

LOCAL GOVERNMENT IN THE MEMBER STATES
OF THE EUROPEAN UNION:
A COMPARATIVE LEGAL PERSPECTIVE

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FOREWORD

The present book seeks to provide a general overview of local government across the European Union (EU). It does not pretend to perform an in-depth or comprehensive analysis of all dimensions of local authorities, as such an attempt would entail an encyclopaedic effort. The purpose of this collective book is more limited and humble: to present the basic and structural lines of local government, following the conceptual thread of self-government or local autonomy.

Therefore, this book is designed primarily for those who wish to have a clear and synthetic presentation of the legal scheme governing local government in the present 27 EU member states. Heavy or too sophisticated dogmatic questions are intentionally avoided, not only for lack of space, but also because the purpose of the book is different and it is conceived as a sourcebook rather than as a treatise.

The perspective of the book is a legal one, although references are made, where needed, to historical or political factors, which will help the reader in understanding better the regulations in place within each country. As a matter of fact, the Law is never an abstract entity, but the concretisation of several historical, political and sociological elements.

The legal situation of local government in each of the current 27 member states of the EU is presented in a short, up-to-date and synthetic manner, thus providing a quick overview of the foremost elements in the legal scheme governing local authorities across Europe. Moreover, for each country sources of additional information (specialised bibliography, landmark court cases, useful internet resources) are provided for the reader who would like to go further in the study of this exciting subject.

This is a comparative legal analysis whose geographical scope is limited to the EU. The reason for this selection is two-fold: on the one hand, covering the whole group of «European» countries (a murky notion anyway) would have entailed much more time, money and effort for this project. On the other hand,

the member states of the EU form a constitutional-political union in which literally all major features of the public sector and governmental organisation become more and more intertwined. The fact that the EU is a union of States (*eine Staatverbund*, in German terminology) does not mean that the whole integration process is indifferent to the «lower» layers of territorial government. Quite the opposite is true: local government plays a significant role within the EU (e.g., in the implementation of many European legal rules), a structure that proclaims subsidiarity as one of its key conceptual pillars.

Moreover, the Union projects a long shadow over almost every aspect of the day-to-day lives of thousands of local authorities around Europe, as legal scholars have already well analysed and documented. Just to mention some of these repercussions, it is worth noting, to begin with, that local authorities are the real (and sometimes only) addressees of many European directives and regulations, in fields such as transport, environmental protection or public procurement, among others. Second, they have a specific voice in the decision-making process of the EU, namely through the Committee of the Regions and through some European Parliament special committees. Third, local authorities play a key role in the implementation of several cohesion and structural funds, of which they are some of the most important recipients.

Finally and most importantly, the deep financial and budgetary crisis that is sweeping Europe is already triggering dramatic changes in the number, size and types of local authorities, in a desperate need to control the deficit and provide more efficient governmental structures. Fusions, mergers and amalgamations of various sorts, the deepening of inter-municipal cooperation, etc. are in the front line of political discussions and on the front page of every European newspaper, on a daily basis. All these elements are now taking place as consequences of the current fate that the EU is currently facing, so the «Brussels problems», at the end of the day, end up affecting our little villages in the mountains, or the human and financial resources of our massive city districts. This is why each chapter includes a specific section aimed at analysing the relationship between the local authorities and the EU.

The reasons behind the publication of this collective book are clear and do not need justification. Simply, as far as we know, a work of this type does not yet exist in the comparative bibliography. There are, it is true, collective books that offer a political science perspective or cross-cutting analysis of local government in some European states. Others perform a study of local government finance, in a narrow number of countries. But there is no book like this one, written from a legal perspective and including all the member states of the Union. I hope that it will be a valuable tool for comparative analysis and first-hand reference.

This collective book consists of 27 chapters, one for each member State. Each contribution is not a free exercise, but rather follows fixed items and subjects, so that all the different chapters are homogeneous. In order to ensure com-

parability, all national contributions develop the same structural pattern, and have the same headings or sections. This has been possible because I asked the authors to frame their individual chapters around a uniform «table of contents», which I circulated and which was overall accepted by them. Of course, they were free to articulate the content of each heading as they deemed appropriate.

Therefore, all the chapters address the key or essential elements of local self-government in every country, those legal ingredients that may be identified as the «core» aspects of local autonomy. Deliberately, and as stated above, the authors do not analyse sociological issues, or other legal aspects within the local government regime which are not connected, in one way or another, with local autonomy.

Every chapter first presents a brief evolution of local self-government in the analysed country. This exercise is very important to understand correctly some historical and cultural patterns. Many sharp differences appear in this field. In some EU countries, local government is a structural element of the social and political evolution of the country, while in others this is a brand-new phenomenon (like in Malta). As concerns the 20th century, many countries saw local government reduced or even annihilated by centralists dictatorships (from Spain to Bulgaria, from Slovak republic to Lithuania). As a rule, nowadays the existence of local self-government is a common feature of all the member states of the EU, and it is recognised in the Constitutions of most of these countries, with the notable and understandable exception of the UK, although the notion is enshrined in the political culture of the country. Key prospective trends (i.e., legislative proposals, reform packages) and hot issues or on-going debates are also mentioned.

The second section of each chapter endeavors to present in a short and clear way the «recipients» or «subjective owners» of local autonomy. Which are the units and levels of local government, which are the names of the local authorities and bodies (first tier, second and third tier, if applicable) in the official/native language, with an approximate translation in English (towns, cities, provinces, counties, parishes, etc). Here, the reader will be able to see the strong influence of the French word «commune» in different countries to identify the basic human settlement, although in this book it has been substituted by the (more English) word «municipality», which is neutral.

The reader will be able to see the sharp differences existing throughout the EU in terms of number, size and average population of local authorities. The extremes are, on the one hand, France (with more than 36,000 municipalities) and the Nordic and Baltic States (and the UK) on the other. Most authors agree that the process of amalgamation or fusion of municipalities is far from easy, and it has failed many times.

Third, each chapter identifies and briefly describes the current, basic legal framework of local government and local autonomy. In this section, the Euro-

pean Charter of Local Self-Government has become, undoubtedly, the most important legal rule, with a huge transnational influence. All the EU member states have ratified the Charter, although some countries have filed «declarations» or statements (as the Charter does not allow, from a technical viewpoint, «reservations») according to which some of its provisions would not be applicable to some local government bodies. This is usually done for second-tier local authorities which in many countries (like Spain), do not have an elected council or assembly. The perception of the legal force and the direct applicability of the Charter is also a tricky question, and I invite the reader to find out the different responses that have been elaborated by the domestic courts in the national jurisdictions. Other topics that are covered are the structure of the legislation (unitary/complex/uniform/devolved, etc.) and the specific status of the capital city, where one exists.

In the fourth section (on the competences, powers and services of local authorities) the book addresses one of the «backbones» of local autonomy. A real self-government clearly requires that local authorities enjoy a realm of actual powers, a significant capacity to regulate the well-being of the local community. At this point, the reader will be able to discover some basic trends. For instance, the common duality, in many countries, about «own» and «delegated» competences (from Spain to the Czech Republic) a key construct that has dramatic consequences in terms of financing, inter-governmental control and so forth. Similarly, some countries have developed interesting doctrines to support the intervention of local authorities: from the «clause générale de compétences» elaborated by the French *Conseil d'Etat* to the «institutional guarantee», formulated by the German federal system.

In almost every country, local authorities have the power to expropriate private property, they have rulemaking powers (always subordinate to the parliamentary legislation), and they have sanctioning powers over individuals and firms. In many jurisdictions, there are also long lists of local, compulsory or «voluntary» (Luxembourg) competences and responsibilities, services and duties.

A look into the basic organisation of local authorities was also necessary, primarily because this allows us to see that local government, contrary to the other layers of the governmental machinery, enjoys a direct democratic legitimacy. The governing bodies of local authorities, at least the first-tier ones, are directly elected by the citizens. In all countries, citizens vote for the council, assembly or deliberative body. In many, they also vote for the mayor. On the other hand, local autonomy involves, *inter alia*, the capacity for the local authorities to determine their internal structuring.

Therefore, precise information is provided on the different cogs of the local organisation. First, the council (its election, number of members, powers, etc). Then, the executive organ (elected directly –by the citizens– or indirectly –by the council–, its appointment and dismissal, main powers, etc). Also, inter-municipal cooperation is analysed: the types, forms and names of the bodies or

structures established for cooperation are presented and discussed. The trend of inter-municipal is of foremost importance in the current situation, and some countries (such as France) show an impressive record in this field.

Next, the human resources of local authorities are examined. In some countries, the different kinds of public employees are considered to be «administrative» civil servants enjoying a special legal status, while in others they are treated just like any other employees in the private sector. Most countries, though, combine the two perspectives. As a rule, local authorities have the power to select and to manage their own human resources. In some countries (Belgium, Italy, Spain,) there are special types of local employees who are selected or recruited by central/regional governments and who perform (as «clerks» or «secretaries»), key and exclusive functions in day-to-day local activities.

A study like the present one could not omit the analysis of the financial resources of local authorities. If there is an element which provides a real assessment of the actual depth of local autonomy, this is local government finance, for without financial means the exercise of competences is rendered an illusion. Thus, the experts present in a concise way how local authorities are funded in their countries. The basic sources of income are enumerated: taxes and charges that can be collected by them; transfers from the regional/state government or from the EU; grants; fines, sale of products or assets, etc. Where possible, these sources are also quantified or appraised in terms of their sufficiency. Most local authorities have taxing powers, but, as a rule, they cannot establish taxes freely, since this is done via a piece of legislation from the state/*Land*/regional parliament. In many cases, local authorities may fix the rate of «local taxes», while in others this is not legally possible. The relative importance of transfers from regional/*Land*/state government is also considered. In this area, the result is, at least, improvable, as in most countries (with the notable exception of the Nordic ones) grants constitute a key or decisive source of income. As long as these grants are conditioned or «earmarked», this fact signifies an actual reduction of local autonomy. Unfortunately, the financial health of local authorities is poor throughout the EU. In many countries, and in spite of prudential rules laid down in general statutes, local authorities have accumulated an important debt and are in situations of severe deficits. This could have strong implications for the short-term survival of some forms of local authorities.

Section eight of each chapter has a look into the property and assets of local authorities, also an important tool for the carrying out of so many local policies and services. As a rule, local authorities are entitled to have property. The authors have identified the most usual types of assets and properties of local authorities in their nations. In some countries, local government property is regulated by a special legal regime (along the lines of the «*domaine public*» in the French legal tradition) while in others general private or civil law applies, with some Public-law corrections.

The control and supervision of local authorities' activities is probably the very backbone of local autonomy. If local self-government means the capacity of local authorities to decide free from political intervention of the «higher» levels of government, any form of «control», «oversight» or «supervision» has to be carefully analysed. Therefore, each chapter considers what type of control over the activities of local government bodies can be exercised by regional or state authorities, and, the crucial point, whether this is solely a control of legality, or also a control of opportunity (on the merits) or expediency. Many countries admit, in a more or less concealed way, the control of opportunity by regional or state authorities, especially where «supra-municipal» interests are at stake. Many different versions may be found throughout the EU, which could not be fully considered in this short foreword. In some countries, when an upper level of government challenges a decision, plan, action or any other measure whatsoever that has been adopted by a local authority, it has the power to suspend the execution and enforcement (that is, to enjoin) such a measure. In some places, that suspension is automatically granted by the courts, while in others the central/regional government has a procedural burden to provide evidence and to convince the court to do so. Also, in some member states it is possible for an upper level of government to suspend directly the execution or enforcement of a local decision, without the need to seeking judicial review. The role of courts is duly analysed, and reference is also made to the role of the Ombudsman (at the national, regional, or even local level).

In most countries, local autonomy is not simply an abstract construct or a «desirable» goal, but a clear legal figure with its own means of legal protection. Consequently, the book also studies this crucial domain. The topics addressed are the ordinary protection of local autonomy by regular courts (administrative or civil ones) and, in some countries, even the «constitutional protection», which is performed by means of a special appeal before the Constitutional or Supreme court.

Finally, as this books wishes to concretise its analysis in the member states of the EU, a special item is devoted to present the relationships between local government and the EU. By reading those sections, the reader will reach the conclusion that local authorities and the supranational level of government are not alien to each other. As stated above, there are «organic», «financial» and «functional» connections. First, the composition of the EU Committee of the Regions shows that local governments have a specific voice (albeit a small one) in the decision-making process of the EU. As the actual composition of the national delegation in this committee is entirely left to the discretion of the member states, one can see differences among the various countries as to the number and importance of local representatives in the said delegations. In some countries (for instance, Latvia and Luxembourg) all the representatives come from local government. In any case, the name of this body is somehow misleading, as it should be renamed as «the committee of regions and local authorities». Second, EU structural funds have played a significant role in local gov-

ernment finances and projects, especially in the «cohesion countries» such as Spain, Portugal or Ireland, and now in the Eastern and Central European member states. Finally, local governments play a prominent role in the actual implementation of so many directives and other legal rules emanating from the EU, especially in the environmental sector, as the Irish chapter shows.

The authors of the chapters are highly qualified experts, professors and practitioners, some of them with practical experience in running local authorities. As anyone will be able to ascertain by reviewing the «list of authors» at the beginning of the book, the contributors are prominent and authoritative scholars in their countries, and some have even had the opportunity to draft legislation (including constitutional texts) on matters of local government and decentralisation.

Many authors (myself included) are members of the Group of Independent Experts on the European Charter of Local Self-Government, established in the nineties by the Chamber of Local and Regional Authorities of the Council of Europe. Since its inception, this group has performed a very good job in providing legal and technical assistance to the different bodies of the Council of Europe in matters of local government law and democracy. I know the members from a long time, so attracting some of them to participate in this collective book (which focuses on a different geographical and political structure than the Council of Europe) was not too difficult. Some of the other authors were contacted outside the framework of the said group. In general, their reply was also positive. I am most grateful to all the authors who were willing to participate in this long-term effort, and who obligingly accepted my comments, requirements... and pressures on the deadlines.

This collective work, then, is designed to be used as a handbook or sourcebook, by all who wish to have a basic and fresh presentation on local government throughout the European Union. I hope that they will find it interesting and useful, and that it will be the first step into a deeper knowledge of the changing world of local government.

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