principle of helping others. Its role can therefore be essentially reduced to these two tasks. The first defines the right and duty of the individual or small community to take responsibility for their actions, while the latter regulates the right of the higher community to provide support where it is needed, where self-help is not sufficient (Novitzky, 2007). János Frivaldszky argues that this assistance is essentially indirect, i.e., it respects the dignity of the persons concerned, has a specific purpose and is identity-fulfilling. This is the true legitimacy and task of political formations organized at a higher level of public authority in relation to the common good. At the same time, it also coordinates the various social and political entities (Frivaldszky, 2006, p. 36–37). Between the state and the individual, reciprocity is presupposed by a general capacity for law (based on human status) and loyalty based on membership expressed by citizenship (Varga Zs, 2009, p. 105). In a positive context, this principle ensures and promotes the development of community autonomy and thus the focus on the wellbeing of citizens (a new form of popular sovereignty), while in a negative context it prohibits unwarranted interference by higher authorities in the sphere of competence of lower ones (Frivaldszky, 2006, p. 36). In essence, subsidiarity is a self-limiting principle binding both the state and the individual (Varga Zs, 2009, p. 105).

It should also be noted that, as our world is constantly changing, social relations are becoming more complex. According to Franz-Xaver Kaufmann, the idea of social layers in the form of concentric circles surrounding the individual has recently become functionally questionable due to the reorganization of social relations. In his view, the larger-smaller relationship can no longer be applied unambiguously, but must take into account that the relevant circles of life are no longer concentric but overlap. He therefore proposes linking the idea of subsidiarity to another theoretical construct, namely the necessary length of chains of action. The division of tasks and the specialization that this enables will lead to greater efficiency, i.e., the lengthening of chains of action may in itself be associated with more rational problem management. It is also possible that the capacity to act is higher in a higher action context (Kaufmann, 1985, p. 55–57).

3 The normativity of the principle of subsidiarity in relation to local self-government

Article 4(3) of the Charter states that public responsibilities shall generally be exercised in preference by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

This declaration is a statement of the principle of subsidiarity, and maybe the clearest and most precise of all the normative provisions. This is of special importance because the normative nature of the principle of subsidiarity is generally highly questioned.

According to Nóra Chronowski, the main deficiency of this principle is its low normative force (Chronowski, 2005, p. 87). Hugo Preuß also draws attention to the fact that it would be difficult to derive the principle's legal force from a positive law perspective. He argues that, although it may be possible to agree with this principle, it is never a legal principle, and in fact the state does not in any way limit itself to a secondary role (Preuß, 1889, p. 81). Reinhard Hendler is more permissive when he says that subsidiarity can only have legal force if the state recognizes that. Without it, it is only a political planning principle (Hendler, 2007, p. 17). Undoubtedly, the Charter provides for its application, but Gábor Kecso argues that even within the Charter its role is secondary, because the residuality principle in Article 4(2) takes priority over it, which is a principle that is privileged over subsidiarity in the system of the Charter (Kecso, 2016, p. 133–134). I disagree with this to the extent that the provision of the Charter referred to above by Gábor Kecso is more about the application of the generic clause model, which not only does not oppose subsidiarity, but actually opens the way to it (as opposed to the enumeration model). However, Franz-Ludwig Knemeyer considers the principle of subsidiarity to be a constitutional reality. He sees it as one of the most important principles, even in the absence of any mention of it in a constitution (Knemeyer, 1990, p. 174). According to Arno Waschkuhn, this principle also infuses the German Basic Law, indirectly in relation to fundamental rights, more specifically in relation to state competences, and explicitly in the bottom-up federal structure (Waschkuhn, 1995, p. 58). More carefully, Reinhard Hendler argues that the German constitutional law reflects subsidiarity at several points while contradicting this principle at others. It follows, in his view, that this principle cannot be described as a general constitutional requirement from which specific requirements for the organization of the state structure can be derived. The constitutional starting point for legal argumentation and conclusion is not the independent constitutional principle of subsidiarity, but rather the relevant constitutional rules (Hendler, 2007, p. 17). This might be hard to disagree with in itself, but it is a principle that is now widespread, supporting those who can take their own initiative to solve their problems and not seek help from a higher, anonymous and pre-determined source (Novitzky, 2007). Although the principle of subsidiarity is not necessarily stated explicitly in state constitutions, the role of local communities in local public affairs is recognized, but without undermining the unity of the state. I can agree with

András Zs Varga that the triad of solidarity-personal dignity-subsidiarity can be derived from the dogmatic interpretation of law and from the conceptual analysis of positive law (e.g., according to him, the obligation of bearing public burdens is a positive legal representation of the dogmatic requirement of subsidiarity; Varga Zs, 2009. p. 105).

4 Subsidiarity as a “catalyst”

The essence of local self-government can be explained through different principles. Decentralization, autonomy, efficiency, local democracy, vertical division of powers are all principles by which local self-government is usually described. In practice, however, they cannot be implemented in isolation, but often act in combination with other principles. There are a number of contradictory approaches which, in my view, can be systematically examined by focusing on the principle of subsidiarity. Indeed, subsidiarity brings into the analysis a point of view (in effect a catalyst) that can give democratic content to any principle. Arno Waschkuhn formulates this as a regulative idea that can express the bridge between “sein” and “sollen” (Waschkuhn, 1995. p. 9, 18). He argues that subsidiarity participates in the construction of democracy as a means of limiting state power and guaranteeing freedom. He also links it to decentralization as a balancing principle and as a principle that is important in the distribution of tasks. He also shows how different political communities have different views of this principle, which he sees as ultimately bringing Europe closer to federation (Waschkuhn, 1995. p. 31–182).

It is also linked to federation (and possibly more generally to vertical division of powers). Nóra Chronowski sees subsidiarity (even though she examines it explicitly in the context of the EU’s relationship with its member states) as a guarantee of the vertical division of powers (Chronowski, 2005. p. 86). While Loren King essentially argues that subsidiarity and federalism are similar and complementary. The reason, she argues, is that many political problems have different territorial scales and do not affect different communities in the same way. The classical problem with federalism is that there is a unification, but interests differ from territory to territory, thus not creating an undifferentiated sovereign state (King, 2014. p. 311).

In my view, the relationship between subsidiarity and the vertical division of powers becomes most visible when the central government decides to delegate a public task to a local (or at least sub-central) level.

In this context, it is very important what counts as a local public affair. At the heart of local self-government is undoubtedly the exercise of local public affairs. István Balázs also points out that, according to the Charter, the role of local authorities is to manage local public affairs with guaranteed autonomy (Balázs, 2018. p. 387). It is local public affairs that give substance to self-government and give meaning to its status.

However, on the one hand, the allocation of functions cannot be decided on the basis of practical considerations alone, and on the other hand, it must be done at a high normative level. The Charter

enables this precisely by the constitution or by statute.² In my view, the really interesting thing about this issue is the criteria that limit the decision-makers when they decide on a local public affair.

In theory, it is a sovereign decision for each state to decide what, to what extent and according to what criteria it recognizes as a local public affair. However, the question is not so simple, because it also imposes obligations on the state in the context of subsidiarity. It could also be ensured by way of deconcentration, therefore the role of the principle of decentralization should be added to the analysis.

Whereas, in the case of deconcentration the territorial body enjoys only executive autonomy, in decentralization powers are effectively shared with territorial decision-makers, who are not subordinate to the central bodies (Pálné Kovács, 1996. p. 141). Zoltán Magyary illustrates the difference between decentralization and deconcentration very aptly when he writes that the geographical location and distance to the center of local government and deconcentrated bodies are the same. The difference, according to him, is in the organization on the one hand and in its relation to the center on the other (Magyary, 1942. p. 120). A decentralized body has a democratic content, while a deconcentrated body is characterized by a bureaucratic organizational logic, the former having relative autonomy, the latter being organized in a strict hierarchy (Pálné Kovács, 2008. p. 24). From a decentralization perspective, the creation of local self-government is a self-limiting decision by the central authority based on efficiency. In this approach, the emphasis is on the origin of local self-government: local self-government is established by the central power and not by the individuals belonging to the local self-government (Csink, 2014. p. 161). The state exercises a kind of self-limitation by delegating certain powers to the territorial or municipal levels (in this logic, local self-governments are also state actors, and the rights of self-government are based on state recognition; Fogarasi, 2010. p. 35).

The academic literature is divided as to whether the subsidiarity principle is more in the interests of efficiency or democracy (Soós, 2010. p. 57; Tamás, 2010. p. 359). The relationship between decentralization and subsidiarity should be considered explicitly here. The ultimate consequence of decentralization is a multilevel governance (Soós, 2010. p. 57). In the words of Edit Soós, the principle of subsidiarity is the accompanying principle of decentralization. The implementation of multilevel governance is based on respect for the principle of subsidiarity, which prevents decisions being concentrated at a single level of power and ensures that policies are elaborated and implemented at the most appropriate level. Subsidiarity and multilevel governance are inseparable, as subsidiarity is linked to the competences of different levels of government, while multilevel governance focuses on the interaction between levels of government (Soós, 2010. p. 62).

The thoughts of Arno Waschkuhn presented above also closely link subsidiarity with decentralization, but he also points out (partly referring to other authors) that the principle of subsidiarity is especially relevant in relation to decentralization, that the appropriate tasks should be assigned to the appropriate levels and that relative autonomy is necessarily linked to

² Charter 4(1).

it. In his view, decentralization, subsidiarity and federalism are complementary concepts and, in contrast to separatist aspirations, have a legitimating meaning. In his view, this principle is of great importance in times of growing regionalism, as it helps to balance conflicting aspirations (Waschkuhn, 1995, p. 89–91). Gérald Orange stresses that all European states have a more or less decentralized administrative and territorial level, which is also required by the principle of subsidiarity. The proximity of leadership allows better information, consideration of opposing interests and greater efficiency. As greater autonomy is to be promoted, the systems allow more scope for decentralization, except in France, where he believes there is reluctance on the part of deputies and parties (Orange, 2006, p. 117). György Képes even mentions the role of the principle of subsidiarity in the territorial distribution of power in the United States of America, which he refers to as an accepted principle in the sense of self-government (Frivaldszky, 2006).

It goes without saying that the concept of decentralization is perfectly understandable and can be explained without the additional meaning of subsidiarity, but not in relation to self-government. The reason is that decentralization without subsidiarity thus appears to be a purely efficiency issue, the existence or extent of which depends primarily on the State's decision on the basis of utilitarian considerations. However, I have argued above that the principle of subsidiarity also requires local self-government to ensure that its functions are performed at the lowest possible level. Thus, the two principles are closely linked, since what is decided by the State in one direction is demanded by the members of the local community in the other. Ultimately, subsidiarity, from the point of view of local self-government, is the basis for the right to decentralization.

Finally, I must stress once again that, in principle, it is the sovereign decision of the State to recognize what is a local public affair, but that this also imposes obligations on the State in the context of subsidiarity. This could also be ensured through deconcentration, but through decentralization (thus recognizing autonomy), the central power necessarily limits itself, because it transfers powers to local authorities which it cannot claim to have the central executive take over. The result is that the central level of the state necessarily relinquishes its right to decide on the matter in question.

5 The importance of subsidiarity in relation to local self-government

In the light of the above, it is not surprising that the principle of subsidiarity has taken on a prominent role in relation to local self-government. This principle prohibits unjustified interference by higher levels of power in the sphere of competence of lower levels, i.e. interference that is incompatible with the common good (Frivaldszky, 2006, p. 36), and also stipulates that the higher level may only intervene in the relations of the lower level in order to help the latter. In essence, it is the principle of limitation of power and at the same time the principle of the necessity and regulation of intervention (Somlyódiné Pfeil, 2003, p. 15). It

is a complex principle that covers the whole range of relations between the individual and local self-government and between the state and the international community (Verebélyi, 1996, p. 57). The practical consequence, in agreement with the conclusion of András Zs Varga, is that without the triad of solidarity—personal dignity—subsidiarity, there is no point in constitution-making, because society will not feel the result as its own, but the constitution will be only a possible instrument of legal positivism, more or less regulating the exercise of power (Varga Zs, 2009, p. 107).

There can be no doubt that a local self-government can fulfill its constitutional function if it can manage, on its own responsibility, the affairs arising from the needs of the people who make up the local community in a given community (Somlyódiné Pfeil, 2003, p. 262). Theoretically, it is those decision-making powers at local level that have a local character, where local room for maneuver and initiative are more valuable than the equally important standardization (Kaltenbach, 2010, p. 47). The principle of subsidiarity regulates the burden of evidence in these very difficult matters, as the presumption is in favor of the autonomy of smaller communities, so that those who wish to restrict them must justify their intervention (Kaufmann, 1985, p. 55).

Subsidiarity therefore requires that problems are solved at the level closest to where they arise, wherever possible. According to Imre Verebélyi, it is primarily the individual and his self-organizing small community that must be empowered to take care of themselves (i.e., the subsidiarity constraint also applies to local self-government). Subsequently, within the local self-government system, the municipal self-government is the beneficiary, while the county self-government is the level closer to the central and regional state bodies (Verebélyi, 1996, p. 57). This means that the relationship between the levels of local government (and the rules for the delegation of tasks and powers) is determined by the idea of subsidiarity (Somlyódiné Pfeil, 2003, p. 13). However, it should also be stressed that the principle is not about over-emphasizing freedom over the state, but about ensuring cooperation in partnership (Heinze, 1985, p. 15). In this way, it also contributes to the construction of a well-functioning society.³ Therefore, it is also part of subsidiarity if, in certain cases, a task that cannot be solved at a lower level is transferred to a higher level (Waschkuhn, 1995, p. 59). The higher level acts when the capacity of the smaller unit is no longer sufficient.⁴ If a local government function must be performed, the decisive criterion is

³ Ilona Pálné Kovács points out that German politicians call subsidiarity the Magna Carta of Europe, referring to the way in which territorial decision-makers are integrated into Community decision-making. (Pálné Kovács, 2006, p. 289).

⁴ This interpretation of the principle of subsidiarity has already been expressed in the reasoning of the Hungarian Constitutional Court, which emphasized that the transfer of tasks from the municipal self-government to the county self-government can be assessed in the light of this principle. {Decision 8/2021 (2. III.) AB, Reasoning [171]} See in English: <https://eccn.hu/decision/164>. There has also been a reference to the principle of subsidiarity in the filling in of the regulatory mandate. {Decision 29/2015 (2. X.) AB, Reasoning [35]}.

whether the situation of the competent local authority allows it to be performed, since under subsidiarity the essential criterion for the existence of competence is capacity to perform (Somlyódiné Pfeil, 2003, p. 263). In the light of these observations, one can in fact agree with Imre Verebélyi that subsidiarity (at least in itself) does not provide a basis for considering the municipal self-government to be more valuable than the county self-government or the deconcentrated bodies. There is not a difference in value between the different levels, but a division of tasks and powers (Verebélyi, 1996, p. 58).

Despite the general acceptance of this principle, it can be also criticized. According to Andreas Føllesdal, its popularity is partly due to the fact that it obscures the central issues and rarely solves problems of separation of powers. The competing conceptions (EU, US, Catholic Church, international law) are all based on contested premises and point to important compromises in very different ways. In his view, these different ideas and their conflicting implications are too often ignored (Føllesdal, 2014, p. 215). At the same time, he acknowledges that one of the advantages of the concept is that it can help to build arguments on the most appropriate allocation of powers in each area and (in the US context) can improve the stability of federal regulation (Føllesdal, 2014, p. 226).

I myself do not think that either the normative content of the principle of subsidiarity or the premises of this principle are of critical importance from a practical point of view. The name comes from the Catholic Church, its content is also influenced by other factors, but the essence is this: local communities have a need to manage their own affairs, which must be given some space by the state.

Despite possible criticisms, the principle of subsidiarity helps to provide a fuller and more accurate understanding of local self-government, while at the same time providing a basis for the local community to claim the right to decide on matters that concern them. This principle prohibits the higher authorities from unjustified interference in the competences of the lower ones. This principle states that it is the role of the higher levels of power to help the lower levels. Ultimately, it is partly this principle that justifies the very existence of self-government.

6 Conclusions

In recent decades, many European countries have implemented local self-government reforms. Their focus has generally been on more efficient functioning. However, local self-governments are also democratic institutions, which makes it difficult to implement reforms. Even in Hungary, local self-government is going through difficult times, and some elements are in crisis. There are no clear directions for reform of the system, and the county level of local self-government in terms of powers has almost disappeared. Moreover, during the COVID-19 pandemic, the system was almost completely turned upside down, and local governments were constantly faced with new challenges.

These situations could be resolved by a rediscovery of the principle of subsidiarity. This principle is often referred to in EU

political discourse, but its underlying meaning is rarely discussed nor is it used in local government discourse. I have pointed out that the ideological basis of the principle of subsidiarity is much more diverse and value-oriented than is commonly used today.⁵ Its significance in relation to local self-government lies not primarily in its normative content, but in the fact that it is a 'catalyst' that gives much deeper meaning to all the other principles that apply to local self-government. Therefore, this principle is not primarily a principle of state organization, but a principle of community organization. In my study, I set out to explore why it would be more worthwhile to pay more attention to this principle. Subsidiarity helps to ensure a reasonable distribution of powers, while taking due regard of the interests of local communities.

There can be no doubt that a local self-government can fulfill its constitutional function if it can manage, on its own responsibility, the affairs arising from the needs of the people who make up the local community in a given community. Theoretically, it is those decision-making powers at local level that have a local character, where local room for maneuver and initiative are more valuable than the equally important standardization. The principle of subsidiarity regulates the burden of evidence in these very difficult matters, as the presumption is in favor of the autonomy of smaller communities, so that those who wish to restrict them must justify their intervention. Subsidiarity therefore requires that problems are solved at the level closest to where they arise, wherever possible. However, it should also be stressed that the principle is not about over-emphasizing freedom over the state, but about ensuring cooperation in partnership. In this way, it also contributes to the construction of a well-functioning society. Therefore, it is also part of subsidiarity if, in certain cases, a task that cannot be solved at a lower level is transferred to a higher level. The higher level acts when the capacity of the smaller unit is no longer sufficient.

Subsidiarity helps to provide a fuller and more accurate understanding of local self-government, while at the same time providing a basis for the local community to claim the right to decide on matters that concern them. This principle prohibits the higher authorities from unjustified interference in the competences of the lower ones. This principle states that it is the role of the higher levels of power to help the lower levels. Ultimately, it is partly this principle that justifies the very existence of local self-government.

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⁵ It should be noted that this concept is often used in a simplified and narrow sense, not only in the literature on local self-government, but even in the literature on EU law. (Koller, 2023, p. 17).

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Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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