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Local self-government across the European Union : present experience in EU member-states and expected developments

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In its preamble the European Charter on Self-government acknowledges that the Member-States of the Council of Europe, signatory hereto, are:

aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power

So across Europe local self-government is seen as one of the pillars of democracy, as one of the elements of any democratic system. Surely this is the reason why according to Art. 2 (‘the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution’) nearly all EU member-states have incorporated the principle of self-government in their constitutions whatever the way they have named it.

1) What is local self-government about?

(Art. 3, Art. 9, para. 1 and 2)

Local self-government is about managing local government rather than structuring it, in opposition to what is usually said: local self-government is a principle that entails freedom in managing and making decisions for those public authorities that are said local because they are separated from central government. This freedom is only delineated by acts of Parliament which must define the conditions and securities under which such the basic principle of local democracy is implemented (Art. 9 para. 4). Interestingly according to the Charter, *in fine* central government should play an unassuming role that is restricted to a vague form of administrative control (Art. 8). Financial control is not even mentioned although it is common place and needed by the communities to protect them against local councils’ misleading management or decisions. Controlling local authorities is a protection against any attempted move back to feudalism and any risk of corruption in the localities.

2) What is local self-government for?

It is more and more useful economically, politically and sociologically since law is just a tool.

Economically, globalisation and the present economic crisis clearly show central government’s withdrawal and failure for the benefit of local authorities. Central government appears to go further and further from citizens and users. Moreover the present crisis has reminded us that ‘Unity is strength’ and construction the European Union is not a choice. Its needs to be successful for all the member-states, economically as much as politically.

Politically, if the centres for decision-making are separated between central and local tiers this makes room for opposition party groups to play their own role at the

local level if they cannot have a role at the national level. So local self-government entails that swings in the balance of powers can happen at any time.

Finally, **sociologically**, out-reach management better answers citizens and users' needs (Art. 3) in terms of new demands for the general interest, for more information, and public relations... So is participative democracy, for new and more efficient local policies. However one question remains to be asked : how much are local users prepared to pay for quality local services?

All over Europe the conditions for implementing local self-government are theoretically the same (as we will see in the first section) but practically securities and limits vary from one member-state to another one (see Section 2).

I – About the conditions for local self-government to be implemented

Four conditions are required: shaping areas for local authorities (A), a functional dimension (B), the issue of responsibilities for local authorities and so devolution from central government (C), and finally the necessary means for local authorities to implement their responsibilities (D).

A) shaping areas for local authorities

This is not an issue for the European Charter on self-government but it is an major issue that needs to be raised: We think that local self-government wants areas to be properly shaped so that they fit the management of local affairs. So the next questions are difficult to answer: Smaller or bigger areas? What is the 'standard' territory, ideally?

More than a big area, autonomous local authorities need coherent, effective and democratic one to deliver efficiently.

i) A 'coherent' area: it must represent an economic and social unit, which sometimes may result from a long historical process; as an inheritance. An obvious example is the French communes and 'départements' which date back from the Revolution.

ii) An 'efficient' area: it must be fully adapted to any policy decided by a local authority that has responsibilities and human, material and financial means related to the management of the area.

iii) *In fine*, 'democratic' area » : it must be a framework for the communities to express its needs, to take part to local policy-making and to assess the implementa-

tion and the impacts of policies. Hence, according to the Council of Europe, out-reach democracy is fully developed when it comes as a tool for enacting and assessing local policies.

However we now need to ask the question of tiers: how many local government tiers need to be structured to ensure local self-government within a country?

B) The structural dimension

Either federal, unitary or ‘regionalized’, nowadays every EU member-state has to face the following issue: what is the ‘right’ number of local government tiers in order to decide over efficient policies?

Smaller European states usually have only one tier of local government. In Europe 9 of them (Cyprus, Malta, Bulgaria, Estonia, Latvia, Lithuania, Luxembourg and Slovenia) only have municipalities; Austria must be incorporated in that group according to its federal structure.

Ten member-states have a two-tier system, with municipalities and regions (Denmark, Greece, Hungary, Ireland, the Netherlands, Portugal, the Czech Republic, Romania, Slovakia, Sweden).

Six Member-states have a three-tier local government system..., dont l’Allemagne, la Belgique, l’Espagne, l’Italie, la France et la Pologne, disposent de 3 niveaux de collectivités locales (communes, niveau intermédiaire au nom variable (provinces, comtés, districts, départements, etc ...) et niveau régional)¹.

Some countries have either one or two tiers depending on regions: in the United Kingdom England has both a single-tier system and a two-tier system of local government but in Northern Ireland, Scotland and Wales local councils are all unitary.

Interestingly some states where municipalities have been forcefully amalgamated in very large areas, have to ‘invent’ new forms of management. In Lithuania, municipalities are divided into neighbourhoods as ‘decentralised’ (strictly legally speaking ‘deconcentrated’) units with some financial means of their own. Similarly in France, larger cities are divided into ‘mairies de quartier’, but smaller communes are gathered into joint ‘intercommunal’ bodies (*établissements publics de coopération intercommunale - EPCI*), that make decisions and implement local policies on behalf of their member-communes. Such an reorganisation conforms with the European Charter’s

1 including Germany, Belgium, Spain, Italy, France and Poland have 3 levels of local government (municipal, intermediate with different names (province, counties, districts, departments, etc ...) and regional) [tlum. red].

wish to promote joint bodies (Art. 10).

Such a varied distribution of local government tiers shows that it remains to be seen whether uniformed and amalgamated local authorities offer economy scale, whether they can spare tax-payer's money but at the same time make local government more efficient. If efficient local government means that local services are decided upon and delivered as close as possible to targeted communities (Art. 4, para. 3), the 36800 or so French municipalities that accounts for 40% of all EU municipalities, could be said to typify the 'best' adapted system to less densely populated areas (117 inhabitants/km² in 2014, compared to 202 in Italy and 232 in Germany).

Local self-government not only relies on relevant areas, it also relies on a relevant allocation of responsibilities.

C) The Functional Dimension

The European Charter on self-government (Art. 4) only provides for general principles and not for a clear pattern of allocated responsibilities depending on the number of local government tiers.

Most European municipalities are responsible for managing the same kinds of services: water and garbage management, street and road maintenance, town-planning, in fewer cases local hospitals and schools.

Although the allocation of local and regional responsibilities is mainly in the hands of central government in the unitary states (not in the federal states) in most cases local authorities, especially municipalities, are endowed a general competence of administration by law.

Curiously the general competence is shared by all 3 types of French local authorities (communes, 'départements' and regions). The same for Slovakian regions and municipalities (respectively Law N° 369-1990, 6 September 1990, art. 4, para. 1 and Law N° 302-2001, 4 July 2001).

However any decentralisation reforms implies for central government to transfer financial means too, which makes the principle of general competence still more difficult to enact and which blurs the distribution of responsibilities between local authorities. And there is more than a mere exercise in administrative and constitutional law in the distribution of responsibilities among local authorities since the issue of financing locally policy-making lies behind. That is the reason why in Hungary, responsibilities for municipalities and counties vary according to how much each local authority is rich or poor.

D) The Material Dimension

Here we raise the successive questions: how to define useful means for the management of a local area and population? Then the next question is: what means do local authorities have – or should have – at their disposal?

This is a serious question for very small municipalities in rural areas, as showed in Estonia where some towns have embarked on litigation proceedings against central government. The European Charter on self-government defines ‘means’ as material, financial and also human resources that includes not only staffing but also *New Public Management* policies (Art. 6, para. 2).

II – What are the securities and limits for implementing local self-government?

Securities and limits refer to the issue of local councillors’ status (A), central government’s administrative, judicial and financial controls over local authorities (B), local authorities’ access to constitutional litigation proceedings (C), and finally participative democracy (D).

A) Local Councillors’ Status

Art. 7, para.1, European Charter on self-government : “The conditions of office of local elected representatives shall provide for free exercise of their functions”.

- 1) Hence to be fully achieved local self-government implies that (Art. 3, para. 2) “This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them”.
- 2) Moreover as for the internal working of local authorities, local executive bodies should be answerable to the local assembly. Although it is seen as an essential aspect of local democracy this point is rarely provided by local government laws across Europe. In opposition to the Charter (Art. 6) which wants local authorities to choose their own organisational rules most often a act of parliament draws a uniformed framework for local authorities to conform with.
- 3) Local councillors should also have special rights to fulfil their mandate, allowing them to be trained as councillors and to special leaves of absence and allowances, at their local authority’s financial cost (Art. 7, para. 2). This is the cost to be paid for representative democracy.

B) Administrative, judicial and financial controls over local authorities

While the European Charter refers to administrative controls, it forgets about financial control. De plus, elle ne précise pas expressément que le contrôle administratif est exercé par l'Etat, même si cela semble s'évincer de la formulation de l'article 8 de la Charte, dont l'objet est le « Contrôle administratif des actes des collectivités locales »².

- 1) Art. 8 para. 1 and 2 remind of the well-known general principle for Western democracy: No administrative control without any legal text, nor beyond what these legal texts assert.
- 2) While financial controls are not written about in the Charter, Art. 9 calls for sufficient financial means to be allocated by central government to local government in order to compensate for the cost of managing the transferred responsibilities. This opens up the discussion toward financial autonomy for local authorities through a convenient taxation system that would offer them directly levied resources. On the other hand one must not forget about equalization system that helps balancing revenues between sub-national authorities. If financial autonomy cannot be achieved we wonder whether local authorities should or should not have access to constitutional courts to sue central government and protect their own rights, even in unitary states.

C) Local authorities' access to constitutional courts

- 1) Art. 11 provides for such a right.
- 2) In a federal state länder or regions are entitled to sue central government for violating their fields of competences, according to the federal constitution (Belgium, Germany, Austria).
- 3) Similarly some unitary states have open up their constitutional court to local authorities and case-law is becoming a growing business (Bulgaria, Poland, Portugal, Czech Republic and Slovakia). Spanish autonomous communities and Italian regions can refer a case against central government to the constitutional judge.
- 4) 4) As they have political impacts, constitutional litigation proceedings are risky for constitutional courts that can be 'instrumentalised' to settle political conflicts based on financial and human resources issues.

2 Moreover, it does not clearly precise that administrative control is exercised by the State, even if it seems to be out of the formulation of article 8 of the Charter, which object is the « Administrative supervision of local authorities' activities » [tlum. red.].

D) Participative democracy

Curiously, the Charter raises this issue only incidentally (Art. 3, para. 2) although nowadays many legal tools exist to inform citizens and to ask for their advice or decision, in the case of referendums. But participative democracy must not compete with representative democracy that is embodied by elected lawful councillors. So participative democracy is useful only if it is for incorporating citizens into evaluation in the view of reforming and improving policies and services, both at central and local government levels. The Lithuanian example of ‘one stop offices’ could be a starting point for other EU member-states.

Conclusion

A people of footmen cannot make a free government.
(A. de Tocqueville)

On 23 August, 1989 more than two million citizens of the Baltic states, including one million in Lithuania, formed a human chain in order to demand something that was essential, basic, intrinsically related to their dignity as human beings: the right to be free, to be able to organize themselves into self-government, to manage their own affairs by themselves while they proclaimed they were ready to take the responsibility for it.

All of these men and women have seen the way forward to local self-government in Europe, hence to local liberties, as one of the most effective answers to their demand for administrative and financial autonomy and also for local democracy.

For as Napoleon III wrote: “If one can rule from far away one can govern in the right way only closely” (Preamble of the 1852 Decree).

Summary

The Article shows the basic issue of defining and implementing local self-government within the EU. Across Europe local self-government is seen as one of the pillars of democracy, as one of the elements of any democratic system. The Author concentrated especially at the answer on fundamental questions like: what is ‘local self-government’ about, and what is local self-government for? The article also shows the conditions for implementing self local government as well as the securities and limits for implementing local self-government.

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