

University doctoral (PhD) Dissertation Abstract

**REGULATION OF ORGANIZING SOCIAL SERVICES FROM THE VIEWPOINT
OF THE TASKS OF PUBLIC SECTOR ACTORS**

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I The aim, background and relevance of the research

After the change of the regime, the system of social administration and the regulations have continuously changed. New social services appeared, and in the cases of certain services normative financing was replaced by financing through application on the basis of task description, moreover in 2013, task-based financing was introduced in residential institutions. At the same time a two-way change could also be seen in the last 20 years. Outsourcing and privatization, which enforce the role of the market, were applied in addition to renationalization and centralization. Meanwhile a new problem rose from the fact that the state specified entitlements rather than rights in the operation and regulation of the social service system with the primer aim to work out a system that is adjusted to capacity. However, it implies injury to legal equality and equal access.

The dissertation is presenting, while searching for the answers, how the role of the state and local self-government was shaped between the change of the regime and 2013, with special attention to the last 3 years' events; organizing and ensuring social services that are part of public services. It is examining the impact of these processes on the actors of public services, mainly on the churches and civil organizations participating in service provision. In Hungary, care provided and regulated in social law is divided into four major systems: the system of compulsory social security (health, pension and accident insurance); the system of family support and other care for families; the system for handling unemployment (employment policy instruments and care); the system of social care (cash, in-kind and personal care). My usage of social services equals to what is defined as services providing personal care in Act III of 1993 on Social Governance and Social Benefits. I examined this area within social administration since a closer look at cash and in-kind support is important to understand the process in certain cases.

The novelty of this research is that it is trying to reveal connections and relations between the examined areas such as administrative law, constitution law, social law and the European Union law from the viewpoint of social services. On the other hand, no similar survey was made in the above mentioned period, in the studied field. Continuous change and the intention to change is a feature of both administrative law and social administration, so the topic is on the agenda.

II. Basic questions of the research

My research has focused on the following three key issues.

1. I examined whether the processes in the last 20 years, especially after 2010, have been similar to the international practice, what impact the trends and reforms have had on the changes in the Hungarian social care system. I was searching the underlying reasons behind the 2008 changes in social administration, comprehensively introduced in 2010, which have significantly diminished the role and responsibility of local governments in state administrative tasks (determining cash and in-kind allowances) and as an institution maintaining authority. I have also mapped the function of the churches and civil organizations in providing social services, apart from local governments, and how their situation has changed since 2010.

2. The present system of social services involves several dysfunctions. These administrative and ruling problems can be derived from the fact that despite the remarkable social changes, the state needed to provide its citizens with the chance of equal access to services, while there was an explicit demand to have equal conditions for each service provider. The regulations of the last 20 years did not specify the tasks and responsibilities of the state and the local government, moreover no answer has been found to what extent the market actors can be present in organizing personal service; or what possibilities there are for the churches and civil organizations. However, as a new goal, the state aims to improve the effectiveness, efficiency and quality of public services. The questions are that along what maxim the social care system has been shaping; how the principles of equal chance to access and sector neutral financing will take shape; whether the present ruling circumstance/law makers will create a multi-actor system or to the contrary.

3. Due to the growing number of implementing decrees and out-of-field though relevant regulations, the operative norm material regulating the social care system within the social branch seems impenetrable, though when making a new law, to keep the principles of transparency, legal certainty and foreseeability is a high priority. When the rules are not written clearly or consistently, neither the executives nor the service providers can apply the law properly. Once a law is being made or changed, there are expectations towards the rules that permit and supervise the operation of services, as well as demands from the acting authorities and maintaining organization to have a more unified, dependable and quicker

procedure in order to better suit legal certainty important for the maintaining organizations, service providers and the beneficiaries, too. I am searching for the answer to whether the present laws meet these expectations.

III. Scientific methods applied

To elaborate the topic, an interdisciplinary approach was required; therefore besides certain fields of legal science like constitution law, administrative law, financial law, and social law, I also overviewed professional literature in sociology and social policy, which contributed to a deeper understanding of theoretical relations. To reveal the problems related to regulation, supervising and financing in organizing social services, it is necessary to analyse the present and historic legal materials, which I tried to execute from the viewpoint of legal certainty, plainness and constancy. By analysing the changes in regulations we can have an overview of the process and features of service organizing policy and ideology. The continuously changing legal milieu has been part of the social governance since the change of the regime, however, the outcomes of deeper changes induced by the modifications in regulation introduced in 2010, cannot be seen right now. By presenting and analysing statistical data, I tried to make the processes clearer.

In my thesis I found it important to examine the state's role in regulating and supervising. The change in the process of supervising and licensing as well as the development of electronic public administration may mount a challenge for the executive authorities and social service providers alike, who need to cooperate with the state on these conditions. The degree of efficiency and success of reforms introduced in public administration and public service can be influenced by several factors. The accommodation of regulating and supervising authorities to changes can depict a realistic picture of the efficiency of administering law in a changing legal milieu. The research employed the method of survey, which was determined by the methodological restrictions of the first survey. Data taking took place in 2008 and 2012. In a peculiar way, due to the continuous changes of the legal milieu, we only could collect data on tasks that were binding at that time. We only could ask those who acted as licensing and supervising authorities when data were being taken. During the research we got permission from and could enjoy the support of the National Rehabilitation and Social Office (and its legal predecessor). It greatly contributed to the success of our research, though in some respects it restrained data collection.

IV The Structure of the Dissertation

The dissertation is divided into ten major parts. The development, regulation and changes of social welfare services are closely connected to the development of the welfare state. In order to reveal the state's present role and future possibilities in providing these services, not only the development of the welfare state is presented in the theses, but also the critics on welfare state, the analysis of the era of neo-conservative state, and the contemporary views on welfare state in Chapter One. After studying the professional literature, I concluded that the state's role in providing welfare services would be highlighted.

The most debated topic of our days is the functions of the state and what roles the state ought to include. Before introducing the reforms in public administration related to public services and social care, I find it important to show the connections between the state and public service and public administration by presenting their definitions in Chapter Two. The trigger of public administration reforms was the New Public Management (NPM), which was a trend, built on the theory of community choices. In Chapter Two I give a short overview of NPM, the reasons for its evolution, its most important features, as well as the characteristic features of contra-trends criticising NPM, trends influencing the operation of local governments, and finally the factors that hindered the success of NPM in view of public administration reforms that took place in OECD countries.

In Chapter Three I present the impact of certain trends on the Hungarian public administration, the introduced reforms and their consequences, as well as the critics worded against them. In Chapter 4, after a short overview of the system of social care, especially the development of social services, I intend to reveal the connections which connect the welfare state with social rights and citizens' rights. We have witnessed the intention to continuously change the Hungarian public administration and social administration, primarily promoted by joining the EU, the most significant outer factor. The main principle of the EU is that all the state members can decide who should belong to the social security system, who and on what conditions are entitled to it, and how much it costs. Meanwhile, community provisions also have a great effect, which articulate joint principles that should be enforced by all member states. The characteristic features of the administration of European Union law is introduced in Chapter 5.

The state's role in providing public services highlights the issue of public goods and private goods; beyond their definitions and analysis, privatization and outsourcing of social services – with respect to their advantages and disadvantages – will be presented in Chapter Six.

During the change of the regime, making the Social Act became inevitable, because the social policy tasks of the local government needed to be defined, and the role of the non-state organs like the churches, associations and foundations had been growing. Since the very beginning, regulations made it possible for charities; religious, self-help and economic organizations; and foundations to provide care and services. The changes of the recent period have influenced the situation of these actors, therefore in Chapter 7 I describe the most important elements of the changes and the relationship between these actors and the largest actor: the local government. Since 1993 the social administration has experienced regulation under acts and orders alike. The legal material of this field has continuously increased, which, at the same time, required a more and more detailed regulation. Before presenting the empirical study in Chapter 9, I found it necessary to show the legal changes which determined the situation of both the maintaining organizations of service providers and the licensing authorities. Chapter 8 is devoted to this. The dissertation is closed with my conclusions.

V. Research results

A central issue of my dissertation was to examine how international public administration reforms have influenced the processes of social administration. The reforms presented in the research embodied in more visible trends and ideologies at international level and thus contributed to an explicit debate, which promoted the reforms to be cleared and executed. In Hungary, the system of local governments, started in 1990, had neither chance nor time to be prepared for the tasks in an efficient and sustainable way. Due to the change of the regime, local governments, which had no basic organizational culture, knowledge or resources, were delegated so many social cases that found themselves in disadvantage. To illustrate these difficulties organizing social care and services, tackling unemployment, and dealing with housing cases can be highlighted as the three most problematic areas, which required proficiency, coordination. Apart from the inadequate support from the local government at the beginning, the citizens' low participation also hampered the organizing. The relatively overdue legal materials and regulations in social and child protection fields, enhanced the local governments' independency and responsibility in organizing services. For a long time,

the principle of thinking strategically about task provision by local governments was to meet the minimum requirements of the prescribed tasks. It was only in the mid 2000's, when regulations on a more deliberate planning process were enacted. Meanwhile the problem of financing services had not been solved; therefore actors were inspired to spend sources of their own (of local governments) or other sources from the state on operating services (the church as a maintain organization). Shortly after regaining its feet, the local government, the largest actor in providing social services, had to permanently polish the set system. The public administration processes, which were similar to the international ones, accumulated and were adapted onto a less considered service system. The ideological analysis or complete adaptation of the reforms did not take place; instead certain principles and part were applied in actual politics and regulating processes.

In 1990, a plural service system was introduced, which marked a compulsory track for the actors because of low financing. The churches, due to or rather for the favourable financing, became central actors, while non-profit and open market service providers could undertake tasks with local governments according to their financial and care conditions. They are ready to fulfil new and unsatisfied needs; in addition they make it possible to gain outer sources for underfinanced areas. At the same time, it is true for both actors that the major part of the costs of provision comes from the state and the local government. This fact greatly determines their role: instead of forming the process they suffer from it. The events of the last 3 years have acted against the otherwise weak civil participation, making it more vulnerable to the intentions of the state and local governments.

In the social policy of the last 20 years two worthwhile reform attempts took place. Like public administration, the process of development was also influenced by the strategies of international trends and their interpretations. "The possible renewal of the social act and the democratic long-term development of social administration" (SZOLID)¹ aimed to develop primary services and strengthen the local governments' potentials. As an extension of SZOLID, Péter Győri and Péter Mózer, independent experts, published their study² on possible solutions to financing and regulating problems. According to them, the formative financing of social services is "stupid and safe"; forces the state to over-regulate; and

¹ <http://www.szmm.gov.hu/main.php?folderID=872> (Letöltés ideje: 2014. március 12.)

² GYŐRI Péter-MÓZER Péter, „Tékozló koldus ruháját szaggatja”- A szociális szolgáltatások és támogatások újrakonstrukciójának reformja, 2006.

influences innovations, problem-centred service organizing, and developing local governments' peculiarities in a counterproductive way. The National Social Policy Conception (Nemzeti Szociálpolitikai Konceptió (NSZK)) published in 2011, outlined the developmental measures of social administration, the systems of care and provision for the 2011-2020 period. Although 11 versions were made and was launched for public debate, NSZK was not accepted. This reform merged the elements of public administration in a unique way³, which could be perceived as the intensification of the weberian principles. The scheme also contained the principle of sector neutral financing, which could have made it possible to strengthen the multi-actor service system. According to the ideas presented in NSZK, the government would completely have changed the social policy system. Apart from the dynamic centralization of social policy, most of the tasks would have been taken away from the local governments. All these reforms, at low degree of efficiency, were only measures that only partially influenced the entire social care system and its regulations.⁴

Efforts to strengthen the state's role in the social sector appeared in 2008. By creating state institutions, the centralization of authority and supervising jurisdiction took place. According to Gyekiczky, who builds his view on sectorial law making, this process had started much earlier, at the beginning of 1990's.⁵ In my view, the appearance of the mentioned sectorial regulations served .

As a matter of fact, all interventions that aims to gain a stronger influence over the service areas, can be interpreted as nationalization, though these measures cannot be compared to the regulatory practice after

In the last 3 years, 2010-2013, the government's endeavour led to strengthening the state's regulator, supervisor and maintaining functions. Apparently it favours the largest actors of the social actors, since their tasks and expenses reduce. However, regarding the social service reforms, no matter which direction the changes in welfare services lead, the costs of provision needs to be taken into account.

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http://www.efoesz.hu/download/nemzeti_szocialpolitikai_koncepcio_munkaanyaga.pdf (Letöltés ideje: 2014. március 12.)

⁴ GYÖRI Péter, *Elszabotált reformok. Miért vallanak kudarcot a hazai szociálpolitikai kezdeményezések?* Esély 2012/3. 27–62.

⁵ GYEKICZKY Tamás, *Újraállamosítás Idősothonok Magyarországon 1993-2008*, Gondolat, Budapest, 2009. 212-213.

To what extent the state will rely on the principles of equal access and subsidiary, and considers the local government and non-governmental actors of the sector, still remains a question. Appropriate regulation and state control could guarantee quality service provided by these actors instead of the state.

The aim to entrust the social care systems' highest quality service providers with tasks continues to remain. Therefore the state ensures its instruments; the normative and task financing.

On the basis of analyzing and examining statistical data, regulations and related professional literature, we can state that the financing of social care provision is basically determined by the available resources. Social professionals have urged for many years to create a sector neutral financing. Even some politicians have articulated the same idea however; no substantial changes have been made recently. The sector neutral financing is still not created; normative financing is replaced with contract-financing with certain service providers from one year to another, while residential homes have become task financed.

At the moment, there are several reasons why we cannot talk about sector neutral financing; regarding financing (access to resources from the budget) there is a significant difference between the governmental and non-governmental maintaining organizations; the difference also exist between the religious and civil organizations; and there has been a difference within the religious organizations since 2011, when several religious organizations found themselves in a disadvantageous situations. In operating the social care system, the state still plays an important role both in financing and regulating. However, the state should not finance particular maintaining organizations but rather the tasks that belong to public services. A new system could be created as a solution to the problem, which would finance the services instead of the institutions, or the imminent needs in the form of per capita financing. Both of them are able to respond to needs more efficiently.

The law makes it possible for non-governmental and religious maintaining organizations to provide the same services as the state and local governments, using the central budget and the system of normative financing. A sector neutral system for fulfilling public functions could provide an equitable base which could also lead to a service provision of higher quality.

Task financing introduced in primary care has tackled the problems of sector neutrality, though raised some questions as well. Fulfilling the public functions of the state in good quality is not promoted by one-sided type of contracts, in which the possibility of legal remedy is excluded while favourable positions for the governmental organizations are guaranteed – these are the characteristics of the contemporary task financing system.

The non-governmental actors of social policy also gain different supports, therefore the government intends to regulate, restrict and supervise their operation more powerfully. The scrutinized areas are: the process of issuing operating licence, determining the equipment and personnel conditions, and advocacy for the cared ones. Though it still remains a question how it is possible to create a regulating system in which equal opportunity for services is achieved and the service standards are kept.

Due to the intention to centralize public administration, the licensing and supervising authorities face a double expectation. According to the outcomes of the survey, the efforts to centralize seem to be justified, since social and guardianship offices being part of the government offices possess better equipment and personnel conditions. Apart from the efficient fulfilment of the tasks, the universal legal practice must be kept in view. Although authorities still proceed differently in many cases because of misinterpretations of regulations, their number is decreasing; therefore both licensing and supervising procedures will be more calculable. Answers to the questions of the survey also highlights that the improvement of equipment of licensing and supervising authorities does not enhance the culture of respecting regulations. The success of idea and development of digitalized public administration is fundamentally defined by the fact whether the clients, that is the maintaining organizations, are able to grasp the opportunity and implement the reforms. According to the outcomes of the researches from 2009 and 2012, even the authorities do not regard them as possible, therefore a more exhaustive working out and a wider range of personnel training are needed to precede the introduction of reforms. Authorities operating in this hectic legal milieu are more capable to meet the new expectations, so finally the end-users will be the aggrieved party. A similar problem has appeared in the cooperation between authorities working side by side, which rely on local practice according to our research. To promote the cooperation of authorities working on the same case is an important methodological issue of public service. The continuous change of both the licensing authorities to perform public functions and the

actors providing professional methodological tasks, makes it difficult to measure the efficacy and efficiency.

During the research we have experienced that the organizational, office management and client service culture of the executive authorities did not change in the examined period. In many cases we have experienced that public servants tried to compensate the uncertainty of legal background by client and service centred attitude. The present regulations give no answer to the question how the government will apply its formerly extended supervising power against its own institutions.

Community tasks, decreasing population and ageing society all call for a strong state. When examining either the national or international history of welfare states, we can conclude that it is necessary to maintain the state's responsibility in providing public functions. Debates of today are partly about how much responsibility the government should take, and how its tasks should be provided: either by public administration organs or in the institutions established and funded by the state, or by entrusting open market actors.

If we make an international comparison or examine the Hungarian history, we can see that social welfare, the period of outer and inner safety overlap the period when the state is under strong social control with active participation. Therefore our task is to build and maintain a state, public administration and public service, which is able to perform all the tasks needed to improve the living conditions of the Hungarian society.

However, the main question is whether maintaining the state's responsibility in the classic public functions still continues to be necessary or not. In my opinion, which also reflects the dominant international view, it is absolutely necessary. The fulfilment of the state's functions in administration, law enforcement, national defence and economy can ensure the harmonious development of both the country and the living conditions of the citizens as well as the competitiveness. Strengthening rather than weakening the state what is necessary, since a weak state can collapse under different and occasional crises. The debate can further continue on the extent of the state's responsibilities in the above mentioned functions, as well as on how they are performed: directly by the governmental and public administration organs, or by institutions established and funded by the state, or by organizations of the open

market after contracting. Regarding the extent, services of material kind are not adjusted to wishes but financial and economic possibilities.

In my dissertation I present the roles and tasks of the state and local governments in social care and social services. Reflecting periods of certain times may lead to basic experience. Professional and scientific ideologies need to be interpreted through the ever changing relation between the state and the citizens (web of the citizens, the society), which can prove to be valuable if a wider layer of the society legitimates them. In Hungary, a well organized system that is able to satisfy the citizens' needs at an adequate level has not been formed on the basis of regulatory, financial and organizational ideologies. The service sector may be based on market or quasi-market mechanisms but the point of the system is to preserve the state's protective, regulatory and guarantee functions.

According to Zsuzsa Ferge, the state also has a civilization function. If the state withdraws from this function, in line with the growth of disparity, the number of the needed ones also increases, and as a consequence, the integrative service-welfare systems will weaken or disband. Although the number of poor people will grow, they will not be dangerous because they will not be able to organize themselves, they can be easily separated from the rest of the society. Due to the social processes, more and more employees and buyers are crowded out of the market. Meanwhile the state's regulatory role (police state) can strengthen.⁶

While the European Union makes further efforts to enhance social cohesion, we can eyewitness a totally different direction here In Hungary.

By accepting the Fundamental Law, the state not only wants to diminish its social responsibility but it also resigned from admitting social rights as fundamental rights, since the outdated examination of "worthiness" is set in the act of highest level. In line with it, in the field of social administration, the responsibility of the individual and family and the enhancement of the role of the historic churches are also underlined. In line with the diminishing entitlements, a paternalistic attitude has been growing what is more, in certain services (homeless care) the tools of law enforcement also appears.

⁶ FERGE Zsuzsa, *Elszabaduló egyenlőtlenségek*, Budapest, 2000. 47.



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List of publications related to the dissertation

Article(s), studies (4)

1. **Krizsai, A.:** The process of changes in social administration in Hungary; The establishment of the system of municipality.
In: *Access to Services in Rural Areas - A comparison of Finland and Hungary*, by Ferenc Bódi, Europäischer Hochschulverlag GmbH, Bremen, 69-78, 2014, ISBN: 9783867418980
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In: *Jelenségek a városi kormányzás köréből*. Szerk.: Horváth M. Tamás ; írták Varga Judit, Gyirán Zoltán, Lévai Antal, Veres Enikő, Horváth M. Tamás, Szemesi Sándor, Pump Judit, Szerdi András, Bocskai Erzsébet, Ajtai Ferenc, Szilágyi Bernadett, Dialóg Campus Kiadó, Budapest, 63-97, 2013. ISBN: 9786155376085
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List of other publications

Article(s), studies (1)

5. **Krizsai A.**: A hatóságok joggyakorlatának változásai a személyes gondoskodást nyújtó ellátások engedélyezése és ellenőrzése során.
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